Responses to consultation on the Overall Framework for regulating Network Rail

Industry Stakeholder	Pack Page number
Abellio	3
Arriva	7
Bootham Network Solutions Limited	19
Chartered Institute of Logistics and Transport	25
Crewe-Stoke-Derby Stakeholder Board	28
DB Cargo	30
Department for Transport	36
Essex County Council	47
Eversholt Rail	54
First Group	56
Freight Transport Association	68
Gatwick Airport Limited	73
GB Railfreight	75
Go-Ahead Group	81
Heritage Railway Association	88
Historic England	90
IOSH	92
London Travelwatch	96
Merseytravel	98
MTR Crossrail	104
Network Rail	107
North East Combined Authority (Nexus)	125
Peninsula Rail Task Force	129
Rail Delivery Group	134
Rail Freight Group	140
Rail North	147
Railway Industry Association	152
Really Good Ideas	157
SEStran	162
Siemens Rail Automation	165
Stagecoach and Virgin Trains	167
Transport Focus	171

Responses to consultation on the Overall Framework for regulating Network Rail

Industry Stakeholder	Pack Page number
Transport for Greater Manchester	179
Transport for London	186
Transport Scotland	192
Urban Transport Group	196
Welsh Government	202

Office of Road and Rail
One Kemble Street
London

Date   18 September 2017

Reference: Abellio UKs Response to the Consultation on Proposed System Operator Measures and Regulation of Network Rail

Introduction

This submission provides a specific Abellio UK response to the above consultation. The System Operator (SO) plays a pivotal role to allow TOCs to meet their franchise targets. Abellio UK welcomes the opportunity to provide further input to shape the regulatory regime in CP6 for the SO alongside that submitted by the RDG. We agree and support both the RDG and ORR's expectation that: "industry will increasingly rely on a SO that is proactive, transparent, evidence-based and independent and impartial of any particular interests to help them deliver for passengers and freight customers".

Abellio UK Approach

In our approach to this consultation we have not attempted to respond to specific questions set out by the proforma return; we have instead set out our key priorities which should be considered along with the RDG's response to the SO operator measures and the wider regulation of Network Rail.

Our Key Priorities from the Consultation Documents

These are as follows:

1. **SO Measures – clearly defined priorities and terms of reference**

    - We would like to see a defined and clarified Terms of Reference for the SO in the final documentation. This should clearly set out priorities, goals and system outputs for the SO along with balanced KPIs that are carefully aligned to Owning Group and TOC franchise requirements. Consideration should also be given to the prioritisation of measures within the scorecard to ensure that the priorities of customers and clients are appropriately weighted. Network Rail needs to manage the long term sustainability of the network to ensure delivery of safe, reliable, affordable infrastructure for future users of the railway. This should be recognised in the overall

assessment of the SO's approach to both supporting the railway and managing its business in a sustainable railway.

- In line with the RDGs response to SO measures, we would also like to emphasise the point that the SO should be facilitating optimisation of the network in order to deliver a growth in output through improved journey times, increased track capacity and optimised costs. This will require innovative solutions and the ORR should ensure that measures and Terms of Reference are geared towards the delivery of these improvements by the SO. Support for the transferal and sharing of innovative solutions should be strongly encouraged by the ORR and seen as highly important to the role of the SO.

- Critically important to the terms of reference is a clear direction from the ORR that a balanced and multi-dimensional approach must be taken when making decisions on performance strategy and regimes. We have seen examples in the recent Control Period where one dimensional performance initiatives and strategy has been put together and implemented with limited TOC consultation which may lead to at best short term performance benefits without consideration for wider industry impact in the long term. The opportunity to change the one dimensional approach to resolving performance issues must be not be missed in the next Control Period. The approach to performance has to be multi-dimensional and take into account all elements of cost and benefit. This should include discussion and agreement on schemes which look to improve performance with Routes and TOCs/FOCs at the outset, including balancing performance improvement benefits against journey time improvement, capacity and associated revenue and cost benefits or impacts.

- We would support further devolution of some aspects of the timetabling and train planning roles within the SO; while still allowing Validation and cross checking centrally by the SO.. The ORR should consider encouraging the SO to devolve these processes in order to achieve greater efficiencies and a better overall result for our customers and the railway.

2. **Addressing and tackling Under Performance in Network Rail in CP6**

- The RDG consultation response outlines support for the requirement for a proportional response and approach to regulation of the SO. We believe that a more detailed framework and structure for managing under performance must be set out by the ORR.

- It is mentioned in the consultation document overarching consultation on the regulatory framework for Network Rail that: "As a general principle, where there are strong mechanisms for customers and other stakeholders to work with Network Rail to agree and deliver appropriate

action, we will give the space for these mechanisms to be used, supporting the relationship between Network Rail and its customers."

We believe it is fundamentally important that Network Rail and its customers should be allowed to develop mechanisms to support action and this approach should continue. In addition we would like to see much clearer levels of minimum engagement set out by the ORR. Whilst not being overly prescriptive, it should set out an outline of minimum joint outputs expected from the engagement as well as agreement on the recovery plans that are developed.

- The management of Network Rail's under performance by the ORR needs to be strengthened within CP6. During CP5, we have seen examples of underperformance being tackled in an ineffective manner. Improvement notices and similar regimes have been too slow to deliver the correct results in the right timescales. In the consultation document on the overarching consultation on the regulatory framework for Network Rail, it describes "We are consulting on introducing a number of new incentives, including reputational, procedural and management. We wish to signal the types of responses we will be likely to consider in different performance situations, giving a clear message to Network Rail and its stakeholders about how we may escalate performance issues using an incremental approach to reflect Network Rail's progress in addressing any issues".

We would like to see Owning Group involvement in these discussions on the initiatives, to ensure that they have high impact and will deliver results in the timescales required. We must see a step change in enforcement of measures to tackle underperformance and the timescales in which results must be achieved. This is a common view across all of our TOC and one of the most important aspects to Abellio UK.

3. **Creation of an SO Supervisory Board**

- In line with our comments in section 2, and our response to the Route Requirements and score cards document, we would like to see the creation of an SO Supervisory Board, with the sole purpose of monitoring delivery of system outputs from the SO and ensuring that under performance is tackled using the correct measures. We would strongly support this approach and believe there would be great benefits in this being a cross industry oversight body for a critical function in the UK rail industry. In line with the RDGs view, we look forward to Network Rail setting out further development of SO measures and means by which stakeholders can continue to play a substantive role in the SO's governance.

Response to ORR's consultation on the overall framework for regulating Network Rail (PR18)

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to pr18@orr.gsi.gov.uk by **21 September 2017**.

Full name	Mary Hewitt
Job title	Strategy and Policy Director
Organisation	Arriva plc, its subsidiary Arriva UK Trains Limited and its wholly owned train operating companies (TOCs), Arriva Rail London Limited, Arriva Rail North Limited, Arriva Trains Wales/Trenau Arriva Cymru Limited (ATW), Grand Central Rail Company Limited, The Chiltern Railway Company Limited (CR) and XC Trains Limited (XC). In addition, this response also covers Alliance Rail Holdings Limited and the Great North Western Railway Company Limited. Arriva is a wholly owned subsidiary of Deutsche Bahn AG (DB AG).
Email*	
Telephone number*	

*This information will not be published on our website.

Question 1 (Chapter 3):

Do you agree with our proposed use of scorecards in CP6?

Arriva supports the use of Scorecards as part of the process to hold Network Rail to account for its delivery of the outputs required of it by the Control Period Settlement, its other duties laid out in its Licence and its obligations to its customers detailed in Access and other contracts   We believe that the concept is good but that further development is needed in order to gain the maximum benefits for the industry.

We believe that appropriately designed Scorecards have the potential to:

- provide a simple overview at a management level on key route performance issues and delivery.
- Drive the right behaviours by incentivising management to focus on what matters.

Arriva believes that in order to realise the full potential of Scorecards Network Rail and operators should embed these in to the routine of their management activities alongside existing Safety and Performance reporting.

Arriva's experience to date of the use of Scorecards is that they have the potential to provide an increasingly effective overview at a management level as to how a Route is performing in the delivery of the key results it is targeting. It would appear that they also assist in making Network Rail's management incentive schemes more effective in incentivising the actions

needed at a management level to underpin this delivery. In addition, in the most recent iteration of the Route Scorecards, the addition of a suite of "Customer Scorecards" in the Route Scorecard structure has allowed Network Rail's customers to select a few targeted measures to increase the Route management team's focus in that Operator's priorities. However, more still needs to be done to embed the use of Scorecards in the routine of Route management alongside existing Safety and Performance reporting.

Despite these positive aspects, it would appear that the effectiveness of the Route Scorecards as a management tool is undermined by some of the key metrics being highly complex and built up of results from a very wide range of separate activities. Therefore, we believe that the benefits delivered by the deployment of Scorecards could be improved by simplifying some of the key metrics so that the link between management action and the metric is clearer. In particular, it would appear that the Train Accident Risk Reduction and Financial Performance Measure metrics are vulnerable in this regard.

Based on this experience, Arriva continues to be concerned that Scorecards will not, in themselves, be sufficient to deliver all the outcomes that ORR envisage. In particular, while the Scorecards may be a transparent way of simply recording the outputs that Network Rail is required to deliver and of highlighting specific customer and funder requirements and priorities, there needs to be separate processes established to enable these parameters to be agreed. In particular, Arriva is concerned that securing agreement to key levels of output on a bilateral basis between Routes and their individual customers will prove to be extremely challenging as there appears to a significant gap between what Network Rail currently suggests is deliverable and the existing expectations of Network Rail's customers. For example, in the key area of operational performance, the gap to what Network Rail's customers were previously led to expect is significant. The use of regulatory minimum floor levels of delivery is a useful backstop but the need to establish such a floor highlights the weakness of the customer position in this key area.

Ironically, setting some key measures as "reasonable requirements" without supporting Network Rail's customers in their relationship with a dominant monopoly supplier may actually make reaching agreement of acceptable targets harder. Particularly if Network Rail were to react in a risk averse manner to the perceived additional jeopardy associated with failing to deliver a "reasonable requirement". This support was available in the PR13 process by ORR setting clear targets which could be transparently disaggregated – similar support is needed in the PR18 process if the ORR's expectations are to be achieved.

Arriva recognises the concern that the process followed in PR13 may have caused Network Rail to look to the ORR as its customer rather than Operators. However, the use of the Scorecard development process, if underpinned by ORR target (as opposed to floor) setting will reinforce the position of Operators as Network Rail's real customers. The ORR's role would therefore be to enable the Operators in this key negotiation.

As highlighted by ORR, it should be noted that some of the targets established in the 2016/17 customer-led scorecards often do not reflect the PR13 regulated outputs or Franchise trajectories. This reflects the position of the current Route Scorecards as local management tools and not Regulatory enforcement mechanisms. Merging these two functions in CP6 without other supporting arrangements for target setting as outlined above is likely to lead to the Scorecards failing to support either process effectively. Indeed, Network Rail's current and proposed approach of rebasing the Scorecards each year to reflect emerging results is appropriate for the use of the Scorecards as a management tool but would be totally inappropriate in a Regulatory environment where a "line of sight" back to the original Settlement expectations is essential.

While we recognise the challenges associated with setting targets over a whole Control Period, Arriva sees this as entirely parallel with the challenges that Franchised Operators have in contractualising Franchise Business Plans over similar timeframes. In this context, while it is useful to see Network Rail outlining how they will work with Franchise Bidders in developing Scorecards, this will only benefit a small number of Network Rail's customers who enter into new Franchise Contracts during a Control Period. In addition, it is unclear how Network Rail will engage with individual Franchise Bidders on a bilateral basis and still maintain a level playing field between all Franchise Bidders involved.

Arriva sees a particular challenge arising with the Operational Performance metric and its link to the calibration of Schedule 8 if Network Rail's approach were to be adopted. The approach of having forecast trajectories (and associated ranges) potentially fits with the use of these trajectories as management reporting and incentive tools but it is not consistent with the need to set Benchmarks for Schedule 8 for the whole Control Period. It therefore remains unclear how Schedule 8 is to be calibrated and the Benchmarks derived. Arriva suggests that a clear operational performance Output trajectory established for the whole Control Period and disaggregated to each Operator should be the basis for the setting of Network Rail Benchmarks. For passenger Operators, the ORR's proposed consistent route measure for passenger performance (Network Rail caused primary and reactionary delay minutes) would be an appropriate metric.

Continuing to align the metrics, targets and results detailed in the Scorecard to Network Rail's management incentive schemes will assist in incentivising appropriate local management actions but it will not be sufficient to drive Network Rail as a whole.

Careful selection of the Scorecard metrics will enable easier comparisons between Routes but equally important will be the determination by ORR of the results that each Route is expected to deliver against each metric taking account of the factors which influence delivery on that Route – it cannot be an expectation that every Route will be able to deliver the same absolute level of outcome for every customer against every metric.

It has been easier to consider the use of Scorecards in the context of Network Rail's Routes through reflection on the experience gained in this area over the last 18 months. In addition, the available metrics are also better developed and often more obviously linked to immediate management activity. However, similar principles can be applied to the use of Scorecards for the NSO with the proviso that this will take time to reach the same level of maturity.

The current proposals for Scorecards focus on the Routes and the NSO. However, given the significant role played by other Network Rail central functions such as Infrastructure Projects and the Technical Authority, Arriva suggests that it is also important that these functions engage with their Stakeholders, produce appropriate Strategic Business Plans and associated Scorecards.

Question 2 (Chapter 3):

Do you have any comments on what scorecards should include in order to make them balanced (recognising that there is a limit to how much can be included on a scorecard)?

In order to be "balanced" the Scorecards need to include metrics associated with delivery in at least the following key areas:

Safety - measures need to cover all aspects of risk managed by Network Rail including that associated with its own staff and contractors, Operators' staff and passengers. Given the wide range of potential consequences of the risks being managed, a specific "catastrophic" risk metric is needed.

Financial Performance - metrics are needed that separately reflect Network Rail's operations, maintenance and renewal activities so that results in one area do not mask delivery trends in another as is the case currently with the Financial Performance Measure. The metrics deployed should allow the monitoring of spend rates and also the financial efficiency achieved. Where appropriate, details of progress made in securing 3rd party funding and financing should be reported.

Operational Performance - metrics are needed that reflect Network Rail's role as

- infrastructure asset manager,
- renewals and enhancement deliverer,
- traffic manager,
- National System Operator,
- Major Station operator.

In additional, all industry performance metrics are needed.

Asset stewardship - metrics are needed that reflect the delivery of Network Rail's key asset stewardship role. These should reflect long-term asset sustainability and shorter-term Network capability trends.

Project delivery – metrics are needed that reflect the delivery of specific business case outputs of Projects detailed in the Route or NSO Strategic Business Plans. Details of progress made in developing staff culture and competence should be included.

Governance and engagement – metrics are needed that reflect the delivery of the governance arrangements detail in the Route or NSO Strategic Business Plans together with metrics that reflect the effectiveness of these arrangements including as reported by the stakeholders involved.

Customer results – specific customer priorities should be reflected by reporting against agreed metrics. Experience in 2016/17 suggests that the establishment of separate Customer Scorecards including a selected number of metrics with the rolled up aggregate performance being reflected on the Route Scorecard has been effective.

Passenger and Freight Customer experiences – these should be monitored:

- Indirectly through the "Customer Scorecard" element of the Route Scorecard using metrics selected by the operator involved
- Directly in the Route Scorecard where Network Rail is providing services directly to passengers such as at Major Stations.

The specific measures to be included in an individual Scorecard should reflect:

- The differences between Routes, FNPO Route and NSO

- Delivery to all Operators on a Route, not just those who have that Route as their "lead" Route.

Question 3 (Chapter 3):

What are your views on our proposed approach to specify a small number of measures and two regulatory minimum floors for route scorecards, in order to leave Network Rail with greater flexibility to satisfy its customers' needs?

If meaningful comparisons of delivery by different parts of Network Rail are to be made and local teams are to be spurred on to "compete" to outperform their peers, it is essential that an appropriate suite of measures is established against which all parts of Network Rail should report. This suite of measures should include

- Some that are applicable to all parts of Network Rail that will present Scorecards

- Some that are applicable to Routes (geographic and FNPO)

- Some that are only applicable to geographic Routes.

Arriva sees the establishment of regulatory minimum floors for key outputs as a useful back stop in a situation where the ability of Network Rail's customers to negotiate acceptable targets with a dominant monopoly is inevitably weak. However, Arriva remains of the view that it would be more effective for ORR to set appropriate targets in these areas reflecting what Network Rail could be reasonably expected to deliver in light of the funding with which it has been provided.

ORR could usefully examine how similar matters have been addressed in the regulation of how distribution networks are managed in the energy sector.

Question 4 (Chapter 4):

What role should customers and stakeholders (including end-users and their representative groups) play in influencing what routes/the SO commit to deliver, and what role should they play in supporting and challenging Network Rail to deliver on these priorities?

Arriva envisages that the key roles for Network Rail's customers and other stakeholders to be to:

- Clearly communicating the priorities that they expect Network Rail to address in the Strategic Business Plans and associated action plans

- Providing input at times when it becomes necessary for Network Rail to make choices between different courses of action due to diverging requirements or when deliverability challenges present themselves

- Actively supporting Network Rail where joint or cooperative action can enable the delivery of better outcomes to the benefit of all parties

- Participating in the governance processes put in place in connection with the Strategic Business Plans.

- Challenging and holding Network Rail to account for delivery of business case benefits of enhancements and renewal schemes.

In the same way that ORR does not wish to become a proxy customer to Network Rail, Arriva would seek to avoid a situation where Network Rail's customers become proxy Regulators. Equally, the process of providing active support to Network Rail where joint or cooperative action can enable the delivery of better outcomes to the benefit of all parties should be in the context of the Access Contract and any relevant Franchise Contract.

While Arriva does envisage a role for formally structured passenger representative groups such as Transport Focus in Network Rail's Strategic Business Plan governance and engagement processes, the primary relationship with passengers and freight customers should lie with the relevant Operators. This includes operators being the primary channel to:

- Communicate passenger and freight customer requirements and priorities to Network Rail

- To challenge Network Rail to deliver the outputs needed to address these priorities.

Question 5 (Chapter 4):

How do you think Network Rail routes and SO should engage with their customers/stakeholders and what are your thoughts on the principles and minimum expectations we propose?

Arriva is supportive of the approach proposed by the ORR in relation to its expectations on how Network Rail should engage.

Arriva also believes that the Route and NSO Strategic Business Plans should lay out the governance arrangements through which key stakeholders will be engaged by Network Rail in the:

- development of the Strategic Business Plans including to reflect stakeholder priorities

- communication of detail of Network Rail's action plans

- communication of the detail of the business case outputs to support renewals and enhancements

- development of appropriate action plans to deliver the Strategic Business Plan initiatives where joint or cooperative action is required

- establishment of suitable Scorecard metrics and targets,

- monitoring of delivery including through the review of results reported in Scorecards and Network Rail reporting on its own progress with its action plans

- development of appropriate corrective action to recover underperformance where joint or cooperative action is required.

Arriva believes that it is important that all Operators who have a material presence on a Route should be engaged through Network Rail's Strategic Business Plan Governance processes – not just those who have a Route as their "lead" Route. In addition, all of Network Rail's customers and stakeholder who have direct engagement with or require services from other elements of Network Rail (NSO and central functions such as the Technical Authority) should also be suitably engaged through the Strategic Business Plan Governance processes of those elements and functions.

In order to make this engagement process effective, it is necessary for appropriate information and insight be provided by Network Rail to stakeholders to enable the stakeholders to provide meaningful input.

These expectations are in line with the ORR's Guidance on Network Rail's Strategic Business Plans issued in February 2017.

Arriva also expects Network Rail to report on the delivery and effectiveness of its Strategic Business Plan governance and stakeholder engagement processes.

The arrangements described above should be reinforced by appropriate bilateral engagement between and its customers in line with their Access Contracts and should not subsume or negate the requirements of the Access Contracts.

Arriva also believes that it is important that Network Rail develops clarity on how its Routes, its centre and the NSO function will work together to provide a seamless corporate customer focused organisation. For example, Network Rail needs to develop a new process for how it sells capacity in a devolved structure ensuring that the NSO retains overall leadership while taking due account of the position of the affected Routes.

Question 6 (Chapter 4):

How should the quality of stakeholder engagement be assessed, and who is best placed to assess this?

Given the complex and multifaceted nature of the stakeholder engagement required to make the delivery of the CP6 plans effective, a multifaceted assessment process will be needed. This should include review of:

- the narrative of the Strategic Business Plans to confirm that they have been informed by stakeholder input, have addressed stakeholder priorities appropriately and detail appropriate stakeholder engagement processes

- the make-up of Scorecards to confirm that reflect stakeholder input, have addressed stakeholder priorities appropriately and include metrics associated with the delivery of the stakeholder engagement process laid out in the Strategic Business Plans

- evidence provided by Network Rail on the delivery of the stakeholder engagement process laid out in the Strategic Business Plans including Scorecard metric results

- direct stakeholder feedback gathered by Network Rail or an independent 3rd party

These reviews should be undertaken by Network Rail central management functions as part of their normal management processes but also by ORR as part of their Regulatory oversight. The frequency and depth of review should be selected to reflect the results being observed in this area by the part of Network Rail being assessed – particularly the stakeholder feedback results.

An appropriate assessment framework and management arrangements should be developed by Network Rail during the PR18 process and reflected in Strategic Business Plans. Network Rail should work with Stakeholders in the development of the assessment framework and agree it with them.

A review of the arrangements established for National Grid is this area would be informative.

Question 7 (Chapter 5):

What are your views on the relevance and balance of the incentives we describe in this chapter, and the circumstances in which would it be most appropriate to apply them?

The complex public/private partnership that exists in the UK rail industry makes the appropriate incentivisation of a dominant monopoly public sector infrastructure manager challenging – particularly when its owner is also the client of so many of Network Rail's customers. Nevertheless, given the firm nature of many of the commitments included in Franchise Contracts which depend on Network Rail delivering the outputs its customers should expect, it is essential that this incentivisation is focused and effective.

In this context, the direct use of corporate financial incentives is even less likely to be effective than it has been to date. Therefore, reputational incentives based on effective comparisons of delivery across different elements of Network Rail, coupled with a clear expression by ORR as to the expected standard and nature of Network Rail's responses to under delivery are likely to be the most effective approach to incentivising the appropriate behaviours from Network Rail.

In particular, a clear expectation that Network Rail should organise itself to engage effectively with its customers should be at the heart of ORR approach.

In the event of this approach being insufficient, the application of appropriate procedural remedies requiring Network Rail to increase reporting frequency or detail would reinforce the reputational incentives.

At the all-important local management level establishing an unambiguous link between the outputs to be delivered by Network Rail and the local management financial incentive scheme is vital.

To strengthen this and to build on the proposals that ORR should recognise good practice, Arriva would suggest that:

- local management teams that are performing well should be rewarded by increased levels of autonomy by a local acceleration of Network Rail's devolution process

- local management teams should have access to development budgets over and above the baseline Settlement to enable them to develop improvement schemes with their local customers. The benefits of these schemes should retained locally and shared between the local Network Rail business unit and its customer involved in the initiative. – but within bounds set by Network Rail corporate functions and the Principles of Engagement.(ORR consultation 4.15)

Notwithstanding the expectation that local Network Rail business units and their customers will work together cooperatively, it should also be expected that customers will make use of the direct contractual remedies available to them under their Access Contracts when appropriate. This may include recourse to ORR.

Overall, Arriva broadly supports the balance of approaches ORR proposes in this area including the circumstances that might trigger different ORR interventions.

Question 8 (Chapter 5):

What are your views on the format and content of publications and data that you would find most accessible and useful?

Arriva anticipates that the primary source of data will be the Strategic Business Plans and Scorecards. To enable local comparisons across different Network Rail business units undertaking similar activities, it will be necessary for all Strategic Business Plans and Scorecards to be accessible locally.

Arriva does find the datasets published by ORR useful but does not generally make use of these at a day to day management level.

Question 9 (Chapter 5):

How should we reflect the level and quality of route and SO engagement with their customers/stakeholders in our monitoring, escalation and enforcement?

Arriva suggests that ORR should flexible in its monitoring, escalation and enforcement approach by focusing its resources on those Network Rail business units that are assessed as underperforming with regard to stakeholder engagement much as proposed in the table 5.1

Question 10 (Chapter 5):

How should we respond if Network Rail fails to meet scorecard targets agreed with customers? Specifically, what should be the balance between designating scorecard targets as 'reasonable

requirements' (creating specific enforceable expectations on Network Rail), and relying on our overall assessment of Network Rail's performance against an overarching licence condition?

As highlighted above, Arriva is concerned that without sufficient support from ORR, Network Rail's customers will find it difficult to agree scorecard targets that deliver the level of performance they had previously been led to expect given Network Rail's dominant position as a monopoly supplier. Ironically, setting some key measures as "reasonable requirements" without supporting Network Rail's customers in their relationship with a dominant monopoly supplier may actually make reaching agreement of acceptable targets harder if Network Rail were to react in a risk averse manner to the perceived additional jeopardy associated with failing to deliver a "reasonable requirement".

On this basis, Arriva believes that ORR should continue to set appropriate targets for key outputs to provide a framework within which Network Rail and its customers can agree suitable scorecard targets.

In this event, subject to the observations provided against question 9, Arriva would suggest that key scorecard targets, as agreed by the relevant parties, should be treated as reasonable requirements.

ORR should also take a more general view by assessing Network Rail's overall performance and use this to inform itself on any decision to trigger enforcement action against an overarching licence condition.

Question 11 (Chapter 6):

What are your views on the approach we set out for managing change? In particular, do you think our proposed level of involvement, and role for stakeholders, are appropriate?

Although ORR intend to regulate Network Rail by focusing on the Routes and the NSO, Arriva recognises that Network Rail remains a single entity and that centrally driven action may result in change affecting individual Network Rail business units.

While this could enable Network Rail to manage its resources in response to shocks affecting part or parts of its organisation and to address external factors requiring a broad response, Arriva sees it to be important that such changes do not impact on the outputs delivered to Network Rail customers without proper engagement and consideration of such impacts. In addition, changes that Network Rail make should not prevent the delivery of any outputs specified in or associated with the Access or other Contracts in place between Network Rail and its customers.

The requirement for Network Rail to produce a Business Case for change as proposed by ORR may provide a process to ensure that such consideration is given provided that the Business Case for change is developed with input from Network Rail customers. In addition, Arriva would expect ORR to seek the view of Network Rail's customers when assessing any such change proposal.

In addition, once changes are to be progressed we would expect to see measures put in place to mitigate the impacts on business as usual activities and to ensure a smooth transition from organisation to organisation.

Network Rail should develop a standard and comprehensive "change management" process that reflects these principles. This process should be included in all Strategic Business Plans.

Question 12 (Chapter 6):

Are there other options for managing change you think we should consider?

No.

Question 13 (Chapter 6):

Are there any other types of change you think we should consider?

Arriva would suggest that the sale or transfer by Network Rail of assets involved in the provision of services to Network Rail's customers should be considered as changes requiring the submission of a change Business Case.

Are there any other points that you would like to make?

In the suite of Consultation Documents issued in July 2017, ORR highlights on a number of occasions that its intention is that the Scorecards should "reflect a balance of the range of outcomes that Network Rail is **required to deliver**" (our emphasis). It is not clear that the approach to the overall framework for regulating Network Rail reflects this intention. Indeed, it appears that the targets reflected in Scorecards may reflect annually adjustable management forecast of outputs. Further, it would appear that ORR anticipates most of the "targets" to be included in the Scorecards to be negotiated and agreed between Network Rail and its customers.

While this approach is likely to be of value in the context of day to day management activity, it does not feel sufficient to ensure appropriate Regulatory oversight and if necessary

enforcement of Network Rail's delivery of the outputs required of it in exchange for the funding it is provided with in the Settlement.

The ORR focus has been primarily on Network Rail's Routes and the NSO. However, Arriva believes that it is necessary to give similar attention to other elements of Network Rail – particularly those central functions which provide direct service to stakeholders. These would include:

- Infrastructure Projects
- Technical Authority.

These central functions should be required to:

- Engage with their non-Network Rail stakeholders in order to gain an understanding of their priorities
- Produce a Strategic Business Plan to detail how they will address these priorities and their other outputs
- Produce a Scorecard to show how they are progressing with the delivery of their activities.

Response to ORR's consultation on the overall framework for regulating Network Rail (PR18)

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to pr18@orr.gsi.gov.uk by **21 September 2017**.

Full name	Chris Polack
Job title	Director
Organisation	Bootham Network Solutions Limited
Email*	
Telephone number*	

*This information will not be published on our website.

Question 1 (Chapter 3):

Do you agree with our proposed use of scorecards in CP6?

I agree with the use of scorecards as part of the PR18 settlement. The use of scorecards is an established practice within the rail industry with a good level of understanding amongst operators. It is sensible to build upon a process which is already embedded within Network Rail's business.

The key requirements are that the scorecards are balanced (see Q2 below), and that there is a significant level of consistency between routes. Consistency is vital to allow effective and meaningful comparison between routes. A small degree of variation and customisation is to be encouraged to enable routes to agree specific measures with their customers.

The consultation makes the valid point (3.28) that it is essential that "freight and national passenger operators' interests are appropriately represented in geographic route scorecards" to ensure that they are not discriminated against.

Question 2 (Chapter 3):

Do you have any comments on what scorecards should include in order to make them balanced (recognising that there is a limit to how much can be included on a scorecard)?

Balanced scorecards should include measures to cover:

• Availability of the network for use - with the aim of minimising closure of the network for maintenance and renewal/enhancement.

• Performance - maximising punctuality and reliability.

• Network sustainability - ensuring that assets are managed, maintained and renewed efficiently and effectively, to maintain long - term network condition.

• Cost - minimising the cost of operation, maintenance, renewal and enhancement.

Question 3 (Chapter 3):

What are your views on our proposed approach to specify a small number of measures and two regulatory minimum floors for route scorecards, in order to leave Network Rail with greater flexibility to satisfy its customers' needs?

I support the proposal to specify a small number of measures - these should include, as a minimum, those measures described in my answer to Q2 (above).

The specification of two regulatory minimums:

• Performance

• Network sustainability

 would appear to be proportionate.

However, I am concerned that the consultation proposes that the inclusion of freight performance is only "possible" (3.44). Good, reliable performance by Network Rail is as important for freight operators as it is for passenger operators. Performance failures by Network Rail can have an immediate financial impact on freight operators through additional operating costs and/or loss of revenue. To ensure that freight operators do not suffer discrimination it is important that freight performance is included within the regulatory floor regime.

Question 4 (Chapter 4):

What role should customers and stakeholders (including end-users and their representative groups) play in influencing what routes/the SO commit to deliver, and what role should they play in supporting and challenging Network Rail to deliver on these priorities?

Customers and stakeholders can play an important role in shaping the direction taken by the routes and the SO. By their very nature stakeholders will view issues and opportunities in a different perspective from Network Rail; by representing these perspectives to Network Rail it will be enabled to take more effective actions. Stakeholders have an important role in asking the "what if" and the apparently "stupid" questions that can lead to real break throughs.

In its description of key stakeholders the consultation ignores freight customers (4.6). Freight customers do have a valid role to play and whilst not all of them will want to be involved some of the bigger customers will certainly want to influence decisions and actions affecting them. One example of this is Tarmac's role in developing the DfT's Freight Strategy - Tarmac obviously feels it is important to influence strategy, it is axiomatic that it will be just as important to Tarmac, and similar customers, to influence delivery. Therefore freight customers should be considered as "key stakeholders"

Question 5 (Chapter 4):

How do you think Network Rail routes and SO should engage with their customers/stakeholders and what are your thoughts on the principles and minimum expectations we propose?

Engagement should be regular, inclusive and proportionate. Some degree of flexibility should be allowed to routes to decide how to engage; that is the format of meetings or discussions. There should be consistency between routes on who is included within the engagement process; with a role for the ORR to determine if a party has been unreasonably excluded.

Question 6 (Chapter 4):

How should the quality of stakeholder engagement be assessed, and who is best placed to assess this?

A number of thoughts on how the quality of engagement should be assessed.

I understand there has been some academic research into collaboration in supply chains. Cranfield University might be able to assist with techniques for assessing degrees of engagement and collaboration.

Level of representation at meetings is one indicator - if the CEO attends the process is probably taken seriously, if a junior member of staff attends then perhaps it is treated less seriously.

Another indicator could be the nature of the agreed actions arising from stakeholder engagement. If all the actions are for Network Rail to comolete, the relationship is perhaps not mature and the engagement is more akin to a "moaning" session. If there are actions for both Network Rail and stakeholders, to change processes or ways of working, then this would indicate more mature engagement.

Assessment of the quality of stakeholder engagement should be carried out by an independent body, one that is not party to the engagement. Are there lessons to be learned on this, and other aspects of stakeholder engagement, from other regulated industries?

Question 7 (Chapter 5):

What are your views on the relevance and balance of the incentives we describe in this chapter, and the circumstances in which would it be most appropriate to apply them?

Broadly in agreement with the measure proposed in the consultation. Increased route level comparison will provide a reputational incentive.

Question 8 (Chapter 5):

What are your views on the format and content of publications and data that you would find most accessible and useful?

No comment.

Question 9 (Chapter 5):

How should we reflect the level and quality of route and SO engagement with their customers/stakeholders in our monitoring, escalation and enforcement?

Broadly in agreement with the approach set out in table 5.1.

Question 10 (Chapter 5):

How should we respond if Network Rail fails to meet scorecard targets agreed with customers? Specifically, what should be the balance between designating scorecard targets as 'reasonable requirements' (creating specific enforceable expectations on Network Rail), and relying on our overall assessment of Network Rail's performance against an overarching licence condition?

An over riding consideration should be that there is consistency between routes. The targets agreed with customers could vary significantly from route to route, and if these targets were considered "reasonable requirements" then ORR would be monitoring and enforcing different standards for different routes.

If such targets were to be "reasonable requirements" then there is a perverse incentive on Network Rail to agree less challenging targets so as to be sure of meeting them.

It therefore does not seem sensible to make scorecard targets agreed with customers "reasonable requirements".

However the fact that these targets are not "reasonable requirements" does not mean they are unimportant. The very fact that the targets are agreed with customers endows them with importance. Agreement and delivery of such targets could be indicators of good stakeholder engagement.

Question 11 (Chapter 6):

What are your views on the approach we set out for managing change? In particular, do you think our proposed level of involvement, and role for stakeholders, are appropriate?

Broadly in agreement. The approach outlined strikes a good balance between giving Network Rail the freedom to manage its business efficiently and effectively and giving ORR the ability to accurately and consistently monitor Network Rail's performance.

Question 12 (Chapter 6):

Are there other options for managing change you think we should consider?

No comment.

Question 13 (Chapter 6):

Are there any other types of change you think we should consider?

No comment.

Are there any other points that you would like to make?
No comment.

Thank you for taking the time to respond.

Submission by the
Chartered Institute of Logistics and Transport
to the ORR Consultation on the Overall Framework for Regulating Network
Rail

1. The Chartered Institute of Logistics and Transport is a professional institution embracing all transport modes whose members are engaged in the provision of transport services for both passengers and freight, the management of logistics and the supply chain, transport planning, government and administration. Our principal concern is that transport policies and procedures should be effective and efficient, based on objective analysis of the issues and practical experience, and that good practice should be widely disseminated and adopted. The Institute has a number of specialist forums, a nationwide structure of locally based groups and a Public Policies Committee which considers the broad canvass of transport policy. This submission has been prepared by the Institute's Strategic Rail Policy Group.

2. We appreciate that this consultation is the next stage in developing the ORR approach to regulation of Network Rail during CP6 and fleshes out the detail around an approach previously consulted on. Also that it develops a principle of having regulatory objectives set at Route level. However, while the delivery against the objectives will be monitored transparently the ORR is legally unable to apply any regulatory sanctions for non-delivery at that level. It is only able to apply them at the level of the Licence holder which is Network Rail as a whole.

3. ORR has recognised that, as a public sector organisation subject to public sector spending limits, Network Rail is not so easily or meaningfully incentivised by financial penalties. The principal route for incentivising performance is thus to be 'naming and shaming' using the Route delivery reports as the basis for comparison between Routes. The ORR will publicise these results and will also expect central Network Rail to invoke management action to incentivise delivery. If Network Rail does not take action that the ORR feels is required then the ORR could take Licence enforcement action against Network Rail.

4. We agree that public comparative embarrassment can indeed serve to incentivise behaviour and is probably the most effective mechanism available.

5. However, there is a risk that a whole industry of excuse makers and excuse challengers could spring up, which would not be value for money, so some arrangement to cut through this risk is needed. This could be as simple as saying that no excuses are acceptable – the results are the results and they are what matter to Network Rail's customers.

6. We are also concerned that the licence enforcement action may only be available against Network Rail as a whole and difficult to enforce when only one Route is under-performing – with the consequence lost in the average, which would not look too bad. It is too late for CP6 but we propose that ORR should consider modifying the Network Licence (or creating more network licences) for CP7 so that it is effective at individual Route and System Operator level so that Licence enforcement could be taken at those levels.

7. The consultation indicates that the Route Requirements and Scorecards will relate to how Network Rail manages routine operations and maintenance activities, with enhancements to be considered separately, later. As this is a particularly contentious area it will be interesting to see these proposals.

8. We are interested in the proposals for monitoring and regulating the System Operator functions of Network Rail, particularly about enhancements planning and use of capacity.

9. In relation to enhancements, we note the emphasis towards non-infrastructure solutions to capacity increases, which may imply lower capital expenditure, and also greater focus on early scheme development and cost estimating. We commend the latter, which may serve to avoid repeating the 'approved-before-properly developed' recent debacles. However, the former may well be overstated. For instance there will be occasions where more capacity may be available by running longer trains but a cap of only £1m on small spend before it is deemed an infrastructure scheme (which by implication is less desirable) may inadvertently exclude a sequence of small platform lengthening schemes that sum to more than £1m.

10. It appears from the documentation that responsibility for a scheme lies with the System Operator during early development (to GRIP 4 – Single Option Development) but is then passed to the Routes for delivery. This appears to provide an opportunity for wasteful and time consuming re-invention of the wheel by the delivery organisation (otherwise known as 'value engineering', all of which should have been done before GRIP 4). It also flies in the face of Network Rail's own findings that projects work better with 'early contractor engagement' – analogously therefore the Routes should be involved during early development and this might mean that this activity should not be retained within System Operation. This is likely to be much more relevant as 'local' rather than national funding sources come more to the fore.

11. A key gap in the consultation is any reflection of the fact that local authorities will normally employ consultants to prepare schemes for them which then need to be delivered by Network Rail. This often results in re-work, a preponderance of 'not-invented-here' reactions and general delays as Network Rail does not feel under any agreed timescale pressures – all this despite the local authority being prepared to fully fund the work. In much of this, local authorities see Network Rail as a contractor but one that is not as responsive as private sector consultants, who are willing to work to client-set timescales. Given that Network Rail, as the monopoly supplier, has to be involved, this seems to be an area where regulatory incentivisation needs to be available. This should form part of either the SO or Route Scorecards.

12. The System Operator consultation continues down the blind alley of seeking to create a metric for use of available capacity, despite many studies that have demonstrated how this is not usefully achievable. For any stretch of track there is a signalled capacity but under-maximisation of its use is dependent upon how it is used. For a mixed traffic railway a decision would have to be made as to whether a stopping service, slow freight service or a fast passenger service is the one that is 'guilty' of using capacity wastefully. This is not a useful conclusion to have to draw. We offer an alternative approach:
    - All requests for additional use of current capacity derive from a commercial need – either new freight business or passenger franchise bid proposals (or specified by the DfT following acceptance of bid proposals)
    - Such requests will be the result of detailed studies by applicants which will have included additional infrastructure where they perceive it to be needed (and affordable within their business cases) e.g. lengthened platforms. They will usually have also considered how small adjustments to other Operators' services could accommodate the proposed services without major infrastructure enhancements, thus already seeking best value in capacity usage.
    - A proxy measure of how well Network Rail is using the infrastructure capacity could therefore be how many such requests for additional services Network Rail has agreed to (or agreed to subject to various works being required).

13. In relation to the long term planning role of the System Operator, it is noted that past studies have looked at exogenous growth factors when predicting future rail use. These forecasts are usually exceeded because no allowance has been made for franchisee-generated growth – even though this is a fundamental intent of the franchising process. This gap needs to be incorporated to give more meaningful forecasts and avoid demand suppression through over-crowding. ORR should resist the government's discouragement of this approach, whatever the implications for additional capacity investment.

14. The System Operator consultation proposes various measures related to the amount of third party funding used in investment projects. This is unlikely to be an appropriate measure – it is for the funders to arrange the portfolio of finance – if they fail to do so the scheme will not progress and this is sufficient incentive to seek it out. There is nothing magical about having a certain amount/proportion of non-DfT funding (and most 3rd party funding will be Local Enterprise Partnerships or local authority funds anyway).

15. On investment, the whole crux appears to be based upon having a 5 year portfolio of schemes in delivery or development. There is insufficient emphasis on accommodating, and responding to, schemes that come forward during the control period – but there will be a lot of these from local authorities, especially as more responsibility is devolved to them.

Submitted by:
Daniel Parker-Klein
Head of Policy
The Chartered Institute of Logistics and Transport
September 21st 2017

Crewe-Stoke-Derby stakeholder Board response to the consultation on the overall framework for regulating Network Rail

Thank you for providing the Crewe-Stoke-Derby Stakeholder Board with the opportunity to respond to this consultation. The Board comprises all of the relevant MPs, Local Enterprise Partnerships, Local Transport Authorities and the Chambers of Commerce along the Route together with the North Staffordshire Community Rail Partnership.

The Crewe-Stoke-Derby rail line is a key strategic route connecting key cities and localities in and across Cheshire, Derbyshire and Staffordshire together with the Intercity West Coast and Midland Main Line routes to and from London. Significant growth has occurred over the last 10 years with passenger numbers increasing by over 30% and constraints along the line are now impinging further growth and becoming a barrier to business and commercial investment along the route. However, the East Midlands Route Study does not recognise the true levels of growth being experienced along this line.

The Crewe-Stoke-Derby route is identified within Midlands Connect as a growth corridor between the economic growth hubs of the East Midlands and North Staffordshire. It has also been identified by both Midlands Connect and the Constellation Partnership as being key for connecting the HS2 Hub Station at Toton with the HS2 Hub Station at Crewe. The Constellation Partnership's Growth Strategy has also identified significant levels of economic and housing growth for along this route. It is therefore imperative that we ensure in the longer term that this line is HS2 ready and that all the necessary infrastructure is in place to accommodate the proposed growth and respond to increasing passenger demands.

The Board already has a close working relationship with both East Midlands Trains and Network Rail and it welcomes the proposals for the development of even more closer working relationships between Network Rail and its partners during the next Control Period. The Board is also encouraged to see the proposals for greater transparency and accountability. Having the correct checks and balances in place is essential for ensuring we do not find ourselves in a similar situation as we have during this Control Period.

The Board has published its vision and priorities for investment along this route. This was undertaken in collaboration with Network Rail and East Midlands Trains (please see attached) and we would ask that Network Rail works in partnership with the Board to develop an investment plan (short, medium and long-term) for the line. We would also ask that the re-signalling of the Derby to Stoke section of the line be included for delivery early in CP6. This project was originally scheduled for delivery in CP5. This means that there are a large number of manual signal boxes and crossings along the route. This results in a large OPEX cost to Network Rail and the ability for the line only to be open around shift times. Currently the last service departs Derby and Crewe at 20:42 and 20:45 respectively and the first train on a Sunday departs at 14:38 and 14:04 respectively. Re-signalling would unlock the ability to run early and later trains on

weekdays and to significantly improve Sunday services thereby providing the ability to meet the changing market demands.

Other necessary investment required along the route to enable the economic growth and housing proposals to be accommodated includes:

- There are currently severe capacity constraints between Stoke-on-Trent and Crewe due to the 4-mile single track section between Alsager and Crewe which limits both the ability to run more timetabled services and the ability to maintain a normal timetable when the route is needed as a diversionary route for the West Coast Main Line services between Crewe and Stafford. Therefore, as a minimum double tracking is required.

- The speed of the line is a currently 70 mph. Increasing speeds along this route would result in journey time improvements for passengers. Potential new or cascaded rolling stock in future franchises would mean that the current line speed would prove to be a limiting factor in improved journey times.

- The Board would ask that funding such as Access for All and National Stations Improvement Programme continues to be made available in the next Control Period. There are major redevelopment plans for Kidsgrove Rail Station during this Control Period including a new Access for All footbridge and a new car-park. Funding had also been identified through NSIP in this Control Period for a new station building but due to the Hendy Review it is hoped to secure necessary funding for the new building in CP6. Other Station improvements along the route include improvements to the footbridge at Longport, a car-park for Tutbury and Hatton and improvements to Uttoxeter including a new station building.

- There is a long-term aspiration for Longton Station to be made accessible. However, in the short-term the slopes on the platforms are quite steep and need to be re-laid.

- From a safety perspective the Board would also ask that Flashing Yellows in the Down Direction for trains passing onto the North Staffordshire Route coming from the Derby direction are included in Network Rail's future business plan. Increasing the number of signal sections along the route will also help to improve capacity.

If you would like to discuss this response in further detail, please do not hesitate to contact me. The Board looks forward to working more closely with Network Rail during the next Control Period.
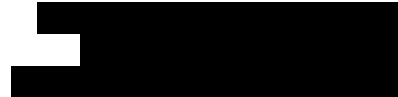
Clare Horton

Vice Chair. For and on Behalf of the Crewe-Stoke-Derby Stakeholder Board.

PR18
Office of Rail and Road
One Kemble Street
London WC2B 4AN

DB Cargo (UK) Limited
Ground Floor McBeath House
310 Goswell Road
London EC1V 7LW

Richard Clarke
Head of Transport Policy, Access &
Regulation

21 September 2017

OVERALL FRAMEWORK FOR REGULATING NETWORK RAIL

1.   This letter contains the response by DB Cargo (UK) Limited ("DB Cargo") to the PR18 consultation document entitled "*Overall framework for regulating Network Rail*" issued by the Office of Rail and Road ("ORR") in July 2017. DB Cargo confirms that it is content for this response to be published on the ORR website.

2.   DB Cargo is the largest rail freight operator in the UK and is a wholly owned subsidiary of Deutsche Bahn, the second largest mobility and logistics group in the world. DB Cargo operates over 5,000 trains per month in the UK conveying everything from cereals to aggregates, consumer products to biomass and petroleum to steel. DB Cargo employees over 2,700 people, providing freight, infrastructure, rail support and charter passenger services within the UK and freight services to and from continental Europe via the Channel Tunnel.

3.   DB Cargo in common with other rail freight operators is a wholly private sector activity receiving no material direct government support in the UK. In this respect, rail freight is different to passenger rail as it has a very different, less direct relationship with Governments, funders and other devolved bodies. In a heavily-capital intensive industry, DB Cargo owns and operates its own assets, including depots and rolling stock, and has invested heavily in new locomotives, wagons and facilities over the years since UK privatisation.

General Comments

4.   DB Cargo cannot emphasise strongly enough the importance that an affordable and sustainable funding settlement is provided for CP6. It considers that a key factor in achieving this is that maximising efficiency of the network can only be achieved through clear accountability and a sufficiently resourced and competent Network

Rail to ensuring transparency and individual accountability that renewals (and other infrastructure works) are delivered as efficiently and effectively as possible.

5.   Many of the matters covered in this consultation have been discussed at regular industry working group meetings in which DB Cargo have fully participated. DB Cargo hopes that the ORR has also found this approach helpful and DB Cargo would encourage that such working groups continue as the PR18 programme progresses.

6.   As a national operator, DB Cargo remains concerned that ORR's framework does not seek to compensate for a lack of effective governance at Network Rail as it is critical the right measures are in place ahead of the start of CP6. Given that the geographical routes are both responsible and accountable for operational delivery, good working relationships between the System Operator, the Freight National Passenger Operator virtual route ("FNPO") and the geographical routes that are supported by clear and robust governance are crucial for national operators such as DB Cargo if they are to receive good customer service in Network Rail's new structure. If the FNPO or System Operator has no effective control or influence over the routes in relevant areas, it is difficult for DB Cargo to envisage how the needs of national freight operators will be taken account of and delivered.

7.   It is concerning to DB Cargo, therefore, that it still remains unclear how the interfaces between the System Operator, the Freight National Passenger Operator ("FNPO") virtual route and the geographical routes will function to deliver outcomes for freight matters that will only be included on the FNPO scorecard.

Scorecards

8.   DB Cargo supports the use of scorecards which are an effective management tool to measure the delivery of key performance indicators across a business. As a national operator, DB Cargo will expect good consistent performance across all routes. Therefore, the approach set out by the ORR in its consultation document appears to align with the aims of devolution to benchmark performance using comparative measures across each route which should drive national improvement and efficiency.

9.   DB Cargo agrees that the ORR should monitor performance across routes using effective comparative measures. These measures should be aimed at driving positive behaviours including best practice and collaboration. However, there is a risk the ORR needs to consider and monitor that the scorecards do not become a means of rivalry between routes which could be counter-productive in delivering the

...

best outcomes for the network as a whole.

10. Network Rail is required to provide a wide range of activities across its business and it is clear that a balanced suite of measures should be included in the scorecards for CP6. However, DB Cargo considers that it must be acknowledged that it may not be possible to capture all of these activities in quantitative measures and, consequently, a form of commentary from each route will be required in support of the scorecard.

11. The ORR has acknowledged the challenges in developing a balanced scorecard in relation to the System Operator which is responsible for a broad range of short, medium and long term activities which will require interface with the majority of the other parts of Network Rail. For example, the role System Operator plays in the sale of access rights and in delivering a national timetable. These are just two examples of the activities of the System Operator which DB Cargo believes are very difficult to represent in scorecard indicators to meet the ORR requirements set out in the consultation document.

12. It is important for both the ORR and industry to acknowledge this and agree on how the ORR's approach to monitoring performance will need to be adapted to ensure such important activities can be included rather than focussing solely on those indicators that are easy to measure.

13. DB Cargo is supportive of the inclusion of a specific measure for customer satisfaction on route and System Operator scorecards and believes this is consistent with the aim of delivering a more customer focused Network Rail. This measure emphasises the need for routes to ensure effective and timely stakeholder engagement that should be imbedded throughout their strategic business plans and normal day to day delivery of services.

14. DB Cargo supports the inclusion of a regulatory measurement of the freight delivery metric ("FDM") on all of the geographic routes scorecards so that it is not just confined to the FNPO.

15. DB Cargo believes the ORR's proposal to set minimum floors in relation to metrics for performance and network sustainability does not go far enough. The proposal that failure to achieve these minimum performance levels will just flag the need to consider formal investigation is wholly inadequate in DB Cargo's view. DB Cargo submits that the ORR should go further than this and set the expected level of outputs that must be achieved by Network Rail, commensurate with the funding that

...

it will be expected to recover from customers in CP6.

16. It is important that the geographical routes reflect all operators that use their parts of the network, including national freight operators. However it is difficult to see how this can be achieved without the development of other relevant controls within Network Rail as there is likely to be a single freight measure on performance. DB Cargo, is therefore concerned as to how other important outcomes such as new freight traffic flows, freight investment, freight train velocity and other measures set out in the FNPO strategic business plan will be delivered as it is difficult to envisage these key measures being addressed through scorecards alone.

17. Scottish Ministers have asked for specific freight targets in their HLOS which is a model DB Cargo submits should be used elsewhere. Management incentives or a more formal inter-route governance agreement might also be ways of closing this gap.

Stakeholder engagement and the role of Customers in CP6

18. DB Cargo continues to support giving additional emphasis to the role of train operators and other stakeholders in agreeing outputs to be delivered in CP6 and in challenging Network Rail. It also agrees that Network Rail should move to an environment where the freight and train operating companies are treated as the primary customers of Network Rail rather than ORR and Government.

19. DB Cargo values the importance that effective stakeholder engagement and involvement can contribute to the development of Network Rail's plans. For this to be effective, those plans are best developed collaboratively at a local level between FNPO, geographical routes, System Operator, operators and stakeholders all working together to deliver a high-performing railway in the interests of the end – user customers.

20. DB Cargo agrees that it should be for each route and the System Operator to determine how they should engage with stakeholders and it is correct for the ORR to restrict itself to setting some minimum expectations in this area. However, that said, DB Cargo believes that it is unnecessary for the ORR to set a specific minimum requirement for face to face meetings with stakeholders on the routes and System Operator. Whilst regular multi-lateral stakeholder meetings 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.

...

21. 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. It will 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, other operators, the ORR and other key stakeholders in the coming months in taking this work forward successfully.

Monitoring and enforcement

22. DB Cargo supports the ORR's aim to create a balanced set of incentives for Network Rail. These need to be developed to ensure that they incentivise good performance at route level and for the System Operator.

23. DB Cargo also agrees that there is a role that operators and other stakeholders have in seeking to resolve issues that arise in CP6 without the need for ORR intervention in the first instance. However, ultimately it is clearly the role of the ORR to hold Network Rail to account for delivery and licence enforcement and no other party can effectively replace the ORR in this respect. DB Cargo continues to support the need for a strong and effective Regulator and therefore welcomes the ORR's statement that its aim is not to reduce its regulation of Network Rail through the proposals in this consultation document..

24. As mentioned earlier in this response, DB Cargo believes that in addition to the measures contained in the scorecard there also needs to be a commentary/narrative to report on those key activities that are not suitable to be quantitatively reported as a number in the scorecard. Examples of this, which are critical to operators, is the effectiveness, consistency and efficiency of the sale of access rights process and the development and delivery of train plan reviews to optimise timetables and maximise capacity of the network.

25. It is important that the focus of ORR's monitoring of publications and reports covering Network Rail's performance should include comparisons across the routes and System Operator consistent with how Network Rail is structured.

26. The ORR reports and data generated from scorecards should be easily available to all operators and wider stakeholders.

27. DB Cargo supports the proposal to use reputational, procedural and management incentives in a proportionate way in cases where performance reaches unacceptable levels. Given the reclassification of Network Rail to a public sector body, it is necessary for the ORR to adapt its approach to ensure that its monitoring and enforcement roles remain fit for purpose.

...

28. DB Cargo supports the proposals in Table 5.1 of the consultation document given they will cater for different situations. It also agrees with ORR's approach to escalation and that ORR must maintain a strong ability to regulate and enforce at a national level with the possibility of action at a route level if there are constant failings at a more local level.

Change control

29. DB Cargo agrees that there should be a process for managing material changes that occur in CP6, provided that it is used in exceptional circumstances only. Such changes should be supported by a business case, where appropriate, and should involve stakeholders in the process of deciding whether and how any such changes should be implemented.

Please contact me if you would like clarification or amplification of any of the points in this response.

Yours sincerely,

R Clarke

Richard Clarke
Head of Transport Policy, Access & Regulation

...

Phil West
DEPARTMENT FOR TRANSPORT

Web Site: www.dft.gov.uk

30 October 2017

Emily Bulman
Head of Regulatory Framework
Office of Rail and Road
By email

Thank you for the opportunity to respond to the ORR's consultation on the overall framework for regulating NR (NR). We are also grateful for the ORR allowing additional time to respond to the consultation, enabling the Department for Transport to first conclude work to finalise and publish the Statement of Funds Available (SoFA).

Overall approach

We welcome the ORR's overall approach as set out in the consultation, which we consider is consistent with the themes set out in the recent guidance from the Secretary of State to the ORR, particularly around using the Periodic Review process to drive an ambitious programme of reform within NR.[1] We welcome the clear commitment of the ORR to making "*significant*" changes to its regulatory approach to help secure a safer, more efficient and better used railway.

In particular, we welcome the clear focus in the consultation in maximising the opportunities for effective route based regulation to hold NR more effectively to account in CP6, facilitating a rigorous and robust challenge to improve NR's delivery and efficiency. We also very much welcome the emphasis on effective and meaningful stakeholder engagement by NR, helping to ensure that passenger and freight shipper priorities are better reflected and supporting closer, collaborative relationships between track and train. Enabling an effective System Operator (SO) is also critical to ensuring an effective and efficient use of capacity, enabling rail to play its full role in meeting the needs of users, communities and the broader economy.

To best secure this approach, the Secretary of State considers it important that, as far as possible, a period of shadow running for the new route based regulatory regime is in place by 1 April 2018, well in advance of the start of CP6. This will enable the whole system to hit the ground running, enabling issues to be fully resolved before CP6 and helping to embed the cultural changes needed to maximise the opportunities created by the route based approach.

---

[1] Available at
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/629698/guidance-to-the-office-of-rail-and-road.pdf.

In the remainder of this response, we consider each of the consultation areas, setting out our views on each of them. We would, of course, welcome the opportunity to further discuss these issues as the periodic review process continues.

Network Rail and the determination

While recognising that the legal framework in which the ORR is operating is unchanged, we strongly encourage the ORR to continue to take an ambitious approach to maximise the benefits from route based regulation. In particular, we consider it is important that ORR continues to support an ambitious approach to NR transforming its business, with the regulatory regime supporting and challenging it to do so.

We therefore welcome the ORR's clear focus that the "*routes and the SO should take responsibility for all aspects of their delivery*", including holding their suppliers to account, whether they be external suppliers or internal suppliers, such as Infrastructure Projects or the Route Services Directorate. We consider that it is critical for the ORR to ensure that this theme is fully embedded in the regulatory framework for CP6. This will help enable routes, including the Freight and National Passenger Operators route (FNPO), to have genuine ability to deliver their business plans and be clearly accountable for doing so.

In this regard, we strongly agree that each of the relevant strategic business plans <u>must</u> be signed off by the relevant Director, with a commitment that they are responsible for its successful delivery. Additionally, we consider that for the formal process of NR accepting or rejecting the determination, it is important that NR does more than appropriately engage with its routes and the SO; the routes and the SO must, instead, provide a clear commitment to deliver their business plans. This would help avoid any lack of commitment creeping into the process at this point.

Scorecards

As we signalled in the Secretary of State's guidance to the ORR, we very much support the implementation of scorecards, developed following a genuine and effective process of engagement between the SO, the routes and NR's customers, to ensure that NR is effectively held to account.

We agree that these can support closer working between NR and its customers to better align track and train (including, importantly, bidders in the context of franchises, as the ORR highlights at para 3.23), as well as facilitating comparisons between routes; in this latter regard we do consider that a spirit of competitive rivalry between routes can play an important role in driving performance, something that the ORR must support and embed in the regulatory regime.

Additionally, we agree that scorecards are important to create stronger incentives to deliver – it is therefore useful and important that they are used as the basis for performance related pay, and the Department will continue to discuss overarching pay strategy with NR to ensure effective incentives are in place.

Moreover, we very strongly support the introduction of a route based network sustainability measure into the scorecards – as set out in the UK Government's High

Level Output Specification (HLOS)[2] and Statement of Funds available (SoFA), we would like to see, consistent with ORR's advice, a significantly increased volume of renewals in CP6 to improve reliability and performance. A robust measure will help ensure that the regulatory regime strongly supports the delivery of sufficient volumes of renewals to enable improved performance and that NR is clearly held accountable for doing so.

As the ORR acknowledges, in order for scorecards to be effective, it is critical that their composition, and the underlying approach within them, is effective and persuasive, and takes full account of the HLOS's from Governments. We support ORR's proposed approach for using NR's scorecards as part of the regulatory framework, and consider further related issues in detail in **Annex A**.

National System Operator performance

As we mentioned earlier, the Government strongly supports an effective SO. To achieve this, clearly articulated measures of the SO's performance, which follow meaningful engagement between the SO and its stakeholders is important (including the Department for Transport in its various roles, as well as the routes and other customers). In **Annex B** we set out further observations on this issue and system operation generally.

Stakeholder engagement

Consistent with our comments regarding scorecards, we strongly support the need for "meaningful engagement" between NR routes and their stakeholders to support closer working and joining up track and train. It's also important that end users have their own representation, including via the independent watchdog Transport Focus, something we consider it is important that the regulatory regime supports. We also agree that it is critical that the routes are clearly in the lead to develop innovative approaches, which best suit the requirements of their particular route and customer base; we therefore agree that the ORR should set out clear principles and minimum expectations, rather than look to be unduly prescriptive. In this regard, we have considered the principles of stakeholder engagement set out in the consultation document – in our view these appear reasonable and appropriate, draw on best practice in other similar sectors and are consistent with the previous submissions made on this issue by Government.

To support effective stakeholder engagement, we consider that an active role by the ORR in vigorously assessing the effectiveness of this engagement, and holding routes to account, where it falls below expectations is important. As the ORR acknowledges, there must be clear consequences where this falls below the expected standards. To support this, we think it is important that the ORR goes further than in the consultation document. The implications of different grades for stakeholder involvement need to be clear and explicit to provide the appropriate incentives for effective and meaningful engagement. We also consider that it is important that performance in this area is reported in the Network Monitor, with overall performance against the principles of stakeholder engagement forming an immediate and central role in monitoring NR.[3]

---

[2] https://www.gov.uk/government/publications/high-level-output-specification-2017
[3] In this regard we considered that the use of the term "eventual" in para 4.24, may not create the right signal to support clear and consistent progress.

Monitoring and Enforcement in CP6

We welcome the focus on the customer-focussed approach set out in the consultation document, supported by the overall assessment of NR's performance under an overarching licence condition.

In order for this to be effective, we agree that there must be both clear recognition of the success of NR's routes as well as clear consequences where NR's routes (or NR generally) does not meet required outputs. In the light of the public sector status of NR, we agree that reputational incentives are likely to be the most significant regulatory tool, both to support best practice and sanction poorer performance. Maximising the use of effective comparisons between routes, in a transparent way (particularly through public reporting), will clearly be important to achieve this.

We also welcome the clear articulation in the consultation document of the escalation approach, particularly where performance is below expectations or unacceptable. We agree that there is a role for Government, as shareholder, as part of this process. We would welcome the opportunity to continue to work with ORR as it refines its monitoring and enforcement approach to ensure clear roles and responsibilities.

Managing Change

We agree with the ORR that ensuring effective change management is an important aspect of ensuring clear accountability for the routes and ensuring flexibility where circumstances change. This may be particularly important in the case of any potential changes to route boundaries to better align the route with the relevant train operators, helping to further support a collaborative approach between track and train. We consider that the touchstone to developing the appropriate approach must be whether any change, or the possibility of change, results in a diminution of responsibility or accountability.

With respect to financial changes to route settlements, where this issue appears particularly significant, the ability of the centre to reallocate financial resources between routes is likely to substantially diminish accountability. While we fully recognise the importance of effectively managing financial risk, and look to the ORR during the periodic review to ensure a robust, proportionate and efficient approach to this issue, we consider that there should be a clearly articulated presumption against changes, except in exceptional circumstances; any changes should then be restricted to what is absolutely necessary to manage risk where appropriate, and then implemented following a transparent change control process, with significant stakeholder (including the Government as shareholder) engagement. Of course, the approach to this issue, must be consistent with NR's financial framework for CP6; as we indicated in the SoFA, we will continue to work with ORR to develop suitable budgetary and oversight arrangements for NR consistent with its status as a public sector body; it will be important that the regulatory framework should take account of developments in that area to ensure coherence and workability.

Concluding remarks

Thank you for the opportunity to respond to the consultation. We would welcome further discussions on each of these issues as the period review process develops to ensure that, collectively, we maximise the opportunities it provides for supporting an effective, efficient and responsive NR, alongside greater alignment between track and track and train.

Yours Sincerely

Phil West
Director, Rail Strategy and Security

ANNEX A – ROUTE REQUIREMENTS AND SCORECARDS

Route requirements and scorecards

We welcome NR's increased focus on its customers' requirements, as captured in the scorecards, and agree that this evolving approach must be complemented by ORR using scorecards as a monitoring, assessment and enforcement tool, alongside the wider set of information and requirements ORR will expect NR to report on outside of the scorecards.

While allowing for a range of customer-led measures and thus the greater alignment of NR's and operators' incentives, we also agree that scorecards should be balanced, should reflect appropriately the requirements the UK Government and Transport Scotland have set in the HLOSs, and should facilitate comparisons between routes. This latter point will be crucial to unlocking the full benefits of route devolution, including benchmarking of routes, greater transparency of relative route performance, and greater competitive rivalry between routes.

We therefore support ORR specifying a number of consistent measures which should be included in scorecards throughout CP6 to ensure that routes' performance in key areas can be compared, and agree with the areas identified as requiring consistent measurement across routes. We strongly support the setting of a regulatory minimum floor for the two areas suggested: train performance, and network sustainability. We agree with the proposal of setting the regulatory minimum floors below the assumed trajectories set out in the PR18 determination, given that a breach would likely lead to formal investigation for licence breach.

The scorecard consultation poses question on which exact measures should be included in scorecards. While we look to the ORR to determine the precise measures in light of consultation responses and its own judgment, we offer the following views on some of the options presented:

- **Financial performance:** routes must have clear, consistent and explicit measures of effective spend and efficiency, given the importance of efficiency gains in improving the financial sustainability of the railway and the value it offers customers and taxpayers. We consider that this must go beyond the position typically set out in regulated sectors (using the RPI-X system) to ensure transparency.

- **Train performance (passenger):** we agree with the need for a consistent measure of routes' contribution to train performance, and believe that it should reflect how well routes manage reactionary delay, including delay arising from operator-caused incidents. NR has a key role in minimising the overall delay experienced by the end user, and the measure should take account of that. This is part of improving the alignment of incentives in rail, as supported by NR and the industry via the National Task Force, and we will work with the industry to identify other opportunities for improvement in this area.

- **Train performance (freight market):** we support the inclusion of a freight performance measure on the FNPO scorecard and the geographic route scorecards, which will increase visibility of freight performance at route level and support comparison between routes. We believe that further work is

needed between NR and the freight industry to define the measure, e.g. whether it reflects freight delay minutes.

- **Passenger experience:** we agree that a consistent measure (or measures) of end user experience is vital. Of the measures proposed, we view overall passenger satisfaction as most important, followed by overall passenger satisfaction with NR-managed stations.

- **Investment:** we would welcome scorecards reflecting how well NR encourages third-party investment in the railway, which we consider an important an important additional measure of finance in CP6, and look to ORR to work with NR to determine how best to achieve this.

We also support ORR specifying a consistent measure to for inclusion in geographic route scorecards which reflects route performance in health and safety, network sustainability (which we consider of particular importance in the light of the UK's Government's HLOS and SOFA, and the focus on increased volumes of renewals that they include) and use of the network, and support the ORR's preferred approaches.

We remained keenly interested in the measurement of available network capacity and how "well" it is being used, and welcome any further work from ORR and the industry on potential measures in this area.

General points

We recognise that NR route scorecards already contain a large number of measures. We think it's important that there is a consistent measure across geographic route scorecards for the areas identified, but as far as possible this should be achieved while minimising expansion of the overall number of measures.

Scorecards are likely to be increasingly important as a communication tool for NR performance, particularly at the route level. We think this is a good opportunity for NR to review the presentation of scorecards to make them as accessible as possible, as well as how the data is publically reported. This could include, for example, making historic records of past performance available, and dedicated presentation of scorecard data (outside of quarterly reports).

It will also be important to put scorecard data in its proper context, e.g. explaining how the measures are calculated and what they represent, any differences between routes or wider circumstances which contribute to relative performance differences, and how the data relates to other industry reporting. There will remain a wealth of information that is of interest to us as funder and shareholder which is not appropriate to include on scorecards, and which ORR will continue to monitor and report on, including more detailed data on financial performance and efficiency.

We will continue to work with NR and the ORR on the development of scorecards, including the annual process of setting scorecard measures where the Department has a role to play as proxy for future users and operators, as well as in its role as shareholder. We look forward to the further evolution of scorecards in greater aligning the work of NR and train operators, and driving improved outcomes for passengers, freight shippers, and the taxpayer.

ANNEX B – SYSTEM OPERATOR

Possible measures of the system operator's performance

Overall, the Government welcomes the opportunity for increased focus and coherence created by bringing the range of NR system operation functions together in the National System Operator (SO). We also support the approach being pursued by the ORR to separately regulate the SO during CP6.

We would welcome continued dialogue on the issues raised in this Annex, with both ORR and NR.

An objective, capable and open SO is vital to rail

Government has responsibility for the legal framework of the rail sector, and plays an important role in defining the functions of many rail bodies. We are, as you are well aware, the shareholder of NR. We seek to ensure that the organisations we sponsor, fund or contract with are structured in a way that can deliver the Government's overall goals for the railway, helping to better serve customers, communities and the wider economy.   We will therefore want to engage with the SO on the following capabilities and principles:

   a. **being impartial and objective** – treating customers fairly, and ensuring actions and advice are objective

   b. **producing and using high-quality, appropriate evidence, analysis and tools**

   c. **supporting timely, well-informed decision-making** by all parties

   d. **working openly, transparently and leading engagement**

   e. **achieving the right balance between routes and the SO**

   f. **helping third parties and new entrants** fund and finance rail, or develop, design and deliver rail schemes.

   g. **supporting the Government's goals for rail in a balanced way**: helping the railway offer good services for passengers, opportunities for citizens, communities and the economy (including by moving rail freight), and value for taxpayers.

DfT has specific interests as client of the SO

As well as our interest in ensuring the overall industry structure can deliver the Government's specific goals, DfT is a major direct client of the SO. Whilst not unique, the scale of our rail investment (as reflected in the SoFA, for example) and strategic decisions make DfT's relationship with the SO and the quality of the SO's advice to Government critical for the railway. Key DfT functions that rely on SO advice include:

- Investment in enhancement schemes (**DfT as enhancement funder**)

- The development, design and delivery or major projects, key fleet procurements and HS2 (**DfT as Project Sponsor**)

- Franchising functions, including service design, fleet and depot decisions, competitive bidding and contracting and use of Franchise Change or other mid-term interventions (**DfT as Franchising Authority**)

ANNEX B – SYSTEM OPERATOR

Measuring and improving performance by the SO

We recognise the useful work led by ORR and RDG in developing and assessing the measures/metrics under consultation. In part, this work has proved how challenging it is to find quantitative measures that reflect how well the SO functions.

We support the proposition that the SO should first engage with its customers and clients to ensure their priorities are central to planning and delivery of SO work during CP6, before the ORR considers specifying measures. As well as supporting the SO's engagement with TOCs, FOCs and other stakeholders to make sure their priorities are captured, DfT is keen to engage in three key areas.

Firstly, we want to see the SO assess its performance and improve its capability over time. It would be particularly useful to understand performance and progress on the capabilities and principles highlighted on the previous page. In particular:

- how the SO's organisation and governance will **encourage impartiality**. We would like to see the SO providing concrete information about its decisions so it can assess its own track record, and stakeholders can hold it to account on this key issue. The SO faces a particular challenge to demonstrate how the interests of NR routes or NR as a whole do not outweigh the interests of its other customers and the wider public interest.

- the SO's approach to **analysis, modelling and forecasting**, where we would like to see NR and DfT analysis aligned more effectively to help the industry as a whole take better decisions.

- How the SO will develop timely, high-quality support for third party investors and developers, including guidance or other tools to drive up efficiency or help the railway access funding and/or finance. We consider the SO has a key role in supporting the development, design and delivery of projects by third parties, and therefore in delivering the contestability agenda as set out in the Hansford Review.

- How the **relative roles of the SO and the routes** will support empowered, local decisions as well as securing network benefit. How routes and the SO work as clients for enhancements at various stages of the life-cycle is one key area, as well as roles on passenger and stakeholder engagement. We know NR have put considerable thought into ensuring the split between SO and route functions works well. DfT, like NR, will want to see good results as the new structures bed down.

Secondly, because stakeholder feedback is an important tool for judging the performance of the SO, we want to develop clear agreement between NR and DfT on how SO outputs will be assessed for key processes where DfT is a client.

Thirdly, we welcome the proposal in the consultation for the SO to lead work on tools and reports that help us collectively understand the use of, or capability of, the railway system (as distinct from the performance of the SO). This could build on the concept of a system dashboard, and could be a useful product to inform strategy and help DfT make the decisions about outputs that form a large part of our work.

Some more detailed comments on the consultation questions are set out below.

ANNEX B – SYSTEM OPERATOR

Measures relating to strategic planning and managing output change

Our core aims in this area are around quality, which we think is best explored through customer satisfaction. Any such reports or metrics should be structured to ensure perverse outcomes are avoided, and to make them as objective as possible. Bilateral agreements between the Department and SO about the timing, scope and nature of advice and analysis should form the backbone for DfT as client assessing how well SO has delivered. This approach already exists in places, e.g. as part of franchise project planning, and we would like to develop this concept further with NR.

There may be merit in developing some core satisfaction questions on specific quality issues, for instance:

- whether DfT or other decision-makers who use the products of the long-term planning process are satisfied with the quality of advice, or

- whether clients are satisfied that the SO's approach to modelling and analysis (including demand forecasting) provides information which supports decision-making and is in line with industry best practice.

Progress against milestones seems an intuitive metric, as the SO should certainly be working to meet key milestones, which are important to the Department. However, depending on weighting, there is a risk of privileging timeliness above all other considerations. Anecdotally, pressure to meet milestones may in past have resulted in NR delivering unnecessary advice rather than cease work. This could potentially be tempered by providing a process where the milestones of most importance to clients and stakeholders are identified, and timescales could be altered by agreement. Alternatively, clients could be asked to rate their satisfaction with delivery against milestones, rather than focus on the milestones themselves – a focus on the outcome rather than the process.

Many of the other measures explored in sections A and B would be interesting to have information on, but their interpretation would be challenging, as the consultation recognises. We are keen to work with NR to understand performance and improve practice in many of the areas flagged, and would particularly welcome qualitative work, lessons learned and internal management actions which can help DfT and NR understand delivery of benefits from schemes, and how outturn varies from plan.

Managing the framework for access rights, producing the timetable and the use of capacity

The advice provided on capacity and network capability decisions may best be assessed through structured stakeholder feedback on quality, fit and timeliness.

Section D, which explores measures for timetabling and near-term access requests has the largest number of directly controllable, quantitative measures. Some of these (such as the number of timetable defects) are promising metrics for customers to discuss with NR, but the "measurability" of these metrics should not lead to an unbalanced scorecard for the SO which puts more weight on these functions simply because they are more easily assessed. This is one aspect of balance which will need consideration when the ORR reviews progress on SO measures for CP6.

DfT is interested to explore the SO's role (and how it fits with industry mechanisms, and/or NR geographic or FNPO routes) in some key areas around access, including

the competing demands on the network for engineering access and services. These are clearly important issues for system operation, and potentially have a major impact on DfT goals for passenger/freight services, network efficiency and value.

SO management performance measures

In assessing quality, we support the approach of asking stakeholders how far products and processes met their needs. Measures which track relationships, overall engagement and trust are also important that should be clearly separated and defined. The value of this information will be how trust or engagement scores change over time, rather than the overall score or comparisons with routes.

We consider there is room to separately track the quality of the relationship between the Department and the SO, given our closely linked roles on planning the use of the network and our investment in future system capability, and the scale of decision-making and the scope of DfT's role on national rail.

The criteria for possible ORR-led SO measures

We support the process suggested for determining ORR-led SO measures, that would see NR working with its stakeholders in the first instance to agree balanced measures for reporting over the course of CP6 (including in the SO scorecard). We broadly welcome the criteria set out for determining whether ORR should impose measures, including consideration of balance and stakeholder requirements.

The potential for customer interests to focus on the short term is discussed by the ORR. It is worth adding that the comments apply largely to TOCs and FOCs. DfT, in its many functions, will seek to represent the interests of future rail users and sub-groups of users (both freight and passenger), and these considerations are likely therefore to feature in our requirements for the SO. As well as focussing on different groups of passengers, DfT will focus on the interests of taxpayers and our wider goals for supporting citizens, communities and economic growth (including by the carriage of freight).

Response to ORR's consultation on the overall framework for regulating Network Rail (PR18)

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to pr18@orr.gsi.gov.uk by **21 September 2017**.

Full name	Alastair Southgate
Job title	Transportation Strategy Manager
Organisation	Essex County Council
Email*	
Telephone number*	

*This information will not be published on our website.

Question 1 (Chapter 3):

Do you agree with our proposed use of scorecards in CP6?

Scorecards would appear to offer a consistent approach to the assessment of Network Rail performance, however, it is essential that the process and data are open and transparent.

It is important that the measures included in the scorecard are an appropriate balance between business wide standard measures and measures more specific to local requirements.

Users and potential users of the network should be placed at the heart of processes that regulate Network Rail.

Question 2 (Chapter 3):

Do you have any comments on what scorecards should include in order to make them balanced (recognising that there is a limit to how much can be included on a scorecard)?

Users and potential users of the network should be placed at the heart of processes that regulate Network Rail. The scorecards should be focussed on the needs of the user of the network (passengers and freight customers) and the tax payer (rather than the ORR), as users and the tax payer are the principle funders of Network Rail.

Clearly the scorecards should reflect the need to regulate the different business areas within Network Rail using a mixture of business wide indicators that can compare performance across Network Rail, and more local indicators that reflect local priorities.

For example. Essex County Council is responsible for the highway network in Essex and this has a number of intersections with the rail network such as bridges were collaboration between

Network Rail and ECC is essential for inspections and planned maintenance. More effective and collaborative planning has the potential to result in more timely and effective interventions and cost savings to all involved.

A measure that quantifies the level of collaboration with local highway authorities would be welcome.

Question 3 (Chapter 3):

What are your views on our proposed approach to specify a small number of measures and two regulatory minimum floors for route scorecards, in order to leave Network Rail with greater flexibility to satisfy its customers' needs?

Users and potential users of the network should be placed at the heart of processes that regulate Network Rail. Delay is a particular concern, whether this is caused by Network Rail or operators.

Greater local flexibility is essential; however, there remains a need for Network Rail wide measures that enable route performance to be compared. It is also essential that regulation has teeth. The concept of a floor below which performance is deemed unacceptable is welcome; however, the ORR needs to ensure that the floor is placed at a level that drives improved performance.

Question 4 (Chapter 4):

What role should customers and stakeholders (including end-users and their representative groups) play in influencing what routes/the SO commit to deliver, and what role should they play in supporting and challenging Network Rail to deliver on these priorities?

Users and potential users of the network should be placed at the heart of processes that regulate Network Rail. In Essex and the south-east of England users of the rail network provide the funding necessary to operate rail services and contribute to Government finances. It is essential that the rail industry as a whole; Network Rail, TOCs, FOCs and the ORR, all work together to deliver a service that meets the needs of their customers. While Network Rail has the technical expertise other local stakeholders may well have a better understanding of end user requirements.

Local stakeholders have a key role to play. While closer working between NR and the TOCs is welcome; ECC would emphasise the need for closer working with local transport and planning authorities to fully understand local growth and to integrate rail with other transport networks. Local transport authorities should be specifically included in the list of stakeholders.

Given the national aspirations for economic growth and the delivery of additional housing it would appear to be entirely reasonable for Network Rail to be subject to a specific requirement to facilitate growth. This requirement would be similar to that now imposed on Highways England and would, for example, greatly enhance the delivery of new Garden Settlements.

Again; local authorities are well placed to provide detail on growth and its timing to enable Network Rail to better understand local network requirements.

The ORR has a key role to play in ensuring that long term interests are reflected as well as the short term delivery of targets. Network Rail should ensure that its programme has stakeholder support; i.e. It should be the responsibility of NR to ensure that the priorities NR identifies are understood and supported by stakeholders and reflect stakeholder priorities. Where stakeholder priorities are not taken forward, Network Rail should provide a reasoned explanation that satisfies the regulator.

Question 5 (Chapter 4):

How do you think Network Rail routes and SO should engage with their customers/stakeholders and what are your thoughts on the principles and minimum expectations we propose?

Effective stakeholder engagement is essential if Network Rail is to fully understand local requirements. Proposals for route supervisory boards or similar are welcome; however, these boards would need to have broad membership and real influence, especially over commonly agreed outcomes. These Boards could also provide high level oversight w regard to the interface between the rail and highway networks.

As the local highway authority for Essex, ECC needs to have an effective working relationship with Network Rail routes to allow both ECC and Network Rail to effectively plan programmes of work.

ECC also benefits from a relationship with the System Operator to ensure that future growth plans within Essex can be accommodated with Network Rail's plans and appropriate improvements identified where these are necessary. ECC can assist in identifying appropriate outcomes that improvement schemes deliver and to assist in the identification of potential 3rd party funding opportunities.

It is essential that these relationships are effective and collaborative; the ORR could have a role in assessing the effectiveness of Network Rail's engagement by seeking evidence of specific cases where an improved relationship has led to a documented efficiency saving.

Question 6 (Chapter 4):

How should the quality of stakeholder engagement be assessed, and who is best placed to assess this?

Individual stakeholders are best placed to assess the effectiveness of stakeholder engagement. This has the benefit of stakeholders being seen as customers, rather than the ORR.

Users and potential users of the network should be placed at the heart of the process.

Transport Focus could have a role in ensuring adequate input from passengers. It could be more appropriate for Transport Focus to be one of the stakeholders representing passengers rather than an oversight role

Question 7 (Chapter 5):

What are your views on the relevance and balance of the incentives we describe in this chapter, and the circumstances in which would it be most appropriate to apply them?

It is essential that the whole rail industry is incentivised to improve performance and deliver results. For local cross-industry solutions to be effective, it is important that local mechanisms are given freedom to deliver results while also encouraging the sharing of best practice between routes.

ECC agrees that the imposition of fines on Network Rail could be counterproductive by reducing funds available to Network Rail. Fines should be imposed as a last resort with funding generated made available for spending elsewhere within the rail sector. Reputational incentives would appear to be the best way forward. Instilling a sense of competition between routes, with public recognition of best practice and appropriate constructive public criticism where targets are not met. Given Network Rail's monopoly position care needs to be taken that criticism does not result in the loss of staff or reduced staff morale.

Question 8 (Chapter 5):

What are your views on the format and content of publications and data that you would find most accessible and useful?

Publications should be targeted at users of the network as users' satisfaction and dis-satisfaction should be the principal measure of success.

Question 9 (Chapter 5):

How should we reflect the level and quality of route and SO engagement with their customers/stakeholders in our monitoring, escalation and enforcement?

Individual stakeholders are best placed to assess the effectiveness of stakeholder engagement. This has the benefit of stakeholders being seen as customers, rather than the ORR.

Users and potential users of the network should be placed at the heart of the process.

Question 10 (Chapter 5):

How should we respond if Network Rail fails to meet scorecard targets agreed with customers? Specifically, what should be the balance between designating scorecard targets as 'reasonable requirements' (creating specific enforceable expectations on Network Rail), and relying on our overall assessment of Network Rail's performance against an overarching licence condition?

Users and potential users of the network should be placed at the heart of the process.

ECC agrees that the imposition of fines on Network Rail could be counterproductive by reducing funds available to Network Rail. Fines should be imposed as a last resort with funding generated made available for spending elsewhere within the rail sector. Reputational incentives would appear to be the best way forward. Instilling a sense of competition between routes, with public recognition of best practice and appropriate constructive public criticism where targets are not met. Given Network Rail's monopoly position care needs to be taken that criticism does not result in the loss of staff or reduced staff morale.

Question 11 (Chapter 6):

What are your views on the approach we set out for managing change? In particular, do you think our proposed level of involvement, and role for stakeholders, are appropriate?

It is important that the ORR gives due consideration to local views when managing change.

Question 12 (Chapter 6):

Are there other options for managing change you think we should consider?

No comment

Question 13 (Chapter 6):

Are there any other types of change you think we should consider?
No comment

Are there any other points that you would like to make?
Essex County Council is the Highways and Transportation Authority for the administrative county of Essex. Essex has a population of 1.4 million people and supports 766,000 jobs, it is home to over 73,500 businesses and generates over £30bn per year for the UK economy. The rail network is key to the prosperity and vitality of Essex, connecting the rapidly growing urban centres of Chelmsford, Colchester, Braintree, Harlow and Basildon with London and the rest of Great Britain. The rail network also provides essential access to the Thames and Haven Ports, and Stansted and Southend Airports. An efficient and effective rail network is therefore essential to Essex and the UK as a whole.

ECC played a key role in the development of the Rail Prospectus for East Anglia; authored and supported by a strong cross-party and multi-agency alliance of MPs, county councils, Local Enterprise Partnerships, other local authorities, businesses and rail user groups across the four counties of Essex, Cambridgeshire, Norfolk and Suffolk. The Prospectus put forward the case for a realistic and technically feasible 20 year programme of improvements which will help create thousands of jobs and unlock billions of pounds of growth for the UK economy. Essex is also an active contributor to the Great Eastern Mainline Taskforce and the West Anglia Taskforce established to further the case for investment in these two key rail corridors.

Passenger numbers in Essex are at all-time record levels and the rail network is already at or close to capacity, with further substantial growth expected to follow the provision of significant numbers of new homes across Essex.

With a growing population, and without significant levels of capital investment from Government, Network Rail, rail operators and other sources, Essex's rail links will be forced further beyond their capacity, affecting congestion and journey times for residents. Investment in our rail network is therefore essential to attract investment and unlock sustainable growth. Rail investment will relieve the growing pressure on our roads to accommodate increased movement of both people and freight.

Essex County Council is also responsible for the highway network in Essex and this has a number of intersections with the rail network such as bridges were collaboration between Network Rail and ECC is essential for inspections and planned maintenance. More effective and collaborative planning has the potential to result in more timely and effective interventions and cost savings to all involved.

Our underlying vision for rail services in Essex is improved connectivity for passengers and freight; improving services between all stations, not just to London, in terms of overall journey times and passenger experience, backed up by improved integration with other forms of transport. |

This will only be achieved by providing a high-class, seamless whole journey experience from when passengers and goods start their journeys until they reach their final destinations.

Thank you for taking the time to respond.

The Office of Rail and Road
One Kemble Street
London
WC2B 4AN

Dear Sirs

This letter represents Eversholt Rail Group's (ERG) formal response to the ORR's PR18 consultation "Overall Framework for Regulating Network Rail". While ERG does not have any direct relationship with Network Rail, nonetheless we are materially affected by many of the investment decisions it takes, and by the overall investment strategy for any Control Period.

ERG does not have any detailed comments on the content of the consultation paper, but it does have some observations on some general principles which, in our view, should underpin the regulatory framework and which over time may affect the way the ORR regulates Network Rail.

First, the consultation paper rightly makes much of the importance of Network Rail consulting effectively with stakeholders to support effective delivery, and of making the fullest possible use of the expertise and interests of its customers and other key stakeholders in contributing to a successful railway. The consultation paper appears to have a restricted view of Network Rail's key stakeholders, focusing on to passenger (and freight) representatives, funders and local transport decision-makers. However, as the rolling stock leasing market and owners are directly affected by the general investment strategy in place for any one Control Period, and by individual investment decisions (for example, electrification and / or a bi-mode rolling stock strategy), we believe that there must be an explicit obligation on Network Rail to consult directly with this stakeholder group, and that its performance in this respect should be an element against which it is assessed when the ORR regulates the organisation.

This is also relevant in relation to the issue of scorecards, the use of which is clearly seen as an important tool for monitoring and assessing the performance of the individual Network Rail routes. We note that at page 23 of the consultation paper the ORR sets out Network Rail's views on the purpose of scorecards. There is nothing explicit in this list on the effective management of, and engagement with, the rolling stock leasing companies. This may be implicit, but again we feel this issue should be a more explicit element in the use and purpose of scorecards.

Eversholt Rail (UK) Ltd
PO Box 68166,
210 Pentonville Road,
London N1P 2AR
+44 (0)20 7380 5040
+44 (0)20 7380 5148

Registered in England Number 06953112. Registered Office: 3rd Floor, 210 Pentonville Road, London N1 9FR

The second point relates to the emerging agenda for greater funding and financing of rail infrastructure by third parties. We note that the consultation paper makes reference to the interests of funders and potential funders. However, nowhere does it refer to the interests of financiers, whose interests are separate and distinct from those of funders – a distinction recognised by the Hansford Review. We believe that as the private funding and financing agenda gains momentum and is developed with specific projects attracting third party funding and financing as CP6 progresses, it will be necessary for the ORR to regulate Network Rail with the specific and separate interests of financiers in mind.

We note that the ORR describes Network Rail as a monopoly supplier, which of course today it is. However, in the context of the third-party funding and financing initiative and of the proposals for greater contestability of individual rail projects, it is likely that Network Rail's monopoly position will erode to some degree, although it will always remain as the primary delivery agent for rail infrastructure projects in the absence of any further major reforms by the government. We would be interested to know what assessment the ORR has made of the potential impact of the contestability and private funding and financing initiatives on Network Rail's position as a monopoly supplier and what implications this may have on the regulatory regime in the longer term.

Finally, and importantly, we note that the ORR's current proposals for monitoring Network Rail's performance are focused on Route Organisations and, to a lesser extent, the System Operator role. Neither of these encompass the Design Approvals activities that are essential to enable service introduction of some 6,000 new vehicles from 2019 onwards and, just as importantly, the cascade of existing fleets to new routes.

Given the well documented problems with the delivery of the original investment programme for CP5 it is more important than ever that the industry delivers the rolling stock capacity in a timely manner to sustain the demand growth on which franchise revenues are predicated, and on which franchise contracts are based. Network Rail approvals are critical to this and so there is an absolute need for the ORR to monitor Network Rail's activity in this critical aspect of its performance. Failure in this area could have major knock-on implications, yet today the team within Network Rail that undertakes this task seems under-resourced to deliver the quantum of rolling stock approvals that will be required. We would welcome confirmation that the ORR will include the monitoring of the Network Rail Design Approvals activities for rolling stock in its regulatory oversight of the organisation.

I look forward to your response, and we would be happy to meet to discuss these and other issues if that would be welcome.

Mary Kenny
Chief Executive Officer

By email:

pr18@orr.gsi.gov.uk

John Larkinson

Office of Rail & Road

One Kemble Street

London

WC2B 4AN

21 September 2017

Dear John,

Response to ORR's Consultations on the Overall Framework for Regulating Network Rail and on the Possible Measures of the System Operator's Performance

Thank you for the opportunity to respond to this consultation. This response is made by FirstGroup on behalf of our Rail Division and its train operating companies: Great Western Railway; TransPennine Express; Hull Trains; East Coast Trains Ltd; and South Western Railway (which is a joint venture between FirstGroup and MTR).

FirstGroup is a core member of the working groups established by the Rail Delivery Group (RDG) in relation to the PR18 process, which has spent time reviewing both of these consultations and debating feedback. We are therefore fully supportive of RDG's response to this consultation and for the avoidance of doubt RDG's views can be interpreted as being reflective of ours in all but two specific points. In these two cases, we acknowledge the arguments made by RDG but feel some additional clarificatory commentary is required These are noted in the main text of our response. The remainder of our response reflects the themes contained within the RDG response and provides some additional detail on some of the more important areas that FirstGroup is keen to comment on.

We would request that the ORR considers our letters of 10th March 2017 (Response to ORR's Consultation on Improving Incentives) and 13th September 2017 (Response to ORR's Consultation on Renewals Efficiency) as there are pertinent and related points, for example in relation to setting performance targets to enable relevant and meaningful benchmarks for Schedule 8. Included at Appendix 1 is FirstGroup's letter of 31st May 2017 to Network Rail in relation to the development of the System Operator function and role, which we feel is relevant in the context of this consultation given the separate funding settlement in CP6.

Given FirstGroup's support for the matters raised in the RDG's responses, rather than list answers to the questions in the consultation document this letter deals with those specific areas where we have additional comments that we request the ORR takes into consideration. The Overall Framework matters are dealt with first before turning to the System Operator (SO).

Overall Framework for Regulating Network Rail (including Scorecard measures)

1. **Scorecards**

   FirstGroup is supportive of the use of scorecards in ensuring that Network Rail is meeting its obligations; delivering its outputs in relation to the funding settlement; ensuring that its customers', the operators, needs are being met; and crucially is being held to account. This final point is particularly important, given Network Rail's ownership status which means that it effectively operates at arm's length from Government with no other shareholder or stakeholder scrutiny or accountability. Scorecards will therefore be important in setting expectations of what Routes and the SO are expected to deliver during CP6.

   With the ownership status that Network Rail has there is no commercial pressure and as such there needs to be a different system of ensuring deliverability and success. We therefore agree with the recommended approach to use comparative measures across each of the Routes. FirstGroup is pleased that the ORR is trying to find ways to encourage Network Rail to focus on its customers rather than delivering the requirements that the ORR sets, as this will ultimately help to deliver for the end-users. We also agree that scorecard measures should reflect overall railway outcomes and take account of what Network Rail's customers require of their infrastructure provider.

   Given that Network Rail Routes do not match with train and freight operators geographical networks, Routes have to have multi-lateral engagement with their customers. As such there should be a multi-lateral customer-based element within scorecards, which ensures that there is recognition of the consistency of delivery that operators require as they cross Route boundaries. There are also bilateral relationships with operators to consider, but no-one customer should be treated favourably by a Route regardless of status.

   Taking all of this into account, it is likely that for scorecards to be effective there will need to be four elements to them, as follows:
   * Comparative measures set by the ORR to ensure that Network Rail is delivering its obligations and outputs in relation to the funding received for CP6;

   * Network Rail's own internal measures (where these differ from above), again comparative, to ensure effective management, delivery and monitoring of its assets and business plans;

   * Multi-lateral customer requirements, where each Route determines deliverables and outputs that are consistent for all its customers. These may be similar measures to those in the two categories listed above;

   * Individual customer requirements for bilateral relationships, or where appropriate, reflective of alliance arrangements. Again, these may be similar to those in the categories listed above.

2. **Targets in Relation to Operational Performance**

   This is the first of the two areas where we would like to provide additional clarification on the points presented by RDG. In this case, in paragraph 9 of its response to the Overall Framework, RDG notes that "some 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...", FirstGroup is one of those members, and therefore supports the use of targets for measuring performance. The rationale for this is explained in more detail below.

FirstGroup notes that the ORR wants to set minimum performance levels for Network Rail to achieve. Whilst this is supported to an extent, it cannot replace setting effective and realistic target levels for key deliverables such as operational performance. In our letter of 10th March 2017 we set out why setting targets and benchmarks for performance are particularly crucial, the pertinent points are reproduced here for ease of reference:

"There has to be a level of past performance in order to set benchmarks to achieve the desired outcome of improved performance. This is just as true in the context of the funding in place for Network Rail to deliver for its customers and ultimately the end user as it is for passenger operators. Quite correctly there are no regulatory targets for operators, as they have their own existing commercial and contractual incentives to deliver good performance, as such the only method left to set a benchmark is the use of past performance. We are not sure why the ORR believes that operators do not have incentives to improve their performance against a benchmark based on historic delivery… operators are incentivised through their own revenues and reputation to improve performance. Franchised operators also face an incentive to improve TOC on Self delays and cancellations through the performance regime contained within their franchise agreements.

Network Rail benchmarks must be appropriate for each operator and be set at a level cognisant with service delivery (i.e. Service Group). This is also consistent with Network Rail devolution and the move towards regulatory settlements by Network Rail Route.

We accept that using PPM is not necessarily appropriate to set Network Rail benchmarks or even for enforcement purposes. However, Network Rail can be measured on delays and cancellations that it causes and these can provide a clear and effective regulatory target. With Network Rail funded to deliver improvements through the Control Period there is a trajectory of performance that can be used to set benchmarks within Schedule 8.

By linking the benchmarks to these regulatory targets will ensure that Network Rail is incentivised to deliver in a manner consistent with the regulatory settlement. We would advocate that with such a relationship in place that there would not be a need for additional fines to be levied against Network Rail for failures to deliver against its targets as it would already be paying out compensation to operators if it under-performs against the benchmark trajectory."

Building on those comments, we offer the following additional reasons why relying on a floor or base level of performance on its own is simply not effective or reasonable:

- Operational performance is the most important factor for end-users, the passengers travelling on the Network (as reflected in the National Rail Passengers Survey) and the freight companies' customers. To not have a target level commensurate with the funding put in place for the Operation, Maintenance and Renewal of the Network means that Network Rail does not have anything to strive for and could ultimately accept mediocrity, regardless of the challenge from operators or indeed from ORR itself given that Network Rail will not been required to achieve anything other than avoid performing at an unacceptable level;

- Network Rail is responsible for the performance of the Network, as set out in the Railways Act and as such should be incentivised to ensure that it is as good as possible for the funding received, which a floor does not achieve;

- We understand that the ORR wants performance targets to be agreed with operators on a bi-lateral basis, but each Route has more than one operator and there is not a common geography between operators and Routes. This means that there are several specific measures that could be chosen by operators which could be in conflict or not amalgamate to a realistic overall deliverable, so a common and specific target for each Route and collectively for Network Rail will avoid this;

- We agree that an overall punctuality target is not a fair measure for Network Rail as it is not wholly within its control. However, basing a target on a common currency of delays (and cancellations) per 1,000 train kilometres is a sensible, consistent and equitable measure that can be applied across Routes and recognises the different operational geographies of operators. It can also be used to establish the benchmarks for the Network Rail element of Schedule 8;

- In addition to helping to deliver an acceptable level of performance for their customers, franchised operators rely on Network Rail's performance to help to meet the revenue forecasts on which their business plans are based. During a competition for a franchise, bidders are provided with a forecast level of performance from Network Rail and will meet with Network Rail to discuss and determine future performance levels. Those that are included within a franchise are reflective, therefore, of the Governments desired outcome for that franchise. The performance levels are a key input to the revenue within a bid and bidders accept a level of risk associated with including forecast performance levels. However, during franchise operation Schedule 8 compensates train operators for the risk taken on Network Rail's performance level (as the benchmarks in Schedule 8 are designed to be set at the expected level of performance for that Control Period), this is also why Network Rail can earn a bonus should it outperform. Franchise bidders can choose to include forecast performance beyond that estimated or provided by Network Rail, and do so fully on risk. But this should not be a reason to remove target benchmark levels associated with funding for a Control Period, for which a degree of certainty is relied upon. We would also ask that the ORR acknowledges the levels of performance for franchises when it reviews Network Rail's Strategic Business Plans, as these are clear reflections of funders requirements for acceptable passenger performance outcomes; and

- Relying on locally agreed measures is unlikely to achieve targets that are acceptable for operators, as demonstrated by the performance targets included in 2016/17 Route Scorecards – i.e. they do not reflect the PR13 expected outcomes.

Whilst the foregoing focuses on operational performance, a number of these points apply equally to other metrics that will be included or need to be included on scorecards. We would also observe that aligning targets, metrics and results with management incentive schemes within Network Rail will help to achieve appropriate and required outcomes.

3. **Governance, Monitoring and Engagement**
There are several elements to ensuring a successful outcome for CP6, not least how Network Rail will continue to engage with its stakeholders but also how the ORR ensures that Network Rail achieves the outputs consistent with the funding provided, aligned with outcomes that operators are delivering. Here we focus on monitoring and

governance as well as the role of the other Network Rail functions that will not receive separate and distinct funding for CP6.

As we have stated on a number of occasions, it is ultimately the role of the ORR to hold Network Rail to account and to ensure that it is delivering. We recognise that ORR will continue to monitor Network Rail and will take enforcement action where required. Given the status of Network Rail, fining it for under-delivery as has been the ultimate enforcement in the past will not necessarily be effective and will merely remove money from the system and limit the outputs for the railway that can be achieved. We would therefore advocate that in circumstances where Network Rail is failing that action plans which commit resources, an approach that has been adopted in the past for franchises, is used. We would also argue that the ORR should use the reputational management approach proposed, ensuring that management incentives and pay reflect delivery of targets and outputs.

We are concerned that the emphasis from ORR seems to be that operators hold Routes to account for delivery and that they will be expected to, in effect, take on a de-facto regulatory monitoring role. Whilst it is expected and entirely appropriate that operators demand delivery from Network Rail for those elements of its operation that are critical to providing an effective service for end-users, there are numerous deliverables for Network Rail that operators do not have the skill to asses or indeed need to monitor. As such, there needs to be a balance, between bilateral and multi-lateral engagement between operators and Network Rail and the ORR monitoring, reviewing and publishing Network Rail results. This links with our comments as to why there will need to be several parts to any scorecard.

We note the emphasis placed by Network Rail on the new Route Supervisory Boards, however, these are not the right forums for discussing delivery and compliance with the outcomes of CP6 in relation to the funding provided. Network Rail established these bodies originally stating that they would hold it to account, although increasingly this seems to be missing from the agenda. There also appears to be a decreasing role for minority operators within Routes which means that the emphasis may be distorted. We would, however, suggest that the industry working together under the leadership of the RDG could develop and implement a more effective and appropriate forum for monitoring outputs during CP6 that would complement the bilateral and alliance boards that each operator has in place. This would also help to address concerns that multi-Route or National operators have over the role of the Route Supervisory Board concept. This approach could also consider an effective approach for considering how the SO is monitored.

Whilst there is clarity of funding for Routes and the SO, of which we are supportive, this is not the case for the roles of the Technical Authority and Infrastructure Projects (IP) within Network Rail. There has been a significant emphasis in recent months on Network Rail's efficiency in delivering renewals, but what about enhancement delivery – the activity that is undertaking by IP? This part of Network Rail will also be continuing to deliver outputs planned for CP5 in CP6, will these continue to be subject to CP5 oversight? How is IP going to be held to account in CP6 both in terms of efficiency but also effectiveness? These are important but apparently unanswered questions that need to be addressed over the next 18 months before CP6 starts. We would welcome further debate on these areas and would be keen to be involved.

There are similar concerns about the Technical Authority. This is the body within Network Rail responsible for setting and applying consistent standards across the Network, yet there is no apparent oversight or observable requirement for this important function.

For both the Technical Authority and IP effective engagement with operators is required and the ORR will need to ensure that this happens. We are supportive of the RDG's proposals in working collaboratively to ensure appropriate arrangements are put in place.

4. Change Control & Flexibility

Change Control will be an important process for CP6 given the devolved settlement approach. Changes will need to be supported by business cases and with evidence of the views of stakeholders that will be affected have been considered.

We also support the comments by ORR that monitoring, reporting and enforcement is flexible across Routes. This means that where Network Rail is underperforming in one Route that the total funding can be reallocated as required to redress the failing situation in a way that is consistent with the overall management of the Network.

System Operator

1. Overview

FirstGroup is supportive of the separate SO settlement and for the proposed roles of this function within Network Rail not least with regard to:

- long term planning;
- access and capacity planning;
- providing a single team of experts to work with bidders for franchise competitions; and
- for ensuring dedicated resources exist to support the development of projects relating to the Network that are not provided for within the CP6 funding settlement or that may be promoted or funded by third parties including train operators.

An effective regulatory regime is required for this function, as it is for all parts of Network Rail, and our comments on the proposed measures for this organisation are provided to help ensure that this function is successful and works for the benefit of end users of the railway. Our letter to Network Rail, attached as Appendix 1 to this response, should be taken into account by the ORR in considering the approach to regulating and funding an effective SO in CP6.

2. Measures & Scorecards

The SO function is very different from that of the Routes, as its role is both to enable effective delivery within the Routes, but also in some key elements it will deliver outputs that help to achieve overall railway outcomes. The measures chosen therefore need to be relevant and focus on what can be achieved by the SO rather than being held accountable for outputs that are not within its control. Qualitative and quantitative metrics should also be used together to provide an effective and meaningful balance of measures both for the SO, its customers and the ORR.

Some specific comments on the proposals contained within the consultation document for measures for the SO are as follows:

- *The Long Term Planning Process (LTPP)* – The SO will undertake this role, fulfilling the legal requirement placed on Network Rail to do so. However, it is not reasonable to hold the SO to account for the failure of a forecast growth figure not being achieved. Rather it would be more sensible to measure the SO on delivery of updates to the LTPP including forecasts and potential solutions to gaps on a regular basis. It would also be useful for there to be a measure on engagement and involvement with operators in the process, including confirmation of acceptance of proposals. This is important as there are numerous ways to provide capacity on the Network, including: timetabling; rolling stock; infrastructure; and signalling

- *Timetabling and Capacity Planning Processes* – Compliance with the detailed planning process is important for operators as this ensures that timetables can be produced and advertised to end-users with confidence. Measuring planning based on delays alone may highlight that there are problems with the plan, but it places an emphasis on managing the delays or even an incentive to ensure that they are attributed elsewhere rather than concentrating on resolving the root cause. We would advocate the adoption of measures that ensure the SO is delivering on its obligations and producing timely and accurate (i.e. without errors and in compliance with Train Planning Rules) inputs to the process and the timetables themselves;

- *Availability of the Network* – It remains important for there to be a measure on the availability of the Network for operators. However, an improvement on the current P-DIP metric, which operators do not find useful or indeed meaningful is required. The current approach simply measures possessions after the timetable has been produced, which completely misses the point that there are number of possessions that are already accounted for in that timetable. The true measure of whether the Network is available should be against the access rights that operators hold and the timetables that they request in association with these rights. Where an operator is not able to fulfil its access rights, or desired timetable, due to Network Rail taking possession of the Network could be used as a more effective measure;

- *Stakeholder and Customer Perceptions/Satisfaction* – It will important to understand how well the SO is performing in providing advice as well as its outputs and deliverables, which could be achieved through surveys, much like train operators use themselves. This could be applied to potential third party funders of schemes. Using such an approach would provide a quantifiable assessment of delivery;

- *Franchising* – As noted above we are supportive of the proposals for the SO to have a dedicated team to lead the Network Rail input to franchise bidders and provide advice to DfT. This is the second area where we would like to clarify the commentary provided by RDG. In paragraphs 31 to 32 of its response to the System Operator Consultation the RDG sets out that Network Rail should be involved in the assessment of bids. In our view there needs to be a clear distinction here between assessment in terms of reviewing and providing advice and that of evaluating bids. We do not agree that Network Rail should evaluate bids as it is not responsible for funding the Network or for determining outcomes. There is, however, a role for Network Rail to continue to play in providing advice to DfT ahead of ITTs and providing a review of the plans contained within bids, particularly in relation to those activities that have been discussed with prospective franchisees during the bidding phase.

- *Financial Performance and Delivery of the SBP* – it is important that there are a range of measures to ensure that the SO is effective and efficient in its delivery, much as any other business would be. In addition, given that the SO will be operating alongside the Routes, it is important that there are locally agreed measures with operators to reflect the engagement and delivery of relevant outputs.

3. Summary

Finally, we would like to add that the role of the SO has the potential to be beneficial to the industry. It is the engagement and collaboration with operators, Owning Groups and RDG that will help to deliver this and that is where the onus for the SO should be. If there are too many measures and metrics imposed on the SO by the ORR, then this could be counterproductive with the SO engaged in delivering for the ORR's monitoring purposes rather than for the benefit of the railway. Equally it is important that the SO does not inhibit or look to overly control the Network so the role of the ORR in monitoring and holding the SO to account will be important. There is a need for a small number of specific regulatory-focused outputs and measures however, the majority of key indicators for the SO's performance and deliverability should be achieved through the use of metrics that are developed and agreed with operators and the wider industry.

Once again, thank you for the opportunity to comment on this consultation. Should the ORR wish to discuss any aspect of this response in more detail please do not hesitate to contact me. We will provide a copy of this response to RDG and Network Rail.

Yours sincerely

Russell Evans
Policy & Planning Director, First Rail

Appendix 1

Letter from FirstGroup to Network Rail commenting on the first draft of the System Operator Strategic Business Plan

By email:

███████████████████

Helen McAllister
Industry Planning Manager
Network Rail
One Eversholt Street
London
NW1 2DN

31 May 2017

Dear Helen,

Network Rail's System Operator Strategic Business Plan Draft for Consultation: FirstGroup Comments

Thank you for the opportunity to comment on your draft Strategic Business Plan for the proposed National System Operator business unit. This response is made by FirstGroup on behalf of our Rail Division and its train operating companies: Great Western Railway; TransPennine Express; Hull Trains; East Coast Trains Ltd; and First MTR South West Trains.

We welcome the development of the System Operator (SO) role within Network Rail (NR) as a natural and consistent step in the devolution process. We also welcome the assurance that NR intends to work more closely alongside its customers within the industry, taking account of passenger and stakeholder needs.

The formalisation of the SO activities through the creation of a Business Plan and a separate Regulatory Settlement for CP6 means that it is essential that the role, responsibilities and boundaries of the SO function are clearly defined and understood. This will shape and define stakeholder expectations, while also setting a minimum level of service that NR should achieve in discharging these SO activities with customers and funders. We would propose that the formalisation of the SO function gives the Office of Rail and Road (ORR) an opportunity to restate the requirements of NR specified via its Licence Conditions on asset knowledge and wider strategic planning.

A key objective of the SO function in CP6 will be to restore industry credibility with funders and stakeholders following the at times poor experience of CP5. It is therefore essential that the System Operator speaks with authority and relevance and can demonstrate that it is holding the NR Routes to account for the creation and delivery of outputs.

Competence in technical and operational matters is a key skillset within the SO function in engagement with funders, users and the Asset Management and Route teams within NR. This applies with each of the strategic planning, train planning and capacity and capability activities.

UITP ADVANCING PUBLIC TRANSPORT   Rail Delivery Group   🚶 PROSTATE CANCER UK

First Rail Holdings Limited.
Registered in England and Wales number 05154485
50 Eastbourne Terrace, Paddington, London, W2 6LG

It is essential that in its forward planning, the SO considers the potential for asset enhancement upon renewal and ensuring that renewal is based on modern equivalent form, moving away from the presumption that "like for like" is adequate. This outlook has led to suboptimal outcomes over the past 20 years. Renewals led incremental enhancement becomes essential as the network prepares to adopt ETCS to optimise capacity and performance with junction turnout speeds commensurate with the capability of new build traction, and as the sources of funding become disparate and smaller.

We welcome the proposal that the SO will be the part of Network Rail that will discharge the responsibility of Long Term Planning on behalf of the industry. FirstGroup is fully supportive of this process and recognises that it is at the heart of identifying how the industry will meet future challenges. This process remains strategically important for the development of the Network as a whole, which is required to help drive economic growth and prosperity. In turn, this will ensure that options to meet changes in demand and other requirements (e.g. performance) are assessed and solutions identified. These solutions are then available for funders to define as outcomes for industry to deliver, for example through franchise specifications.

The SO needs to develop and maintain a list (by priority) of solutions, which will include infrastructure enhancements alongside other solutions such as rolling stock replacement, train lengthening or timetable solutions, required to meet demand and generate economic growth over the next thirty years. A list of developed infrastructure schemes will be important, given the likely change in approach for CP6 and beyond, with enhancements likely to be specified outside the process for Operations, Maintenance and Renewals (OM&R). NR Routes will be able to align renewals to enable incremental enhancement in line with the needs thus identified. Correspondingly there is a need for the SO to show constructive challenge on technical standards to secure efficient, economic and appropriate outcomes.

There is the question of the alignment of incentives within NR to permit the SO activities to function efficiently: how will the SO ensure that the Routes engage appropriately with Route based Strategic Planning? To ensure that all opportunities for enhancement are considered it is essential to involve the Asset Managers at Route level, but it is often the case at present that RAM teams are under-resourced to engage in strategic development work beyond the core funded OM&R activities. For NR to be able to respond effectively to the changing industry that will include an increased appetite for schemes to be funded by third parties (including train operators), adequate resources need to be in place across the devolved organisation, starting with strategic planning.

It is essential that route based enhancement planning is devised on a basis that reflects Route territory and markets sensibly. There are currently areas where asset stewardship and strategic planning is managed in two distinct locations and there is consequently a risk of suboptimal outcomes. Equally some key corridors (such as Birmingham to Bristol) do not lend themselves to a tidy strategic plan fit. That said, we look forward to working with the SO to develop the strategic plan for CP6, and particularly for both the East Coast and Great Western Main Lines post 2019 taking into account those CP5 interventions completed by that date.

We note the specific focus given to HS2, given that its integration with the existing network is a challenge. With specific reference to GWR we would be very keen to work with the SO to establish and verify the design and capability of the layout in the Old Oak Common area that will accommodate the proposed station there.

The SO function has a critical role within access planning, and the train service offer to the end-user, FirstGroup's customers. It will need to be suitably resourced to meet the variations in workload, in all aspects of train planning but in particular Short Term Planning and the forward planning of timetable upgrades following investment. Risks exist here, given that engineering access planning appears to reside with the Routes. We hope that the SO continues to work towards a train planning environment where data can be transferred seamlessly between the centre and operators, without the time consuming need to re-enter and check offers, as happens at present. Harnessing technology in this area should make tasks not only easier but more effective at the same time, reducing reliance on outmoded forms of communication.

There must, therefore, be funding included within the settlement for a continuous training programme to ensure that the SO has adequately resourced teams that have the skills required to undertake the roles effectively and efficiently. Coupled with this is a requirement for ongoing investment in system development, using technology to improve capability and processes.

The System Operator also manages the Regulatory and Capacity Allocation duties of NR. We urge the SO to ensure transparency and consistent in the activity carried out the Sale of Access Rights panels. Operators must be permitted to engage appropriately in this process to ensure that service specifications set by Franchising bodies and other aspirations are considered appropriately.

PR18 assumes a separate regulatory settlement for the SO function in NR. This implies an assumption as to the extent to which the SO will be funded for its activities, and where it might recover its costs through fees. This raises the question, at what point in an evaluation of a stakeholder aspiration would the SO commence charging for work? This links to the overall Investment Framework and as noted above, NR's ability to work on schemes that are not part of the core OMR funding. The issue will need careful consideration as, to date, NR has often appeared eager to ask potential funders to finance further development work on proposals, when the information being sought could be readily available if suitably experienced SO staff are engaged. This is particularly important for FirstGroup because our strategic approach involves employing teams to work with stakeholders and potential funders identifying routes for investment in the Network. Given the nature of the third parties with whom we work, additional funding for NR is often not factored into their budgets and it often comes as a surprise, particularly if the scheme is not fully developed. We therefore need NR to be able to work with us and our partners to assess schemes and work on initial development helping to determine viability.

FirstGroup and our companies are happy to discuss these issues further and if that would be helpful please do not hesitate to contact me. In the meantime, FirstGroup looks forward to working with NR's SO in the future.

Yours sincerely

Russell Evans
Policy & Planning Director

Response to ORR's consultation on the overall framework for regulating Network Rail (PR18)

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to pr18@orr.gsi.gov.uk by **21 September 2017**.

Full name	Chris MacRae
Job title	Head of Policy – Rail Freight and Scotland
Organisation	Freight Transport Association
Email*	
Telephone number*	

*This information will not be published on our website.

Question 1 (Chapter 3):

Do you agree with our proposed use of scorecards in CP6?

Yes it is important that performance is accurately and transparently measured.

Question 2 (Chapter 3):

Do you have any comments on what scorecards should include in order to make them balanced (recognising that there is a limit to how much can be included on a scorecard)?

The emphasis for freight on route performance is vital.

Question 3 (Chapter 3):

What are your views on our proposed approach to specify a small number of measures and two regulatory minimum floors for route scorecards, in order to leave Network Rail with greater flexibility to satisfy its customers' needs?

This is correct, but is dependent upon fulsome customer engagement.

Question 4 (Chapter 4):

What role should customers and stakeholders (including end-users and their representative groups) play in influencing what routes/the SO commit to deliver, and what role should they play in supporting and challenging Network Rail to deliver on these priorities?

It is important from a freight perspective that freight operators (as customers of both the geographic routes and the FNPO route) as well as third party logistics providers and major end customers (i.e. shippers) are involved and consulted.

Question 5 (Chapter 4):

How do you think Network Rail routes and SO should engage with their customers/stakeholders and what are your thoughts on the principles and minimum expectations we propose?

The principles and minimum expectations laid out are correct as are the means for judging it.

Question 6 (Chapter 4):

How should the quality of stakeholder engagement be assessed, and who is best placed to assess this?

The quality (and assessment of that) would best be addressed by third party review with stakeholders.

Question 7 (Chapter 5):

What are your views on the relevance and balance of the incentives we describe in this chapter, and the circumstances in which would it be most appropriate to apply them?

These are well laid out in the table in Chapter 5.

Question 8 (Chapter 5):

What are your views on the format and content of publications and data that you would find most accessible and useful?

Again, these are standard.

Question 9 (Chapter 5):

How should we reflect the level and quality of route and SO engagement with their customers/stakeholders in our monitoring, escalation and enforcement?

This is obviously a factor that needs taking into account as the more there is engagement the more likelihood there is of correct outcomes.

Question 10 (Chapter 5):

How should we respond if Network Rail fails to meet scorecard targets agreed with customers? Specifically, what should be the balance between designating scorecard targets as 'reasonable requirements' (creating specific enforceable expectations on Network Rail), and relying on our overall assessment of Network Rail's performance against an overarching licence condition?

It is important that there is adequate balance between the two, and with adequate specification of requirements.

Question 11 (Chapter 6):

What are your views on the approach we set out for managing change? In particular, do you think our proposed level of involvement, and role for stakeholders, are appropriate?

Yes, it is important that change is correctly managed with stakeholders within defined parameters as shown in the example flow-chart.

Question 12 (Chapter 6):

Are there other options for managing change you think we should consider?

Change that affects cross-route border operations is important to be captured on a line of route basis that affects end-to-end freight journeys.

Question 13 (Chapter 6):

Are there any other types of change you think we should consider?

"Shock" events have been referenced but it is vital that there are correct procedures for dealing with the change that they import.

Are there any other points that you would like to make?
Obviously the regulation of Network Rail in respect of freight operations is a key concern, and it is vital that the integration between the Freight & National Passenger Operators' Route and the Geographical Routes is properly managed and regulated.

Thank you for taking the time to respond.

21 SEPTEMBER 2017

Chris Hemsley
Office of Rail and Road
One Kemble Street
London
WC2B 4AN

Dear Chris,

Re: Overall framework for regulating Network Rail – A PR18 Consultation
Gatwick Airport Limited (GAL) welcomes this opportunity to comment on the Office of Rail and Road's (ORR) consultation regarding the overall framework for regulating Network Rail in PR18.

Gatwick, its passengers and staff have been disappointed by the level of service delivered on the Brighton mainline over the past 12 -18 months, acknowledging this resulted from a number of factors. The widespread failings are visible through the rail punctuality statistics and passenger satisfaction scores for the affected operators. The experience of our passengers and staff was overcrowded platforms and concourses, queues at ticket machines, and arriving late for work and to meetings. These outcomes are bad service for passengers in general – and even worse for many airport users who unlike commuters carry luggage which makes them more exposed in disruption scenarios.

We understand the many causes of disruption, which are often attributed to Network Rail and the operators, but also reflect the weather, industrial relations and other causes. We do however observe a lack of transparency of "ownership" of these issues across the various rail stakeholders.

Overall, we therefore welcome the use of scorecards and the increase focus on service signalled by the consultation. A particular challenge for ORR is to design a system which delivers meaningful service outcomes for passengers (and other users). With this in mind we offer the following comments on the overall framework for PR18.

- As the rail sector is fragmented across multiple regulated entities, a particular challenge for ORR is to ensure that in setting incentives for Network Rail (in its various roles) and other parties it remains focused on the end outcomes for passengers and that all parties have a stake in delivering these outcomes.

- Incentives needs to be relevant to deliver meaningful outcomes for passengers. For example it is scarce comfort to a commuter that the overall punctuality on his route is

YOUR LONDON AIRPORT
Gatwick

80% if it means the off peak services he rarely uses all have 100% punctuality and the peak trains he relies on are only at 60%.

- We would welcome metrics to incentivise Network Rail to invest in resilience. Resilience and predictability is a desirable outcome as it brings certainty for passengers around timetables they can use to plan their activities, rather than broad aspirations of the operator. We believe such investments in resilience are particularly needed on the Brighton Main line. Appropriate incentives set at the System Operator level may help identify the need for such investments more proactively.

- We would furthermore welcome additional service metrics for stations. Service quality metrics are successfully used in the aviation sector to compare passenger satisfaction with the airports themselves and to assist them in prioritising investment. We see no reason why similar consistent surveys and metrics could not be implemented across at least larger rail stations – not only those operated by Network Rail.

We trust you find these comments helpful. Please do not hesitate to contact us if you need any further information.

Yours Sincerely

Mattias Bjornfors
Economic Regulation Manager

Response to ORR's consultation on the overall framework for regulating Network Rail (PR18)

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to pr18@orr.gsi.gov.uk by **21 September 2017**.

Full name	Ian Kapur
Job title	National Access Manager
Organisation	GB Railfreight Ltd.
Email*	
Telephone number*	

*This information will not be published on our website.

Question 1 (Chapter 3):

Do you agree with our proposed use of scorecards in CP6?

GB Railfreight (GBRf) is content that scorecards form part of the basis on which Network Rail is measured and regulated. GBRf currently uses a scorecard, as part of its engagement with the FNPO Route, and is in the process of changing elements of it for 2018 year.

Scorecards are fine, to a point, but GBRf does not want Network Rail to believe it has carried out all of its Licence Conditions and duties just because some of the chosen activities are listed and monitored in the final scorecards. Scorecards are, merely, part of the process of monitoring and regulation and there will be many activities not listed that Network Rail is obliged to carry out.

Finally, GBRf doesn't think ORR should place too much emphasis on route comparison data, as an incentive, as we believe that many routes will be far too busy engaging with their stakeholders and dealing with the issues to have worry about where they might be in league tables. There is likely to be only a mild incentivising effect, in GBRf's view.

Question 2 (Chapter 3):

Do you have any comments on what scorecards should include in order to make them balanced (recognising that there is a limit to how much can be included on a scorecard)?

Scorecards will, ideally, include sections on safety, damage to vehicles from lack of vegetation management, freight performance, some aspects of capacity planning, progress and costs of enhancements delivery, maintenance of network capability, freight journey time improvement and general customer satisfaction with the Route / System Operator.

Maintenance of published network capability (including gauge, RA and infrastructure being present and usable), and Network Rail's indifference to it in places, has been a particular issue during CP5. GBRf believes this needs special attention and must be closely measured and monitored.

How much capacity is used, on any particular part of the Network, would also be a good metric to measure.

However, from using scorecards currently, GB Railfreight is only too aware that some of the above examples are actually quite difficult to measure, accurately, and the relevant weightings of various aspects of scorecards may well change over a 6 month period.

Question 3 (Chapter 3):

What are your views on our proposed approach to specify a small number of measures and two regulatory minimum floors for route scorecards, in order to leave Network Rail with greater flexibility to satisfy its customers' needs?

Whatever is chosen needs to be measurable and important to Network Rail's customers otherwise it won't be of use to any parties. The idea of having two scorecard items (with minimum floors) is fine however there should be some more debate as to the specific items.

There are likely to be several scorecard items that are qualitatively measured, or not quite as precisely as some others, which are very important to operators and their businesses.

Question 4 (Chapter 4):

What role should customers and stakeholders (including end-users and their representative groups) play in influencing what routes/the SO commit to deliver, and what role should they play in supporting and challenging Network Rail to deliver on these priorities?

The operating companies and network connected-parties, must be central to the detail of what is included in the various Route and System Operator scorecards, not least because one of the priorities should be sustaining asset condition for the benefit of future rail users. This could apply to increased and more varied traffics, from existing operators/customers or brand new operators.

The current Ministry of Defence rail traffic is an example of where GB Railfreight, as the operator, and the MoD as the end customer, have expectations of expanding MoD's rail operations around the U.K. Some of these are new-to-rail traffics.

At present, although valuable in some cases, there are too many groups of meetings between the various parts of Network Rail and TOCs/FOCs. If Route/SO Scorecards are to be the main tool for monitoring and regulating Network Rail, there will need to a group of fora to manage this process. This, in turn, may lead to other less important meetings being removed as there's a real danger of operators being overrun with meetings.

Question 5 (Chapter 4):

How do you think Network Rail routes and SO should engage with their customers/stakeholders and what are your thoughts on the principles and minimum expectations we propose?

GB Railfreight is very concerned that business interaction doesn't take place with multiple routes. In order to flourish and grow, and not be bogged down with multiple communications with each of the routes on multiple aspects, GB Railfreight needs to be able to deal with "one Network Rail" and would, therefore, favour the introduction of a system that does just that.

A new set-up and more initiatives are needed to take current and expanding freight services into proper consideration, from the start of all activities, not retro-fit them almost as an afterthought. As areal example of why this should occur, the potential for the vast increase in freight traffic for HS2 construction works, across the network, should be enough of an incentive to plan properly.

With regard to projects, there needs to be more careful listening of operator's needs, from the beginning, and the current Trans-Pennine Route Upgrade project is an excellent example of how all parties are fully involved from the start, then agreeing joint goals and outputs, both from a TOC/FOC perspective and also for the good of the industry and whole route perspective.

In all aspects of consultation, GB Railfreight believes that very early and meaningful engagement is key to trying to ensure that projects are steered on the right path, with realistic specified outputs at the heart. This, currently, takes place early enough in some instances but there are many current plans where System Operator's or Routes' decisions are almost "locked down" too early, before the end-users of the network have had meaningful input. The danger with this is that enhancements, for example, get built and don't get used to anywhere near their full potential, thus ending up with a very weakened benefit: cost ratio.

The FNPO Route Strategic Plan for CP6 is an example where GBRf has had input from the start and will continue to do so through its life.

GB Railfreight is always keen to be actively involved with face-to-face cross-party discussions, on an operational/output level as well as the more commercial and general railway benefit aspects of a project however this is a danger of having too many meetings and there being little time for the "day job". Thus, the balance of engagement between meetings and other forms of communication needs to be carefully considered.

GBRf believes that more discussions between itself and the Routes will be needed to ensure that our future needs on the network are understood and managed in a way that can cater for FOCs' expansion over the next few control periods. Whether this be Route Supervisory Boards or Freight Joint Boards is definitely a matter for more debate and discussion.

However, it does not want to have a process whereby it must interact with each Route individually not does it wish each Route to act alone, in a silo, without acting on the wishes of the national cross-boundary operators.

Question 6 (Chapter 4):

How should the quality of stakeholder engagement be assessed, and who is best placed to assess this?

At the heart of this must be an effective regulatory process to oversee what is likely to be a brand new way of working between Network Rail and its customers. Qualitative and quantitative assessments of the individual Routes will be needed and clear lines of escalation understood by all parties from the start.

Question 7 (Chapter 5):

What are your views on the relevance and balance of the incentives we describe in this chapter, and the circumstances in which would it be most appropriate to apply them?

With regard to the use of scorecards as a financial incentive mechanism, GB Railfreight believes it is correct that scorecard measures count towards Network Rail's performance-related pay arrangements. However, GBRf thinks it extremely important that the scorecard results should influence performance-related pay to a far greater extent than at present. Rather than just affecting bonus payments, the process should be used to drive how much (or little) general performance-related pay increases might rise over each year. This is far more likely to incentivise many more people.

Question 8 (Chapter 5):

What are your views on the format and content of publications and data that you would find most accessible and useful?

GBRf's only comment is that greater transparency of information, including financial where appropriate, is a progressive and welcome step forward. Ensuring easy access to publications is fundamental. Regular capacity utilisation and route capability data would be especially useful.

Question 9 (Chapter 5):

How should we reflect the level and quality of route and SO engagement with their customers/stakeholders in our monitoring, escalation and enforcement?

ORR's proposed approach, in Table 5.1, seems an appropriate framework for monitoring, escalation and enforcement. It may be, as part of the process, there needs to be structured tri-partite meetings between ORR, Network Rail and FOCs for some of the real points of issue, and the background, to be discussed.

Currently, there is no such gathering for day-to-day business issues but given the probable increased reliance on scorecards, this is likely to be necessary.

GB Railfreight would rather this not be a binary process and would prefer more ORR involvement from the start. This might well lead to some of the pertinent issues of the day, between a FOC and Network Rail, not reaching the point that many of them do.

Question 10 (Chapter 5):

How should we respond if Network Rail fails to meet scorecard targets agreed with customers? Specifically, what should be the balance between designating scorecard targets as 'reasonable requirements' (creating specific enforceable expectations on Network Rail), and relying on our overall assessment of Network Rail's performance against an overarching licence condition?

Firstly, GB Railfreight cannot view scorecards as the absolute determinant of customer satisfaction and delivery. They do form a good basis for how we measure many quantitative elements of the Network Rail – TOC/FOC relationship but are not the complete answer.

We do however feel that at some point in time ownership for poor delivery must be addressed and for many years this has not been the case.

Any action that the ORR would plan to take, to address the failure to meet scorecard targets, should be communicated with the TOCs/FOCs to determine whether it would be fair and reasonable to take further action. It is likely to be more important to address multiple failures across a range of scorecard measures as this would indicate where multiple areas of the route/business might not be delivering.

Question 11 (Chapter 6):

What are your views on the approach we set out for managing change? In particular, do you think our proposed level of involvement, and role for stakeholders, are appropriate?

GB Railfreight believes that change must encompass the involvement of all stakeholders and interested parties who need to be kept well informed.

Question 12 (Chapter 6):

Are there other options for managing change you think we should consider?

GB Railfreight believes that the detailed replies it has made in this response, along with some points in the other two parts of this consultation, give a good indication of how change and managing change should take place.

Question 13 (Chapter 6):

Are there any other types of change you think we should consider?

No further comments.

Are there any other points that you would like to make?

Thank you for taking the time to respond.

Response to ORR's consultation on the overall framework for regulating Network Rail (PR18)

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to pr18@orr.gsi.gov.uk by **21 September 2017**.

Full name	Charlie Hodgson
Job title	Managing Director, Rail Development
Organisation	Go-Ahead Group
Email*	
Telephone number*	

*This information will not be published on our website.

Govia is one of the leading rail operators in the UK and is a joint venture between the Go-Ahead Group (65%) and Keolis (35%). Govia has experience running complex and challenging rail operations; currently running three major rail franchises: GTR, Southeastern and London Midland. Govia is the UK's busiest rail operator, currently providing around 35% of all passenger journeys. As a key provider of rail services, we welcome the opportunity to respond to the ORR's consultation regarding the 2018 periodic review.

This response represents the views of the three Govia-owned Train Operating Companies as well as Go-Ahead Group plc. Go-Ahead has contributed to the industry response prepared by RDG and this is intended to supplement that response.

Question 1 (Chapter 3):

Do you agree with our proposed use of scorecards in CP6?

We support the use of scorecards as a suitable means of setting expectations and measuring Network Rail's performance. We also support the principle of linking performance related pay to scorecards, providing targets are set at the right level, as we believe this will provide a greater incentive for Network Rail.

We agree that the clear, consistent presentation of results will allow comparison between routes and support the sharing of best practice. Also, for consistency, it seems logical to use the reasonably well-established scorecard rather than introduce additional workload and complexity by creating a new process.

Paragraph 3.18 states that the scorecards for CP5 have generally not reflected regulated outputs, with Network Rail instead updating targets annually. This approach must change going forwards to ensure that the scorecard targets are consistent with the regulatory targets Network Rail has been funded to achieve. There is a risk that by reviewing and updating targets annually, rather than setting a long-term trajectory, Network Rail could reduce the target the following year if the target no longer looks achievable; like the current situation with the PPRP, which although is intended to be a more flexible process than JPIP, does inadvertently allow the delivery of joint

performance targets to be pushed further and further back within the Control Period, making the uplift required to deliver of the overall exit target more and more difficult to achieve. Also, in terms of resetting the target annually, how much can Network Rail realistically be expected to achieve within a year? It is important to maintain a fixed Control Period exit target.

Whilst we support the shift in approach to encourage Network Rail to view Operators as its customers rather than the ORR, it is important that the ORR remains responsible for ensuring targets are set at an appropriate level and then Network Rail is regulated to that level. Left completely to their own devises, Operators and Network Rail would struggle to agree targets in some areas where expectations or incentives differ. For example, at London Midland the engagement with Network Rail's performance team in agreeing targets for the level 2 scorecard has been challenging. We believe a RT Arrival target of 47% for Euston Station is too low to present any sort of challenge, however Network Rail is reluctant to sign up to anything higher that may be difficult to achieve. This is a similar issue to that of JPIP targets vs Franchise Agreement targets, where Operators are contracted to deliver levels of performance than Network Rail is no longer prepared to commit to.

Regarding the assertion under paragraph 3.23, around the development of scorecards in the bidding process; Network Rail's process of engagement would need to change significantly to make this possible. There is currently limited engagement from Network Rail during the franchise bidding process, limited information exchange and its corporate governance process prevents it from being able to agree to significant commitments.

Question 2 (Chapter 3):

Do you have any comments on what scorecards should include in order to make them balanced (recognising that there is a limit to how much can be included on a scorecard)?

We agree with paragraph 3.28 that geographic route scorecards need to take account of the needs of all operators on that route, not just those for which the route is their lead route. This has not been our experience so far, for example London Midland's performance is not shown on the Western scorecard at all. By failing to include data from all operators on a route, poor performance can, whether intentionally or not, be disguised by better performance elsewhere.

Similarly, whilst Southeastern and GTR both operate on the London South East Route, GTR's performance is not included on the scorecard Southeastern reviews with the route. Given that 2018 is a key year for closer integration, not least reflected in GTR remapping into Kent and it operating former Southeastern service groups; scorecards reflecting the Route performance for all TOCs on the Route should be adopted.

In terms of items we would like included on the scorecard, we would like to see some targets around paying claims within specified timescales. This is a significant issue for all three of our TOCs and with the exception of raising a formal dispute, there appears to be little that Operators can do to highlight poor performance in this area and resolve long-standing issues. Claims seem to go on for inordinate amount of time, sometimes unresolved at franchise end, adding further complexity.

Question 3 (Chapter 3):

What are your views on our proposed approach to specify a small number of measures and two regulatory minimum floors for route scorecards, in order to leave Network Rail with greater flexibility to satisfy its customers' needs?

We agree with the proposal to set a regulatory minimum floor for performance and network sustainability, however the floor level must be sufficiently challenging to have any effect. We also support the threat of formal investigation for licence breach if the regulatory minimum floor were breached, although it may not provide a genuine motivation for Network Rail as subsequent action involving a financial or reputational impact does not appear to act as a significant incentive.

Question 4 (Chapter 4):

What role should customers and stakeholders (including end-users and their representative groups) play in influencing what routes/the SO commit to deliver, and what role should they play in supporting and challenging Network Rail to deliver on these priorities?

Operators are best placed to understand passengers and end-users requirements and therefore best placed to represent them in the development of the scorecards. Transport Focus, passenger transport executives and local passenger user groups should perhaps be consulted on the customer satisfaction targets; however they would need to be realistic in their expectations.

The maturity between operators and Network Rail needs to develop in this area as currently though scorecards are discussed, the customer measures are minimal and often agreed in tight timescales. Given that the ORR is placing a greater importance on scorecards in CP6, this requires a cultural shift in the industry as the scorecards are currently viewed as Network Rail measures related to performance-related pay. The regular discussion on the scorecard should be held at Alliance Board or other similar forums to monitor delivery and also review the obstacles to delivery to unlock the challenges in a collaborative relationship. This allows the scorecard to be more meaningful and a support to the alliance relationship between operators and Network Rail.

It is a point which has been raised several times, however it is worth reiterating that in formulating a scorecard reflecting up to the next eight years of customer engagement, giving operators less than one week to reflect on suitable measures for its scorecard is not sufficient. This was our experience on Southeastern; it is important that this is not repeated going forwards.

Question 5 (Chapter 4):

How do you think Network Rail routes and SO should engage with their customers/stakeholders and what are your thoughts on the principles and minimum expectations we propose?

In principle, we agree with the principles and minimum expectations set out in the consultation, however the ORR may not need to be prescriptive with minimum expectations as Network Rail and operators work collaboratively and already have joint delivery teams, joint programme boards and other forums to engage. What may be important is for the ORR to set out the process for what happens if Network Rail does not take into account concerns raised by operators during engagement and how it anticipates this would be resolved.

One method to ensure operators have been sufficiently consulted in the process of developing scorecards could be a requirement for scorecards to be formally signed off by the operators. Where Network Rail has not secured sign off, it would need to explain to the ORR why this is the case. Network Rail should provide evidence that TOC requirements have been incorporated, perhaps through this formal TOC sign-off, and where requirements have not been incorporated to demonstrate why not. This should apply to all routes the operator operates on.

Appreciating that the scorecard should be reflective of regulatory outputs, there needs to be a better balance of AIP weighting for customer measures agreed with Network Rail. This would incentivise Network Rail on the need to deliver for the customer rather than measures that are internal to Network Rail.

With regards to the SO, we are conscious that its role, functions and reporting arrangements are still being developed and therefore our view on how it should engage and how this will be assessed will be dependent on the outcome of this ongoing work.

Question 6 (Chapter 4):

How should the quality of stakeholder engagement be assessed, and who is best placed to assess this?

The proposal for Network Rail's Centre to take on the role of collecting information and assessing the relative quality of the routes' and SO's engagement appears to have some logic, however given the importance that the ORR places on engagement with stakeholders in how it will monitor Network Rail, the point under paragraph 4,22 regarding independent input is important. Throughout the Control Period, perhaps on an annual basis, an independent body should be commissioned by the ORR to seek the views of stakeholders.

Question 7 (Chapter 5):

What are your views on the relevance and balance of the incentives we describe in this chapter, and the circumstances in which would it be most appropriate to apply them?

We support the proposal to highlight the relative performance of individual business units through routine monitoring and publication of comparative information; we agree this will strengthen the reputational incentive on the routes/SO. In terms of management incentives, we also agree that scorecards are an effective means by which Network Rail can link performance-related pay with the performance of their business unit.

Question 8 (Chapter 5):

What are your views on the format and content of publications and data that you would find most accessible and useful?

Scorecards should be readily available to operators and stakeholders, and discussed on a regular basis so there is transparency around progress against targets. The ORR Network Rail Monitor will be a valuable publication incorporating comparisons of routes and the SO. For a TOC like GTR which operates across five Network Rail routes, the incorporation of areas of best practice to support lesson learning is a good tool to challenge Network Rail and also to have an understanding of where best practice can be adopted for problem areas.

The publication of the Annual Efficiency Assessment demonstrating how efficiency is being achieved and the leading indicators of delivery/quality of delivery is important. This allows a much more informed discussion at a local level with Network Rail.

Question 9 (Chapter 5):

How should we reflect the level and quality of route and SO engagement with their customers/stakeholders in our monitoring, escalation and enforcement?

Greater focus should be given to areas previously identified as weak in terms of engagement. An independent audit could be undertaken on annual basis (or 6 monthly) identifying strong or weak areas as this will drive the reputational factor that has been a theme in this consultation. This should also drive rivalry and competition between routes.

Question 10 (Chapter 5):
How should we respond if Network Rail fails to meet scorecard targets agreed with customers? Specifically, what should be the balance between designating scorecard targets as 'reasonable requirements' (creating specific enforceable expectations on Network Rail), and relying on our overall assessment of Network Rail's performance against an overarching licence condition?

Within the private sector, accountability sits with the company Managing Director, this shouldn't be any different for Network Rail. Route MDs should be held to account for the performance of their route, with bonuses and other management incentives predominantly linked to the achievement of targets. The role of the ORR is particularly important in this context as all targets will be linked to regulated outputs. It is more meaningful to operators to see enforcement at a route level rather than an overall assessment of Network Rail's performance against an overarching licence condition. The value of the scorecard is lost if the regulator does not play a pivotal role.

Question 11 (Chapter 6):
What are your views on the approach we set out for managing change? In particular, do you think our proposed level of involvement, and role for stakeholders, are appropriate?

It is positive that the ORR is considering changes with the Control Period; previously some changes have had to wait until the next Control Period as they were deemed too difficult to address. For example, as part of the CP6 planning process London Midland has made strong representations to Network Rail to request a review of the location of the LNW / Western Route boundary, primarily to consider moving the Worcester - Malvern area (which currently sits within the Western Route) onto the LNW Route, due to the natural balance of operational and journey links between Worcester and Birmingham. This is currently under review by Network Rail, and although the CP5/6 Control Period change would be a sensible time to undertake this change, it would be regrettable if this opportunity was missed for 5 years just because the complexities of rebalancing Network Rail's OM&R and other revenue requirements mid-way during the Control Period was deemed to be too challenging.

Clearly Operators will naturally be concerned regarding Network Rail's ability to change targets such that they are no longer consistent with TOC targets, given past experiences with JPIP for example. It is therefore reassuring that the ORR intends to set clear governance for such changes. It is important that changes are supported by a business case and that Operators are consulted and engaged throughout the change process.

Question 12 (Chapter 6):
Are there other options for managing change you think we should consider?

We have nothing further to add in this area.

Question 13 (Chapter 6):
Are there any other types of change you think we should consider?

The need for Network Rail to apply for changes which are as a result of external requirements i.e. changes made by the DfT to Train Service Requirements where operations, maintenance and renewal are affected as a result of increased traffic. This may be covered by the first bullet point under 6.18 but it isn't specific.

Are there any other points that you would like to make?

Thank you for taking the time to respond.

Heritage Railway Association

Patron: Dame Margaret Weston DBE
President: Lord Faulkner of Worcester
Deputy President: David T Morgan MBE TD
Chairman: Brian Simpson OBE

Office of Rail and Road
One Kemble Street
London
WC2B 4AN

Ian Leigh
Finance Director

20th September 2017

Dear Sir or Madam,

Regarding the ORR consultation on regulating Network Rail in CP6, this is the Heritage Railway Association submission on behalf of its members. We broadly support the use of scorecards to support your approach and agree with your conclusions regarding regulatory action should this be required.

Currently, our members run heritage services over three sections of the national network on a regular basis during the summer. We don't believe we need anything more complex from Network Rail than the following

1   to be able to resolve the usual contractual issues through the current mechanisms of email, phone calls and the occasional customer meeting
2   to be able to object to their possession requirements if they interfere with our members published services
3   to be able to influence them in the way they maintain and renew the network that our members run over so that the service improves over time (such as the removal of PSRs)

For charter operators, we believe the key services Network Rail provide are

1   Route clearance – all issues, including restoring clearances that have been infringed over time, such as platform coping stone are re-seated in the correct position, are resolved before a charter train is accepted

2   that the charter train timing unit provides timings to the agreed timescales and that we can pay for an enhanced service if we require timings for a train more quickly than the usually agreed timescales.

3   that timings of the trains are not unduly slack and if necessary other trains are retimed (with the other operators' agreement) to provide reasonable journey times

For all our members

1   continuing access to redundant materials at reasonable cost

2   route acceptance and possibly route testing is carried out in a timely manner as required by the 4th railway package. Should the UK government decide to transpose the EU enabling act into UK law as the act will become effective at about the time of Brexit. Can we expect a scorecard with HMRI on this issue?

3   Funding of ECTS fitments for cabs involved or potentially involved in main line operations

4   Funding of revised toilet arrangements to reduce or remove effluent on the track on stock used on the Network Rail network

So, we on behalf of our members we would welcome regulatory requirements on Network Rail to achieve these objectives.

Yours Faithfully,

Ian Leigh
Finance Director

Office of Rail and Road

Overall Framework for Regulating Network Rail: A PR18 Consultation (July 2017)

Historic England Response 20 September 2017

Historic England is the Government's statutory adviser on all matters relating to the historic environment in England. We are a non-departmental public body established under the National Heritage Act 1983 and sponsored by the Department for Digital, Culture, Media and Sport. We champion and protect England's historic places, providing expert advice to local planning authorities, developers, owners and communities, to help ensure our historic environment is properly understood, enjoyed and cared for.

In our previous response to the Office of Rail and Roads *Periodic Review 2018 (PR18) Initial Consultation* (August 2017), we noted that to the best of our knowledge, Network Rail does not hold accurate information on the heritage assets in its ownership which could create potential difficulties when planning and implementing future projects.

Furthermore, having been reclassified as a public sector organisation in 2014, Network Rail (and the franchise operators) should adhere to the *Protocol for the care of the Government Historic Estate*, which has been developed by Historic England and the Department for Digital, Culture, Media and Sport (https://historicengland.org.uk/images-books/publications/protocol-for-the-care-of-the-government-historic-estate/).

This sets out best practice for the management of heritage assets in public ownership and includes, amongst other things: nomination of a heritage officer, to ensure the significance of any heritage asset is taken into account when planning change, commission regular condition surveys, implement a planned programme of repairs and maintenance, ensure the design quality of any new work enhances the historic environment and the preparation of biennial conservation reports.

Having reviewed the consultation, together with the proposed score cards for both the routes and system operator, they appear to contain no information on the environmental performance or environmental obligations of Network Rail. Of course, we understand there will be other, more qualitative, requirements that need to be placed on Network Rail, which are not conducive to being reflected on scorecards, and this may be more appropriate for those relating to the environment, including the historic environment. Historic England would be willing to discuss such performance measures with the Office of Rail and Road, which could then be reflected in Network Rails Business or Delivery Plans plan, thereby helping it in meeting the requirements of the *Protocol for the care of the Government Historic Estate*.

 Given the current lack of information on environmental performance and obligations, the Office of Rail and Road may also wish to consider convening a meeting to discuss how this can be best addressed, involving the relevant Government Departments (Department for

Environment, Food and Rural Affairs and Department for Digital, Culture, Media Sport) and statutory environmental bodies (Historic England, Natural England, Environment Agency and Forestry Commission).

Shane Gould

Senior National Infrastructure Adviser

 20 September 2017

Consultation on the overall framework for regulating Network Rail

IOSH response to the Office of Rail and Road consultation

Introduction

The Institution of Occupational Safety and Health (IOSH), the Chartered body for health and safety professionals, registered charity and international NGO, welcomes this opportunity to comment on these important consultations on the overall framework for regulating Network Rail by the Office for Road and Rail (ORR).

The content for our submission has been provided by members from the IOSH Railway Group committee. This Group is made up of over 1,500 professionals with a common interest in rail as a specialist area. The Group offers a range of networking and professional development opportunities.

In brief, the aims of the IOSH Railway Group include:

- supporting UK and international members in developing and sharing professional competences relating to rail industry matters
- providing technical support to IOSH
- working closely with IOSH Branches, Groups and Forums, industry regulators, representative bodies and relevant professional bodies

Specifically, its activities include:

- holding and supporting networking and industry events, including the Rail Industry Conference
- reviewing and commenting on key issues
- promoting best practices

In the response that follows, we provide general comments on the consultations and further information about IOSH.

IOSH response

We have reviewed the four consultation documents: Overall framework for regulating Network Rail; Route requirements and scorecards; Possible measures of System Operator's performance; and Draft design for PR19 overall framework, and would like to offer the following advice and comment. These comments should be read in the context of our three earlier submissions on the initial consultation, the proposals regarding strategic business plans and the financial framework.

We agree that the 2018 periodic review of Network Rail (PR18), should aim at securing 'a safer, more efficient and better used railway, delivering value for passengers, freight customers and taxpayers in control period 6 and beyond'. We also agree that the overall framework for network regulation should embody a balanced approach across the full range of outcomes. We acknowledge that in the new devolved approach the concept of 'reputational rivalry' may well help with incentivising improvements across all outcomes. However, as we have commented before, **the approach needs to take a holistic view of health and safety performance across routes and careful management to avoid any negative impact on health and safety**.

Overall, our view is that the proposals for Network Rail regulation in the consultation documents do not represent a suitably balanced approach. Our concern is that the interconnected nature of health and safety, operational performance and efficiency is not fully accounted for by the proposals.

While the proposed framework refers to health and safety, the majority of the text presents new, well-considered proposals for improving the oversight of financial performance and efficiency. This is not balanced by new thinking on monitoring and securing improvements in health and safety performance at the same time. The new approach will place greater emphasis on finance and efficiency monitoring without any checks and balances to avoid any potential negative impacts on health and safety. The draft design for PR18 overall framework is silent on health and safety issues. The impression is that the approaches of the economic and health and safety branches of ORR are not appropriately joined up. The new approach of the economic regulator is set alongside the apparently 'business as usual' approach to health and safety regulation.

In our view, a more integrated approach to Network Rail monitoring is necessary to meet the industry's health and safety challenges. *ORR's Annual Health and Safety Report of Performance on Britain's Railways: 2016-17* outlines key challenges, which warrant consideration in the new PR18 framework:

1. Maintaining safe and sustainable assets: civil assets are old, fragile and susceptible to rapid deterioration in bad weather and some preventive work has been deferred by funding constraints. They present a significant vulnerability in preventing a serious train accident. Should not the new framework take account of health and safety critical deferrals in the PR18 settlement and ensure that due emphasis is given to these issues in scheduling the backlog of deferrals?

2. Managing change: for example, the risks of changes arising from growth, new franchises and rolling stock - all of which need to be well managed. Is there not similarly a need for a health and safety component in the process proposed for managing changes to the PR18 settlement to ensure they take due account of health and safety?

3. Culture and occupational health: although there are pockets of excellence, the health and safety culture and management of Network Rail has still some way to go to show widespread excellence. The RM3 scores have varied across the organisation and not shown significant improvement across all components over the last three years. The lessons appear to be that improving culture contributes to business efficiency. Should not the PR18 approach be used to stimulate a much-needed improvement in health and safety management and culture?

4. Safety by design: critical principles of excellent 'Safety by design' need to be applied in new projects. There is a role within the new framework for the System Operator to take a lead in securing safety by design in all new projects and for this to be monitored in the new arrangements.

In conclusion, IOSH believes that **further thought should be given to achieving a better balance to monitoring the full range of outcomes expected from PR18**. Our concern is that the opportunities to achieve **necessary improvements in health and safety performance may be missed**.

About IOSH

Founded in 1945, the Institution of Occupational Safety and Health (IOSH) is the largest body for health and safety professionals in the world, with around 47,000 members in over 130 countries, including over 13,000 Chartered Safety and Health Practitioners. Incorporated by Royal Charter, IOSH is a registered charity, and an ILO international NGO. The IOSH vision is:

"A safe and healthy world of work"

The Institution steers the profession, providing impartial, authoritative, free guidance. Regularly consulted by Government and other bodies, IOSH is the founding member to UK, European and International professional body networks. IOSH has an active research and development fund and programme, helping develop the evidence-base for health and safety policy and practice. Summary and full reports are freely accessible from our website. IOSH publishes an international peer-reviewed journal of academic papers twice a year titled *Policy and practice in health and safety*. We have also developed a unique UK resource providing free access to a health and safety research database, as well as other free on-line tools and guides, including resources for business start-ups; an occupational health toolkit; and a risk management tool for small firms.

IOSH has 41 Branches worldwide, including the Caribbean, Hong Kong, Isle of Man, Oman, Qatar, the Republic of Ireland, Singapore and UAE, 17 special interest groups covering aviation and aerospace; broadcasting and telecommunications; construction; consultancy; education; environment; financial services; fire risk management; food and drink; hazardous industries; health and social care; offshore; public services; railways; retail and distribution; rural industries; and sports grounds and events. IOSH members work at both strategic and operational levels across all employment sectors. IOSH accredited trainers deliver health and safety awareness training to all levels of the workforce from shop floor to managers and directors, through a professional training network of more than 2,000 organisations. We issue around 180,000 certificates per year.

For more about IOSH, our members and our work please visit our website at www.iosh.com.

Please direct enquiries about this response to:
Richard Jones, Head of Policy and Public Affairs
The Grange, Highfield Drive
Wigston
Leicestershire
LE18 1NN
Tel: 0116 257 3100
Email: consultation@iosh.com

London TravelWatch response to ORR consultation on the Overall Framework for regulating Network Rail

Dear Sir / Madame,

I am responding to your various consultations on regulating Network Rail that are due a response by the 21st September 2017.

London TravelWatch is the statutory consumer body representing the interests of passengers in the London Railway Area. In general, London TravelWatch supports most of the proposals that you outline in your various documents. This includes the proposed use of scorecards in CP6, which will enable greater comparisons of end-user experiences. However, there are a number of areas, common to all of the consultations that we would like to make comment on.

All of these consultations should require Network Rail to behave in a way that is guided by their impact and relationship with the ultimate consumers of rail services i.e. passengers and users of freight services.

There should be a single overall objective that should be adhered to; Does this benefit the consumer of rail services?

Network Rail's public accountability

It seems to us that current mechanisms for holding Network Rail to account and the threat of financial penalties is not necessarily producing the behaviours that have the consumer interest at heart. We note that this has been part of the 'lessons learned' from PR13/CP5, and that the introduction of scorecards will allow Network Rail to focus on improving accountability. However, we have found that often Network Rail are more responsive when they are asked questions at meetings held in public, such as our Board and Policy Committee meetings. We suggest that this might be a useful route to explore : perhaps route supervisory boards should meet in public? Alternatively Network Rail could be required to attend local authority transport committees. London Underground and other infrastructure providers have public accountability through bodies such as the Mayor of London and the London Assembly. We would like to note that scorecards alone are not enough to ensure that consumer interests are fully represented.

Another element to Network Rail's accountability is the lack of relationship to passenger numbers. This applies both to the routes and to the system operator function, and so we agree that the numbers of off-peak passengers should be used on the scorecard as a measure of efficiency to ensure that best use is made of the network. However, we would suggest that a further measure to determine the dependability of a route, should be the number of season ticket holders affected by delays and disruptions, with the aim to minimise these for passengers who are dependent on Network Rail providing infrastructure to train operators reliably. This would equally apply to the System Operator role, in so far as delivering a reliable and dependable timetable.

We note that train operator alliances with Network Rail include 'health check surveys' of the relationships between the various parties. We would suggest that similar arrangements could apply to other bodies that deal with Network Rail, and that these surveys should be made available to the ORR to measure the performance of such relationships. Additionally, we note

that there are already 'customer focused' scorecards which Network Rail has created with operators on a route by route basis. We believe that these should be published. Whilst we understand that these 'customer focused' scorecards would not be suitable for comparative purposes, they would be an important step to increasing transparency and accountability for the end-users of rail services.

Ensuring efficiency in both enhancement and renewal expenditure

Network Rail needs to ensure that enhancements and regular maintenance are effectively co-ordinated. Too often renewals of assets, simply replicate an existing facility or capability, without considering whether it would be better to consider a different design or process. There is also a tendency towards employing and relying on technology when a simpler solution might be more reliable and effective for the consumer e.g. systems for selective door operation when a platform extension would overcome the problem.

The cost overruns of recent years in enhancement projects have also reflected Network Rail's loss of previous corporate knowledge of its assets by for example poor archiving policies of historic documents regarding structures on the Barking – Gospel Oak line have resulted in delays and cost increases to the project. Other examples include damage to the Dover sea wall, where the loss of historic documentation was very unhelpful. All of these have then resulted in considerable ongoing and avoidable disruption to passengers.

Stations

The measures proposed in relation to stations should also include train operator managed stations where Network Rail is landlord. We often come across issues at such stations where Network Rail has failed to maintain areas of its responsibility, such as land outside of the train operator lease area or structures that it has maintenance responsibility for. In these types of stations we think that there is a case for a measure of 'unoccupied property' and where this is unlet consideration needs to be given for letting out / making available to community uses. This benefits passengers by increasing footfall and security at stations.

If you have any queries on this please feel free to contact me.

Yours sincerely

Tim Bellenger

Director, Policy and Investigation

Response to ORR's consultation on the overall framework for regulating Network Rail (PR18)

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to pr18@orr.gsi.gov.uk by **21 September 2017**.

Full name	David Jones
Job title	Rail Development Manager
Organisation	Merseytravel (on behalf of the Liverpool City Region)
Email*	
Telephone number*	

*This information will not be published on our website.

Question 1 (Chapter 3):
Do you agree with our proposed use of scorecards in CP6?
Yes, Merseytravel supports the proposed use of scorecards in CP6.

Question 2 (Chapter 3):
Do you have any comments on what scorecards should include in order to make them balanced (recognising that there is a limit to how much can be included on a scorecard)?
While Merseytravel appreciates there are many areas which could be measured we are particularly keen on measures which reflected work undertaken on behalf of third parties specifically. While there may be measures included which cover the overall work programme a measure which specifically focused on third party funded work would provide comfort to third parties there funding was being well spent.

Question 3 (Chapter 3):

What are your views on our proposed approach to specify a small number of measures and two regulatory minimum floors for route scorecards, in order to leave Network Rail with greater flexibility to satisfy its customers' needs?

As indicated in question 2 we believe that there is a need to develop scorecards which include measures which specifically take into account third party requirements.

Within the urban environment rail has a key role to play and it is important that local transport authorities are included within the overall stakeholder engagement on a direct basis.

Including specific measures within the scorecards would assist in directing Network Rail's actions and appreciating the importance of third party funders.

Question 4 (Chapter 4):

What role should customers and stakeholders (including end-users and their representative groups) play in influencing what routes/the SO commit to deliver, and what role should they play in supporting and challenging Network Rail to deliver on these priorities?

While Network Rail is responsible for the maintenance, renewal and development of the rail network the benefits 3rd parties can bring both through funding and local knowledge cannot be ignored and stakeholder engagement should include those bodies outside of the direct rail industry such as the devolved transport authorities.

Rail plays a key role in the development of the urban and inter-urban transport network. Within the Liverpool City Region funding of approximately £50m has been made available by the City Region for the development of improved facilities at Newton-le-Willows, a new station at Maghull North and improved track and signalling to allow bi-directional services across the Halton Curve. Funding over the past five years has been made available for improved facilities at stations, new lifts at stations and improved park and ride facilities.

It is important that this is taken into account as Network Rail develops its plans. Even if projects are not funded directly by Network Rail there is still a requirement for Network Rail to provide resources to support the development and delivery of projects.

Local bodies have a wider knowledge of the local infrastructure and in particular the enhancements needed to improve the attractiveness of rail to potential rail users. Network Rail has involved stakeholders in the development of the Liverpool City Region Strategic Rail Study which we believe enhances the value of the Study.

While customers and stakeholders should be clear with Network Rail what their requirements are it is just as important that Network Rail provides the correct level of resource to allow projects to be delivered successfully both to time and budget.

Question 5 (Chapter 4):

How do you think Network Rail routes and SO should engage with their customers/stakeholders and what are your thoughts on the principles and minimum expectations we propose?

The consultation document sets out a reasonable basis for minimum level of engagement between Network Rail and stakeholders.

Merseytravel currently engages with Network Rail through in a number of ways. These include:

   a) high level Director level meetings covering strategic issues;

   b) involvement at a specific project level, specifically the three major projects being taken forward (Newton-le-Willows, Maghull North, Halton Curve);

   c) regular updates to cover taking forward the Strategic Rail Study and the Liverpool City Region Long Term Rail Strategy;

   d) regular 4 weekly meeting s with Network Rail and the local operator, Merseyrail to discuss train performance issues.

Both Merseytravel and Network Rail recognise the benefits of working closely can bring to the rail network and we would expect this to continue in the future.

Question 6 (Chapter 4):

How should the quality of stakeholder engagement be assessed, and who is best placed to assess this?

Merseytravel's engagement with Network Rail is currently good.

However how this would be measured and quantified will be a challenge.

We would suggest that any assessment should be standard across the routes to allow comparisons to be drawn and best practice developed.

This is a major task and we would suggest that it requires considerable thought and care in its development.

While supporting the proposals incorporated within the consultation document we do not believe we are in a position to suggest how the assessment of Network Rail should take place. However we look forward to seeing the ORR's specific proposals and we would be happy to comment on these.

Question 7 (Chapter 5):

What are your views on the relevance and balance of the incentives we describe in this chapter, and the circumstances in which would it be most appropriate to apply them?

The assessment of the performance should be focussed on the delivery of a railway that is fi for purpose.

In addition to this we are keen to see the delivery of 3rd party projects incentivised and we look forward to seeing how this will be incorporated into the process.

A number of potential actions are identified in the event of poor performance. Generally we support these. We do not believe that financial penalties are helpful as this would just take money out of the railway to the detriment of passengers.

Question 8 (Chapter 5):

What are your views on the format and content of publications and data that you would find most accessible and useful?

Merseytravel is happy with the proposed means of publicising the performance of Network Rail.

Question 9 (Chapter 5):

How should we reflect the level and quality of route and SO engagement with their customers/stakeholders in our monitoring, escalation and enforcement?

Merseytravel engagement with Network Rail is positive. Details are included in question 5 above.

We would expect this to be maintained.

It would be helpful if a formal process was in place which ensured that this level of engagement was maintained. We look forward to seeing the proposals which would ensure this is the case.

Question 10 (Chapter 5):

How should we respond if Network Rail fails to meet scorecard targets agreed with customers? Specifically, what should be the balance between designating scorecard targets as 'reasonable requirements' (creating specific enforceable expectations on Network Rail), and relying on our overall assessment of Network Rail's performance against an overarching licence condition?

While our current engagement with Network is positive it would be naïve to believe that this would never change. The shift to a route based approach needs to take cognisance of the arrangements which currently exist.

For this reason we feel that local scorecard targets are important should be given a similar weighting and importance as nationally set targets and should require the same level of response from Network Rail.

Sub-national bodies need to have assurances over the targets and improvements that are set so that they can plan for these and ensure that the benefits are realised. Conversely, if scorecard objectives are not met, it could prevent local railways from operating efficiently and delivering benefits to customers.

Question 11 (Chapter 6):

What are your views on the approach we set out for managing change? In particular, do you think our proposed level of involvement, and role for stakeholders, are appropriate?

The approach proposed seems reasonable. However while covering change in general we would be more interested in how 3rd party projects would be dealt with. These can range from small schemes through to major interventions. I would suggest the new rolling stock on Merseyrail would fall into the latter category.

There is little information on how 3rd party projects will be incorporated into the process. The assumption is that they would fit into the procedure included within the consultation document which might be fine for larger projects but may not be as helpful for smaller projects.

Local Transport Authorities are unlikely to be able to provide details of all projects they would like to take forward at the start of CP6, not dissimilar to the Government. There needs to be a practical yet robust method of incorporating smaller 3rd party projects into the delivery process.

We would like to see more information on how smaller schemes would be incorporated into the process.

Question 12 (Chapter 6):

Are there other options for managing change you think we should consider?

Aside from providing a greater level of guidance on small 3rd party projects and how these will be handled we have no further comments.

Question 13 (Chapter 6):

Are there any other types of change you think we should consider?

No.

Are there any other points that you would like to make?

No.

Thank you for taking the time to respond.

David Dingwall
Office of Rail and Road
One Kemble Street
London
WC2B 4AN

20 September 2017

Dear David

PR18 Consultation

MTR Crossrail welcome the opportunity to comment on the ORR consultation to inform policy development for Network Rail Control Period 6 (PR18). We have provided our comments below:-

Scorecards

MTR Crossrail supports in principle the concept of Route Scorecards.

Network Rail Anglia Route has recently introduced a Scorecard for MTR Crossrail, although this is in its infancy and some of the measures are still in discussion and have not been fully developed.

MTR Crossrail currently operates services on Anglia Route but in due course we will also operate on Western Route and will run parallel to the Southeast Route at Abbey Wood. We have some concern as to how Scorecards will be aligned between routes and the national 'System Operator' function.

Whilst we understand the reasons for 'benchmarking' and encouraging 'competition' between Routes, MTR Crossrail needs a degree of consistency across the Network Rail routes.

We would also like to understand how CP6 funding will be aligned with measures agreed in Route Scorecards and what will happen in the event of a target set in a Scorecard not being sufficiently funded or resourced.

The Scorecard measures put in place need to reflect the operations of the route in question and the requirements of the train operators that run on the route.

It would be helpful if the ORR could provide greater clarity as to how it will decide the appropriate action to take in the event of Network Rail targets not being met.

Consideration also needs to be given to train services that run on/off the Network Rail network – for example, MTR Crossrail will be operating services that run from Network Rail to Rail for London Infrastructure, and then back onto Network Rail infrastructure again. It is important that whatever route-level regulation is put in place, it encourages Network Rail to work with other infrastructure managers or local transport authorities to ensure that through services operate well.

MTR Crossrail (and the MTR Corporation) are keen to invest in the rail infrastructure in the UK, but our efforts to date have been frustrated due to the governance associated with funding and financing rail investment through Network Rail. We would welcome a Scorecard measure that is linked to third party investment in Network Rail infrastructure.

Overall Framework for Regulating Network Rail

MTR Crossrail supports in principle the concept of Route Scorecards, although we have some concerns as detailed above.

In particular we are keen to make sure that Network Rail is sufficiently funded to meet the targets that have been set by Crossrail (for example MTR Crossrail has a target of 95% PPM) and that these are funded and deliverable across all of the relevant Network Rail routes.

We would expect the ORR to step in and take appropriate action should Network Rail not deliver on some key targets included in the Scorecard.

Systems Operator Performance

We remain concerned about the disconnect that we sometimes see between planning undertaken at a Route level and planning undertaken centrally as part of the System Operator function.

Whilst we understand and support the concept of a 'System Operator' we are concerned that this will prevent the 'System Operator' function from developing a close working relationship with the Network Rail routes, and therefore providing a consistent and 'joined-up' position to train operators.

We have been disappointed that a number of 'System Operator' led projects in CP5 have not resulted in material benefits, in particular projects related to Access Planning and improvements to the Timetable Planning Rules.

In addition we would like to see greater transparency in CP6. For example the Network Rail Sale of Access Rights (SOAR) panel is not open to train operators and as a result there is a risk that decisions will be made without understanding all of the implications associated with a timetable change (for example; efficient rolling stock and train crew diagramming and the impact on customer experience). A more transparent, inclusive, consistent, risk based process may be more appropriate in CP6.

Planning of an integrated transport system in London is complicated, with several infrastructure managers (IMs) involved, including London Underground Limited (LUL), Network Rail, High Speed 1 (HS1), Heathrow Airport Limited (HAL) and Rail for London Infrastructure (RFLI) as well as several Network Rail routes. The Network Rail System Operator function also needs to integrate with the other IM's in London.

The timetable development process can be over-complicated, slow and labour intensive. The timetable process needs to be more dynamic supported by a closer working relationship between Network Rail and operators. The ability to quickly simulate the impact of a timetable change needs to be available. MTR Crossrail is taking some initial steps to help with integration, such as adopting the ITPS planning system that is used by Network Rail.

There does not seem to be a common understanding of how congested each part of the network currently is – or in other words how much of the capacity is currently used, how much is available for new services and what the impact is on train performance as more capacity is utilised.

There needs to be a more detailed understanding of network capability and a consistent way of measuring capacity and modelling performance. This should also identify where capacity is not efficiently utilised - perhaps due to the type of rolling stock, length of trains, stopping patterns or other timetable constraints. It may be appropriate to charge a premium to operators that do not use capacity efficiently (i.e. an operator wanting to depart at a certain time). This in turn should help with making informed decisions at the SOAR panel.
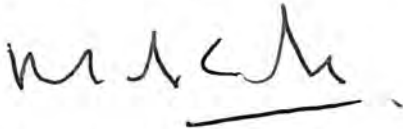
The process could also identify timetable, rolling stock or infrastructure enhancements that could release additional capacity in the future.

Consideration should also be given to service recovery in the event of an operational incident to make sure that capacity is prioritised appropriately, including the implications on other Routes.

We therefore encourage the 'System Operator' Scorecard to take into account these issues.

We look forward to working with ORR, Network Rail and other industry colleagues to inform the development of the strategy for PR18.

Yours faithfully

Mark Eaton
Concession Director
MTR Crossrail
63 St Mary Axe, London, EC3A 8NH

Network Rail's response to ORR's consultation on the overall framework for regulating Network Rail (PR18)

21 September 2017

Executive Summary

Network Rail welcomes the opportunity to respond to ORR's PR18 consultation on the overall framework for regulating Network Rail.

We support the overall framework proposed in ORR's consultation. We welcome ORR's approach to change the way in which it regulates Network Rail to reflect the broader changes that are taking place. We believe ORR's proposed framework will support Network Rail's devolution to become more customer focused while continuing to regulate Network Rail as a single entity, recognising the importance of the national network. Network Rail's centre will continue to provide support to routes in delivering CP6 plans. Network Rail's central functions will provide national oversight of the deliverability of route and System Operator (SO) plans, monitor national progress towards delivering strategic objectives, set policy from the technical authority and provide national governance around the devolved structure.

ORR's proposal puts scorecards at the centre of the regulatory framework, which is aligned to our own use of scorecards to monitor routes' and the SO's delivery to stakeholders. For ORR to successfully use scorecards to compare routes' and the SO's delivery of customer reasonable requirements, we accept ORR's proposal to include a small number of additional measures on scorecards. We have further explained our position on the specific measures proposed in our response to ORR's consultation on Route Requirements and Scorecards. We also accept the principle of ORR setting a regulatory floor for some scorecard measures, but believe that a floor should only be set for measures where (i) Network Rail has sole accountability, (ii) a breach of that floor may be indicative of systemic failure, and (iii) it is set at a level that is likely to represent an unacceptable outcome for end users.

We welcome ORR's proposal to support our continued engagement with stakeholders throughout CP6, both in developing our plans and addressing concerns when they arise. While we broadly support ORR's proposed high-level approach to setting out minimum requirements and best practice principles for stakeholder engagement, we believe that ORR should focus on what customer engagement should deliver, and that it is inappropriate for the regulator to specify how Network Rail and its customers should engage. As a customer focused business it is imperative that we have an engagement process that suits our stakeholders' individual requirements with ORR retaining backstop powers to intervene should we fail in this duty.

We agree that the quality of stakeholder engagement is a key indicator of Network Rail's performance in delivering stakeholder priorities and fulfilling its obligations as a regulated monopoly. We propose that routes should undertake primary assessments of the quality of stakeholder engagement, tailored to each stakeholder's preferences within a national framework providing a level of consistency. We also propose to continue to promote high quality stakeholder engagement through central assessment and grading of the engagement demonstrated in route and the SO plans. We consider that ORR should base its review of stakeholder engagement initially on our own assessments in this area before considering whether any further assessment is required.

Where scorecard targets are developed in consultation with our stakeholders through a transparent business planning or change control process, we believe that scorecards should be the primary means by which ORR assesses routes' and the SO's performance. We support ORR's proposal for the development of an updated data protocol which defines requirements for providing data to ORR beyond route, the SO and national scorecards, and propose that this should be based upon data already used by Network Rail or its stakeholders to assess business performance. We believe that this data protocol should be reviewed regularly to ensure that data provided to ORR remains relevant. In order to provide useful and insightful narrative, we propose that ORR's publications are consistent with the structure of Network Rail's business. We support the use of route comparisons to make use of reputational incentives.

Where scorecard targets are not being met, we agree with ORR's approach to support engagement between Network Rail and its stakeholders to agree resolution. We consider that the process to agree resolution should make use of existing meeting architecture where possible. Where this does not adequately identify or address concerns, we agree with ORR's proposal to take a staged approach to regulatory intervention. We propose that key principles about the circumstances in which regulatory intervention would be considered should be included in a revised Economic Enforcement Policy and Penalties Statement (on which we recognise ORR has committed to consult prior to the start of CP6).

In such cases, we support the proportionate use of reputational (using internal and external publications to shine a light on positive and negative performance), procedural (increasing regulatory intervention where expectations are not being met) and management (relying on our own performance related pay mechanism) incentives. We also support ORR's proposal to signal the circumstances in which certain regulatory action would be taken. In determining the circumstances in which regulatory intervention would be appropriate, we believe that ORR should consider the required outcome (e.g. to bring about compliance, to prevent re-occurrence or to get more information about a particular issue) and consider how the available tools would most effectively drive behaviours and outcomes. We support ORR's proposal that financial penalties should be treated as a last resort in recognition of Network Rail's public sector status, and the limited impact that financial penalties have on behaviour (instead affecting our ability to subsequently deliver for end users).

We do not believe that enforcement action should be initiated solely by a failure to deliver a customer reasonable requirement, for example, delivery outside a forecast range. Instead we consider that it should be triggered where there is objective evidence that Network Rail is not complying with its licence to the greatest extent reasonably practicable. Our licence obligations set out the standards expected of Network Rail to fulfil its functions as infrastructure manager and a failure to deliver in this regard could be indicative of systemic failure or a significant event of non-compliance. Where there is evidence that Network Rail is doing everything reasonably practicable to comply with its licence obligations (even in circumstances where a breach has been identified) enforcement tools should not be relied upon as a normal part of the escalation process if Network Rail is taking the appropriate action to remedy the breach.

Network Rail needs to be able to make the changes we believe are necessary to improve our business. We also need to be able to respond to changes that arise outside our organisation. We welcome ORR's support of the need for Network Rail to be able to change its organisational structure, its budgets, route boundaries and scorecards. We agree that in order to manage change effectively, we need suitable change control processes in place that are well understood. Network Rail's centre will, in consultation with routes, develop a governance framework within which change will be managed in CP6. Network Rail's centre will retain national oversight of delivery and provide independent assessment of plans.

We further agree that we need to transparently report to our stakeholders the changes that we propose to make and the anticipated impact on them. Should this process be carried out transparently, we strongly believe that route's accountability and responsibility for delivering targets will not be undermined.

We note that ORR expects to conclude on its consultation in January 2018. Prior to ORR's conclusions, we would welcome further discussion with ORR and industry stakeholders on the points we make in this response.

Responses to ORR's consultation questions

Question 1 (Chapter 3):

Do you agree with our proposed use of scorecards in CP6?

> We support ORR's proposal to put scorecards at the centre of the CP6 regulatory framework. This reflects our devolved structure and promotes greater alignment of incentives between track and train.

We strongly support ORR's proposal to use route and the SO scorecards as the primary mechanism for monitoring and assessing routes' and the SO's delivery of its requirements within the CP6 regulatory framework. This is entirely consistent with the way in which Network Rail's Executive Committee and Board use scorecards to drive performance and monitor progress. Routes and the SO will continue to develop challenging yet achievable scorecard target ranges in consultation with their customers, with the central Network Rail functions providing strategic direction, independent challenge and national oversight of deliverability. Scorecards provide an at-a-glance summary of routes' and the SO's achievements against targets, and also allows us to identify potential national issues as well as recognise and share best practice.

We accept the proposal that ORR makes to set out a number of requirements for route and SO scorecards to ensure balance, to support route comparison and to capture the requirements of the HLOS, where appropriate. For safety performance, while ORR states that scorecards will not replace its assessment using its Risk Management Maturity model, we assume that it will carry out route comparisons using scorecard information.

With regard to route comparison, we want to maintain a healthy balance between competition and collaboration so believe that the way this data is reported is crucial to inspiring a competitive dynamic where sharing of best practice continues to be encouraged. We are keen to work closely with ORR to understand how it intends to use its Network Rail monitor publication to draw out route comparison.

We recognise that a competitive dynamic between routes will incentivise continuous improvement. Network Rail will assess, compare and publicly report on routes' and the SO's performance based on overall delivery of the balanced scorecards. Central Network Rail functions will also work closely with route teams to support and encourage collaboration and the sharing of best practice.

We note that the consultation refers to focussing on comparing routes using the consistent measures ORR proposes. We accept this approach, but Network Rail will continue to assess overall performance against the whole balanced scorecard. This may lead to Network Rail and ORR producing different narratives as to how well Network Rail is delivering. We are mindful that this could result in a lack of clarity in the industry and we will continue to work with ORR to ensure a coherent narrative on Network Rail's performance.

We believe that scorecards can also help ensure that there are aligned incentives between track and train, consistent with the Secretary of State's objectives. The processes for setting Network Rail's CP5 train performance targets and TOCs' franchise targets have not been aligned. Franchises should be set with targets that align with the capability and plans for the infrastructure and the team accountable for it. In an ideal world the winning franchisee will have committed to a performance range taking into consideration the quality and capability of the network and our ability to improve it within the funding available. This is a longer term objective that requires changes to existing processes for setting performance objectives in franchises. These changes are being discussed within the rail industry but will not be delivered by the start of CP6. The use of scorecards in the regulatory framework will therefore need to acknowledge the potential misalignment that exists between some franchise commitments and Network Rail forecasts during this transition phase.

Question 2 (Chapter 3):

Do you have any comments on what scorecards should include in order to make them balanced (recognising that there is a limit to how much can be included on a scorecard)?

> Scorecards need to balance the needs of current and future rail users, providing Network Rail routes and the SO with a clear set of priorities developed in consultation with its stakeholders.

As well as delivering for today's users of the railway, Network Rail needs to manage the long term sustainability of the network to ensure delivery of safe, reliable, affordable infrastructure for future users of the railway. Route scorecards were therefore developed to measure the performance of each route in managing the infrastructure for a wide range of stakeholders, representing the needs of the multiple current and future users of the railway. Our scorecards therefore seek to balance the needs of all stakeholders rather than to focus solely on any individual stakeholder, and different areas of the scorecard represent the requirements of different stakeholders. We consider that an industry framework that strengthens an aligned industry focus on a more balanced range of outcomes would benefit both the current and future end users of the railway.

The technical authority which sits at the centre of Network Rail sets policy to protect the long term sustainability of the railway. This is incorporated into route and the SO plans, and will be reflected in both the measures and target ranges within scorecards.

We are pleased that ORR supports the continuation of our current scorecard shape with minimal additional requirements. We recognise the merit in reporting a measure of asset sustainability to better reflect the longer term stewardship of the network. However, we recognise ORR's view set out in its draft impact assessment that the proposed metrics would be slow moving and would only be updated annually. This may mean that it does not drive behaviours throughout the year and therefore may not be an appropriate measure to include on scorecards for incentive purposes. Additionally, as some of the drivers of a measure of asset sustainability have a long lead time it is very complex to establish cause and effect. We would welcome a more detailed discussion with ORR on the most appropriate way to report Network Rail's performance against this measure.

The freight and national passenger operator route (FNPO) was established as Network Rail's ninth operational route. It is different in scope and scale to the eight geographic routes in that it does not physically manage infrastructure. However, as Network Rail devolves more accountability to the eight geographic routes, FNPO provides a single point of contact and has overall accountability for delivery of performance and other outputs for customers who operate nationally, across multiple routes. FNPO achieves this by working closely with geographic routes, the SO and its customers and stakeholders. As the FNPO route develops and the relationships between FNPO and geographic routes evolve, we want to retain the flexibility to alter how we monitor and hold our routes to account in the way that most appropriately reflects our organisational dynamic. Were we to propose a change to how we monitor the route contribution to the Freight Delivery Metric (FDM-R) we would work with key stakeholders to demonstrate how our governance structure supported the delivery of their priorities.

National passenger operators' interests are currently represented in varying ways across the majority of route scorecards. For example, Caledonian Sleeper performance is included on both LNW's and Scotland's scorecard, while CrossCountry has scorecard measures on most geographic route scorecards. The right time performance metrics on many route scorecards also incorporate the performance of national passenger operators.

Question 3 (Chapter 3):

What are your views on our proposed approach to specify a small number of measures and two regulatory minimum floors for route scorecards, in order to leave Network Rail with greater flexibility to satisfy its customers' needs?

> We accept the principle of ORR specifying a small number of measures, and recommend these are carefully considered to most effectively drive performance. We believe a regulatory floor should only be set for metrics that Network Rail has sole accountability for, and at a level that indicates systemic failure or exposes end users to unacceptable levels of performance.

A key purpose of scorecards is that they enable us to focus on a core set of priorities. To achieve this purpose, we are mindful that scorecards do not try to be 'all things to all people'. Inclusion of multiple additional requirements would dilute the value of scorecards.

The consultation proposes a small number of additional measures to allow route comparison and to ensure a balance across our responsibilities as an infrastructure manager. In principle, we support inclusion of a small number of additional measures for regulatory purposes. It is important that the core requirements of our customers, our funders, ORR and other stakeholders can be monitored and assessed through a single scorecard.

We accept the rationale that a regulatory floor could provide additional assurance and promote greater transparency of the regulatory regime around triggers for formal regulatory investigation. The principle of a floor also recognises the risk and uncertainty in forecasting some targets with a degree of accuracy given the large number of variables and assumptions required to be made. A floor should enable us to revise and agree targets with stakeholders without the potential disruptive impact of formal regulatory action. Given the potentially serious implications of a breach of a regulatory floor, we believe there are some key characteristics necessary for a floor:

- any floor should be set at a level where a breach of the floor is indicative of systemic failure which warrants further investigation
- all scorecard metrics, including any regulatory floors, should be understood, meaningful and drive the right behaviours
- a regulatory floor should only be set for a measure where Network Rail has sole accountability.

Regarding the last point, we agree with the overarching aims to create a predictable and consistent regulatory framework but consider that setting a floor for a measure where Network Rail is not solely accountable is not likely to deliver these aims. This could mean that any regulatory investigation as a result of performance falling below the floor could be a more complex, costly and contentious process. This could place an additional regulatory burden on Network Rail's business caused by a failing outside our control.

We comment in more detail on the specific proposals for additional measures and the proposed regulatory floors for performance and network sustainability in our response to the route requirements and scorecards consultation.

Question 4 (Chapter 4):

What role should customers and stakeholders (including end users and their representative groups) play in influencing what routes/the SO commit to deliver, and what role should they play in supporting and challenging Network Rail to deliver on these priorities?

> We are accountable to customers and stakeholders in developing our plans and the day-to-day running of routes and the SO. Through regular engagement we believe our customers and stakeholders will influence the development and delivery of our plans.

Following devolution to customer-facing route businesses, our route managing directors are accountable to customers for the day-to-day running of their routes and for the outcomes of projects and renewals. While recognising our position as a monopoly, we should behave like a commercial business and continue to focus on the needs of our customers and stakeholders.

We have a broad range of stakeholders. Different stakeholders are interested in different aspects of our plans and scorecards. For example, train operating companies (TOCs) will be interested in the performance and locally driven sections of our route scorecards as well as their individual customer scorecards, where relevant. We engage with our stakeholders in the normal operation of our business to develop and execute our plans as well as on changes to these plans where circumstances and/or stakeholder priorities have changed. Routes and the SO have deepened and developed the level of stakeholder engagement over the course of CP5 and they will continue to refine and improve the engagement and planning processes to ensure our business is driven by stakeholder needs.

We strongly support greater focus on our accountability to stakeholders for the delivery of our plans which is reinforced by agreed targets in scorecards. We will continue to work with stakeholders to ensure appropriate opportunities to do this. We welcome ORR's support in this area and the clarification of a continuation of ORR's role to monitor Network Rail and escalate issues where appropriate.

We believe that Network Rail and its stakeholders should increasingly take the lead in resolving issues without the need for regulatory intervention. We are setting up route supervisory boards which will bring train operating companies and Network Rail together, independently chaired, to improve railway performance for end users. There are several aspects to the role of a route supervisory board including:

* assessment of the integrated performance of Network Rail route businesses
* assessment of the delivery of current commitments and future long-term plans
* seeking to align strategic priorities across Network Rail route and stakeholders.

To bring the voice of the passenger to these boards we will also have passenger representation, with a core member from Transport Focus. We have established route supervisory boards on Western route, East Coast (as part of LNE&EM route) and Wales route. We understand that it is DfT's intention to require joint supervisory boards as part of future franchising arrangements.

We are accountable to stakeholders for the delivery of our plan, particularly for the areas of the plan that are relevant to the individual stakeholder. We need to ensure there are appropriate fora and engagement channels in place to ensure this process works effectively, both on a bilateral basis and multilateral basis, where appropriate. While supervisory boards provide an opportunity for Network Rail and some of its stakeholders to review scorecards we are not convinced that supervisory boards fulfil the requirements of a forum allowing broad multilateral review. We will therefore need to consider appropriate ways to do this. It may be that existing bilateral meetings we hold with customers and stakeholders can provide an opportunity to review Network Rail scorecards. Alternatively, it could be possible to use our ongoing programme of stakeholder workshops to both review the delivery of our plans and scorecards as well as focussing on the continuous development of our plans. We will consider these options and confirm with our stakeholders how we propose to take this forward.

Question 5 (Chapter 4):

How do you think Network Rail routes and SO should engage with their customers/stakeholders and what are your thoughts on the principles and minimum expectations we propose?

> Network Rail routes and the SO should have primary accountability for engaging with stakeholders in a way that is best suited to stakeholder needs. ORR's guidance should focus on what is required from stakeholder engagement, not how it should be carried out.

We welcome the consultation's recognition of the variations in approach to engagement due to the differing requirements and focus of stakeholders, and also due to the different characteristics of individual routes and the SO. A prescriptive framework would hinder our ability to tailor our approach to individual stakeholder needs and would not recognise that engagement is not fully within our control. While we support ORR's proposed high-level approach to setting out minimum requirements and best practice principles, we believe that it is inappropriate for the regulator to specify how Network Rail and its customers should engage with each other. As a customer focused business it is imperative that we develop an engagement process that suits our customers and stakeholders based on their individual requirements. For example, some stakeholders may only want to engage once a year by phone or email in relation to a specific project, while others may want regular face-to-face meetings to discuss multiple areas of our plans. We therefore consider that stipulating that Network Rail must have 'face-to-face discussions on a bilateral and multi-lateral level' with stakeholders is too prescriptive.

We agree that it is important that routes and the SO engage with passenger representative organisations to ensure the priorities of passengers are reflected in our plans. Our ability to reflect passenger requirements (and those of our customers and other stakeholders) will depend on the funding available to us. We will need to transparently articulate how and whether we can address the requirements identified by stakeholders (including passenger representative bodies) to engender a deeper understanding of what we can deliver. Both Transport Focus and London TravelWatch have been part of our route and SO stakeholder workshops to date. It is worth noting that there are many organisations that represent passengers, from large national organisations to local volunteer organisations. We agree with the principle of 'effective engagement' in this context such that our engagement with passenger representative organisations should be proportionate to what it is seeking to achieve and will therefore depend on the issue under consideration.

A flexible approach to reviewing engagement in relation to the principles and minimum expectations will be required in certain circumstances. For example, franchise bidders may feel unable to take part in broader stakeholder engagement where there are issues of a commercially sensitive nature. We will need to consider how we create the right framework for engagement with franchise bidders and also with franchise holders at the end of their franchises, where priorities could be more short term.

We want to encourage routes and the SO to take their own approach to developing their engagement. As an example of this, LNE&EM route have recently introduced 'My Customer Day' which offers route colleagues the chance to spend time with colleagues who work more closely with Network Rail's customers, building broader understanding of the challenges faced by customers. The Network Rail centre will issue high level guidance to routes and the SO incorporating ORR's minimum requirements together with best practice principles. We propose to further develop and will communicate to stakeholders our proposals on how the stakeholder engagement process will be embedded within our continuous planning process and the associated governance that we propose to put in place. As part of this process, we will also establish clear lines of escalation beyond route teams where it has not been possible to address concerns at a local level, so that our stakeholders are clear about who they should liaise with. We fundamentally believe that Network Rail should have the primary accountability for resolution of issues with our customers and stakeholders. Were our customers/stakeholders to believe that the engagement process did not meet minimum requirements and they felt their concerns were not being addressed by Network Rail, they could raise a complaint with ORR which it would investigate in line with its statutory duties.

Question 6 (Chapter 4):

How should the quality of stakeholder engagement be assessed, and who is best placed to assess this?

The quality of stakeholder engagement is a key indicator of Network Rail's performance. We believe that routes and the SO are best placed to assess the quality of stakeholder engagement within a national framework. We will report the results of this assessment to ORR to inform its monitoring of performance in this area. ORR should retain backstop powers to intervene if our assessment is unsatisfactory.

Assessment of the effectiveness of stakeholder engagement should form part of our normal stakeholder relationship. On an ongoing basis, we believe that routes are best placed to carry out a primary assessment of the quality of stakeholder engagement and to identify, embed and share best practice in response to stakeholder expectations. As a specific example of how this assessment is working in practice, Western route has conducted online surveys following the stakeholder workshops in February and March 2017 and implemented changes to their second round of workshops in June 2017 following the input received from both the online surveys and the regular feedback they receive from their day-to-day engagement.

Routes will undoubtedly adopt different approaches to assessing engagement and this is something we are keen to encourage. Network Rail's centre proposes to develop a national framework, including high level guidance (incorporating ORR's minimum requirements) to routes and the SO to ensure an element of consistency in the approach across routes, which will be important to stakeholders of more than one route.

We believe that the role of Network Rail's centre is primarily to support high quality stakeholder engagement by routes and the SO. We propose to continue to incentivise routes through assessment and grading of stakeholder engagement throughout the planning process (alongside other key aspects of our plan). The results of this assessment will continue to be reviewed by the Executive Committee who hold routes and the SO to account. We recognise that we need to further develop the process for central assessment of stakeholder engagement and to facilitate sharing of examples of best practice across the organisation. This will enhance the competitive dynamic through an internal reputational incentive.

We strongly support the proposal in the consultation for the model that proposes that Network Rail's centre takes much of the responsibility for objective assessment and grading of routes and the SO on their engagement. We will share the results of our assessments with ORR as part of wider reporting requirements to inform its own assessment of stakeholder engagement.

We believe that given the different requirements of stakeholders in relation to engagement, assessment of the quality of engagement should be qualitative rather than quantitative. ORR will also be able to review route and SO engagement through the established route level and the SO bilateral meeting structure and through ORR's engagement with our customers and stakeholders. We consider that any further ORR role in relation to stakeholder engagement could focus on providing recommendations of best practice within its guidance.

Question 7 (Chapter 5):

What are your views on the relevance and balance of the incentives we describe in this chapter, and the circumstances in which would it be most appropriate to apply them?

> We support the use of reputational, procedural and management incentives, where relevant and proportionate. The primary purpose of regulatory intervention should be to drive behaviours or outcomes. Regulatory intervention should not be considered a natural progression unless it is likely to result in real benefit.

Network Rail's centre will continue to internally and publically report on performance including route comparisons to incentivise continuous improvement. The centre will also independently monitor progress against targets, seeking further information to explain positive and negative variance to target, and implementing improvement programmes where appropriate. Our management incentive scheme is linked to performance against targets in our scorecards, therefore providing clear focus on a core set of priorities.

In determining whether regulatory intervention is necessary or appropriate we believe that, as a starting point, ORR should consider how its available tools will drive better behaviours and outcomes, further to what Network Rail is already doing to address issues and concerns.

Financial

We support ORR's proposal that financial penalties should be treated as a last resort in recognition of Network Rail's public sector status. We believe that ORR should consider how effective financial penalties are in driving behaviour, and the impact that removing funds from the business would have on delivering outputs for our stakeholders and end users of the railway.

We agree with ORR's view that reparations would require resources to be diverted from other areas of the business, therefore impacting those areas' ability to deliver outputs. We do not believe that reparations are appropriate in the context of route based regulation where routes have developed plans to deliver for their customers within the available funding.

Reputational

We agree with ORR's proposal that reputational incentives will support Network Rail's delivery for stakeholders. As part of this, we support the use of comparisons to highlight relative performance across routes and the SO. We believe that a balanced scorecard is the best way to assess performance in the round, and will continue to monitor our performance in this way. We accept ORR's proposal that as well as assessing balanced scorecards, it will monitor performance against consistent comparison metrics.

ORR considers that the use of route comparison as a reputational incentive should aim to strengthen a sense of 'rivalry'. We are concerned that rivalry may limit the sharing of best practice and collaboration for the benefit of the industry, while recognising the value of healthy competition. We believe that route comparison should create a competitive dynamic between routes in order to drive improvement.

We recommend that route comparison metrics are carefully considered in order to drive positive behaviours. For example, comparing routes based on nominal metrics disregards performance against target, while comparing improvement does not consider the potential scale of improvement to be gained. For example, the delivery of major improvements to remove a bottleneck may deliver significant improvements in train performance. In other routes where such bottlenecks do not exist, the potential to improve would be smaller. We believe that the narrative that ORR provides around route comparisons will also be important to gain the most benefit from the incentive.

We recognise ORR's public reporting as a powerful medium for highlighting aspects of Network Rail's performance. We are concerned that at present much of ORR's public reporting is focused on highlighting negative issues and lacks balance. Ultimately this may have a demotivating effect on Network Rail employees

with unbalanced criticism not creating a positive environment for improvement. We consider that where there is clear evidence of Network Rail taking steps to resolve an issue, consistently highlighting negative performance is unhelpful and will not deliver any additional benefit. We therefore suggest that where negative performance has been highlighted, and Network Rail is taking remedial action, ORR considers how it can effectively provide a balanced narrative.

Procedural

We agree that scorecards should be the primary means by which ORR assesses Network Rail's performance, together with a wider information base where proportionate and relevant. We support ORR's proposal to develop an updated data protocol defining requirements for route and national information to be provided to ORR (beyond scorecards). We discuss the data protocol in more detail in our answer to question 8.

We agree that Network Rail should attempt to resolve issues through appropriate stakeholder engagement as far as possible. If issues are not resolved or ORR has reason to believe that Network Rail may not have complied with its licence obligations we recognise that the level of regulatory scrutiny is likely to increase as ORR develops its understanding of the reasons for the shortfall in performance. In this case, we support ORR's proposal to take a staged approach to escalation and to signal the types of circumstances in which certain actions would be considered.

We believe that the primary purpose of increased regulatory scrutiny should be to provide ORR with additional information to support its monitoring of Network Rail. Alongside existing incentives to deliver for our customers we recognise that the prospect of increased regulatory scrutiny could encourage timely engagement and efforts to resolve issues. If ORR has established that Network Rail is doing everything reasonably practicable to improve performance, additional regulatory scrutiny should not continue indefinitely where it does not provide further insight. We propose that any intervention by ORR is reviewed regularly to continue to assess the risk and either continue with regulatory interventions, or revert to BAU information provision. We support ORR's proposal that any intervention it does deem appropriate should be risk-based and proportionate.

Our views with regard to enforcement are set out in relation to Question 10.

Management

ORR's consultation proposes the use of sanctions to financial performance and efficiency measures in route or SO regulatory accounts. We believe that this proposal has merits, but that regulatory financial sanctions should be considered only where there is objective evidence that Network Rail is not complying with its licence to the greatest extent reasonably practicable following the appropriate regulatory investigation process. This is because individual metrics on our scorecards will already reflect our performance in relation to the delivery of an output and we want to maintain the integrity of the management incentive scheme by avoiding double counting the impact of missed targets. We would need to do further work with ORR to determine how this proposal could work in practice.

Question 8 (Chapter 5):

What are your views on the format and content of publications and data that you would find most accessible and useful?

> We believe that ORR publications are a critically important reputational tool and should be used by ORR to highlight areas of both positive and negative performance as appropriate.

We believe that ORR's Network Rail Monitors are important documents in highlighting positive and negative performance, and therefore act as a key reputational tool. We have expressed concern to ORR that the Monitor has, on occasion, described poor performance in great detail while passing over positive of improving trends quickly. For example, the best ever performance for Virgin Trains West Coast was covered in one sentence in ORR's 2016/17 H2 monitor. We believe that the Monitors in their current form are too focused on negative performance, and believe that reputational incentives would be more effective if the Monitors aimed to provide a more balanced view of performance. Enhancing reputation by highlighting successes creates a positive incentive through the competitive dynamic between routes and the SO.

We believe that some of ORR's publications have previously lacked transparency and balance. We suggest that ORR considers how publications and data can be used to most effectively drive performance and provide transparent reporting to the intended audience. We would welcome further discussion with ORR on this.

In order to provide useful and insightful narrative, we propose that ORR's publications are consistent with the structure of Network Rail's business, and therefore support the use of route comparisons. We consider it to be important that ORR uses route comparisons to generate an insightful, balanced narrative of Network Rail's delivery of its plan.

We support ORR's proposal for an updated data protocol. We think there should be an agreed CP6 route level data protocol in which ORR and Network Rail seek to agree the data that ORR reasonably requires to fulfil its statutory duties in CP6. As far as possible, this should be aligned with Network Rail's internal requirements so that we are monitoring and reporting against the same information and to ensure we are not producing data for ORR that we do not require to run our business. We believe that a data protocol developed in this way would mean minimal regulatory requirements for data that falls outside the protocol. It will be important that this data protocol should be reviewed regularly to ensure that information provided to ORR remains relevant.

We believe that where forecasts have been change controlled through a transparent process, ORR should reflect this in its publications and then provide comparisons to change controlled forecasts rather than referring back to PR18 baselines.

We support ORR's proposal to highlight positive and negative performance in its publications and to continue to highlight what it sees as best practice. Network Rail will continue to share best practice between routes and the SO in a timely manner that also incorporates ORR's views as set out in its publications.

Question 9 (Chapter 5):

How should we reflect the level and quality of route and SO engagement with their customers/stakeholders in our monitoring, escalation and enforcement?

> ORR should monitor Network Rail's engagement with stakeholders to resolve issues, and take account of stakeholder views about Network Rail's delivery of customer reasonable requirements and further relevant obligations under its licence when considering whether regulatory intervention is necessary or appropriate.

ORR proposes to use scorecards alongside its monitoring of the effectiveness of stakeholder engagement to prioritise regulatory activity and determine whether Network Rail is meeting its licence obligations. We agree with this shift in emphasis as it supports our aims to increase stakeholder involvement in the development of our plans.

We agree with ORR's view that Network Rail and stakeholders should engage to resolve issues in the first instance, and believe this should apply to all customer reasonable requirements including the level and quality of stakeholder engagement. We also agree that where performance is below expectations, ORR should monitor the progress of discussions and outcomes outside of BAU monitoring and reporting. We believe that where engagement is progressing successfully for all parties, ORR would not normally need to make additional interventions.

Where local engagement is not adequately identifying or addressing concerns, we believe that ORR should consider the views of stakeholders (including through monitoring the results of Network Rail's assessments of the quality of engagement) in assessing whether the application of regulatory tools would be appropriate and effective.

We would support ORR in seeking stakeholder views on whether Network Rail has taken all reasonable steps to meet its obligations, as part of enhanced monitoring, to determine if enforcement would be appropriate.

Question 10 (Chapter 5):

How should we respond if Network Rail fails to meet scorecard targets agreed with customers? Specifically, what should be the balance between designating scorecard targets as 'reasonable requirements' (creating specific enforceable expectations on Network Rail), and relying on our overall assessment of Network Rail's performance against an overarching licence condition?

> We support a staged approach to escalation where regulatory intervention will help to deliver a positive outcome for the industry. We do not believe that failure to meet scorecard forecasts should be considered 'enforceable action' as enforcement should be triggered where there is objective evidence that Network Rail is not complying with its licence to the greatest extent reasonably practicable.

Where scorecard targets represent customer reasonable requirements, agreed through a transparent business planning or change control process, we believe that scorecards should be the primary means by which ORR assesses routes' and the SO's performance. We do not believe that scorecard forecasts, even when designated as reasonable requirements, should be considered 'enforceable expectations'. In itself, a failure to achieve any forecast should not necessarily result in regulatory intervention. Instead we consider that it should be triggered where there is objective evidence that Network Rail is not complying with its licence obligations to the greatest extent reasonably practicable. These regulatory obligations set out the standards expected of Network Rail to fulfil its functions as infrastructure manager and a failure to deliver in this regard could be indicative of systemic failure or a significant event of non-compliance.

If scorecard targets are not being met, we will work with our stakeholders to agree action plans for resolution. We welcome ORR's support for this approach. Where this does not adequately identify or address concerns, we agree with ORR's proposal to take a staged approach to regulatory intervention. We propose that key principles about the circumstances in which regulatory intervention would be considered should be included in an updated data protocol agreed between ORR and Network Rail.

We accept that failure to meet scorecard targets may trigger ORR to consider regulatory interventions. We believe that ORR should consider the desired outcome for the industry, and whether action will deliver that outcome, when determining whether regulatory action is required. We believe that ORR should consider the available information, including stakeholder views, to determine whether regulatory intervention would incentivise Network Rail to improve performance.

The structure of ORR's consultation, and the question posed, suggests that enforcement would be considered a natural progression of the process of escalation. We are concerned by this approach, as we believe that enforcement action should be primarily to effect change following a period of investigation. Failure to deliver scorecard targets may trigger such an investigation, but in itself should not trigger an enforcement action. Enforcement should be reserved for instances when there is there is objective evidence that Network Rail is not taking such steps as are reasonably required in order to secure compliance with its licence obligations (including the delivery of a customer reasonable requirement). Where there is evidence that Network Rail is doing everything reasonably practicable to comply with its licence obligations (even in circumstances where a breach has been identified) enforcement tools should not be relied upon as a normal part of the escalation process if Network Rail is taking the appropriate action to remedy the breach. We do not consider that enforcement action in these circumstances would be necessary or appropriate as we would already be taking the appropriate action. We recognise that ORR has committed to consult on its Economic Enforcement Policy and Penalties Statement prior to the start of CP6 and we will work closely with ORR to develop this.

We are supportive of ORR's proposal to take a risk-based, proportionate approach when there is a concern about below target performance. We believe that ORR should use available information as far as possible to determine the risk of non-delivery, but we accept that enhanced monitoring may be required to determine the risk associated with non-delivery. We will engage proactively with stakeholders and ORR to provide relevant information to assist in assessing whether an area is high risk.

We suggest that Network Rail and ORR should agree, within an updated data protocol, circumstances and procedures to review the level of risk associated with escalated issues. We accept ORR's view that past performance patterns may indicate a high level of risk, but we believe that it is important to recognise where a risk is no longer present, and regulatory intervention should be reduced.

We believe that a regulatory floor should be set at a level to protect the interests of end users of the railway, and represent the point at which performance may indicate a systemic issue. Where a regulatory floor has been determined, and Network Rail has reached the floor, we accept that ORR is likely to require further information to assess Network Rail's behaviours and consider whether regulatory intervention is required.

Question 11 (Chapter 6):

What are your views on the approach we set out for managing change? In particular, do you think our proposed level of involvement, and role for stakeholders, are appropriate?

> We welcome ORR's support of Network Rail needs to be flexible to respond to changing circumstances, both inside and outside our organisation. Change will be managed within a robust, transparent governance framework. ORR's regulatory framework should not create an unnecessary regulatory burden and limit our ability to adapt quickly to changing circumstances.

Network Rail needs to be able to make the changes we believe are necessary to improve our business. We also need to be able to respond to changes that arise outside our organisation, for example, franchise change or faster than anticipated growth in passenger numbers. We welcome ORR's support of the need for Network Rail to be able to change its organisational structure, its budgets, route boundaries and scorecards. While we recognise that changes due to enhancements are outside the scope of this consultation, this area will be a major focus of managing change in CP6 and will require further development.

We agree that in order to manage change effectively, we need suitable change control processes in place that are well understood. We further agree that we need to transparently report changes we propose to make and the anticipated impact to our relevant stakeholders, where this change impacts them. A transparent and well understood process will reinforce the accountability of routes and the SO.

The role of Network Rail's centre will have an important role in managing change and transparently reporting on it. Network Rail's centre will continue to provide a national overview of business plans and, in consultation with routes and the SO, agree and manage the change control governance framework.

While we have a robust change control process to manage changes to the enhancements portfolio, similarly robust processes are required to manage change more broadly. We are committed to developing these processes and seeking input from our stakeholders during development so that we have well understood processes and the right governance in place to manage change from the start of CP6.

The consultation proposes a regulatory approach that depends on the size of the change. We support this idea in principle and believe that successful implementation of a differential regulatory approach will be dependent upon definition of clear criteria for small, medium and large changes.

To ensure we can make the changes we consider necessary to run our business effectively, we propose a slight amendment to the process described in the consultation document. We are concerned that a formal step in the process that creates a dependency on ORR providing an opinion would restrict our ability to enact change efficiently, potentially delaying our response to changing circumstances. In addition, insufficient clarity on the definition of small, medium and large changes could result in all changes being referred to ORR. We would plan to proceed with our change control process, where we assessed it to be appropriate, and would inform relevant stakeholders (including ORR) of proposed changes where we assess these changes will have a material impact on our plan or the PR18 settlements. This would remove the need for Network Rail to distinguish between 'medium' and 'large' changes and simplify the process. It would be for ORR to determine whether it provided a formal opinion on a specific change. Where ORR decided to provide a formal opinion, based on its own assessment of whether the change was a 'large' change, we would take this into account in reaching a final decision.

The consultation also sets out that for large changes, ORR would expect Network Rail to provide a business case assessment of the impact of the change ahead of any decision being made. We will

share with ORR the business rationale to support our internal decision making process where the change proposed has a material impact on our plan or the PR18 settlement.

For both Network Rail and ORR, forming an opinion on a proposed change and its impact will need to recognise that some changes may forecast delivery of long term benefits but the short term impact may be a deterioration of certain scorecard measures. For example, where an enhancement project is planned to commence in two years, we may consider (having regard to our duties as infrastructure manager) that it is more efficient to maintain rather than renew a section of track. This decision may result in a reduction in reliability and/or sustainability in the short term. However, for the long-term benefit of the network we could decide to go ahead with the change, accepting a short-term deterioration. Any reporting narrative should reflect this.

With regards to changes to **financial expenditure**, we welcome ORR's recognition that routes' and the SO settlements for England & Wales will not be ring-fenced. Network Rail will, as a single company, manage financial risk and uncertainty that may require funds to be re-allocated between routes. The consultation refers to the establishment of protocols for moving money between routes. Network Rail already has protocols in place for agreeing changes to route budgets, and this process will be formally governed and managed by Network Rail's centre in CP6. We will ensure transparency of these processes to provide confidence that the protocols are appropriate. The need to manage overall risk, resources and opportunities is likely to be a higher priority than the integrity of route settlements, particularly within likely funding constraints in CP6. ORR's approach in CP6 should have high regard to the financial pressures that Network Rail faces in CP6, particular where it has access to only limited additional funds for risk and uncertainty.

We agree that it is important that any **changes to route boundaries** and the impacts are communicated to ORR to ensure continued effective route comparison, and to stakeholders for clarity around points of contact. We agree that it would be sensible to restrict updates to baselines to annually as part of reporting cycles.

The consultation sets out ORR's proposals relating to **organisational change** within Network Rail. We agree with these proposals and would expect to inform ORR of planned changes to our organisational structure where these had a significant impact on responsibilities or that impact the PR18 settlement. Where proposed change did not have a significant impact, we would proceed without any requirement to inform ORR.

The impact of change will ultimately be expressed through **changes to scorecards**. Ideally there will not be significant changes to Network Rail's plan, providing greater stability and more effective delivery. However, we will seek to respond to changes in customer priorities and changes to circumstances and will update our scorecard forecasts accordingly (where possible within our funding constraints).

During CP6 Network Rail will update its route and the SO scorecards annually. Any changes to scorecards will be supported by evidence to justify the change alongside evidence of stakeholder agreement, where relevant. If we have agreed changes with customers, we will report the change and recommend that the new, agreed number is used as a baseline by both us and ORR for reporting purposes. While we support the aim of placing weight on changes that have been agreed with stakeholders, this may not always be achievable while we transition to an aligned franchise and scorecard process. For example, there is a risk that customers may not agree to a route's proposed changes because of a misalignment between fixed franchise commitments and Network Rail's ability to deliver within the funding available. This may result in ORR reporting against PR18 baselines that may not reflect latest relevant circumstances.

The consultation refers to retaining a consistent calculation methodology and continuation of reporting of measures unless for a technical reason. While we agree with this principle to ensure transparency and consistency throughout a control period we strongly believe that we need the flexibility to change

measures if the measure is no longer fit for purpose. This situation could arise where it transpires that a metric does not usefully inform any decisions or where the calculation of the metric fails due to issues that were not anticipated at the time the metric was agreed, such as has been the case for the Possession Disruption Index (PDI). In these circumstances we would engage with the relevant stakeholders to determine whether it is appropriate to continue to measure that output area and if so, which metrics may be sensible replacements.

Question 12 (Chapter 6):

Are there other options for managing change you think we should consider?

We are content with the options set out in the consultation, which we have responded to in our response to question 11.

Question 13 (Chapter 6):

Are there any other types of change you think we should consider?

As mentioned in our response to Question 11, while we recognise that changes due to enhancements are outside the scope of this document, this area will be a major focus of managing change in CP6 and will require further development. While we have a robust process to manage programme and portfolio change, we need to develop transparent processes to manage the secondary impact on other areas of the plan and scorecard. Further clarity in this area will be included in our response to ORR's enhancements framework consultation and through the ongoing industry collaboration.

While we are very supportive of the regulatory framework proposed in the consultation document, we are mindful of the impact that the Digital Railway will have on the way the railway operates and on the balance of accountabilities. This will impact the way Network Rail is regulated in terms of what we are held to account to deliver. The Digital Railway may have broader implications as to how the regulatory framework works and we will need to work with ORR in this area to ensure the regulatory framework supports the development of the Digital Railway.

Are there any other points that you would like to make?

We have no further points, but welcome continued discussion with ORR and stakeholders while ORR develops its proposals further.

Richard Gusanie
PR18 programme manager
One Kemble Street,
London,
WC2B 4AN

Date: 27th September 2017

……………………………………………………………………………………...…………...................…

Dear Richard,

2018 periodic review (PR18): consultation on the overall framework for regulating Network Rail

Thank you for the opportunity to respond to the above consultation. By way of context to this response, Nexus undertake two distinct roles here in the North East. One part of Nexus leads on behalf of the North East Combined Authority (NECA) on Heavy Rail matters whilst another part of Nexus manages and operates the Tyne and Wear Metro system (as a non-franchised TOC). Although predominantly a stand-alone network, the Metro runs on a section of Network Rail operated infrastructure. As the regulation of Network Rail has different influences and effects on both the Tyne and Wear Metro and wider local and long distance heavy rail for the North East, I have tried to capture responses covering both of these interests.

The responses have been agreed by the constituent authorities of the NECA and by the train operating company (NEMOL).

I have just included the main areas of interest and thus offer a response to your questions Q2, Q3, Q4, Q5 and Q6.

Q2 Do you have any comments on what scorecards should include in order to make them balanced (recognising that there is a limit to how much can be included on a scorecard)?

NECA response:
NECA consider it important that Network Rail should reflect in their scorecards the performance against obligations for both train performance and service

enhancements. NECA also consider that a measure to reflect working in partnership with Local Transport Authorities to deliver 3rd party projects, such as Sunderland Station need to be reflected in light of the Handsford review. So for example, stakeholder satisfaction should be a set of measures in the scorecard.

Metro response:

It would be helpful if non-franchise operations such as the Tyne and Wear Metro where provided with a disaggregation of performance information on an equal footing as franchised operators. This would enable Nexus to compare Network Rail's performance per km operated against franchised operators on the same route.

Q3   What are your views on our proposed approach to specify a small number of measures and two regulatory minimum floors for route scorecards, in order to leave Network Rail with greater **flexibility to satisfy its customers' needs?**

NECA response:

NECA agree that it would be useful to have a small number of measures with regulatory floors in scorecards. It would be useful for local stakeholders to be able to have these measures and floors disaggregated to local level, so that it can be established whether or not performance in an area of a route is performing below the route average or regulatory floor level even if the route performance as a whole is acceptable. This will enable stakeholders to help and influence performance improvement from an informed standpoint as well as allowing those who hold Network Rail to account for performance to understand whether or not Network Rail is showing equal priority to all parts of a route.

Q4 What role should customers and stakeholders (including end-users and their representative groups) play in influencing what routes/the SO commit to deliver, and what role should they play in supporting and challenging Network Rail to deliver on these priorities?

NECA response:

As NECA we would seek the opportunity to assist in the development of the route and SO business plans and seek a 'shared narrative' for an enhancements development programme to facilitate tomorrow's railway in the North East.

As well as the long distance mainline Boards, NECA would support the similar creation of regional boards to cover those operators that run on the local network that still come under the overall Routes jurisdiction. Using Rail North as an example perhaps the North East Quadrant (North East Rail Management Unit) could be considered for a pilot of such a regional board.

NECA would seek regular engagement with the route and SO senior managers to review progress against formally agreed locally relevant objectives and actions.

NECA should also be in a position, as part of this shared narrative with Network Rail to influence the business case for future investment in rail infrastructure helping to guide Network Rail towards priority schemes because of the economic regional benefits they may bring.

Metro response:

As an operator Nexus support the establishment of Route Supervisory Boards and would expect to be a part of this forum.

There are a number of meetings and groups at present all linked to TOCs and Network Rail, perhaps a regional Route Supervisory Board would provide an opportunity to rationalize and simplify these provided all parties are fully engaged.

Q5 How do you think Network Rail routes and SO should engage with their customers/stakeholders and what are your thoughts on the principles and minimum expectations we propose?

NECA response:

NECA supports the principles and minimum expectations proposed by ORR. Furthermore, NECA consider that as stakeholders, it welcomes **Network Rail's** continued attendance at the North East Rail Management Unit (NERMU) Performance (Route) and Officer Steering Group (SO) meetings. These provide an opportunity to work more collaboratively with respect to performance and also to influence and build upon business plans taking account of local economic growth projections.

Network Rail should be encouraged to established shared strategic objectives, with stakeholders, specifically public transport authorities such as NEXUS so that **we are able to move through our 'shared narrative' whi**ch would show agreed joint objectives. As these objectives move towards delivery, Network Rail should

participate to a relevant extent in any alliance, project board, or steering group, which it is appropriate, they attend.

Metro response:

On Metro operations, engagement should be through regular level 1 meetings with sufficiently senior Network Rail attendees.

Q6 How should the quality of stakeholder engagement be assessed, and who is best placed to assess this?

NECA response:

The suggested use of customer / stakeholder feedback, as a scorecard measure, is consistent with other industries and seems a practical approach. Although an overall quality of engagement score would be welcomed and of use in terms of comparison and year on year improvements, it will be important to again have the ability to drill down to perhaps project level. This will enable stakeholders like NECA to highlight any issues with Network Rail's planning and delivery and work together to bring about improvements where required.
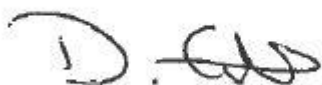
Of course, Network Rail should be encouraged to seek feedback informally and frequently as any responsive **business would so that 'problems' are not just** discovered at the point the scorecard is marked, and Network Rail should share with stakeholders the means to escalate if they are dissatisfied with the service or engagement they receive.

On the remaining questions, NECA / Metro simply either agree with the proposed approach or have no real comment to make.

Thank you once again for your consideration of these comments and hope you find them useful.

Should you require any further information, please do not hesitate to contact me.

Yours Sincerely

Derek Gittins – Head of Heavy Rail
Nexus House   St James' Boulevard   Newcastle upon Tyne   NE1 4AX

Response to ORR's consultation on the overall framework for regulating Network Rail (PR18)

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to pr18@orr.gsi.gov.uk by **21 September 2017**.

Full name	John Hillman
Job title	Programme manager
Organisation	On behalf of the Peninsula Rail Task Force (PRTF)
Email*	
Telephone number*	

*This information will not be published on our website.

Question 1 (Chapter 3):

Do you agree with our proposed use of scorecards in CP6?

The PRTF agree that the use of scorecards to monitor delivery by Network rail in CP6 is a credible mechanism.

Question 2 (Chapter 3):

Do you have any comments on what scorecards should include in order to make them balanced (recognising that there is a limit to how much can be included on a scorecard)?

The PRTF was involved with the Western Route CP6 consultation exercise where the items to be included on score cards was heavily debated and discussed. The clear outcome for the PRTF is to see scorecards reflect a long term betterment in delivery and condition of the railway asset leading to a recognisable step change in the customer experience for the complete journey.

Many of the indicators that have been proposed by NR are lagging indicators, we would like to see the inclusion of many more 'leading' indicators to understand trends and allow early intervention to take place.

We believe there needs to be a clear understanding who are NR's customers?, as they are only part of the delivery mechanism for the true customer and without working with operators scorecards can become irrelevant. There should therefore be a number of route scores that

combine NR and the operator to give a true measure of the customer experience (there is no point in NR delivering a route to be used and the operator cancelling all the trains due to a problem of their making, this still leaves the real customer with no service).

From a stakeholder perspective we would like to see a measure on the railway increasing productivity and growth in key centres and area along the route.

Question 3 (Chapter 3):

What are your views on our proposed approach to specify a small number of measures and two regulatory minimum floors for route scorecards, in order to leave Network Rail with greater flexibility to satisfy its customers' needs?

We support this proposal.

Question 4 (Chapter 4):

What role should customers and stakeholders (including end-users and their representative groups) play in influencing what routes/the SO commit to deliver, and what role should they play in supporting and challenging Network Rail to deliver on these priorities?

We recognise the active engagement that NR has undertaken as part of the regions business plans and welcome the opportunity to provide comment and input, of course the final outcomes that are proposed by NR are what is critical, and NR should ensure that stakeholders are aware of the reasons for the final decisions made within the business plans to close the consultation loop.

The PRTF is active in defining through its 20 year plan what the group seek as the long term aims of the route, we would like to see the aims adopted by the Government and NR and for them to form the underlying basis for the future plans to deliver better services and economic growth.

It is clear that the routes are being expected to define their level and nature of stakeholder engagement as separate bodies, we do not suggest that any one model fits all, but these engagement levels should be measured and monitored to ensure that they are representative of 'wider' stakeholders views and provide the active challenge to NR on priorities and targets.

Question 5 (Chapter 4):

How do you think Network Rail routes and SO should engage with their customers/stakeholders and what are your thoughts on the principles and minimum expectations we propose?

We believe that there is a need for wider strategic engagement with regional funding parties like the Local enterprise Partnerships and other bodies like Highways England especially where road/rail route closures can be maximise to reduce cost and improve efficiency.

Question 6 (Chapter 4):

How should the quality of stakeholder engagement be assessed, and who is best placed to assess this?

We believe that this should be assessed annually through a stakeholder survey to measure the level of engagement and more importantly the effectiveness of the engagement. It is important that whilst NR central functions support the routes it should not reduce the opportunity for innovation, local delivery and create an administrative burden.

Question 7 (Chapter 5):

What are your views on the relevance and balance of the incentives we describe in this chapter, and the circumstances in which would it be most appropriate to apply them?

We broadly support the initiative and would suggest that any penalties incurred should be used in conjunction with stakeholder consultation to make enhancements to the railway system that has a defined benefit i.e. enhancing planned replacements to track to improve line speeds.

Question 8 (Chapter 5):

What are your views on the format and content of publications and data that you would find most accessible and useful?

We believe that the route score cards should be available online and be easily available for all to be able to see the performance of each section of NR.

Question 9 (Chapter 5):

How should we reflect the level and quality of route and SO engagement with their customers/stakeholders in our monitoring, escalation and enforcement?

No comment

Question 10 (Chapter 5):

How should we respond if Network Rail fails to meet scorecard targets agreed with customers? Specifically, what should be the balance between designating scorecard targets as 'reasonable requirements' (creating specific enforceable expectations on Network Rail), and relying on our overall assessment of Network Rail's performance against an overarching licence condition?

We support the suggested approach in table 5.1.

Question 11 (Chapter 6):

What are your views on the approach we set out for managing change? In particular, do you think our proposed level of involvement, and role for stakeholders, are appropriate?

We support the proposal outlined.

Question 12 (Chapter 6):

Are there other options for managing change you think we should consider?

No

Question 13 (Chapter 6):

Are there any other types of change you think we should consider?

No

Are there any other points that you would like to make?

The opportunity to review and be consulted on NR's route business plans has assisted the PRTF to understand the level of challenge and trade-offs required for CP6, however it has also demonstrated that many of the key decisions have been agreed by the route based on costs and there is little that stakeholders can do to challenge the strategic decisions like removing signalling renewal schemes and replacing them with life extension. Many of these changes create different opportunities which are not yet clearly understood by the industry but are significant to stakeholders and external funders.

The PRTF is concerned that there are weaknesses to the route structure where key diversionary routes are through an alternative route area to the main route, an example being Exeter to Castle Cary via Yeovil (through Wessex route), and that there is little reassurance visible that these needs are visible.

It is not clear how the System Operator and the Routes will ensure the stakeholder views on the long term aspirations for complete routes are captured and who has the strategic direction over a routes development?.

The cost of the support of the SO in relation to timetabling studies, better use of the existing network and how routes should be enhanced should be clearly visible to stakeholders, including where these services are used by stakeholders defined with a transparent, fixed and publicised cost.

Thank you for taking the time to respond.

Rail Delivery Group

Response to

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

Date: 21 September 2017

Rail Delivery Group response

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

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

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.

ORR's Consultations on the Overall Framework for Regulating Network Rail Route Requirements and Scorecards, and System Operator

Response from Rail Freight Group

September 2017

1. Rail Freight Group (RFG) is pleased to respond to the ORR's consultations on the overall framework for regulating Network Rail, and on route requirements and scorecards. We have responded to these three documents together given their overlaps. No part of this response is confidential.

2. RFG is the representative body for rail freight in the UK, and we campaign for a greater use of rail freight, to deliver environmental and economic benefits for the UK. We have around 120 member companies including train operators, end customers, ports and terminal operators, suppliers including locomotive and wagon companies and support services.

General Comments

3. Overall, we support the broad framework that ORR is proposing for CP6, noting the balance it seeks to achieve between flexibility and strong regulation. The approach appears to align with the aims of route devolution, benchmarking and encouragement of closer alignment.

4. That said, as minority operators on the network, freight operators and users remain concerned that the right incentives and governance are in place to support delivery of freight objectives, and that ORR's key role in regulating a monopoly provider can still, if required, be strongly enforced.

5. We are also concerned that the emerging framework might be seeking to compensate for a lack of effective internal governance at Network Rail. In particular, it remains wholly unclear how the interfaces between SO, FNPO and the geographic routes will function to deliver freight outcomes which sit on the FNPO scorecard but not elsewhere. ORR should resist seeking to manage this through scorecards and its regulation, and encourage Network Rail to have effective internal management in place for the start of CP6.

Questions 1-3

6. Scorecards are most likely to be effective as a management tool, which can be shared with operators and used to drive actions and improvements. To that end, we agree that there should be a limited approach to regulating the scorecard requirements. They should remain customer facing, not regulator facing. This may mean that ORR will have to place more emphasis on other areas of monitoring and regulation alongside.

7. We agree that there should be sufficient common metrics to enable benchmarking between the routes on key measures, but also allowing space for flexibility.

8. As noted in para 3.28, it is important that the geographic route scorecards reflect all operators including freight. However, it is difficult to see how this can be achieved without other suitable controls within Network Rail. As there is only likely to be a single freight measure on the route scorecards (performance), how will other outcomes such as velocity, new flows, investment – and other measures in the SBP for the FNPO – be delivered? We do not see how this can be remedied through scorecards alone.

9. Scottish Ministers have asked for specific freight targets in their HLOS which could be one model used elsewhere. Management incentives, or a more formal inter-route governance agreement, might also be ways of closing this gap.

10. We note the proposal to set a minimum floor for performance, and consider that the same approach must be taken for passenger and freight to avoid distortion in Network Rail's management of performance (albeit that the targets differ). ORR must assure itself on how it can validate and regulate overall network outcomes to ensure that the network as a whole is delivering as expected, as end to end performance is the most important for freight customers, not route by route.

Questions 4-6

11. Network Rail needs to engage effectively with a range of stakeholders. For freight, this can include operators, end customers, developers, ports, local and regional bodies, planning authorities, rolling stock businesses and so on. It would be counter-productive for ORR to seek to determine who that engagement should be with, or at what frequency.

12. The nature of engagement is also varied, but in many cases, it is the quality and speed of follow up actions that determine how satisfied stakeholders feel rather than just the frequency of engagement.

13. This is an area where light touch regulation is necessary. Some periodic measure of customer satisfaction may be one approach.

14. ORR should also be clear that engagement needs to focus on the delivery of desired outcomes which improve stakeholders business, rather than expecting them play to a significant role in the regulation of the monopoly.

Questions 7-10

15. We broadly support the proposed approach. ORR must maintain a strong ability to regulate and enforce at a national level. At a route level, reputational measures seem most likely to be effective, but ORR also must be able to act if one route is consistently failing.

16. We agree that the measures of SO performance are as likely to be qualitative as quantitative, particularly as it is becoming established. There could be specific targets, for example on the introduction of new technology, although we would generally expect this to be an internal management matter.

Questions 11-13

17. We support these proposals. However there is a danger that well performing routes will 'lose money' to support poorly performing routes, and ORR should consider how that perverse incentive might best be monitored and managed.

18. We are unclear how much stakeholders can realistically influence this area; nonetheless they should be appropriately consulted.

Route Requirements and Scorecards consultation

Questions Para 3.11

19. ORR must assure itself of Network Rail's financial management and efficiency; however we are not convinced that it necessarily adds customer value to require this to be measured on a scorecard. Customers may choose to ask for this if required, and there should be flexibility to choose appropriate measures.

20. ORR's other monitoring activities may be a better way of ensuring financial monitoring, and ORR will need to consider how it collates such information, including at route level, if this is not on scorecards.

Questions 4.13, 4.14

21. Again, we are unclear that having this measure on a scorecard adds particular value to customers. ORR must however have clear ways of monitoring and enforcing this, as end customers, particularly in time limited franchises, may not place particular value on it.

22. Long term sustainability is of importance to freight users, including in Network Rail managed yards and sidings.

Questions 5.55- 5.58

23. As outlined above, scorecards cannot be used as a substitute for effective cross route governance. Absent this, it will be necessary for freight performance (and arguably other measures) to be both on the FNPO scorecard and those of the geographic routes.

24. FDM has proved a better and more useable measure than delay minutes and should be retained, including at route level.

25. The regulation of freight performance should be done in the same way as that of passenger to avoid distortion and as such a minimum floor should be set.

Questions 6.10-6.12

26. An equivalent approach to freight user satisfaction should be considered, to ensure that freight customers' voices are considered on an equal footing with passengers.

27. Although we understand the desire to grow off peak ridership, the off peak periods are also where most freight is able to operate. Increasing off peak passenger services can therefore be detrimental to freight growth. A balanced approach to considering the best service mix here could avoid the need for some enhancements in future, and as such we do not support specific targets in this area.

28. If off peak growth is however included as a scorecard measure for the geographic routes, then we consider that freight growth should also be included, as set out in the Scottish HLOS.

Questions 6.22 – 6.24

29. We agree with this proposal. As both ORR and Network Rail measure freight in net (not gross) tonne miles, this would be the preferred metric for the industry. Freight miles (and indeed passenger miles) tends not to reflect the efficiency of use – so for example, a better loaded, longer train would not reflect in a freight miles measure but would be a good outcome for both the customer and Network Rail.

Question 7.10

30. This is a complex area, as the potential sources of funding and the interaction with Government enhancements is unclear. As such we think it is difficult to include a freight measure at this stage.

31. However, where freight customers are looking to invest in specific schemes, such as new connections to terminals, there must be sufficient leverage on the geographic routes to facilitate this.

Question 8.11

32. Maintaining access for freight through devolution is likely to be an important area, and one where we expect the SO to have a strong oversight. We would support the inclusion of a scorecard measure in this area, which encourages the routes to facilitate freight access and diversionary capability.

Question 8.14

33. This is a critical area and we would support strong monitoring and enforcement of it. The Scottish HLOS refers to this for gauge, and we support this approach, including for other areas such as route availability.

Question 8.19

34. This is most likely to be a matter for the SO, and for the franchising authorities.

Possible Measures of the System Operator Consultation

35. We strongly support the establishment of the SO, and an appropriate regulatory framework to oversee its performance and outputs. An effective SO is critical to protecting the rights of freight in an increasingly devolved railway.

36. We are keen however that the regulatory approach is proportionate, and allows the SO flexibility to manage its activities. As the SO is still newly established, this is particularly important. Whilst this consultation is right to explore regulatory options, we consider that fewer rather than more targets is likely to be appropriate, with an equivalent focus on qualitative oversight of internal programmes such as technology development necessary to fully develop the SO capability. Monitoring of the SO's SBP outputs may be an appropriate approach.

Question 1

37. For freight users, the key elements of SO activity relate to capacity and timetabling. There is a strong focus on improving the outcomes for freight, for example in attained velocity. This focus on improvement is not clear in the discussion in this section.

38. SO also has a strong role in protecting strategic capacity and in securing the outputs of freight enhancements.

39. Investors such as terminal developers may look to the SO (with FNPO)for strategic studies to support their planning application. SO's responsiveness to wider end customers (not just operators) is therefore important.

40. Engineering access planning remains a critical issue, and one where SO should have strong oversight. This is only referred to in passing.

Question 2

41. We note that there are a significant number of potential measures listed, and that including even a fraction of these on a scorecard could be counter-productive. Selected measures need to be most closely aligned with the principle role of long term planning, improving capacity and timetabling and responsiveness as well as maintaining and enhancing systems to enable planning to be undertaken most effectively.

42. Qualitative measures are most likely to be useful for the majority of these areas.

43. Some measures, such as Network Change, link to previous discussions on network capability. As this is a mandatory process, we are unclear that it needs to be on a scorecard.

44. Measures such as A1, A10, B1, B8, B10, B12 would support the delivery of SO objectives and are easy to produce and understand. Other measures are more subjective and it is not clear that they would appropriately focus SO activities.

Question 3

45. We support the inclusion of a small number of metrics, which consider the responsiveness of the SO, its ability to improve network capacity and in timetabling.   Again, there are many suggested measures, which is likely to be unmanageable.

46. We support the inclusion of a measure on development of freight capability, such as Strategic Capacity, and measures on outcomes such as velocity should be aligned with any comparable measures for FNPO (noting previous comments on cross route governance).

Question 4

47. Broadly, we consider this is a matter for Network Rail. However, SO should have sufficient regard to customer outcomes, via its governance processes, or by customer survey and monitoring, which may need to be more qualitative than numerical.

Question 5

48. We think the proposed approach is reasonable.

Response to ORR's consultation on the overall framework for regulating Network Rail (PR18)

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to pr18@orr.gsi.gov.uk by **21 September 2017**.

Full name	Salim Patel
Job title	Programme Manager
Organisation	Rail North
Email*	
Telephone number*	

*This information will not be published on our website.

Question 1 (Chapter 3):

Do you agree with our proposed use of scorecards in CP6?

Rail North is supportive about the use of scorecards to measure Network Rail.

Question 2 (Chapter 3):

Do you have any comments on what scorecards should include in order to make them balanced (recognising that there is a limit to how much can be included on a scorecard)?

Scorecards should include:

Train Performance, Network resilience, safety, performance against the enhancements delivery plan, performance of renewals and maintenance against the strategic business plan, financial performance against determination.

Question 3 (Chapter 3):

What are your views on our proposed approach to specify a small number of measures and two regulatory minimum floors for route scorecards, in order to leave Network Rail with greater flexibility to satisfy its customers' needs?

Given that individual routes will be proposing their own scorecards following consultation with stakeholders, it is unclear as to how comparisons will be made between the routes. A guide of comparative measures that the ORR will be monitoring should be consulted with stakeholders as soon as possible to allow opportunity for Rail North to comment.

Question 4 (Chapter 4):

What role should customers and stakeholders (including end-users and their representative groups) play in influencing what routes/the SO commit to deliver, and what role should they play in supporting and challenging Network Rail to deliver on these priorities?

Given that Network Rail are there to deliver for its customers, it is imperative that they are involved in the measurement of delivery. Key Customers and stakeholders should form part of a regional board that holds Network Rail accountable periodically for the delivery of the commitments, with performance related to performance related pay.

Question 5 (Chapter 4):

How do you think Network Rail routes and SO should engage with their customers/stakeholders and what are your thoughts on the principles and minimum expectations we propose?

Network Rail should be open and transparent about unit rates for delivery and how these are arrived at. Stakeholders are wary about the size of estimates received with no evidence for how these numbers have been arrived at.

The System Operator should engage with stakeholders as a professional provider of service and treat clients with funding as proper clients.

Question 6 (Chapter 4):

How should the quality of stakeholder engagement be assessed, and who is best placed to assess this?

Stakeholder engagement should be measured through the use of regular 360 degree feedback. This should include questions that provide stakeholders to provide good and honest feedback to NR, and also provide opportunity to look at providing actions prior to the next 360 review.

Question 7 (Chapter 5):

What are your views on the relevance and balance of the incentives we describe in this chapter, and the circumstances in which would it be most appropriate to apply them?

Rail North are supportive of incentives to reward good performance, however ensuring that rigorous review of scorecard measurements so that they are SMART and challenging.

Instances of significant impact to stakeholders and end users should lead to proper review/investigation that should be shared publicly.

Question 8 (Chapter 5):

What are your views on the format and content of publications and data that you would find most accessible and useful?

Question 9 (Chapter 5):

How should we reflect the level and quality of route and SO engagement with their customers/stakeholders in our monitoring, escalation and enforcement?

The measurement of the system operator is not abundantly clear as part of this consultation. Measures for how the system operator will be measured will need to be shared with stakeholders to maintain consistency for this function within NR.

Question 10 (Chapter 5):

How should we respond if Network Rail fails to meet scorecard targets agreed with customers? Specifically, what should be the balance between designating scorecard targets as 'reasonable requirements' (creating specific enforceable expectations on Network Rail), and relying on our overall assessment of Network Rail's performance against an overarching licence condition?

The ORR needs to work with Network Rail to link the scorecards to the internal performance review process of their senior leadership team. This will tie scorecard measures to individual performance incentives of the leadership team.

Measures that have less importance than others will lead to less focus when these could be just as important to some stakeholders.

Fines to NR are counter productive. Enforcement should be based around reputation rather than removing money from the industry.

If fines are to be issued in the north then this money should be given to Transport for the North to make decisions about where this money should be used on the network.

Question 11 (Chapter 6):

What are your views on the approach we set out for managing change? In particular, do you think our proposed level of involvement, and role for stakeholders, are appropriate?

Definition for medium and large change is required to understand further.

We believe that it is positive that stakeholders are involved in the change control process.

Further information is required about if there are fixed times when change control can be issued.

Question 12 (Chapter 6):

Are there other options for managing change you think we should consider?

Question 13 (Chapter 6):

Are there any other types of change you think we should consider?

Are there any other points that you would like to make?
Rail North are concerned that measurement against enhancement is not included as part of the Periodic Review, and Rail North and its Partners should be included as part of any further consultation for this.

Thank you for taking the time to respond.

September 2017

ORR CONSULTATIONS ON:-
THE OVERALL FRAMEWORK FOR REGULATING NETWORK RAIL;
ROUTE REQUIREMENTS & SCORECARDS;
POSSIBLE MEASURES OF THE SYSTEM OPERATOR'S PERFORMANCE

1. INTRODUCTION

1.1 This letter constitutes the formal response from the Railway Industry Association (RIA) to the above consultations.

2. BACKGROUND TO RIA

2.1 The Railway Industry Association is the long-established representative body for the UK-based railway supply sector, with nearly 200 member companies from across the entire field of railway supply with over 30,000 employees and turnover of around £6bn, covering most of the UK rail supply base. Members include manufacturers, consultancies, contractors and numerous specialist service providers. Most major supply companies are members, together with many SMEs.

2.2 RIA provides its members with extensive services, including:

- representation of the supply industry's interests to Government, Network Rail (NR), TfL, HS2, ORR and other key stakeholders
- providing opportunities for dialogue and networking between members, including a number of Special Interest Groups (see 3 below)
- supply chain improvement initiatives
- provision of technical, commercial and political information every week
- export promotional activity, through briefings, visits overseas, hosting inwards
- visits
- organising UK presence at exhibitions overseas.

3. RIA'S RESPONSE

3.1 We have seen the responses from both the Rail Delivery Group and the Rail Freight Group and we are in broad agreement with the thrust of both. There are however, one of two other points we would like to make from a RIA perspective.

3.2 We support the broad framework that ORR is proposing but there clearly needs to be a balance struck between appropriate regulation to achieve the desired results and over-regulation which could lead to stifling Network Rail and making the process of compliance counter-productive in terms of delivering the 'day-job'.

4. SPECIFIC RIA COMMENTS ON THE OVERALL FRAMEWORK CONSULTATION

4.1 We note that, according to our search, the words 'supply chain' are mentioned only once in the document on page 55. We have raised in previous responses, the apparent lack of recognition of the supply chain in the PR18 process. Paragraph 1.4 of the consultation states the PR18 aim as "a safer, ==more efficient== and better used railway, delivering value for passengers, freight customers and taxpayers in control period 6 and beyond". Regarding the highlight (ours) we believe that the supply chain has a crucially important role to play in helping deliver further efficiency – particularly in respect of renewals, so the lack of reference to it is disappointing – eg page 35, para 4.6 makes no reference to the supply chain in the list of key stakeholders.

Bearing that in mind, paragraph 3.13 of the consultation refers to Network Rail's route-level customer-led scorecards for freight and passenger operators which are summarised as a single entry in the relevant route scorecard. While we support the use of Scorecards in CP6 (page 33 Q1) and also that the measures need to be balanced to allow NR adequate flexibility (Q3) we believe consideration should be given (Q2) to devising a process for each Route to measure the effectiveness of its engagement with the supply chain, eg in terms of overall communication. We believe the issue of asset knowledge is something that should also be measured via a scorecard, especially in terms of buried cables etc. The Hansford Review, and Network Rail's response, encourage outside investment in the railway but a significant obstacle in the way of such investment is the inability to map utilities and describe the "as is" condition.

4.2 We believe it would also be useful to consider some sort of measure around actual v estimated spend – especially in respect of renewals. We have seen in the past the problems with the peaks and troughs in renewals expenditure across Control Periods – the two slides embedded below provide examples of this:- *(ORR Note: These slides are included below the response letter).*

Renewals Peaks and Troughs by CP.p

Renewals CP5-6.pptx

4.3 And as we made clear at the ORR Efficiency Seminar on 19 September this leads to increased costs, and a disincentive to invest in people, products, and process. We also note that it is the intention to allow Routes the flexibility to vire money from one to the other which might also help smooth out expenditure profiles. We have a meeting with John Larkinson scheduled for 16 October to discuss how we might take forward the key findings of that Seminar where we would be happy to discuss this and the issues described in 4.1 & 4.2 above. This is relevant to Q's 4-6 on page 42, and Qs 11-13 on page 64.

With respect to Qs 7-10 on page 54, we are broadly supportive of approach proposed.

ROUTE REQUIREMENTS & SCORECARDS;

5.1   We believe that our main comments are outlined above.

POSSIBLE MEASURES OF THE SYSTEM OPERATOR'S PERFORMANCE

6.1   We agree the need for the establishment of an appropriate regulatory measure for the System Operator (SO)

6.2   With respect to Q1 on page 11, 'smart' engineering access planning is very important to the supply chain as outlined at the Efficiency Seminar on 19 September.

6.3   With respect to paragraph 3.12 and 3.14 on page 21 and Box 3.1 on page 22, we would absolutely stress the importance of early-stage development of projects being critical to their success. In many other responses and forums, RIA has repeatedly called for early contractor involvement to ensure projects are at an appropriate level of maturity before commitments are made. There seems to be no reference to supply chain involvement here, or indeed elsewhere in the document – see 4.1 above.

6.4   Regarding 3.24 on page 24, we strongly agree that the impact of enhancements on renewals activity is likely to become increasingly important and needs to be undertaken to a high standard to support orderly and efficient change-control.

6.5   Regarding 3.28 on page 25, we would refer you to our comments on underground services in 4.2 above

CONCLUSION

7.1   We hope these high-level comments are useful. As mentioned earlier, we would be happy to discuss these further in our upcoming meeting, and at subsequent regular bilaterals between ORR and RIA.
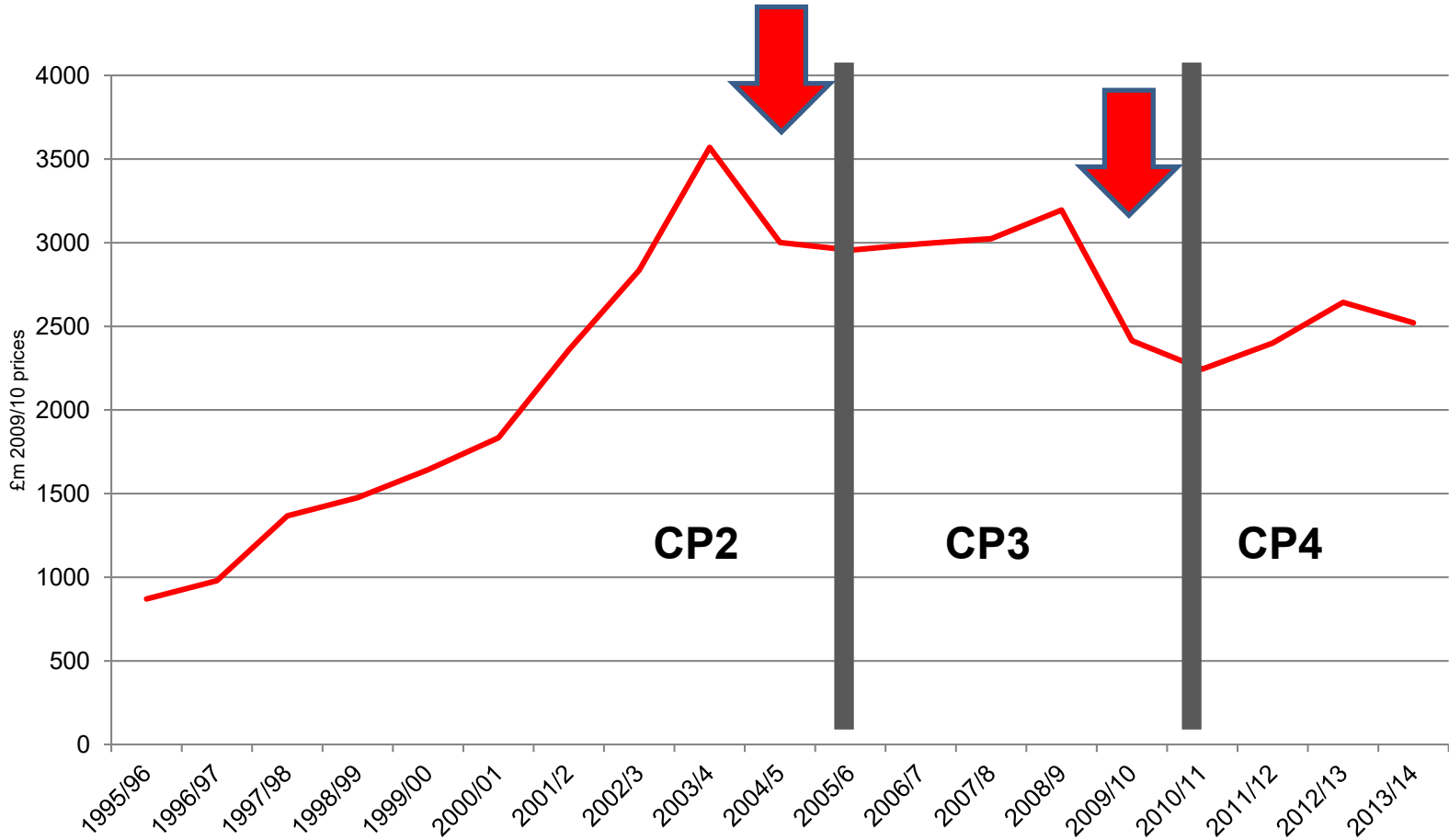

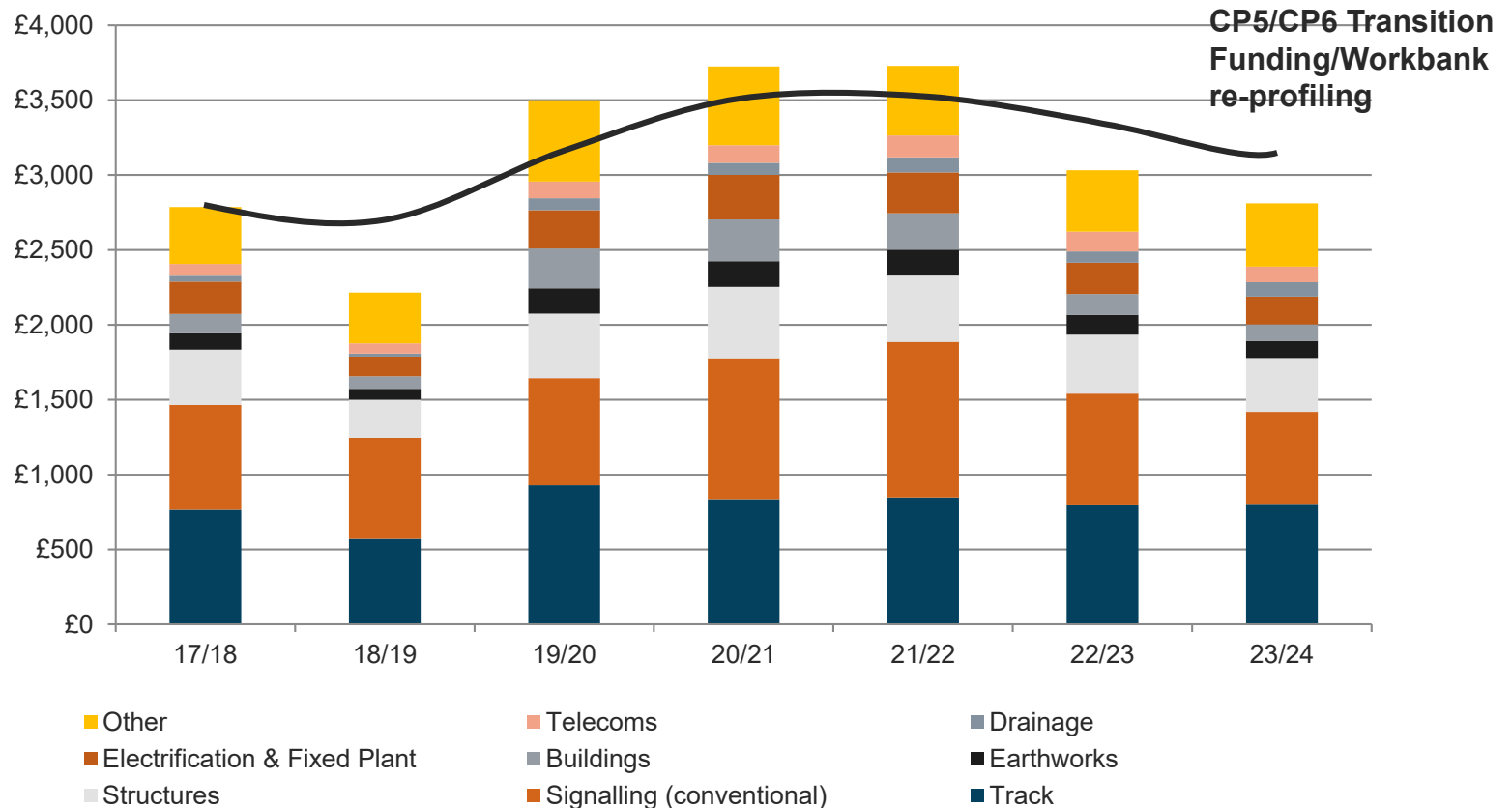Peter Loosley

Peter Loosley
Policy Director

Railway Industry Association
22 Headfort Place
London SW1X 7RY

Company No. 10036044
Company Limited by Guarantee registered in England & Wales

Network Rail renewals expenditure 1995/6 – 2013/14

Railway Industry Association

1

CP6 Renewals*

Renewals Spend Profile - RF2

CP5/CP6 Transition Funding/Workbank re-profiling

Legend:
- Other
- Electrification & Fixed Plant
- Structures
- Telecoms
- Buildings
- Signalling (conventional)
- Drainage
- Earthworks
- Track

* Based on RF2 inputs – subject to Business Planning and ORR Determination

Response to ORR's consultation on the overall framework for regulating Network Rail (PR18)

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to pr18@orr.gsi.gov.uk by **21 September 2017**.

Full name	ALAN ROBERT HAYES
Job title	director
Organisation	really good ideas
Email*	
Telephone number*	

*This information will not be published on our website.

Question 1 (Chapter 3):

Do you agree with our proposed use of scorecards in CP6?

If scorecards are used as the basis for performance related pay there will be issues concerning goal-setting, methods used to achieve goals, and equity among staff that contribute towards the achievement of goals but do not receive performance related pay. These issues require careful design if the potentially damaging effects of goal setting are to be avoided. It could be that performance related pay is over-rated in relation to people with strong intrinsic or pro-social motivation.

Question 2 (Chapter 3):

Do you have any comments on what scorecards should include in order to make them balanced (recognising that there is a limit to how much can be included on a scorecard)?

Scorecards were noted as being to "support comparison and competition between routes" – perhaps they ought to be also thought of as supporting collaboration between routes. Particularly where routes need to act together to mobilise initiatives that may be beneficial for one route but not for the other – but beneficial for the network overall.

Question 3 (Chapter 3):

What are your views on our proposed approach to specify a small number of measures and two regulatory minimum floors for route scorecards, in order to leave Network Rail with greater flexibility to satisfy its customers' needs?

A small number of measures is fine – but if the idea is that Network Rail is to be left with greater flexibility to satisfy its customer needs then perhaps the issues that needs monitoring are in relation to the governance of Network Rail and its performance outcomes. The 'organizational citizenship' of Network Rail needs to be monitored in order to guard against incentives – including PRP - acting adversely.

Question 4 (Chapter 4):

What role should customers and stakeholders (including end-users and their representative groups) play in influencing what routes/the SO commit to deliver, and what role should they play in supporting and challenging Network Rail to deliver on these priorities?

There should be a mature engagement between customers, Stakeholders, the SO and NR – particularly in relation to route delivery and also digital access to customer services.

Question 5 (Chapter 4):

How do you think Network Rail routes and SO should engage with their customers/stakeholders and what are your thoughts on the principles and minimum expectations we propose?

The train operating companies are probably more engaged with customers on a daily basis and in the best position for collecting whole-industry data. Perhaps there should be a common cross-TOC customer and stakeholder engagement process that acts for Network Rail led infrastructure issues too. As opposed to customers having to engage with different bits of the industry.

Question 6 (Chapter 4):

How should the quality of stakeholder engagement be assessed, and who is best placed to assess this?

Ask a PR agency. Someone who has led stakeholder engagement initiatives for Waitrose or BMW.

Question 7 (Chapter 5):

What are your views on the relevance and balance of the incentives we describe in this chapter, and the circumstances in which would it be most appropriate to apply them?

I think the incentivisation model is relatively weak in that there is ultimately still a lack of commercial accountability in the sense of profit and loss or business substitution. Performance comparison between routes is difficult to make because of vastly different route characteristics. It would seem to me that the best insurance you have is the quality of the people employed by Network Rail. This then places an emphasis on recruitment and selection – in particular, the ability to manage complex investment decisions with no perfect answers. Performance related pay may be more of an issue than a solution. Studies have shown that PRP can attract high performing people to a business but may not necessarily motivate the best performance when they are there. PRP and goal-set targets can often result in 'cheating' - and a 'crowding out' of intrinsic motivation in people who have strong social or public service values. Employing people with those values and the ability to manage complexity may be a better route to success than incentives that could lead to resentment – particularly in situations where performance outcomes are difficult to attribute to individuals.

Question 8 (Chapter 5):

What are your views on the format and content of publications and data that you would find most accessible and useful?

No comment.

Question 9 (Chapter 5):

How should we reflect the level and quality of route and SO engagement with their customers/stakeholders in our monitoring, escalation and enforcement?

No comment.

Question 10 (Chapter 5):

How should we respond if Network Rail fails to meet scorecard targets agreed with customers? Specifically, what should be the balance between designating scorecard targets as 'reasonable requirements' (creating specific enforceable expectations on Network Rail), and relying on our overall assessment of Network Rail's performance against an overarching licence condition?

No comment.

Question 11 (Chapter 6):

What are your views on the approach we set out for managing change? In particular, do you think our proposed level of involvement, and role for stakeholders, are appropriate?

No comment.

Question 12 (Chapter 6):

Are there other options for managing change you think we should consider?

No comment.

Question 13 (Chapter 6):

Are there any other types of change you think we should consider?

No comment.

Are there any other points that you would like to make?

In 2.5 you recognise that financial incentives are weak and that there are other reasons why people will work in the rail industry to do that. Perhaps you should work with those parameters rather than trying to create a complex framework of incentives that may be an administrative burden and a source of damaging inequity and goal setting with adverse impacts.

Give very serious thought to the merits and difficulties of PRP and the characterstics and abilities of people you need to lead in this complex industry – complex because of political, customer and stakeholder requirements. The engineering is the easy bit.

It's possible that the new route based and customer centric era for Network Rail needs a different kind of leadership to the type we've previously had. What we look for in recruitment and selection will be key as will what the remuneration and reward structure does to the whole organisation – not just the few who participate in PRP.

Thank you for taking the time to respond.

Office of Rail and Road

Consultation on the overall framework for regulating Network Rail

Introduction

SEStran (South East Scotland Transport Partnership) is the Statutory Strategic Transport Planning Authority for the eight Councils in South East Scotland centred on the City of Edinburgh. SEStran welcomes the opportunity to comment on the 2018 periodic review (PR18), on the overall framework for regulating Network Rail. SEStran welcomes the consultation document on the high-level approach to PR18 and CP6 and is encouraged by the strong approach to consultation with all stakeholders.

Geographical Context

It is understood that responsibility for day-to-day operation and management of the railway is devolved to eight geographic routes. However, in terms of the proposal for disaggregation of measures, SEStran would welcome further articulation of how this will be reflected to stakeholders across the different geographies of the UK.

Further clarification would be welcomed as to whether there will be one strategic plan for Scotland, in terms of a consolidated version that includes all routes. We would support the proposal for at least a decade context for the determination, given this would fit with the timescales for local development plans and shorter horizons for initiatives such as City Region Deals.

It would be helpful to have NSO performance at a Scotland level and we would welcome the suggestion to disaggregate information further, which would help in the making and evidence proofing of some of NSO's difficult trade-off decisions between different customers and geographies.

In addition to this, we would hope that any capability measures would focus on outcomes and would be disaggregated to a geography that allows local transparency and scrutiny by stakeholders. In terms of capability measures it may be helpful in future to provide further worked examples.

Route Requirements and Scorecards

We would presume that in terms of scorecards and route objectives, that the format of presentation will enable comparison and recognise the potential difficulty in devising objectives prior to the publication of HLOS and SoFA. In terms of appraising proposed improvements in a proportionate form to inform funding choices, will this be undertaken via some form of scenario planning, with a strategic and inter-connected appraisal, where not doing a certain project is recognised in terms of its impact on other related projects?

Supporting comparison between routes, SEStran would ask if there would be some form of benchmarking process formalised, via annual public reporting on scorecards and consolidated plans to enable a systematic analysis?

We would also welcome further discussion and detail on how effectively the application of a "penalty clause" approach on underperformance would work towards driving better performance. It doesn't immediately seem apparent from the proposals as to how varying revenue, presumably negatively, would help deliver the overall goals of the process. It is presumed that the performance would be rated against the scorecard proposals.

Revenue for the NSO potentially sets an appropriate organisational culture in progressing its objectives alongside a potential penalty clause. Further, it would be helpful, before providing a final comment, to have further information on where any revenue would be "lost", where it's removed due to NSO under-performance and where further monies would be earned from and against what scorecard to achieve additional revenues. There would also need to be a balance on incentives on some volume measures which could have negative impacts on other performance measures.

With regards to the proposals for NSO regulation and monitoring, if NSO performance is an indicator, would any process devised need to ensure avoidance of any unintended "double regulation" of a singular process or a situation where an impact of a certain decision by the NSO may only partly reflect its role as outlined in the document.

In terms of the scorecard, for stakeholders it may be helpful to have a simplified "red/amber/green" summary but this may not fit with a revenue varying approach. Further, it will be important presumably to recognise and articulate to stakeholders that some NSO outputs will be positive but not necessarily tangible or easily measurable

Stakeholder Engagement

In regards to wider stakeholder engagement for CP6 and the question of who are relevant stakeholders, SEStran would welcome inclusion of Communities, Councils, Planning Authorities and Regional Authorities such as Regional Transport Partnerships in Scotland. Furthermore, in terms of efficiency and financial performance, it would also be helpful to make mention of Communities rather than taxpayers.

Concerning the long-term system operation settlement, we would also suggest that in the LTPP process there is specific reference to the need to work with Regional land-use and Transport Planning Authorities.

We also welcome the proposal for routes to share with stakeholders a much wider range of material and would hope that would also be in a non-technical format to enable even greater engagement with communities and under-represented groups.

We welcome ORR's broad continued support for Network Rail's move to "continuous business planning". This would, for us, fit well with a wider landscape of varying timescales for national, regional and local strategies/plans across a number of subject areas.

With regards to safe asset performance, it may be helpful for non-expert stakeholders to have further detail on how you could depart from the first outcome of "safe" without being clear on the definition of "safe" as it will be subjective for certain communities of interest.

Finally concerning the proposals for Network Rail's approach beyond the SBP and during CP6, is there an implied consultation on the update of the annual business plan when new information is available? Will this be a wide-ranging engagement opportunity or specific to the new information? In terms of the grading of route SBPs, SEStran would welcome the good practice guidance to be published.

SIEMENS

20th September 2017

The Office of Rail and Road
One Kemble Street
London
WC2B 4AN

Paul Copeland,
Managing Director
Siemens Rail Automation
PO Box 79, Pew Hill,
Chippenham,
Wiltshire,
SN15 1 GG

Dear Sirs,

As the largest supplier of signalling and train control technology to Network Rail, and as one of Network Rail's key strategic suppliers, Siemens Rail Automation (SRA) has a strong interest in the effective regulation of the organisation. This letter represents SRA's formal response to the ORR's PR18 consultation "Overall Framework for Regulating Network Rail".

SRA does not have any detailed comments on the content of the consultation paper, but it does have some observations on some general principles which, in our view, should underpin the regulatory framework and which over time may affect the way the ORR regulates Network Rail.

First, the consultation paper rightly makes much of the importance of Network Rail consulting effectively with stakeholders to support effective delivery, and of making the fullest possible use of the expertise and interests of its customers and other key stakeholders in contributing to a successful railway. However, the consultation paper appears to limit Network Rail's key stakeholders as passenger representatives, funders and local transport decision-makers. The consultation paper does not appear to expressly identify Network Rail's supply chain as a key stakeholder. Yet this group of interests arguably has more expertise in how to deliver a successful railway than almost any other stakeholder group. Accordingly, we would like to see the ORR make effective and direct consultation with the railway supply chain an explicit requirement of Network Rail. Of course, SRA already enjoys a strong and healthy relationship with Network Rail, but we believe that there would be merit in making consultation with the supply chain a formal requirement and a key element in how the ORR regulates the organisation.

This is also relevant in relation to the issue of scorecards, the use of which is clearly seen as an important tool for monitoring and assessing the performance of the individual Network Rail routes. We note that at page 23 of the consultation paper the ORR sets out Network Rail's views on the purpose of scorecards. There is nothing explicit in this list on the effective management of, and engagement with, the industry supply chain. This may be implicit but again we feel this issue should be a more explicit element in the use and purpose of scorecards.

The second point relates to the emerging agenda for greater funding and financing of rail infrastructure by third parties. We note that the consultation paper makes reference to the interests of funders and potential funders. However, nowhere does it refer to the interests of financiers, whose interests are separate and distinct from those of funders – a distinction recognised by the Hansford Review. We believe that as the private funding and financing agenda gains momentum and is developed with specific projects attracting third party funding and financing as CP6 progresses, it will

Mobility

be necessary for the ORR to regulate Network Rail with the specific and separate interests of financiers in mind.

In the context of contestability, and indeed private financing generally, we believe it is increasingly important for Network Rail to move towards an output specification approach to procurement, rather than continuing with the prescribed input specification approach adopted today. This is critical to encouraging and enabling the supply chain to develop innovative solutions to rail investment generally and specific projects in particular. We welcome Mark Carne's comments at a recent RIA Hansford Review meeting when he said this was his goal for Network Rail's future relationship with the supply chain, but progress with this may be something that the ORR should consider monitoring as part of its regulation of the organisation.
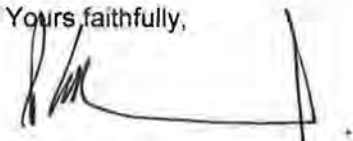
We also welcome Network Rail's emerging proposals, as set out in its response to the Hansford Review, on how barriers to challenging standards can be addressed and how suppliers might best be incentivised to challenge these standards, with these incentives to be introduced in 2018 based on the findings of a pilot focusing specifically on reviewing, updating and challenging current electrification standards. Developing a fresh regime for developing and applying standards that are more appropriate for the products and circumstances of particular projects is also critical to driving efficiency into the railways and in reducing costs. This issue should also, therefore, form an element in the ORR's monitoring and regulation of Network Rail's performance.

We note that the ORR describes Network Rail as a monopoly supplier, which of course today it is. However, in the context of the third-party funding and financing initiative and of the proposals for greater contestability of individual rail projects, it is likely that Network Rail's monopoly position will erode to some degree, although it will always remain as the primary delivery agent for rail infrastructure projects in the absence of any further major reforms by the government. We would be interested to know what assessment the ORR has made of the potential impact of the contestability and private funding and financing initiatives on Network Rail's position as a monopoly supplier and what implications this may have on the regulatory regime in the longer term.

More generally, Network Rail as an organisation is evolving quite rapidly, and as the individual routes gain greater independence as CP6 evolves, opportunities for greater local decision making and for the procurement of local projects will emerge and doubtless gain momentum. The comparison of the performance of local routes will also create opportunities for improving efficiency and reducing costs as examples of best practice are built on. The development of route-specific strategic plans will give real focus to this. The devolution agenda could therefore have material implications for the supply chain, much of which could be beneficial. We would therefore be interested to know what the ORR's own developing views might be as to what efficiency benefits might be anticipated from the devolution agenda and what impact this may have on how the ORR regulates Network Rail, both collectively and at route level..

I look forward to your response, and we would be happy to meet to discuss these and other issues if that would be welcome.

Yours faithfully,

Paul Copeland
Managing Director

STAGECOACH *GROUP*

David Dingwall

PR18 Programme Executive

Office of Rail and Road

One Kemble Street

London

WC2B 4AN

Ref: ORR PR18\framework for regulating NR

21 September 2017

Dear David,

Stagecoach Group and Virgin Trains (incorporating East Midlands Trains, Virgin Trains East Coast and West Coast Trains Ltd.) Response

PR18 Consultation – Overall Framework For Regulating Network Rail

Stagecoach Group and Virgin Trains (SG & VT) welcome the opportunity to respond to the PR18 consultation on the overall framework for regulating Network Rail (NR). We structure our response to this consultation to be based on the consultation documents published on 27th July 2017 and to include some general observations. We are also broadly supportive of comments made in RDG's responses to this consultation.

We welcome ORR's decision to increase focus on regulating each of NR's route businesses in CP6 and to compare data from the route strategic plans on a consistent basis. ORR considers that a well defined System Operator (SO) will complement its greater focus on route-level regulation. We assume that train operators' primary relationships with Network Rail will be through the route management structure, with the SO being a 'supplier' to the routes. We look to ORR to confirm this assumption. We agree that the roles of the SO should be distinct from routes and be increasingly independent from the routes. That said, the routes and the SO must continue to improve engagements with train operators; both passenger and freight to understand what their priorities are and ensure their needs are met.

Scorecards (Routes / SO)

ORR proposes to use scorecards in CP6 to 'formalise' expectations for what is to be delivered by the routes and the SO, and monitor how well different parts of NR are delivering. SC & VT wholly support the principle of improving how NR is measured and the scorecard would appear to be an appropriate management tool with which to do this. However, in our view, it is somewhat vague in terms of the actual definition of scorecards; what they truly represent, how they will be used and how they will truly incentivise performance improvement, when there are no real tangible penalties for non-delivery or rewards for over-delivery over and above today's regimes. It is extremely important in our view that the scorecards measure real outputs i.e.

10 Dunkeld Road   T: +44 (0) 1738 442111
PERTH   F: +44 (0) 1738 643648
PH1 5TW
Scotland   stagecoachgroup.com

STAGECOACH *GROUP*

engineering volumes, and not just inputs and NR spend. Whilst the ORR expects NR to set targets which are agreed between NR and train operators and allow the parties greater autonomy over what are to be delivered, somehow they need to be contract deliverables and not just being used as a working document for discussion between NR and access beneficiaries.

It is important to have a jointly developed, balanced suite of meaningful measures in the scorecards which focus on the right outputs in line with the development of business plans and franchise agreements as part of the PR18 process and throughout CP6 and for the ongoing monitoring of NR's performance. In relation to customer-led scorecards, we support the inclusion of high level measures which should align with franchise targets and ultimately supports the delivery of commitments in existing and future franchises focused on outputs that deliver improvements for the end customer, recognising that it is the operator that holds the ultimate end customer relationship. However, it is not clear in the consultation document how the scorecards will be linked to franchise agreements and performance benchmarks that are contractualised between the franchisee and the DfT. Scorecards that are not linked to franchise agreement outputs and performance measures would be wholly irrelevant to an operator. We would welcome further clarity on this and ORR to share its thinking in this regard.

In order to allow the scorecard to be agreed, it is essential that the TOC has clear rights to setting performance levels to ensure that franchise obligations, notably premia and customer satisfaction can be delivered. The ORR must ensure that these are explicit in the CP6 settlement (as now). There is clearly no incentive for the Route MD to agree a stretching figure, or one which was required by the DfT in the ITT for a franchise. In a situation where Network Rail is unable to reach agreement with its customers in this area, we would expect the ORR to determine what the relevant and acceptable targets should be that must be achieved by NR.

In relation to specific measures, we would like to include the prioritisation of average journey times as a measure on route and SO scorecards and consider this is consistent with inter-city operators' operational priorities. This is an avenue that SG & VT businesses are exploring via Schedule 5 of the Track Access Contract.

It is noted in the consultation document that NR's scorecards for CP5 have generally not reflected PR13 regulated outputs, instead updating targets annually. This says that the use of scorecards could be a useful management tool for providing data and information, but most importantly they need to be accountable against a set of meaningful criteria and monitored carefully ensuring it delivers against its targets. Our concern again is where there is non-delivery and we would like to understand further from ORR how the scorecards will be a true incentive for improved performance.

SC & VT consider the System Operator to be a 'supplier' to the NR Routes and therefore our main relationship will continue to be with the NR Route. This does not mean however, that we do not have views on the SO scorecard. In terms of developing scorecards for the SO, it will undoubtedly be challenging to develop a balanced scorecard for the SO, owing to its wide range of responsibilities in planning, operation and coordination of the rail system. The output measures in the SO scorecards would be very much qualitative which is difficult to measure because it would be very difficult to distill every aspect of the SO works into quantitative measures. Therefore, it will be unlikely to represent the full spectrum of its activities in a Scorecard that would meet the ORR's requirements as set out in the consultation. What we do need to understand from the ORR though is when there is conflict between NR Route and

STAGECOACH GROUP

SO how this could be resolved and what the escalation points are for the operator if it is dissatisfied with any outcome.

Whilst the SO is part of NR, it is crucial to have some significant independence in governance, given that the remit of the SO is to draw all different priorities together to deliver solutions that get the most out of the network overall to deliver best value for UK Rail end customers. It is likely to see cases where this may be in conflict with the interests of the Routes, or indeed NR in its entirety. It is essential for the ORR to monitor and regulate the SO on this ensuring that the SO does make these tough decisions and does not allow NR to become further risk averse.

Stakeholder Engagement

We recognise the potential benefits of effective customer and stakeholder engagement; it will certainly strengthen closer working relationships between NR and train operators, which should help increase efficiency, physical outputs and reduce industry-wide costs.

Alongside the publication of '*PR18 consultation - Draft Guidance on Network Rail's Strategic Business Plans*' in January 2017, NR routes undertook the process of stakeholder engagement as part of ORR's aspiration to involve train operators in the preparation of their strategic business plans. So route stakeholder engagements have started since January/February; it will be useful to have feedback on how the engagement process has been so far across all routes i.e. how NR routes engaged, with whom they engaged and how effective it was from route to route, so that we can build on experience and improve the process gradually. We anticipate that the engagement practices will continue throughout the PR18 process and from CP6 onwards and we must continue to improve with the conclusion of PR18.

The concept of stakeholder engagements is good but it has to be implemented consistently across the routes. As stated above, the engagement process has already started, but there is a lack of visibility of how frequently and efficiently the routes have engaged with various train operators and how the routes follow up over discussions with train operators, either collectively or individually. In relation to the SO and the development of SO management scorecards, we realise that not many operators have knowledge of this particular development and in our opinions the communications have been ineffective in this area and some operators have not yet been approached to discuss the output measures for the SO scorecards. We look to the ORR to ensure NR manages this engagement process consistently and effectively.

The consultation documents have no mention of route governance on how the engagement process is to be structured, monitored and governed, and it is unclear what the structure of responsibilities are by routes. Hence, it is not straightforward to make comparisons between routes based on the current practice of liaisons and discussions between access beneficiaries and NR on the development of the route strategic plans and scorecards. Perhaps ORR should consider one of the mandatory elements of the scorecard is an engagement score, scored by the operator?

Monitoring & Enforcement

We understand the proposal to use reputational, procedural and management incentives in a proportionate way where performance reaches unacceptable levels. Given NR's reclassification to a public sector body, the imposition of fines would have little impact on NR for poor performance and would be ineffectual in the current climate as there would be cuts on spending elsewhere or de-scope of major projects which is not of access beneficiaries'

10 Dunkeld Road   T: +44 (0) 1738 442111
PERTH   F: +44 (0) 1738 643648
PH1 5TW
Scotland   stagecoachgroup.com

STAGECOACH *GROUP*

best interest. However, the industry's current reputation is not good, so we would like the ORR to ensure that these non financial 'penalities' will be effective and look forward to the ORR sharing its thinking in this sphere if NR (either the Route or SO) fails to deliver against its scorecard commitments.

I hope this input is useful. Managing through the use of scorecards is a useful management tool and if jointly developed ensure collaborative working. We are looking forward to working with the ORR and NR to take this workstream further to ensure the scorecards are meaningful tools

Yours sincerely,

Neil Micklethwaite

Stagecoach Rail – Commercial Director

Periodic Review 2018
Office of Rail and Road
One Kemble Street
LONDON
WC2B 4AN

20 September 2017

Dear Sir/Madam

Period Review 2018 – consultation responses from Transport Focus

Transport Focus is the statutory independent watchdog for rail passengers in Great Britain. We welcome the opportunity to respond to the Office of Rail and Road's (ORR) three current consultations about the Period Review 2018. We see the Periodic Review as an important opportunity to ensure that the outcomes expected of the railway between 2019 and 2024 are closely aligned with passengers' needs. In the attached document, Section A deals with the overall framework consultation; Section B with the scorecards consultation; and Section C with the System Operator consultation.

Much of what ORR is proposing Transport Focus strongly supports, including Route-based regulation as a principle. However, in two areas we have significant concerns. In summary we believe:
a. Drawing on best practice from other regulated sectors, ORR should require Network Rail to engage with passengers, as the ultimate customer of its product, to a greater degree than is proposed;
b. ORR should require Network Rail to define success primarily in terms of passenger outcomes rather than technical or financial inputs or outputs; and
c. ORR should use the new 'on time, all stations' measure to compare performance across the Network Rail Routes rather than delay minutes as is proposed.

We would be pleased to elaborate on the points above or any other comments in this document.

Yours faithfully

Guy Dangerfield
Head of Strategy

Encl.

Transport Focus is the operating name of the Passengers' Council

A. PR18 Overall Framework consultation

Transport Focus has confined its comments to areas which seem most directly relevant to passengers' interests. If we have made no observations in relation to particular themes we are broadly supportive of ORR's proposals.

Chapter 2 – Route-based determination

Transport Focus welcomes the intention to regulate each Route and the System Operator separately. In addition to the 'rivalry' benefits that benchmarking will bring, it is clear from the National Rail Passenger Survey and from research carried out in relation to franchising that passenger expectations differ from route to route.

Chapter 3 – scorecards

Our response to ORR's scorecards consultation is provided in Section B, which includes our major concern that it is not proposed to use the new 'on time, all stations' measure as the consistent comparator between Routes, but delay minutes. Transport Focus believes that every scorecard should include the new metric, alongside cancellations and the number of 'severely disrupted days', even if train companies and others argue in favour of other measures being used as well. We know from the joint Transport Focus/ORR research that this is what passengers want. We also know from our research that punctuality is the foundation on which trust between the industry and passengers is built. Incentivising Network Rail on the basis of how passengers define punctuality is surely the right thing to do.

We nevertheless welcome the concept of Route scorecards and the intention to use the National Rail Passenger Survey within them to track consumer satisfaction. The scorecards should help ensure that Network Rail focusses on what passengers really want on that route, reducing the potential to focus on asset management for its own sake or allow financial considerations to override those of passengers. We say *should* because it will depend on the extent to which the priorities *are* consistent with those of end users in the way you expect and whether passengers can *genuinely* hold Network Rail to account for delivery. We expand on our major concerns about this under 'engagement' below.

Transport Focus is broadly content with there being a small number of measures specified, so long as they are closely aligned with passengers' interests. We understand the concept of a target and a regulatory floor, but we think there is a significant danger that the floor will become the *de facto* target. Will passengers' interests be best served if the impression is given that ORR won't take much interest until performance gets close to or below the floor?

Chapter 4 – engagement

Passengers now provide the majority of the railway's income. Therefore it is more important than ever to focus on the identification and delivery of the outcomes passengers want. We recognise and welcome ORR's expectation that each Route and the System Operator must

meet the minimum requirements set out in 4.11 of the consultation and the principles set out in 4.16.

However, we think ORR should go further in requiring each part of Network Rail to focus more clearly on consumer benefits and in defining success in terms of delivery of clear consumer outcomes. While the analogies are not exact, the Civil Aviation Authority (CAA) in relation to Heathrow Airport and Ofwat in relation to water companies are focusing on the consumer to a much greater extent than ORR is proposing for Network Rail. The requirement on Routes and the System Operator to engage with the ultimate customer, passengers, appears weak and should be strengthened.

The CAA has rejected the view that airlines are an adequate proxy for the consumer interest, recognising the primacy of the airlines' financial interest. They are therefore proposing that the focus of the Heathrow business plan, and associated financial incentives and penalties, reflect not inputs or outputs, but consumer outcomes – with Heathrow charged with proposing these outcomes as a result of consumer engagement.

While we do not advocate independent Customer Challenge Groups similar to the water sector, we think ORR should go further in ensuring that Network Rail engages effectively with passengers and incorporates their views in its plans. Despite the guidance ORR has already given in relation to preparation of strategic business plans, the level of engagement with passengers does not give us confidence that this will happen during Control Period 6 unless you strengthen what you require. We also recommend that you strengthen the focus on meeting the needs of vulnerable consumers, an area where Ofwat (see paragraph 3.1, Page 35 of Delivering Water 2020: Consulting on our methodology for the 2019 price review) and the CAA are expecting more.

Transport Focus remains ready to discuss with Network Rail how we can help in this area through conducting a programme of passenger research, articulating the findings and helping Network Rail draw conclusions about the implications for its business. We see this as supplementing the passenger representative role that we hope to play, subject to funding, on the various Route Supervisory Boards (we currently sit on the pilot Western Route supervisory board and have been invited to sit on its East Coast Main Line and Wales equivalents).

In response to your questions, we believe ORR should set a clear expectation that it expects the Routes to involve passengers in shaping outcomes in the following areas:

- The standard of train performance that should be provided, which is likely to include levels of punctuality, cancellations and number of 'severely disrupted days'

- How engineering work should be planned and delivered to minimise disruption to passengers

- Defining the medium and long-term vision for the passenger services Network Rail should be able to facilitate.

Chapter 5 – incentives

In response to your questions, we agree that Network Rail's incentives as a government-owned company are more reputational – both to the entity and to its senior managers as individuals – and what ORR proposes appears appropriate. ORR should seek to guard against Network Rail becoming overly risk-averse or less ambitious as a result of reclassification.

Regarding data, the power of transparency as an incentive should not be underestimated. More should be done to help passengers and their representatives – elected and otherwise – access the information they need to hold Network Rail to account. While Network Rail makes a huge quantity of train performance data available through open data feeds, there is no official (or unofficial) consumer-friendly portal through which these can be readily interrogated. The Rail Delivery Group-sponsored www.mytrainjourney.co.uk website goes some way in this area, but further development is required if it is to truly deliver what is necessary. It is important that ORR secures genuine transparency in key areas as a means to empower passengers and stakeholders. Research suggests that passengers would rather the information came from an independent body like ORR, or was at least endorsed by one, than from the industry itself. ORR should therefore consider who is best placed to publish these data.

In a scenario where Network Rail performance is between 'regulatory floor' and the scorecard target and it has offered no credible proposals to narrow the gap, passengers would expect 'the authorities' to be intervening on their behalf. Whether improvement is best secured by making the scorecard target itself specifically enforceable, or by requiring an action plan that is reasonably likely to deliver it – and holding Network Rail to milestones – is difficult to predict. Perhaps it should be a horses for courses decision?

Chapter 6 – managing change

In 6.19 you anticipate that Network Rail would lead the change management process when there was a proposal to amend the outputs and/or targets within the Control Period. While that is fair enough, we strongly encourage that whatever is agreed by ORR at the end of that process is clearly articulated in the public domain. The purpose being that passengers, and stakeholders, can see clearly what has changed from the original determination and the rationale for that change. This will reduce the risk that change causes distrust of 'the system'.

B. Route requirements and scorecards

Chapter 3 – financial information

While passengers will, generally, be less interested in financial information than in that about the service they receive, an area that ORR may find useful to include in all scorecards for comparison purposes is the unit costs of key types of renewal activity.

Chapter 4 – asset management

First, it is vital that scorecards include a target for sustaining asset condition. We say this because of the disruption to passengers caused by infrastructure failure as track and signalling approaches life expiry. ORR's preferred approach, in 4.6, appears appropriate. We stress, however, that ORR must ensure transparency around whether the rate of renewal being achieved by each Route is keeping pace with the rate of deterioration – allowing action to be taken if not.

In 4.11 you are clear that you expect to see an asset condition score for the principle asset groups within each Route's strategic plan. We encourage you to require some geographic disaggregation, particularly within the larger Routes. An average for a Route, while self-evidently better than one national figure, could still mask undesirable variation. Regarding the station condition score, you will need to consider the implications of the various 99-year lease arrangements that now exist with a number of train companies.

Transport Focus strongly encourages ORR to expect Network Rail to be constantly striving to improve the capability of its product over time – and without an expectation that government or customers (direct or 'end user') should necessarily have to pay more. In a conventional market situation a supplier would need to improve its product, and without necessarily being able to increase the price, simply to stay in business. As a monopoly supplier, Network Rail needs to be required to do so. Transport Focus believes that ORR should require that Network Rail develops a vision for each line within each Route; and require that renewals always move things one step closer to that vision. This would allow Network Rail to break out of the 'ossification' caused by the capability that existed in 1994 being the objective for ever more. It would require Network Rail to rediscover the art of small incremental improvements towards a long-term goal. It would put a stop to the catch 22 situation in which signalling is renewed to match the historic capability of the track, and then a couple of years later the track and points are renewed to match the capability of the brand new signalling.

Chapter 5 – train performance

Transport Focus welcomes ORR's intention to have a consistent Route-level measure of performance in all scorecards, alongside other measures train companies and/or funders might propose. However, we are baffled that it is not intended to use the recently launched 'on time, all stations' metric which the industry, working closely with DfT, ORR and Transport Focus has developed. The proposal to instead use 'delay minutes', divided into primary delay, direct reactionary delay and indirect reactionary delay appears to run contrary to recent direction of travel. It also appears to satisfy few of the key objectives you set out in 5.23 – in particular ease of calculation (you are proposing weighting between Routes to account for greater reactionary delay being generated on busier routes) and credibility (it is highly likely that it will not be understood by passengers – a key stakeholder). Our strong view is that the only measure which meets your objectives is 'on time, all stations'. This will increasingly become the headline metric for the railway; it is surely appropriate for ORR to use the same measure to compare performance between Routes. Transport Focus encourages you to revisit this proposal.

Chapter 6 – passenger experience

Transport Focus welcomes the intention to use the National Rail Passenger Survey (NRPS) to provide a consistent, comparable measure of overall passenger satisfaction across each geographic Route. NRPS should also be included in the Freight & National Passenger Operators (FNPO) scorecard – passenger satisfaction must also matter to the FNPO, even if it is delivered primarily via the eight geographic Routes. We see merit in Route scorecards containing NRPS scores (the station aspects) for relevant Network Rail Managed Stations.

Chapter 8 – network availability

Transport Focus recognises the deficiencies of the Possession Disruption Index for Passengers (PDI-P) and we welcome ORR's intention to continue monitoring in what we agree is an important area. In terms of the most appropriate metric, we believe that measuring how much of the base timetable is altered on a given day to accommodate engineering works should be considered. It would be sensible to disregard inconsequential changes like re-platforming and very minor retimings, but we think a measure of 'timetable change', while not perfect, may offer a reasonable proxy for passenger impact.

ORR should also consider monitoring the number of days on which it is not possible to travel by train between key origins and destinations. This should encourage Network Rail to avoid closing parallel routes at the same time, and should encourage Network Rail to develop options that do not close lines entirely – or if that is necessary to offer an alternative route.

A crucial issue when it comes to engineering works is the accuracy of timetable information, including it being correct twelve weeks in advance (T-12) and amended thereafter in only exceptional circumstances. The System Operator has an important role in delivering this, which we discuss in Section C, but so do the geographic Routes. The System Operator tells us that there is a strong correlation between whether a train company bids accurately at T-18 and the timetable being correct in the public domain at T-12. Train operators tell us that a principal cause of their failing to bid on time at T-18 is that the Network Rail Route has not confirmed the detail of the possession in time for them to do so (and in some cases doesn't for weeks after T-18 has passed). Transport Focus therefore recommends that all scorecards measure Network Rail's success at planning possessions so train companies can bid accurately at T-18 without the need for subsequent change.

C. Measures for the System Operator's performance

Leading strategic planning

Our views about Network Rail's role in developing a vision for the network are covered in Section B. In terms of measuring the System Operator's effectiveness in this area, while there will be elements of its role in strategic planning that lend themselves to a quantitative measure, ORR should consider requiring Network Rail to canvass views among those they involve the process to establish how well it is working for them.

Producing the timetable

On a day-to day-basis, the System Operator's role in producing the timetable is vitally important to passengers – whether it be the quality (in a 'does the timetable deliver high performance' sense), or in terms of timely publication of amendments to the base timetable because of engineering works or other reasons. Many of the proposed measures of the System Operator's performance look valuable, however it appears that D2, D3 (which we assume should read 'delay minutes', otherwise D3 and D4 look identical), D7, D8, D9 and D10 look most critical.

T-12 informed traveller

It is vital to have transparency about the level of post T-12 change, irrespective of who caused it. The level of post T-12 change for which the System Operator alone is responsible should also be reported. As mentioned above, whether a train company bids accurately at T-18 is closely linked to whether the timetable is correct in the public domain at T-12. We believe the System Operator should be responsible for reporting T-18 adherence by train company on a regular basis, allowing light to be shone on problems that would otherwise be hidden.

Improving the timetable

Clearly, the System Operator must invest in systems development to markedly reduce planning errors that will inevitably cause delay. Transport Focus also sees a key role for the System Operator in continually improving the timetable, 'consuming' as much data as it can from as many sources as possible to understand how the timetable 'behaves' in practice and where there are opportunities to improve it. The improvements might be to underlying reliability, to journey times or to safety (for example, by identifying timetable adjustments that would make a Signal Passed at Danger less likely to have catastrophic consequences). We believe that the System Operator financial settlement, and obligations, should be sufficient to revolutionise capability in this area.

Facilitating high quality passenger information

The System Operator should invest to support train companies in providing high quality information to passengers, particularly when there is disruption. The better the information published by the System Operator, the nearer passengers will be to having a single source of the truth'. In particular:

- The System Operator should dramatically reduce the time it takes to publish a revised timetable, for instance in the event of heavy snow being forecast. While the part-year only 'day A for day B' process is better than the underlying 'day A for day C', it remains insufficiently agile to deliver what passengers need. A decision by the train company is still required earlier than is desirable (the weather forecast may change) and once a decision has been made it takes too long for the revised timetable to 'hit' the journey planners passengers use.

- The System Operator should, through its output from the Train Planning System (TPS), help passengers understand what is happening when timetables are temporarily amended. Journey planners have no means of knowing that the trains they are 'returning' are different from normal – they give no context in which passengers can assimilate the information provided. For example, when a freight train derailed recently near Ely most journey planners did not explain why there were no through trains from Cambridge to Leicester. The System Operator should work with train companies and journey planner suppliers to deliver a 'single source of the truth' that TPS can provide in these circumstances.

Network Change process

In 3.29 and 3.30 you refer to the fact that the System Operator has a key role in the Network Change process but is not always accountable for producing the documentation relating to it. It appears that this is an area where absolute clarity about the Routes' obligations and the System Operator's would be helpful.

Transport Focus
September 2017

Response to ORR's consultation on the overall framework for regulating Network Rail (PR18)

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to pr18@orr.gsi.gov.uk by **21 September 2017**.

Full name	Amanda White
Job title	Head of Rail
Organisation	TfGM
Email*	
Telephone number*	

*This information will not be published on our website.

Question 1 (Chapter 3):

Do you agree with our proposed use of scorecards in CP6?

TfGM support this measured outcome based approach to managing Network Rail.

It is important that the scorecards reflect Network Rail's delivery against stakeholder outcomes, including funders and customers, against realistic and challenging targets. The areas of measurement / KPI need to be varied, balanced and comprehensive, addressing the full range of stakeholder needs. It would be particularly valuable if those measures can be benchmarked against other routes, pan industry and other industries as appropriate.

Question 2 (Chapter 3):

Do you have any comments on what scorecards should include in order to make them balanced (recognising that there is a limit to how much can be included on a scorecard)?

TfGM would recommend a balanced approach based on qualitative principles such as EfQM which would enable Network Rail to understand their business better focus efforts. In line with this, principle measurements would cover at least:
- Business results (to include traditional measures such as performance, asset management, transport integration and efficiency and programme milestones)
- Customer results (to include funders and wider stakeholders)
- People results (employee satisfaction)
- Society results (including community and air quality measures)

This would be especially useful if split into measures on a separate route and SO basis, making full use of reputational incentives and as a motivator for good performance and good results.

As a client / stakeholder TfGM would like to see scorecards include the following:
- a measure of effective management of stakeholder and political reputational risk
- a measure of success against delivery of key stakeholder milestones measured in both time and money
- A measure of client / stakeholder satisfaction - ideally understood at both a route and national level. This could be potentially measured via a customer/ stakeholder survey (similar to TOCs)
- a measure of process effectiveness and efficiency (LEAN) - preferably including a qualitative measure by clients/ stakeholders
- joint measures where there are clear cross-boundary or cross transport issues, such as travel demand management and custo9mer information.

Question 3 (Chapter 3):

What are your views on our proposed approach to specify a small number of measures and two regulatory minimum floors for route scorecards, in order to leave Network Rail with greater flexibility to satisfy its customers' needs?

The number of measures needs to balance key customer/ client/ stakeholder outcomes against a manageable, small number of goals. TfGM support the ideal of keeping this simple as long as this does not come at the detriment of holding Network Rail accountable for delivering against all areas of their business. This should include vital internal measures such as people, which drive effectiveness as a business as well as outputs which are most important to us in terms of delivery (time and money) and client / stakeholder satisfaction.

There is a need to measure and understand client satisfaction, without this there is a risk that scorecard outcomes are delivered at the expense of stakeholder relationships. The measures also need to reflect the success in delivering a clear useable output rather than delivering on the process itself.

It is also important that these scorecards can be benchmarked against each other, whilst maintaining the flexibility which allows them to focus on local priorities.

TfGM welcomes the minimum floor for performance and network sustainability as minimum standards in these areas are key. This needs to be complemented by an asset management score focused on stations. Network Rail's asset management performance needs to be transparent and granular to ensure appropriate management of risk and more efficient investment plans, preferably split by asset type and geography.
This data should be comparable between routes to enable reputational competiveness between routes.
The consultation document refers to the fact Network Rail's customers are not fully exposed to Network Rail's costs (4.7) which serves as a barrier to them constructively informing Network Rail's relative priorities. To an extent this also applies to funders and stakeholders.

We would like ORR to consider how they could make this more transparent, through scorecards, the engagement / governance process and/or other appropriate means to support healthy debate and more holistic stakeholder contributions to the delivery, efficiency and effectiveness of Network Rail.

Question 4 (Chapter 4):

What role should customers and stakeholders (including end-users and their representative groups) play in influencing what routes/the SO commit to deliver, and what role should they play in supporting and challenging Network Rail to deliver on these priorities?

The role of customer and stakeholders (including direct clients) is vital. The governance frameworks for these relationships and involvement in the decision making process should be clear.

There should be a requirement for Network Rail to take account of other stakeholder plans when developing its own plans. For example, NR should be required to play an active role in developing and supporting through delivery the spatial frameworks or local plans that Local Authorities are delivering.

The role of customers and stakeholders will only be effective if it leads to shared decisions and genuine engagement. There is a risk that the focus on engagement could lead to activity for the sake of meeting requirements, rather than a genuine willingness to take on board stakeholder needs.

Question 5 (Chapter 4):

How do you think Network Rail routes and SO should engage with their customers/stakeholders and what are your thoughts on the principles and minimum expectations we propose?

It is important that any engagement is open and transparent, and is able to progress in a timely manner.

Customers / stakeholders need to be able to engage with a named contact who has sufficient authority to be able to provide answers to enquiries and drive actions / activity at Network Rail in response to any issues. Representatives of Network Rail should speak with one voice and wholly represent their organisation to present a united outcome to the external party they are liaising with. This is even more important when they are troubleshooting any issues.

We need to use new mechanisms such as scorecards to drive a customer/ client outcome based culture. This will drive a desire for Network Rail to truly understand their customers/ stakeholders, work with them fairly and collaboratively, put time into building honesty and trust and prioritising more effectively and locally according to stakeholder/customer priorities.

Using a qualitative outcome based framework such as EfQM would drive an examination of effectiveness of all elements of Network Rail's business and a focus on inefficiencies and issues which need airing and resolution. By subjecting Network Rail to some of the principles applied to TOCs through Franchise Agreements in areas of stakeholder management and qualitative business assessment it can help Network Rail to think more like a commercial organisation and to better understand their customers and to effectively benchmark against other industry partners.

Whilst we support the principles and minimum expectations set out, it is important that the regulation of Network Rail takes account of the outcomes that need to be delivered, rather than hitting targets through a process driven approach.

Any engagement with stakeholders need to take account of their reputational risk. If stakeholders are involved in setting targets, this shouldn't lead to any "blame" culture and all stakeholders need to be fully "bought into" outputs.

Question 6 (Chapter 4):

How should the quality of stakeholder engagement be assessed, and who is best placed to assess this?

Stakeholder engagement needs to be assessed on delivering outputs to the rail industry, not in carrying out the engagement itself. We feel it is impossible to impose a 'one size fits all' governance on this process but to let Network Rail adapt as they see appropriate and then measure the effectiveness of their ability to do this by monitoring the outcome. We believe this is most effectively monitored by a measurement of stakeholder satisfaction both regarding delivery and for engagement on specific elements where appropriate.

Question 7 (Chapter 5):

What are your views on the relevance and balance of the incentives we describe in this chapter, and the circumstances in which would it be most appropriate to apply them?

Network Rail incentives should be based on performance and delivering a railway that is fit for the customer. It is important that the incentives have 'teeth' and that any new client/stakeholder outcome based incentives added through this process have implications, good and bad, if they are successful or not.

Question 8 (Chapter 5):

What are your views on the format and content of publications and data that you would find most accessible and useful?

In general format and content of publications looks sensible.

It is important to highlight good performance and improvements on routes as well as underperformance. Highlighting good practice can help with information sharing and can be beneficial to areas of the network or business that are not operating as effectively.

There needs to be sufficient consistency in the assessment of the different routes to allow meaningful comparison and adoption of best practise by routes where performance may not be so good.

The way routes are split makes comparisons difficult, with arterial routes and branch lines represented in the same data. Further segmentation, in line with franchise and sub-franchise

areas would be incredibly beneficially at a local level. This would help us to understand good and bad practice and work closer with Network Rail to understand where to focus local investment to bring real performance improvement.

Question 9 (Chapter 5):

How should we reflect the level and quality of route and SO engagement with their customers/stakeholders in our monitoring, escalation and enforcement?

Network Rail must ensure that they engage with the relevant local Transport Authorities and sub-national transport bodies from an early stage in the process to allow for a high quality of engagement to develop.

We would like to see more direct accountability to stakeholders, especially where 3rd party funding is being provided.

TfGM would recommend the implementation of measures as per our answer to Question 2 to monitor stakeholder outcome 'successes. Where scores are particularly low (or high) escalation should involve stakeholders themselves, to understand why and show full accountability on behalf of Network Rail. A lessons learned exercise should be carried out, preferably face-to-face with all relevant parties together. ORR should consider their unique position to facilitate this interface as a 'mentor' for Network Rail, either at this point or before it as the 'neutral' 3rd party. This could avoid escalation to the point of licence breaches or requests for formal intervention in relationships which have deteriorated to an unproductive point or complaints about Network Rail. It could also help facilitate the culture change required to allow Network Rail to work even more collaboratively going forward.

There needs to be real financial consequence to Network Rail for these stakeholder and customer measures to drive effective change, efficiency outcome focus at every level of Network Rail. Any 'penalties' (which may be in the form of reduced performance related payments rather than actual penalty payments) should be ring fenced and spent on improvements in the route for passengers. These should be formulated and assessed in conjunction with the route stakeholders and customers to allow a chain of continuous improvement and a subsequent rise of scores on an ongoing basis.

Question 10 (Chapter 5):

How should we respond if Network Rail fails to meet scorecard targets agreed with customers? Specifically, what should be the balance between designating scorecard targets as 'reasonable requirements' (creating specific enforceable expectations on Network Rail), and relying on our overall assessment of Network Rail's performance against an overarching licence condition?

We feel that the true benefit of bringing in scorecards for devolved routes is to incentivise Network Rail to be accountable for local outcomes, which is vital for us. The value of the following incentives for NR should not be overestimated:

- Management of 3rd party reputational and political risk
- Meeting project milestones for projects where we (can only) use them as a supplier
- 3rd party satisfaction with their service

To this end we feel it is vital that you create specific enforceable expectations on Network Rail, here referred to as 'reasonable requirements' in order to make the scorecard system a success and not just a Network Rail tick box exercise.

Question 11 (Chapter 6):

What are your views on the approach we set out for managing change? In particular, do you think our proposed level of involvement, and role for stakeholders, are appropriate?

It is important that the process for managing change is proportionate to the change that is being made, i.e. scalable governance for different projects. Local stakeholders should also be involved in the process from an early stage to ensure that the full requirements for approvals or design are understood.

The approach looks sensible. As you identify it is vital as a funder and a stakeholder that change control is (proportionately) transparent. We feel that this should also be inclusive, in so much that changes should be made in agreement with stakeholders not as a briefing once the decisions have been made. We want to be consulted not informed and where appropriate funder/stakeholder ratification should be part of the process.

Question 12 (Chapter 6):

Are there other options for managing change you think we should consider?

Network Rail is a large organisation which has recently been restructured. It is vital they (we) quickly build up an understanding of the new organisation in order to manage change effectively in the future. This is in line with our recommendation to introduce a requirement for a qualitative business measure such as EfQM and to reflect this in the scorecard to monitor success against elements of this framework.

Question 13 (Chapter 6):

Are there any other types of change you think we should consider?
Wholesale industry directional change and how Network Rail respond effectively to this.

Are there any other points that you would like to make?
Network Rail are in a unique position in the industry in that they (should) engage with all partners/ stakeholders/ customers on a national basis and formulate a picture of the whole. The devolved routes are an opportunity to drill down into local issues, develop strong collaborative relationships, unite cross-party objectives and priorities and bring this together to speak as one voice for the industry. Traditionally local issues have been compromised to achieve national goals, the devolved routes still centre on a 'main line' and do not sufficiently align with city franchise areas. There is still no single senior Network Rail representative for the north of England and we continue to support the proposal for a North of England Programme Director. It is vital Network Rail effectively engage with and listen to local bodies who better understand local needs and issues and can assist in the development of solutions to local problems.

Response to ORR's consultation on the overall framework for regulating Network Rail (PR18)

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to pr18@orr.gsi.gov.uk by **21 September 2017**.

Full name	Alan Smart
Job title	Principal Planner, Rail Development team
Organisation	Transport for London
Email*	
Telephone number*	

*This information will not be published on our website.

Question 1 (Chapter 3):

Do you agree with our proposed use of scorecards in CP6?

The proposed use of scorecards is appropriate in TfL's opinion. It is critical that the targets specified within the scorecards are disaggregated to operator level at least to ensure that individual operators can hold the Routes and the System Operator to account for their performance. Without this level of detail there is a risk that poor performance affecting a particular (smaller) operator could be masked by better overall performance, leaving smaller operators with little or no influence over the direction and priorities of the Routes and the System Operator. This is particularly pertinent where geographic Routes are closely aligned with one, dominant operator e.g. Anglia and the Greater Anglia franchise. There is an obvious risk here that Network Rail focuses on the requirements of their dominant operator to the exclusion of other parties. The Regulatory framework adopted for CP6 must mitigate this risk.

Question 2 (Chapter 3):

Do you have any comments on what scorecards should include in order to make them balanced (recognising that there is a limit to how much can be included on a scorecard)?

The concept of balance should include a reasoned balance between performance and capability, to ensure that requirements for additional capacity and frequency are given due weight in the planning process alongside consideration of train service performance. The System Operator should be incentivised to consider the relationship between demand, delay and train service volume carefully to ensure that the correct decisions are made when access to the network is planned. A Generalised Journey Time (GJT) measure could potentially be used on the scorecard to enable this as GJT can encompass demand, performance and frequency/capacity in one measure and can be obtained from industry standard models such

as Moira 2. Such a GJT measure could be used to represent the value of planned enhancements to the network as well as to prevent the deterioration of GJT over time due to an excessive focus on performance and associated constraints on train service volumes and frequencies.

Question 3 (Chapter 3):

What are your views on our proposed approach to specify a small number of measures and two regulatory minimum floors for route scorecards, in order to leave Network Rail with greater flexibility to satisfy its customers' needs?

The approach proposed appears to be unduly relaxed and gives Network Rail considerable flexibility to set targets relating to their own performance. It is unlikely that customers will be able to influence Network Rail to set itself sufficiently challenging targets without regulatory oversight and intervention. The ORR should therefore be more proactive in setting challenging measures of success for Network Rail, liaising with its customers to determine reasonable targets and holding Network Rail to account for their delivery.

Question 4 (Chapter 4):

What role should customers and stakeholders (including end-users and their representative groups) play in influencing what routes/the SO commit to deliver, and what role should they play in supporting and challenging Network Rail to deliver on these priorities?

Customers and stakeholders, including funders, should be able to influence the Routes and the System Operator to deliver their own plans and proposals where these are feasible, relevant and funded as part of the engagement process. Customers and stakeholders should also provide oversight of delivery, challenging timescales and costs through benchmarking and informed commentary where they have the relevant experience as well as suggesting and providing alternative delivery routes where these are more cost effective.

Question 5 (Chapter 4):

How do you think Network Rail routes and SO should engage with their customers/stakeholders and what are your thoughts on the principles and minimum expectations we propose?

Achieving meaningful engagement is key. The Routes and the System Operator should be proactive in their approach to ensure that customer and stakeholder/funder requirements are sought and understood in a timely fashion, enabling their incorporation into Network Rail's own plans and processes. The Routes and the System Operator must be flexible in their approach to enable the most efficient modes of project delivery and day to day performance. Challenges to delivery should be discussed in a transparent manner to enable their effective resolution.

It is also important that the Routes and the System Operator take a strategic overview of customer/stakeholder requirements, assessing collective requirements (for example in the area of power supply) and proposing effective solutions these. This is particularly important where Network Rail has interfaces with networks provided by other parties, including the networks operated by TfL (London Underground, the East London Line and Crossrail). Network Rail should proactively seek to understand the plans for these networks across all asset types to ensure that there is integrated planning of the renewal and upgrading of these assets to achieve the best result, both in terms of service performance and financial efficiency. This is particularly pertinent in relation to London Underground's Four Lines Modernisation programme which requires the overlaying of new signalling equipment on the routes to Richmond and Wimbledon on sections of line that are owned by Network Rail. The failure to integrate planned track renewals with this programme of work could ultimately increase the failure rate of the new signalling technology. It is important that Network Rail takes full account of such issues in its planning process.

Further consideration needs to be given to the proposal that each Operator should have a lead Route through which their interface with Network Rail will be managed. TfL's rail concessions (London Overground and TfL Rail/the Elizabeth line) are ill suited to this approach because they have a significant presence on a variety of different Routes that requires direct engagement with each Route i.e. Anglia, South East & London North Western for London Overground and Anglia & Western for TfL Rail/the Elizabeth line. The situation is further complicated by the need to integrate the Routes with the infrastructure managed by TfL (the Crossrail Central Operating Section, the East London Line Core and London Underground). The regulatory approach adopted for CP6 should be adjusted to ensure that London Overground, TfL Rail/the Elizabeth line and London Underground can retain direct contacts with the various Routes that they serve, in the absence of any alternative "virtual" solution focused on train operations in the London area. Placing the Overground, TfL Rail and London Underground with the Freight and National Operator Route would be inappropriate as this would provide insufficient focus on the intensive local requirements of these operations.

Question 6 (Chapter 4):

How should the quality of stakeholder engagement be assessed, and who is best placed to assess this?

The ORR should review the quality of stakeholder engagement to ensure the independence of the review process, through structured interviews of key stakeholder staff or other processes such as questionnaires. The ORR should be prepared to intervene when stakeholders express legitimate dissatisfaction with Network Rail's approach, either generally or in relation to a specific project. The ORR should also engage in the liaison process on an informal basis to provide guidance and support to stakeholders on a continuous basis.

Question 7 (Chapter 5):

What are your views on the relevance and balance of the incentives we describe in this chapter, and the circumstances in which would it be most appropriate to apply them?

The approach proposed does appear to rely heavily on reputational incentives and the desire of staff to perform well which may not prove effective in practice, particularly in the context of a monopoly service provider. It is therefore important that the ORR continues to set Network Rail some financial incentives and penalties to govern the organisation's behaviour at the corporate level. For example it is important that performance targets are set across the three main types of passenger rail operation (Inter-city, Regional and London & the South East) to ensure that a focus is retained on performance at the corporate level that will filter down to all parts of the organisation, driving management focus.

Question 8 (Chapter 5):

What are your views on the format and content of publications and data that you would find most accessible and useful?

Disaggregated data is always most useful, at least to the operator level and preferably to the sub operator level. This approach ensures that problematic areas can be exposed and addressed using an evidence led approach, and not hidden amongst more aggregated statistics.

Question 9 (Chapter 5):

How should we reflect the level and quality of route and SO engagement with their customers/stakeholders in our monitoring, escalation and enforcement?

Where engagement has been of a high quality and genuinely focused on improvements this needs to be accounted for by the enforcement process. Monitoring, escalation and enforcement should be more rapid and severe where this is not the case and the Route or System Operator has acted in a negative or obstructive fashion.

Question 10 (Chapter 5):

How should we respond if Network Rail fails to meet scorecard targets agreed with customers? Specifically, what should be the balance between designating scorecard targets as 'reasonable

requirements' (creating specific enforceable expectations on Network Rail), and relying on our overall assessment of Network Rail's performance against an overarching licence condition?

Scorecard targets should be "reasonable requirements" where they have a major impact on stakeholder/customer interests, i.e. where they are focused on the delivery of performance/journey time/capacity targets and major projects that influence these or other key stakeholder objectives. The delivery of major projects to the planned timescales and budget should be regarded as a "reasonable requirement".

Question 11 (Chapter 6):

What are your views on the approach we set out for managing change? In particular, do you think our proposed level of involvement, and role for stakeholders, are appropriate?

It is important that the views of stakeholders are taken into account over changes (particularly adjustments to budgets) that may have an effect on the delivery of projects and performance that are critical to their interests. The Routes and the System Operator should continually be challenged over the efficiency and value of their delivery processes and proposals to ensure that any changes to funding do not adversely affect stakeholder interests, as far as is practicable.

Question 12 (Chapter 6):

Are there other options for managing change you think we should consider?

No comment.

Question 13 (Chapter 6):

Are there any other types of change you think we should consider?

Further consideration needs to be given to how enhancements are managed. Whilst these may now fall outside the initial Periodic Review Process due to their absence from the HLOS it is nonetheless important to ensure that agreed enhancements are subject to regulatory oversight after they are incorporated into Network Rail's plans. Network Rail needs to be held accountable to customers and stakeholders for project delivery to the agreed timescales and

cost, with redress being available if this does not happen. This is important if operators, stakeholders and funders are to continue to have the confidence to invest in the network.
Are there any other points that you would like to make?
No.

Thank you for taking the time to respond.

Office of Rail and Road
1 Kemble Street
London
WC2B 4AN

PR18@orr.gsi.gov.uk

21 September 2017

Response to the ORR`s consultation on the overall framework for regulating Network Rail

Thank you for the opportunity to comment on the ORR`s PR18 consultation on the overall framework for regulating Network Rail. We have set out our position on the issues raised very clearly in a series of recent discussions with the ORR and in previous consultation responses. However, I thought it would be useful to summarise these in this letter.

Route-level regulation and Scotland`s Railways

As a consequence of executive devolution under the 2005 Railways Act, over the last ten years the Scotland route has had a significant degree of route-level regulation, with the route commanding a greater degree of empowerment than other Network Rail (NR) routes in England and Wales. This operational devolution has put the Scotland route in a good position, enabling it to work closely with the industry, both in terms of alliancing arrangements between NR and the ScotRail franchisee and indeed the broader arrangements in place with freight and national passenger operators, to support the development and implementation of more customer-focussed solutions that are better tailored to local conditions and priorities.

Such collaborative whole-industry approaches to meeting local needs is in alignment with one of the Scottish Government`s key objectives for the railway in PR18; namely to ensure that the regulatory framework for rail in Scotland is developed with the **needs and priorities of customers and funders at its heart** and is sufficiently flexible to adapt to local circumstances and priorities.

We note that there is a general consensus of support within the industry for the principle of increased local autonomy and collaborative working in the operation of the railway to ensure that customers` needs are met. Given the success that this has brought to the Scotland route, we broadly welcome the principle of route based regulation and increased local decision-making being delegated to individual routes across the GB network subject to several important caveats.

Scotland's experience with a now mature devolved route structure must be consolidated and strengthened further without distraction from activity elsewhere in the GB network. This was a principle clearly articulated in the Scottish Ministers' HLOS for CP6 and we would appreciate

An agency of
Buidheann le

The Scottish Government
Riaghaltas na h-Alba

assurance from the ORR on this point; that the regulatory framework at a policy and practical level is sufficiently flexible to accommodate this.

We would again, and in line with earlier consultation responses, reiterate our position that the regulatory framework should support the further devolution of NR Scotland route, in order to provide a greater whole-system approach and accountability to the Scottish Parliament, and enable all rail services to maximise their full potential through collaboration and more localised bespoke solutions. It remains our view that such a structure could be introduced with the appropriate safeguards in place to protect the interests of freight and passenger operators.

Route requirements and scorecards

The overall regulatory framework needs to enable,, support and incentivise NR in Scotland to focus fully on the efficient delivery of the outcomes specified by the Scottish Ministers   The system of regulation, including monitoring and enforcement, put in place by the ORR must bring reassurance to the Scottish Ministers that this will be the case.
We note the likely use of NR scorecards to measure performance against outputs at route level. While we understand the concept of scorecards as a tool to measure and track performance and we accept that the introduction of route scorecards is a new innovation adopted in 2016/17 for the first time, we would like to see more genuine engagement by NR with funders and passenger and freight train operators in devising their route scorecards and measures to increase their effectiveness. We understand from the consultation that the ORR is placing significant emphasis on the role of scorecards therefore meaningful engagement is essential if route level scorecards are to be a credible and fundamental means of measuring performance against the things that matter to NR`s customers, funders and the railway`s users. It should also be an important step in satisfying the governance arrangements put in place post reclassification.

We have concerns around the proposed use of comparative measures on route scorecards, their purpose and value, the potential they have for perverse incentives, or unintended consequences and would highlight that there is no point in comparison for comparison's sake. The value in comparative measures is perhaps clearer for the other GB geographic routes where the Secretary of State may wish to be able to compare between geographic routes within his jurisdiction. However, there is less obvious utility in comparing measures on a Scotland route geographic scorecard with those of the other GB geographic scorecards as the comparisons could have less meaning, or worse, compromise clear strategic intent.

Any measures on the Scotland Route Scorecard and other Scorecards which are over and above the very clear outputs reflected in the Scottish HLOS must not deflect from or compromise the essential and clearly stated outputs from our HLOS. It was not clear from the consultation how any potential or actual conflicts would be identified, risks mitigated and opportunities maximised in the development of scorecards, again an important consideration given the intended role for scorecards in CP6.

It was also not clear from the consultation how our HLOS requirements with respect to freight and cross-border operations would ultimately be reflected in the suite of scorecards, where for example a freight journey time improvement target could be best reflected and given effect in the geographic route scorecard, and the FNPO scorecard and the system operator scorecard.

The use of NR's management incentive scheme and its direct link to delivery should be a useful mechanism properly to incentivise performance against the measures on a scorecard. We would be concerned if the HLOS outputs and their measures on the relevant scorecards were

An agency of
Buidheann le

The Scottish Government
Riaghaltas na h-Alba

not directly linked to the management incentive scheme. This would break a clear line of sight between properly incentivised performance and alignment to NR's funder in Scotland.

Possible measures of the System Operator's Performance

There is a number of perceived system operator functions that the Scottish Government believes could be more effectively carried out if they were devolved to the Scotland route. This includes areas such as strategic timetabling, planning and capacity utilisation. As iterated previously the Scottish Government supports further route devolution, including those related to the system operator function, unless there was a clear and compelling case to retain central control. Only some 9% of passenger rail journeys from and into Scotland cross the border.

The system operator function has both a spatial and sectoral dynamic to it which may not always benefit from a consistent approach across the whole of the GB network. The right approach must be found to balancing differing needs including those of Scottish Ministers and optimum alignment between system operator functions and local priorities. It is not clear from the consultation how the system operator function will be measured in relation to how it services, or serves, the different geographic routes. The systems operator must support the SG in its strategic aims, influence, encourage and compel NR's centre to engage effectively with the Scotland Route, be capable of managing the impacts of enhancement programmes on services and timetables, and consider service and passenger impacts at a much earlier stage when planning renewals and other works, ultimately ensuring the minimisation of disruption. We would be very concerned if there was a perceived or actual increased role for the centre of NR.

We would also underline that to be effective the outputs of good system operation must correlate directly to the delivery of the HLOS and the broader social, economic and environmental priorities of the SG as the principal funder of railway activities in Scotland and we would look to the ORR with considerable regulatory experience to provide assurance on this.

Other considerations

We have been consistent and clear that any movement towards increased route-based regulation across the entire GB-wide network must respect the integrity of the current devolved settlement for Scotland, the separate funding arrangements for Scotland and the established principle of a separate Periodic Review determination for Scotland i.e. there can be no distribution of funds from the Scotland route to any other NR route including the emerging GB-wide routes without the clear and express agreement of Scottish Ministers. We would welcome further details and absolute clarity on how the ORR intends to regulate for this given NR`s legal status as a single company.

The role of NR's customers/stakeholders and the ORR in monitoring and enforcement needs to be more considered and clearly articulated and specified. It is the clear role of the regulator to hold NR to account and through this provide assurance to funders including Scottish Ministers on NR's performance. No other party, no other customer or stakeholder should be expected to fulfil this role of holding NR to account; this is clearly a different role to that of working with local stakeholders and ensuring alignment to local priorities and needs.

Given the unique position of the Scottish Government and some of our more fundamental policy level concerns and questions relating to the principles and theory behind the ORR's consultation we are not responding to the specific questions or using the pro-formas available. We feel that a better use of our collective experience and time would be to continue bi-lateral discussions and have a more focussed session with the ORR before we are able to provide opinion and comment on details.

Conclusion

We reiterate the importance of an effective regulatory framework in driving the right behaviours and decision-making that will deliver a railway that is available and reliable and one that will align with the strategic priorities of the Scottish Government. We expect a flexible approach from the ORR which works as well for the Scotland Route and for the Scottish HLOS, as it does for other funders. Scottish Ministers also expect an approach which consolidates on progress in the current control period, learns from the Scottish experience of route-based regulation, and genuinely delivers in practice on the stated aims of a safer, more efficient and better used railway delivering value for passengers, freight customers and taxpayers in control period 6 and beyond.

We look forward to continued work with the ORR to achieve this.

Yours sincerely,

John Provan
Head of Rail Strategy and Funding

An agency of
Buidheann le

The Scottish Government
Riaghaltas na h-Alba

Response to ORR's consultation on the overall framework for regulating Network Rail (PR18)

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to pr18@orr.gsi.gov.uk by **21 September 2017**.

Full name	Thomas Ellerton
Job title	Researcher
Organisation	Urban Transport Group
Email*	
Telephone number*	

*This information will not be published on our website.

Question 1 (Chapter 3):

Do you agree with our proposed use of scorecards in CP6?

Yes, so long as the scorecards are sufficiently challenging, while being realistic. Stakeholder engagement will need to be robustly monitored to ensure the scorecards actually reflect their priorities as well as those of Network Rail. We want to ensure that this approach is designed to push the level of performance Network Rail delivers, rather than accepting the current level of performance.

Whilst the devolved approach of using geographical scorecards is welcomed and is vital in a devolved context, it must be ensured that challenges and potential conflicts are resolved where stakeholders are served by multiple routes.

Question 2 (Chapter 3):

Do you have any comments on what scorecards should include in order to make them balanced (recognising that there is a limit to how much can be included on a scorecard)?

The areas set out are relatively detailed, however, we feel that the following should be included:

- Measure of reputational risk for stakeholders
- Measures around 3rd party funders (how will failure / success of these impact on the Network Rail scores?)
- Measure of client satisfaction
- Joint measures where there are clear cross-boundary issues.

Question 3 (Chapter 3):

What are your views on our proposed approach to specify a small number of measures and two regulatory minimum floors for route scorecards, in order to leave Network Rail with greater flexibility to satisfy its customers' needs?

There is a need to ensure that Network Rail is more responsive to the needs of devolved transport authorities as well as DfT and ORR given that rail devolution is now in place (or will be in place) on much of the regional, local and urban rail network..

It is important to understand who Network Rail regards as the key local stakeholders and customers, as this is not necessarily clear. Engaging with the key actors is vital if this is to be a success.

Balancing sub-national and national measures on scorecards can improve their value and utility, and also help ensure that Network Rail is more accountable to local customers and stakeholders.

There is a need to measure and understand client satisfaction, otherwise Network Rail could focus on achieving specific scorecard outcomes at the expense of adapting to client needs and providing outputs that meet their requirements. The measures also need to reflect the success in delivering a clear useable output rather than delivering on the process itself.

Question 4 (Chapter 4):

What role should customers and stakeholders (including end-users and their representative groups) play in influencing what routes/the SO commit to deliver, and what role should they play in supporting and challenging Network Rail to deliver on these priorities?

We believe that there is an important role for customers and stakeholders in supporting and challenging NR to deliver on its commitments.

It is important that Network Rail recognises the already significant and growing role of transport authorities at both the city region (e.g. Combined Authorities) and pan-regional level (e.g. Rail North/Transport for the North and West Midlands Rail). These bodies reflect the long term needs of specific economic geographies (compared to the short term perspectives of TOCs and ad-hoc funders) and have a strong interest in both the long-term success of the railways and in ensuring that the railways contribute to wider social and economic outcomes.

Local and sub-national bodies also have good knowledge of local rail infrastructure, operations, and in some cases, cost drivers that may not always be so readily available to national bodies. This means that local and sub-national bodies sit in a prime position to work with Network Rail in influencing what the routes/the SO should commit to deliver.

Once local objectives have been set, Network Rail should be accountable to local stakeholders and customers in much the same way that they are for centrally set targets. Network Rail needs to set out clear processes for engagement which brings stakeholders into the process at an

early stage. The role of customers and stakeholders will only be effective if it leads to shared decisions and genuine engagement.

Question 5 (Chapter 4):

How do you think Network Rail routes and SO should engage with their customers/stakeholders and what are your thoughts on the principles and minimum expectations we propose?

Customers / stakeholders need to be able to engage with a named contact who has sufficient authority to be able to provide answers to enquiries and drive actions / activity at Network Rail in response to any issues.

The principles and minimum expectations are OK, but it is important that the regulation of Network Rail takes account of the outcomes that need to be delivered, rather than hitting targets through a process driven approach.

Question 6 (Chapter 4):

How should the quality of stakeholder engagement be assessed, and who is best placed to assess this?

Stakeholder engagement needs to be assessed on delivering outputs to the rail industry, not in carrying out the engagement itself. We feel it is impossible to impose a 'one size fits all' governance on this process but to let Network Rail adapt as they see appropriate and then measure the effectiveness of their ability to do this by monitoring the outcome. We believe this is most effectively monitored by the outputs that are delivered and a measurement of stakeholder satisfaction both regarding delivery and for engagement on specific elements where appropriate.

Question 7 (Chapter 5):

What are your views on the relevance and balance of the incentives we describe in this chapter, and the circumstances in which would it be most appropriate to apply them?

Network Rail incentives should be based on performance and delivering a railway that is fit for the customer.

We are happy with the balance of incentives.

Question 8 (Chapter 5):

What are your views on the format and content of publications and data that you would find most accessible and useful?

The format and content of publications looks sensible.

It is important to highlight good performance and improvements on routes as well as underperformance. Highlighting good practice can help with information sharing and can be beneficial to areas of the network or business that are not operating as effectively.

There needs to be sufficient consistency in the assessment of the different routes to allow meaningful comparison and adoption of best practise by routes where performance may not be so good.

The way routes are split can sometimes make meaningful comparisons difficult, with arterial routes and branch lines represented in the same data. Further segmentation, in line with franchise and sub-franchise areas would be incredibly beneficially at a local leave. This would help us to understand good and bad practice and work closer with Network Rail to understand where to focus local investment to bring real performance improvement.

Question 9 (Chapter 5):

How should we reflect the level and quality of route and SO engagement with their customers/stakeholders in our monitoring, escalation and enforcement?

Network Rail must ensure that they engage with the relevant local Transport Authorities and sub-national transport bodies from an early stage in the process to allow for a high quality of engagement to develop.

It is important to understand where engagement is not in line with expectations for either Network Rail or for the customers/stakeholders.

Having a formalised way of escalating any problems allows for a systematic response, which should be based on best practice from other areas of the business. It is important that this is geared towards finding a solution to the problem and developing the level of engagement.

Measurement of engagement is one thing, but we would like to see more direct accountability to stakeholders, especially where 3rd party finance is being provided.

Question 10 (Chapter 5):

How should we respond if Network Rail fails to meet scorecard targets agreed with customers? Specifically, what should be the balance between designating scorecard targets as 'reasonable requirements' (creating specific enforceable expectations on Network Rail), and relying on our overall assessment of Network Rail's performance against an overarching licence condition?

We have previously argued that Network Rail is largely unaccountable to sub-national stakeholders and customers. The introduction of locally set targets and incentives onto scorecards can help to change this and introduce more accountability, but this will only happen if outcomes are monitored and any poor performance is corrected.

For this reason we feel that local scorecard targets should be given the same weighting and importance as nationally set targets and should require the same level of response from Network Rail. With local bodies now helping to specify franchises and service enhancements, it is important that they can have confidence that Network Rail targets will be met, as improvements may depend on these.

Sub-national bodies need to have assurances over the targets and improvements that are set so that they can plan for these and ensure that the benefits are realised. Conversely, if scorecard objectives are not met, it could prevent local railways from operating efficiently and delivering benefits to customers.

Question 11 (Chapter 6):

What are your views on the approach we set out for managing change? In particular, do you think our proposed level of involvement, and role for stakeholders, are appropriate?

It is important that the process for managing change is proportionate to the change that is being made and that local stakeholders are involved in the process from an early stage.

The approach looks sensible

Question 12 (Chapter 6):

Are there other options for managing change you think we should consider?

Question 13 (Chapter 6):

Are there any other types of change you think we should consider?

No.

Are there any other points that you would like to make?
Network Rail must ensure that they engage with the relevant sub-national transport bodies and local transport authorities through this process if they are to get the maximum benefit out of locally set objectives on scorecards. Local bodies often have a much greater understanding of how local transport networks operate and have a vested interest in the long term success of the railways.   It is therefore important to make sure that Network Rail capitalises on this knowledge and this transfers into the setting of objectives and targets. Locally agreed objectives must be given the same level of status, monitoring and enforcement as nationally set objectives, providing local stakeholders with as much certainty as possible that they will be met. This is vital when planning future improvements to rail services and the functioning of the railway.

Thank you for taking the time to respond.

Ken Skates AC/AM
Ysgrifennydd y Cabinet dros yr Economi a'r Seilwaith
Cabinet Secretary for Economy and Infrastructure

Llywodraeth Cymru
Welsh Government

Joanna Whittington
Chief Executive, Office of Rail and Road

CC: pr18@orr.gsi.gov.uk

22 September 2017

Dear Joanna

I am writing to provide you with my views on the Office of Rail and Road's consultation on the overall framework for regulating Network Rail.

When I wrote to you last year on the subject of your initial consultation, I highlighted the need to strengthen the Welsh Government's role in respect of Network Rail's activity within the Wales route – particularly in the context of further devolution and ambitions to develop the south Wales Metro.

I very much welcome the progress which has been made so far to develop the detailed arrangements for the next control period. A number of the proposals could strengthen accountability and control in respect of rail within Wales and could meaningfully improve transparency.

However, I would like to take this opportunity to highlight some of the areas where further refinement or consideration would be appreciated.

I note that as part of the move towards route-level regulation, costs will be clearly attributed to routes, and the determination will include settlements for each route in lines with these assumed costs and outputs. I also note that it is planned for route settlements not to be ring-fenced to enhance flexibility. However, it will be crucial that care is taken to ensure the right mitigations are in place so that the repurposing of any funds allocated to the routes do not impact upon the delivery assumptions underpinning third-party funded projects.

The proposal to fund the system operator activities based on costs charged to routes will also need careful handling. These charges to the routes should be transparent and readily available for stakeholders and funders to access in order to understand the true costs of the network. Also, the national-level System Operator function should not be configured in a way which will be likely to compromise the achievement of greater devolution in Wales emerging from both current and future proposals.

I welcome the approach to strengthen the link between Network Rail's delivery and customer needs through the increased usage of route-level scorecards as a basis for performance management. However, the current scorecards which have been developed for CP5 are not easily available, and the revised approach should ensure the scorecards are readily available to all interested parties.

In reflection of the increased importance of scorecards as a method of holding Network Rail to account for their performance, extra care must be taken to ensure they are meaningful and challenging. Any link established to pay bonuses for management performance must not incentivise Network Rail to seek to influence outputs which are not sufficiently challenging. The majority of outputs captured by scorecards should be able to meaningfully be compared across routes.

Additionally, there should be an expectation that the delivery of enhancements schemes will be added to scorecards as part of their regular review. This would help increase confidence for third party funders that Network Rail will be held to account for the delivery of projects, particularly if scorecards are to be used to assess compliance against Network Rail's overall licence agreement and linked to performance pay.

In addition to the scorecards, I welcome the proposals to enhance the level of stakeholder engagement more broadly. The intention to assess and grade the extent to which route Strategic Business Plans reflect engagement with stakeholders will be critical in order to understand to what extent plans reflect the wider priorities of the area served.

In respect of monitoring and enforcement, your document sets out options for monitoring Network Rail against the network licence, including consideration of assessing Network Rail's delivery overall against the licence conditions, or with reference to more specific outputs within the final determination. My view is that the approach should reflect both of these areas, with Network Rail held to account for compliance with its licence and for specific regulated outputs.

The recognition of the need to capture the impact of enhancement schemes on wider railway activity, such as renewals and maintenance, within change control procedures is welcome. Furthermore, control procedures should be implemented which enable enhancement schemes to be introduced to route plans for the control period throughout its life which will ensure plans remained joined up and achievable. Change control procedures will need to be transparent and, where appropriate, informed by robust stakeholder engagement.

Yours sincerely,

Ken Skates AC/AM
Ysgrifennydd y Cabinet dros yr Economi a'r Seilwaith
Cabinet Secretary for Economy and Infrastructure