

PR23 team
Office of Rail and Road

By email

09 June 2023

To whom it may concern,

Rail Partners' response to PR23 consultation on ORR's Holding Network Rail to Account policy

Rail Partners welcomes the opportunity to respond to this consultation on ORR's Holding Network Rail to Account policy on behalf of the private sector owning groups of passenger operators and our freight operator members.

In our response to the consultation on ORR's Policy Framework earlier in the Periodic Review, we recommended some changes to the freight elements of the tiered framework ORR will use to assess Network Rail's performance in CP7. We are supportive of the updated framework that ORR is now proposing which is referenced in this consultation – including freight growth as a Tier One success measure. Although Tier One measures will rightly take precedence in ORR's assessment of Network Rail, continued monitoring of wider metrics will continue to be important.

The Holding to Account policy is an essential part of the regulatory framework that ensures Network Rail is delivering a safe, high-performing railway which represents value for money to the taxpayer. A failure to deliver a railway that passengers and freight customers) can depend on during CP7 could have significant consequences for the recovery of passenger demand following the pandemic and the realisation of freight growth that government committed to in the *Plan for Rail* white paper.

The consultation document outlines a three-tier approach that ORR will use as it holds Network Rail to account. This includes details on when the ORR may decide to escalate concerns or take enforcement action. While we understand that ORR will gather and publish information on the performance of Network Rail through its routine monitoring, Rail Partners would welcome a more agile response from the regulator when there are signs of underperformance, particularly when these are raised by train operators or rail users. By taking a more proactive approach, it will ensure that issues are dealt with promptly before they become widespread and will drive a greater focus on day-to-day delivery within Network Rail.

We note that despite having a range of regulatory levers at your disposal including requiring Network Rail to develop improvement plans when things go wrong, hosting hearings, and issuing financial penalties, the ORR has rarely used these mechanisms in recent Control Periods despite periods of poor performance. As outlined in the consultation, these levers will continue to be available to the regulator in CP7 and it is important that ORR uses them where necessary to drive improvements and hold Network Rail to account when it fails to take satisfactory action. If these levers are not having the desired effect, then a wider review of the regulatory mechanisms used by the ORR to hold Network Rail to account should be considered.

A strong focus on network performance through ORR's Holding Network Rail to Account policy for CP7 is vital. Current levels of performance affecting both passenger and freight services are not acceptable with both the Public Performance Measure and Freight Delivery Metric at some of their

lowest points since records began. While we recognise that some of the explanatory factors underpinning current levels of performance are outside of Network Rail's control, such as the backlog of engineering work caused by Covid and the impacts of industrial action, Network Rail must be challenged to put things right. We have previously expressed concerns with ORR that PR23 risks 'baking in' current levels of performance into the future regime which would send entirely the wrong message to Network Rail as it effectively accepts poor performance. It is imperative that ORR closely monitors infrastructure performance to ensure that it recovers both through the remainder of CP6 and into CP7 – this includes catching up with maintenance work and a renewed focus on improving network resilience against the impacts of climate change. There have been several cases in this control period where key lines have been closed, often for prolonged periods, as a result of asset degradation which has caused significant disruption to passenger and freight services. Unless network resilience is improved, there is a risk that customers' perception of rail's reliability will be reduced permanently, driving modal shift to more carbon intensive modes such as road.

We would also encourage ORR to pay attention to route capability in CP7. In the current control period, there have been instances where Network Rail has failed to provide infrastructure at the published capability that it has been funded to maintain. This has prevented the introduction of new services and there are concerns that this could become a wider issue without close monitoring. This is a key issue for train operators who must have confidence that the published capability is available in order to plan and deliver their services.

Rail Partners and our members look forward to continued dialogue with the ORR as the periodic review progresses.

Yours sincerely,



John Thomas
Director of Policy