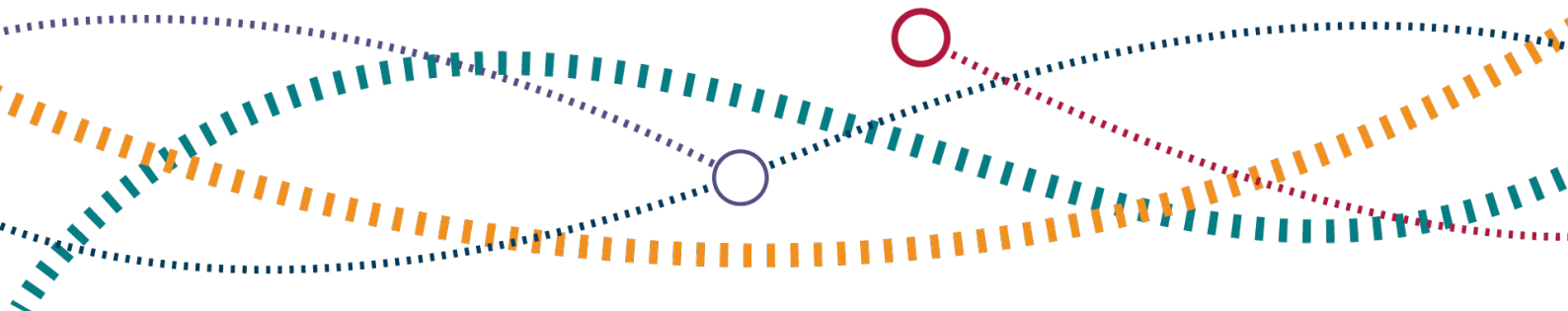# PR23 policy framework:

Conclusions on our consultation on outcomes, infrastructure performance and managing change

19 December 2022

Contents

1. Executive summary

1.1 This document contains our emerging conclusions from the [PR23 policy framework: A consultation on outcomes, infrastructure performance and managing change](#) in July 2022.

1.2 These conclusions set out the policy framework for how we intend to hold the national rail infrastructure manager (currently Network Rail) to account for the outcomes it must deliver for the funding it receives for control period 7 (CP7). Alongside this document, we have also published our conclusions to the accompanying [PR23 policy framework: conclusions on the measures in our CP7 outcomes framework](#).

1.3 We have not made material changes to our consultation proposals. Our policy approach for CP7 has been to evolve our control period 6 (CP6) approach as we consider it is fit for purpose in the current context. We have reflected lessons learnt from CP6, while seeking to align (to the extent possible within the current legislation) with the direction of rail reform.

1.4 **Stakeholders were broadly supportive of our consultation proposals.** However, they requested further detail on some areas. We aim to provide further clarity in this document and in our updated 'Holding Network Rail to Account' and 'Managing Change' policy documents, which we will consult on in spring 2023.

1.5 We set out below a summary of our conclusions and areas for further development across the five key areas that form our PR23 policy framework.

How we will regulate the infrastructure manager

1.6 Network Rail, as infrastructure manager, is one organisation with one licence, and any part of its business or activity may be subject to regulatory focus at any time. The infrastructure manager's Board and Executive must ensure it has appropriate governance to deliver all the requirements placed on it. Within this context, we will create individual settlements for each region and the System Operator (SO) as part of our determination, reflecting our assessment of the plans that the regions and SO have put forward in the Strategic Business Plan (SBP).

1.7 We expect regions and the SO to describe in the SBP what they will deliver for freight and national passenger operators and how they will ensure this is met; our regional and SO settlements will similarly capture our expectations.

1.8   We will not create a settlement for the infrastructure manager's core national functions as these are supporting and policy functions which do not directly deliver outcomes to rail users. However, we want to ensure these functions will efficiently and effectively support the infrastructure manager's overall activity in CP7, and we will identify our expectations of these functions in our determination which will support the delivery of outcomes by regions and SO.

The role of stakeholders

1.9   We will continue to focus on the quality of the infrastructure manager's stakeholder engagement, which we report on in our annual assessment. We expect the infrastructure manager to undertake an annual survey of its stakeholders, removing duplication with activity currently undertaken by ORR.

1.10   We will work closely with the infrastructure manager to agree a survey and assessment approach which can both capture the role of the infrastructure manager has in driving the culture of stakeholder engagement and also provide the flexibility for regions to reflect local stakeholders' needs. This approach must enable comparison of performance between regions, to enable ORR's comparative regulation and reflect operators who run across multiple regions.

Monitoring and enforcement

1.11   We will continue our current approach to monitoring and enforcement, taking a staged, evidence-based approach to addressing concerns using the three broad stages:

- routine monitoring and assessment;

- investigation and early resolution; and

- enforcement action

1.12   We will set out our detailed monitoring and enforcement approach in our updated Holding to Account policy.

Outcomes framework

1.13   We intend to proceed with our proposed tiered outcomes framework approach, focused on success measures for regions and the SO. For each top-tier success measure, the infrastructure manager will develop forecasts, in consultation with its customers. We will assess these and set the baseline trajectories for each region in our determination. These will be the headline indicators we will use to publicly

hold the infrastructure manager to account. Please see our [PR23 policy framework: conclusions on the measures in our CP7 outcomes framework](#) for more detail on the measures that we will be using in the outcomes framework.

1.14   Currently, the infrastructure manager can change its annual targets each year. In CP7 we want to ensure that any changes are subject to a greater level of challenge and transparency. We will therefore include a change control process in our updated Managing Change policy to permit changes to success measures and baseline trajectories where we agree there has been a major change in circumstances during the control period. We acknowledge that we need to develop this process further, in order to provide clarity and alignment across industry on the nature of circumstances that would support a change to the baseline trajectories we report against publicly.

1.15   Our updated Holding to Account policy will set out how we will monitor against the measures and trajectories, including a set of non-exhaustive indicative criteria which will provide transparency on the factors that we take into account when we escalate an issue.

Change and flexibility

1.16   We intend to proceed with our proposed approach to managing changes which affects the key aspects of the determination and settlements in CP7. We have set out proposals for how we will manage changes to the infrastructure manager's funding in our [consultation on the financial framework for CP7](#), published today.

1.17   Our approach retains the existing underlying principles of proportionality, consistency and transparency, and adds a new timeliness principle. We are also making the scope effects-based.

1.18   We will update the Managing Change policy to reflect the above and adjust the content and structure in order to clarify and simplify the policy, as well as including a timeliness principle. As set out above, we will include a change process for updating success measure baseline trajectories, and we will look at ways to better integrate the policy with ORR's assessment of Network Rail's annual reforecasts of its business plans.

Next steps

1.19   This policy framework informs Network Rail's production of its SBP for CP7. Our assessment of the SBP will form the basis of the regional and SO settlements in

our determination, which we will consult on in June 2023 and issue by 31 October 2023.

1.20   We will continue to develop our updated Holding to Account and Managing Change policies for CP7, and will consult on them in spring 2023. We expect to finalise these documents once we have made our final determination.

2. Introduction

This chapter sets out the wider context that we have considered when setting out our framework and areas that we will need to consider in more detail as we progress through the next phase of PR23. We provide an update on our next steps and upcoming milestones following our consultation conclusions.

2.1   Our consultation PR23 policy framework: A consultation on outcomes, infrastructure performance and managing change ran from 28 July to 30 September 2022. We received 19 written responses, which we have published on our website alongside this document – PR23 policy framework consultation responses. We did not receive responses from either Transport Scotland or the Department for Transport (DfT) but we have discussed our consultation with both.

Context for PR23

2.2   Our work on PR23 continues during a challenging time for the wider economy and the rail industry. Decisions about the level of funding the network receives over CP7 will reflect the prevailing fiscal and inflationary pressures.

2.3   The UK Government has issued its High-Level Output Specification (HLOS) and Statement of Funds Available (SoFA) for England and Wales, and Scottish Ministers are expected to issue their HLOS and SoFA in January 2023. These documents set the level of funding each government will make available to the infrastructure manager in CP7 and what outcomes they want it to deliver, reflecting their respective strategic priorities. We will consider whether we need to make any changes to elements of our framework in light of the respective HLOSs, and will reflect these in our summer draft determination if required.

2.4   We will continue to regulate the current infrastructure manager, Network Rail, as one entity across Great Britain, with one network licence. Our policy framework supports this, providing a clear signal on how we expect to hold it to account in the control period. The aim of our framework is to enable those who operate in the rail industry to plan their businesses, by providing transparency and predictability about how we expect to act. This will, in turn, support the interests of passengers, freight users and tax payers by ensuring value for money and focussing on what users of the railway want.

2.5   The framework can be tailored to reflect the specific needs of the different governments, while retaining a consistent approach to enable us to hold the

infrastructure manager to account fairly and consistently as one, GB-wide business.

Developing our policy approach alongside rail reform

In developing our approach we have considered the implications of the UK Government's rail reform agenda, reflected in its consultation in June 2022 on legislative changes to implement rail reform. ORR will continue to be the economic and safety regulator for the railway, and will provide whole-sector oversight that transparently holds Great British Railways (GBR) accountable against its licence and its integrated track and train business plan.

Uncertainty remains about the timing and details of rail reform. It is likely that Network Rail will continue to operate in the early part of the next control period, meaning we need to update our existing Network Rail-focused policy documents for CP7. However, we consider that much of our approach should be broadly applicable for GBR when it is established. Key elements can be applied equally to GBR, such as using comparative regulation, providing strong reputational incentives, and taking a proportionate approach to regulation that aims to resolve issues early and promote improvement.

GBR's remit will be broader than Network Rail's today. As rail reform is implemented and GBR takes on its wider role, we may need to adapt elements of our approach – in particular what outcomes we monitor and hold the company accountable for, and how we manage and assure changes to GBR's plans. Our Holding to Account and Managing Change policy documents would need to be reviewed and, where necessary, updated to reflect the GBR legislative and regulatory framework. However, we have designed our framework so that this would constitute an evolution from our approach to regulating Network Rail in CP7 (as opposed to requiring a radical rethink).

Next steps

2.6   After receipt of Network Rail's business plan in February 2023, we will focus on developing our determination for Network Rail. As set out in our 'Open letter on conclusion of Phase 1 of PR23', we expect to consult on our draft determination in June 2023, before issuing our final determination in October 2023.

2.7   As noted above, we will issue two policy consultations in spring 2023, on our proposals for updated Holding to Account and Managing Change policies for CP7. We expect to finalise these once we have made our final determination.

3. How we will regulate the infrastructure manager

This chapter sets out our emerging conclusions on how we intend to regulate the infrastructure manager and hold it to account during the next control period. We conclude on the role of individual settlements for key business units and how we intend to regulate parts of the infrastructure manager that won't have a settlement.

Regulating one GB-wide business

3.1   In our consultation we said we would continue to regulate Network Rail, as infrastructure manager, as one organisation with one licence. Our proposals for regional and SO settlements and a focus on national functions underpin the principle that all parts of the infrastructure manager are subject to regulatory focus.

3.2   Network Rail agreed this that reflects its current devolved structure, and a continuation of the CP6 approach but highlighted that it is important that regions are able to respond to local needs in developing and delivering their plans, reflecting their own circumstances and stakeholder priorities. We agree with this approach, but consider that it must not be at the expense of the delivery of the infrastructure manager's network-wide obligations and a good service to national stakeholders (such as operators who run across more than one region).

3.3   There were no comments on our proposal that major changes are not required to the network licence for PR23. We will keep this under review as we progress PR23, including in respect of any new licence for GBR that reflects its whole sector role.

Region and SO settlements

3.4   We set out our intention to produce settlement documents for individual regions and the SO. All respondents who provided feedback on this question supported the approach, including seven passenger and freight operators and Network Rail. Having separate settlements for the regions and the SO was seen to enable comparative regulation and benchmarking of performance, which can help to drive efficiency. There was broad agreement that individual settlements are not necessary at route level. Transport for London (TfL) asked for more detail on how the routes will be monitored.

3.5   **We will proceed with our proposal to create settlements for regions and the SO.** We will continue to ensure that we receive sufficient data from the infrastructure manager so that we can identify performance issues within regions including at a route level.

Approach to the infrastructure manager's national functions

3.6   We proposed to place a greater focus on the infrastructure manager's 'core' national functions, which provide various responsibilities and services on behalf of regions on a centralised basis (including for example finance, safety protocols and procurement). Although they do not directly deliver outcomes for rail users, these are functions which have a significant impact on the efficiency of, and delivery by, the regions and the SO. For example, the Technical Authority provides an internal assurance/review function to the regions on rail engineering issues. Four stakeholders, including Rail Partners, agreed with our proposal to increase the focus on national functions, with others requesting further clarity on how we intend to do this.

3.7   South Eastern considered that we should have a settlement for these functions. However, settlements provide clarity on the funding and outcomes that are to be delivered by regions and the SO. National functions play an important role, but do not directly deliver outcomes to end users. We have already enhanced our monitoring of the national functions as CP6 has progressed and we intend to build on this by setting clearer expectations of these functions up front in CP7.

3.8   **In our determination, we will identify a set of expectations in relation to the national functions but we will not create a settlement document.** We consider that this will enable us to continue to embed our approach of engaging with national functions on their spend and activity and the extent to which they support the delivery of outcomes by the regions and SO. We will also scrutinise the infrastructure manager's governance to ensure it supports an efficient and effective relationship between its business units.

Treatment of freight and national passenger operators

3.9   We proposed that each of the regions and the SO must set out in the SBP what they will deliver for freight and national passenger operators and how they will ensure this is met. This is in addition to delivering for the local operators for which they own the relationship. The six stakeholders that provided a view on this proposal were largely supportive of this position.

3.10   Rail Freight Group highlighted the importance of this given the Freight & National Passenger Operator (FNPO) business unit is now part of the SO and therefore the SO settlement will specify the infrastructure manager's freight outputs. It highlighted that the SO is responsible for the infrastructure manager's delivery to freight operating companies (FOCs), and customers including CrossCountry, Caledonian Sleeper, charter operators and open access passenger operators. We recognise this, and expect the SO to reflect it in the SBP.

3.11   **We expect the regions and SO to set out in the SBP what they will deliver for freight and national passenger operators and how they will ensure this is met.**

Regulating GBR under rail reform

3.12   Respondents agreed that there would need to be further development of this area in response to rail reform. Arriva and Rail Freight Group noted the importance of strong regulation from ORR in a future where the infrastructure manager plays a greater role in the passenger railway. Liverpool City Region Combined Authority (LCRCA) also suggested that ORR needed to continue to have a strong focus on the infrastructure manager's delivery during the transition period.

3.13   We agree that a strong focus on delivery during the transition period is important – and this is one of the benefits of the five-year periodic review which sets a stable framework for funding and outputs over that that period. We also agree that strong independent regulation remains vital when the infrastructure manager plays a greater role in the commissioning of passenger services.

Next steps

3.14   As part of PR23, Network Rail will produce its SBP for CP7 that will set out how it proposes to meet the requirements of governments (as funders) and its customers.

3.15   We are working closely with Network Rail to ensure that the information it provides in its SBP is consistent with the information it provides to governments (including as part of the HLOS and SoFA process). Our assessment of the SBP will form the basis of the regional and SO settlements in our determination, which will in turn inform Network Rail's Delivery Plan for CP7. We will use these documents (alongside the network licence and our related policies) to hold the infrastructure manager to account in CP7.

4. The role of stakeholders

This chapter sets out our emerging conclusions on the role of stakeholders and how we intend to assess stakeholder engagement during CP7. We provide conclusions on our expectations of the infrastructure manager and the methods we will use to hold it to account.

Our focus on stakeholder engagement

4.1   In our consultation we stated that we considered the licence requirements in relation to the infrastructure manager's stakeholder engagement activity to be fit for purpose. We proposed to continue our focus on the quality of Network Rail's stakeholder engagement through an annual assessment. We said that we wanted to see more of a culture of stakeholder engagement and that the relationship between the infrastructure manager and the UK and Scottish government was outside the scope of this activity.

4.2   Ten of the thirteen respondents who answered this question supported the continued focus on the assessment of stakeholder engagement. Two stakeholders provided qualified support. In our consultation we stated that stakeholders with commercial arrangements, for example, freight and passenger train operators, have more opportunity to influence the infrastructure manager through contractual arrangements than others (such as lineside neighbours or accessibility groups). Network Rail disagreed with this statement and suggested that its stakeholder engagement activities provided an opportunity for stakeholder influence outside contractual arrangements.

4.3   West Midlands Rail Executive (WMRE) noted that some democratically accountable stakeholders already play a greater role in regional rail networks than other stakeholders. We recognise that different categories of stakeholders have different roles across regions (including rail industry parties, elected stakeholders and other stakeholders mentioned above). We will consider how best to capture this in both stakeholder surveys and business unit self-assessments. South Eastern suggested that ORR should seek to incentivise the sharing of good practice both between Network Rail and train operators, as well as within the infrastructure manager. We will consider how best we can support the sharing of good stakeholder engagement practice, for example, the development of joint case studies in the infrastructure managers' self-assessments.

4.4   **We have concluded that we will continue our annual assessment of the quality of Network Rail's engagement with its stakeholders. We will seek to continuously improve the process for how we do this, to take account of the points raised by respondents.**

Stakeholder engagement surveys

4.5   As part of the current annual assessment process, both ORR and Network Rail conduct surveys of Network Rail's stakeholders. We proposed to remove this duplication and make Network Rail responsible for the survey of its stakeholders, with the requirement that we would set minimum requirements such as a set of consistent questions agreed in advance.

4.6   All of the 14 respondents that provided feedback agreed that business units should ask stakeholders a consistent set of questions. Both Abellio and Heathrow Airport preferred a consistent set of survey questions across stakeholders without the ability for regional variation. In contrast, WMRE believed the surveys should be able to reflect both the different interests of different stakeholders and their levels of collaboration and engagement. Our current approach to the stakeholder survey design provides the flexibility to capture both core and contextualised stakeholder responses. This provides a platform for stakeholder surveys in CP7.

4.7   **ORR will work with Network Rail to agree a survey approach for CP7 which can both drive a national culture of high quality stakeholder engagement while allowing flexibility to meet regional needs.**

Stakeholder engagement under rail reform

4.8   Seven respondents stressed the importance of quality stakeholder engagement in the reformed railway with a particular emphasis on the key role for GBR in balancing the interests of all rail users.

Next steps

4.9   We will continue our CP6 annual assessments of the quality of Network Rail's stakeholder engagement. We will publish our next report in autumn 2023.

4.10   We will work with the infrastructure manager to agree the form and content of their stakeholder engagement for CP7. We will set minimum requirements for stakeholder engagement surveys to support our regional regulation through comparison between business units, stakeholders with less structural influence (such as accessibility groups) and those stakeholders who engage with multiple business units.

5. Monitoring and enforcement

This chapter sets out our emerging conclusions on the principles and broad approach for how we intend to monitor the infrastructure manager's performance and, where necessary, initiate enforcement action. We summarise stakeholder responses to our consultation and outline our next steps on refreshing and updating our Holding to Account policy for CP7.

Our approach to monitoring and enforcement

5.1   We proposed in the consultation that our monitoring and enforcement approach would be an evolution of our CP6 approach. We set out our intention to continue to use general principles of regulatory best practice to underpin our approach, taking a risk-based, targeted, proportionate, and transparent approach to any monitoring and enforcement activity.

5.2   We noted that we would need to refresh and update our Holding to Account policy to make it fit for CP7, but not make significant changes to the underlying core principles (reflecting that it has been fit for purpose and that we are not proposing to change Network Rail's network licence). We proposed to continue to take a staged, evidence-based approach to addressing concerns using three broad stages: routine monitoring and enforcement, investigation and early resolution, and enforcement. We would continue to monitor against the determination and settlements, using comparison and sharing of best practice where it is appropriate to do so.

5.3   We noted that our policy seeks to create a balanced set of incentives on the infrastructure manager that reflects its public sector status and the content of its licence.

5.4   There was broad support from all respondents for retaining our approach in CP7. A number of stakeholders including Arriva and Rail Partners noted that ORR's ability to require Network Rail regions and the SO to develop recovery plans when they fall short of performance expectations will remain an important tool to support intervention and address any issues early. Respondents including Northern Trains felt that reputational incentives will be ORR's most effective tool in holding the infrastructure manager to account. We are clear that our approach to monitoring and enforcement will reflect the requirements of the current network licence including that Network Rail must deliver the reasonable requirements of those providing railway services, as set out in Network Licence Condition 1.2.

5.5   Network Rail supported a continuation of a staged approach, but recommended that ORR defines robust criteria for when it is likely to enhance monitoring to prevent escalation being unpredictable and subjective. Our current Holding to Account policy details the basis on which we would escalate between stages, and we make evidence-based decisions, so we do not consider this to be the case currently. Our decision to escalate would take into account a range of information and we would not want to fetter our discretion by being overly prescriptive. Further, our approach to monitoring specific issues is dependent on the existing level of performance and therefore involves a degree of proportionality.

5.6   Abellio stated that ORR should use its enforcement powers more often in CP7 than it has in CP6. It thinks ORR should hold Network Rail and subsequently GBR to a higher standard than it did in CP6, as the industry aims to recover from the COVID-19 pandemic and also to reflect changes in operator contracts. We consider that our staged approach to monitoring and enforcement enables early intervention, with a strong emphasis on Network Rail working together with its customers to solve problems early and subsequently avoids the need for formal licence enforcement action.

5.7   **We intend to proceed with our proposed approach to monitoring and enforcement in CP7, including refreshing our Holding to Account policy**. We recognise that there are some tools that we have not used to date, such as hearings, but this is not due to concerns about their suitability. We propose to retain these for CP7.

Monitoring and enforcement in Scotland

5.8   While we hold Network Rail as infrastructure manager to account as a single licensed entity, it must do everything reasonably practicable to deliver the requirements of its funders, the UK Government (for England & Wales) and the Scottish Government (for Scotland). Therefore, it is important that our determination ensures that as well as delivering effectively and efficiently across its GB-wide network, Network Rail will deliver the specific outcomes set by the Scottish government.

5.9   As in CP6, our approach will be to both reflect the Scottish HLOS and SoFA, while maintaining consistency across the GB network (e.g. ensuring that we have the capability to compare performance of regions as a reputational incentive). We currently monitor Network Rail's delivery and progress against requirements for Scotland via the Scotland HLOS tracker. While we may continue to monitor in this way, this approach depends on the structure and format of the Scottish

Government's HLOS, which we expect in January 2023. We will work with Transport Scotland to specify arrangements in our updated Holding to Account policy.

Monitoring and enforcement under rail reform

5.10   Three stakeholders (LCRCA, ScotRail and TfL) raised concerns around the proposals in the government's white paper on reform that ORR will lose the ability to levy financial penalties on GBR. Some (FirstGroup Rail, and some members of Rail Partners) supported the removal. Other stakeholders noted that if ORR loses the power to fine GBR, it is important that ORR retains sufficient powers to hold the organisation to account.

5.11   This decision is for government, as it will be part of the rail reform legislation. We note that under rail reform proposals, ORR will continue to have a suite of powers to hold GBR to account – including the use of reputational incentives, and the ability to issue final and provisional orders to direct remedial action if GBR has or is likely to breach its licence.

Next steps

5.12   We will update our Holding to Account policy and will consult on the specifics of the revised policy in spring 2023.

6. Outcomes and monitoring performance

This chapter presents our emerging conclusions for the proposed outcomes framework that will facilitate our approach to monitoring the infrastructure manager's performance in delivering the outputs in return for the funding it receives. We also set out areas that require further development and will be consulted on as part of our upcoming policy consultations. The conclusions in this chapter should be read in conjunction with our PR23 policy framework: conclusions on the measures in our CP7 outcomes framework.

Introduction of success measures

6.1   In our July consultation we proposed a new tiered outcomes framework for CP7. This includes a small number of top-tier 'success measures' that will be the headline indicators we will use to publicly hold the infrastructure manager to account, underpinned by supporting measures and additional information. For each of the success measures, we stated that Network Rail will develop forecasts, in consultation with its customers. We will assess these and set the baseline trajectories in our determination and within the settlements for each year of CP7. We proposed to monitor and report on the performance of each success measure against the baseline trajectories that we will set out in our determination.

6.2   The majority of respondents including Network Rail were in favour of our new outcomes framework. The proposal was seen as an improvement on our current approach, which focuses on the use of Network Rail's scorecards. This tiered approach will allow us to incorporate any measures specified in the HLOSs for England & Wales and Scotland that are not already included in our outcomes framework.

6.3   Arriva and Rail Partners expressed support for the framework, but stated it would be important that the tiered approach did not result in a loss of focus on metrics in the supporting measures and additional assurance tiers of the proposed framework. We do not consider this to be a risk. We already use a variety of different levels of information to monitor Network Rail's performance, and we will continue this in CP7, aligned with our general principles of being risk-based and proportionate in our monitoring.

6.4   Northern Trains suggested that there was still a place for scorecards and that they should focus on customer targets that consider the whole system. We are not

preventing Network Rail and operators using scorecards as a tool to report performance against the success measures. However, we anticipate that our focus and reliance on scorecards as part of our approach to monitoring and reporting on performance in CP7 will be reduced and that there will be a more transparent process for making changes.

6.5 **We intend to introduce a tiered outcomes framework with a small number of top-tier success measures to publicly hold the infrastructure manager to account.** Please refer to our accompanying [PR23 policy framework: conclusions on the measures in our CP7 outcomes framework](#) for more detail on the measures that we propose to use.

Approach to setting outcome requirements

6.6 For each success measure, we proposed to set baseline trajectories in the settlements for each year of CP7. These would be informed by the infrastructure manager's forecasts (developed in consultation with its key stakeholders). In addition, where governments include specified measures with quantified expectations in their HLOSs, we expect Network Rail's SBP to include forecasts of these measures, which we will set in our determination.

6.7 Six stakeholders that provided a view on the proposed approach were largely supportive. Respondents including Arriva, Rail Partners and TfL suggested that these forecasts needed to comprise stakeholder expectations and should be developed in a consistent manner across regions.

6.8 South Eastern was concerned about the targets set for CP6 and suggested that these had failed to support the delivery of good performance. As set out in our consultation, Network Rail will develop forecasts, in consultation with its customers. We will assess these and set the baseline trajectories in our determination. To derive the baseline trajectories, we expect Network Rail to produce forecasts for each success measure based on its detailed plans. We will assess its approach to producing these forecasts by reviewing its methodology, calculations and models, inputs (including the impact of its plans and key assumptions), assurance activities and stakeholder engagement with its customers. **We intend to proceed with our proposed approach to setting baseline trajectories.**

Monitoring and reporting – train performance

6.9 In an industry workshop in September and in their responses, some operators asked us to clarify our approach to operator-level performance. The focus of

ORR's CP7 monitoring and public reporting of the outcomes framework will be at regional level. For each success measure, we will be setting baseline trajectories for each region in our determination. We will not set success measure baseline trajectories for each operator and we have not specified operator level supporting measures.

6.10   We will make use of train performance data by operator, including open access operators, to support our wider monitoring. This is part of tier 3 of the outcomes framework, where we are not specifying the measures or performance expectations as part of the periodic review process. We expect the infrastructure manager to engage with its customers and stakeholders to establish its own performance expectations for each year of CP7 at a train operator level. This should include working closely with train operators during CP7 to agree and maintain joint performance strategies where required by the Network Code. We expect the infrastructure manager to share these joint performance strategies and agreed performance forecasts with us to support our monitoring.

6.11   ORR will continue to monitor the infrastructure manager's contribution to the development and delivery of its strategies and plans. This will inform our assessment of whether the infrastructure manager is operating the network in accordance with Condition 1 of its network licence, specifically to satisfy the reasonable requirements of operators and the interests of passengers and freight end users. This will allow us to make informed decisions on any action we should take to improve a region's delivery of train performance to all operators and will ensure poor performance for individual operators cannot be masked by wider performance of the region.

6.12   When reviewing train operator level performance, we will make decisions on any regulatory action by taking a consistent approach with the indicative non-exhaustive criteria that we have described later in this chapter. We will consult on the detail of these criteria (that will apply to success measures across all outcome areas) in our updated Holding to Account policy in spring 2023.

Making changes to measures or outcome requirements

6.13   We proposed that a robust change control process will be applied to allow any changes to success measures or updates to baseline trajectories where there is a major change in circumstances that could not have been reasonably expected. ORR will have a prior approval role. If we approved the change, we would report performance against the updated trajectory/success measure from that point onwards. This proposal received mixed views. Passenger and freight operators

supported a robust change process in order to bring greater certainty. Stakeholders such as Arriva, DB Cargo, FirstGroup Rail, and Rail Partners requested more clarity on how this would work in practice.

6.14   The majority of feedback stressed the importance of transparency in any decision to update a performance trajectory to enable clarity on how things may change and the reasons for this. Network Rail did not agree with the proposed structure of the major change control process, citing concerns about forecast uncertainty and lack of clarity in reporting meaning that this process should be more flexible.

6.15   We will proceed with our proposal to include a change control process in our updated Managing Change Policy. This will permit changes to success measures and baseline trajectories where we agree there has been a major change in circumstances during the control period. We acknowledge that we need to develop this process further, in order to provide clarity and alignment across industry on the nature of circumstances that would support a change to the baseline trajectories we publicly report against. **This will be developed in more detail in conjunction with industry through our updated Managing Change Policy.**

Non-exhaustive indicative criteria for escalation

6.16   Lastly, we presented a set of non-exhaustive indicative criteria that would be considered in any decisions on whether to initiate a formal investigation relating to poor or declining performance. We did not receive any specific feedback on these, but would like to stress that we intend to retain the principle of the criteria being **non-exhaustive and indicative**. We will continue to assess information and analysis from a range of sources as part of our wider monitoring to inform any action we may need to take.

6.17   A small number of respondents requested further consultation on the criteria we will use. **We will provide stakeholders further opportunity to comment on them as part of consulting on our updated Holding to Account policy.**

Outcomes framework under rail reform

6.18   We did not receive any substantive comments on the role of the outcomes framework in relation to rail reform. We stated that the outcomes framework may need change to reflect our expanded whole-system monitoring role (e.g. as GBR takes on a broader role e.g. in relation to passenger services). Network Rail supported the process for changing elements of the framework in this event. Eversholt Rail suggested that under rail reform ORR should monitor GBR performance in respect of its procurement and management of rolling stock. We

consider that this activity could fall within the remit of our whole-system monitoring role when understanding how effectively GBR had achieved its outcomes.

6.19   Several stakeholders raised concerns about whether ORR or governments would ultimately control changes to the baseline trajectories which describe what GBR is accountable for. The future business planning process for GBR is still being developed with DfT and we cannot provide further detail at this time, but ORR will have a strong role in assuring and providing transparency around what GBR is accountable for delivering.

Next steps

6.20   We expect Network Rail to include forecasts, developed in consultation with its key stakeholders, for each headline success measure and key supporting measures in its SBP. These forecasts should be supported by information on how the forecasts were developed, including the approach and methodology used, assumptions made and what engagement with stakeholders took place.

7. Change and flexibility

This chapter sets out our emerging conclusions on the principles and broad approach to managing changes that could affect key aspects of the determination and settlements (funding and accountabilities) throughout CP7. We summarise stakeholder responses to our consultation and outline our next steps on refreshing and updating our Managing Change policy for CP7.

Change in CP7

7.1   Circumstances will change over the course of the five-year control period either driven by decisions within the infrastructure manager or by external factors (including changes in government policy). Macro-economic pressures and rail reform could generate wider changes during CP7.

7.2   ORR uses several change and flexibility mechanisms to manage changing circumstances that can affect Network Rail's plans during a control period:

(a)   we monitor and report on annual business plan changes that Network Rail makes to ensure that its annual plans continue to be aligned with the delivery plan. For example, a region may revisit its internal budget allocation to make changes to its renewal plans;

(b)   our Managing Change Policy allows changes that impact on changes to a region and SO accountabilities and/or funding;

(c)   in exceptional circumstances, and for a narrow range of situations where certain conditions are met, there are processes that can be used to change Network Rail's overall funding during a control period. Examples include our approval role to return Network Grant money to funders, and our role in the access charge rebates process. As part of our change management approach, today we are also publishing our PR23 consultation on the financial framework for CP7, which sets out the situations where, if certain conditions are met, there are processes that can be used to change Network Rail's overall funding during a control period; and

(d)   very exceptionally, a significant material change in circumstances might mean that Network Rail no longer has the resources to deliver its outputs. To manage these unlikely situations, an interim periodic review could be triggered to carry out a new charges review.

7.3   It is essential that ORR continues to enable appropriate changes, while holding the infrastructure manager to account, ensuring clarity on what it must deliver for its funding and providing industry with certainty. Responses to our consultation showed wide support for robust and effective change management in CP7.

Our Managing Change policy

7.4   The Managing Change policy is generally seen as having worked well to date. In our consultation we proposed to retain the principles underpinning our current approach. However, we also suggested including a new principle of timeliness reinforcing the importance of early engagement on more substantive changes (and in keeping timely records of more minor changes, where these are covered by the policy).

7.5   We also stated that there is scope to improve the policy to build in more transparency and encourage collaboration, as well as improving its clarity and reducing complexity.

7.6   Nine respondents, including FirstGroup Rail and ScotRail Trains, were broadly supportive of the inclusion of the timeliness principle and of minor changes to clarify and simplify the policy. Network Rail also supported the addition of a new timeliness principle, highlighting that case-by-case circumstances must be considered to allow the principle to be applied as reasonably as practicable.

7.7   In our consultation we also proposed to clarify that the policy is 'effects-based'. By this we meant that, if there is a change to a region or SO funding or outcomes, the managing change policy would apply, regardless of the cause of that change. This is to ensure the appropriate level of transparency and clarity is achieved around what is changing and what the potential consequences are. Rail Partners were the only respondent to comment on this and supported an effects-based approach to change. We invited feedback from stakeholders on other features of the current policy, including the approach to identifying and classifying levels of change. We did not receive any comments from respondents on this. As above, we will develop more detailed proposals on these areas as part of our updated Managing Change policy consultation

Managing change and stakeholder engagement

7.8   Our consultation also highlighted some further opportunities to simplify and streamline our approach to change. This included seeking views on whether there are opportunities to enhance stakeholders' engagement on material changes. **We will develop more detailed proposals on these as part of our updated**

Managing Change policy, where stakeholders will have further opportunity to provide comments.

7.9   Seven passenger and freight operators including Northern Trains, Rail Partners and WMRE considered that there should be more stakeholder participation in change processes, enabling operators to provide scrutiny and feedback on the impact of proposed changes. **We will develop and consult on more detailed proposals taking these views into account as part of updating the Managing Change policy**.

Managing change and success measure trajectories

7.10   The "Outcomes and monitoring performance" section of our consultation contained a proposal to include a robust change control process for making changes to success and supporting measures in the CP7 outcomes framework and for updating the baseline trajectories we will set for each success measure. As set out in chapter 6, industry respondents largely agreed that a robust change process would bring greater certainty, but Network Rail raised concerns about a potential loss of flexibility. Again, operators requested further stakeholder involvement in the reporting, feedback, and potential changes to performance measures and trajectories.

7.11   **We will update the Managing Change Policy so it can also include changes to success measures, supporting measures and success measure baseline trajectories. We will consider stakeholders' suggestions as we develop and consult on more detailed proposals in this area**.

Managing change and rail reform

7.12   Some respondents, including Abellio and LCRCA raised concerns about the possible impacts of structural changes ensuing from rail reform and the transition to GBR. They considered a robust and effective approach to managing change as being essential to support the transition to GBR with minimal impact on the ability of the infrastructure manager to deliver business-as-usual.

7.13   Northern Trains asked for greater clarity on how our Managing Change Policy would work during reform and suggested that a mid-control period review/reset of the policy during CP7 would help ensure that the regulatory measures as set, achieved the performance outcomes set out in the determination.

7.14   The Plan for Rail proposes that GBR will inherit Network Rail's funding settlement and remain responsible for it. The DfT Rail Transformation programme will put in

place the necessary mechanisms to achieve the transition to GBR at the appropriate time. ORR will engage as required with this process. In the meantime, ORR continues to keep a close focus on the delivery of business-as-usual activity by the infrastructure manager.

7.15 We will need to develop a new Managing Change Policy under GBR because GBR will be operating under a new licence. We expect this new GBR Managing Change Policy to inherit much of the previous policy, to reflect the fact that GBR will inherit Network Rail's funding settlement. We will review the policy at the time to ensure that the new policy reflects any changes under reform, including the possibility of expansion of the policy to cover changes made under the increased scope of GBR's activities.

Next steps

7.16 We will refresh and update our Managing Change Policy, and will formally consult on it in spring 2023.

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