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Abigail Grenfell
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13 February 2006

Dear Abigail

Enforcement policy and penalties statement - consultation response

I enclose Network Rail's response to the above consultation document.

We welcome the opportunity to comment on the proposed policy and statement, as regards which there are a number of issues that we believe warrant further consideration and / or clarification. We draw ORR's attention to the following key points of our response.

- We believe that the ORR decision making process should demonstrate more clearly its investigation and escalatory nature, and that greater emphasis should be given in the statement to the industry resolving its own problems before a complaint is formally lodged with ORR.
- We consider that the policy could be developed to clarify further that a one off failure or a failure to meet required outputs is not necessarily a licence breach (as distinct from being a breach which it may not be appropriate to enforce). Each case should be assessed on its merits taking into account whether we have adequate plans in position to achieve improvement where problems are identified.
- Our business plan is a management tool and we believe that its contents should not be taken as commitments which are always necessarily enforceable by licence. Targets will always flex subject to the needs of the business and its customers and ORR policy should not disincentivise the inclusion of stretch targets or other planning proposals that would be helpful to our customers.
- We consider that greater clarity should be given concerning the relationship between penalties and incentivisation. Any fine should be set at the minimum level necessary to achieve compliance, which may not necessarily always exceed the cost of compliance.

We do not wish any part of our response to remain confidential.

Yours sincerely

Geoffrey Kitchener
Regulatory Legal and Compliance Manager