
TIMETABLING PANEL of the ACCESS DISPUTES COMMITTEE

Determination in respect of dispute reference TTP1248
(following a hearing held at 1 Eversholt Street, London, on 24 May 2018)

The Panel:

Stephen Murfitt Hearing Chair

Members appointed from the Timetabling Pool

Peter Warhurst elected representative for Franchised Passenger Class, Band 2
Robin Nelson elected representative for Non-Passenger Class, Band 1
Matthew Allen appointed representative of Network Rail

The Dispute Parties:

For First Greater Western Ltd ("GWR" or "FGW")

Robert Holder Network Access Manager
Ben Godfrey-Day Senior Possessions Strategy Manager
Peter Bridges Possession Strategy Manager
Mark Wightman Sunday Long Term Planning Timetable Manager

For Network Rail Infrastructure Ltd ("Network Rail")

Richard Turner Customer Relationship Executive
Tony Morgan Access Planning Manager – Western Route
David Bartlett Senior Programme Manager (Infrastructure Projects)
Ewen Morrison Senior Programme Manager (Stations)
Steve Parsons Route Asset Manager (Track)

Interested parties:

For MTR Corporation (Crossrail) Ltd

Paul Breese Long Term Engineering Access Manager
Ben Sharich Long Term Timetable Planner

For Transport for London ("TFL")

Unable to be represented

In attendance:

Tony Skilton Committee Secretary

Table of Contents

A	Introduction, Substance of Dispute and Jurisdiction	page 3
B	Background, history of this dispute process and documents submitted	page 3
C	Outcomes sought by the Parties	page 4
D	Relevant provisions of the Network Code and other documents	page 5
E	Submissions by the Dispute Parties	page 5
F	Oral evidence at the Hearing	page 6
G	Interested Parties	page 9
H	Analysis	page 9
I	Determination	page 12
	Appendix "A": Directions Letter, 14 May 2018	page 13
	Appendix "B": The Decision Criteria (Network Code Condition D4.6)	page 14

A Introduction, Substance of Dispute and Jurisdiction

1. This dispute has been brought by First Greater Western ("GWR") in respect of Network Rail's decisions in Version 2 of the Engineering Access Statement for 2019 and specifically engineering arrangements which will lead to a "two track railway" operation on Sundays during the Principal Timetable, from December 2018 to May 2019. Network Rail seeks possessions to complete CP5 domestic maintenance and renewal work, and Crossrail construction works at all relevant locations.
2. GWR advances a case that the remaining work for the Paddington to Reading route could be undertaken with a reduced 2-Track Timetable for the relevant Sundays such that a full GWR amplified timetable could be published during the Principal Timetable.
3. I am satisfied that the matters in dispute raise grounds of appeal which should properly be heard by a Timetabling Panel convened in accordance with Chapter H of the ADR Rules to hear an appeal under the terms of Network Code Condition D5.
4. In its consideration of the Parties' submissions and its hearing of the dispute, the Panel was mindful that, as provided for in ADR Rule A5, it should 'reach its determination on the basis of the legal entitlements of the Dispute Parties and upon no other basis'.
5. The abbreviations used in this determination are set out in the list of parties above and in this paragraph 5:

"ADR Rules" mean the Access Dispute Resolution Rules

"DfT" means the Department for Transport

"EAS" means the Engineering Access Statement

"GWML" means the Great Western Main Line

"ORR" means the Office of Rail and Road

"WTT" means the Working Timetable

"2TT" means 2-Track Timetable

B Background, history of this dispute process and documents submitted

6. I was appointed as Hearing Chair on 20 April 2018. The date of the Hearing was set for 24 May 2018. At my request (and as permitted by ADR Rule H21), the Dispute Parties were required to provide Sole Reference Documents. The proposed Panel hearing was duly notified by the Secretary direct to other parties which might wish to become involved in the dispute proceedings and also generally, by means of the Access Dispute Committee's website.
7. On 16 May 2018 Transport for London ("TfL") and on 17 May 2018 MTR Corporation (Crossrail) Ltd ("MTR") notified the Secretary of their intentions to become Interested Parties.
8. On 1 May 2018 GWR served its Sole Reference Document in accordance with the dispute timetable. This Panel hearing was called upon to address only the items leading to a two track railway operation on Sundays; GWR reserved its position on other disputed items in the EAS as discussions with Network Rail were ongoing.
9. On 11 May 2018 Network Rail served its Sole Reference Document in accordance with the dispute timetable.

10. On 14 May 2018 I issued a directions letter to the Dispute Parties, the text of which appears at Appendix "A". In summary, I directed Network Rail to provide by 18 May 2018 further details of CP5 domestic work and Crossrail construction work. Furthermore, to provide greater detail as to Network Rail's consideration and application of the Decision Criteria pursuant to D4.6 of the Network Code. I directed GWR to attend the Panel hearing prepared to respond to questions relating to the further details to be provided by Network Rail.
11. In accordance with ADR Rule H18(c), following receipt of the Dispute Parties' submissions I reviewed them to identify any relevant issues of law raised by the dispute. On 14 May 2018 the members of the Panel and the Dispute Parties were advised that I did not consider there to be any issues of law arising from the submissions received, save for a possible need to consider the canons of construction relating to the interpretation of the documents relied upon by each Dispute Party.
12. On 21 May 2018 and in accordance with ADR Rules A9 and A10, I requested from the Dispute Parties further information as to the document entitled *Access Framework Principles* referred to by Network Rail in response to the directions letter of 14 May 2018.
13. On 18 May 2018 TfL served an Interested Party statement, signed by Paul Richardson. TfL did not attend the hearing.
14. I confirm that the Panel has read all of the papers submitted by the Dispute and Interested Parties. I confirm that I have taken into account all of the submissions, arguments, evidence and information provided to the Panel over the course of the dispute process, both written and oral, notwithstanding that only certain parts of such material are specifically referred to or summarised in the course of the determination.

C Outcomes sought by the Parties

15. GWR sought outcomes of principle and a specific conclusion from the Panel:

Principle

A determination is sought that an infrastructure regime is implemented as soon as possible in the Paddington – Reading environs that permits adequate capacity and capability for GWR's January 19 Franchise Service Level Requirements for Sundays in order to meet demand, generate growth and repay investment sums.

Specific Conclusion

A determination is sought for each of the disputed Section 4 items and Section 7 items that they are published and planned in accordance with GWR pattern outlined in paragraph 5.4 of this Sole Reference.

It is GWR's belief that exceptional circumstances apply here. Work levels are completed providing opportunity, crowding needs curtailing, and franchise requirements are beginning.

16. Network Rail sought an outcome of matters of principle:

Principle

- (a) *That Network Rail has considered and applied the Decision Criteria in*

- accordance with D4.6.3. of the Network Code*
- (b) *That Network Rail continues to use 29hr 2TT access on Sundays until May 19 to enable key track renewal work, Crossrail Construction work along with the remainder of the CP5 domestic work to be completed.*

D Relevant provisions of the Network Code and other documents

17. The versions of the Network Code Part D dated 12 July 2017 and the ADR Rules dated 12 July 2017 were applicable to matters to be determined in these dispute proceedings. Condition D4.6 of the Code, The Decision Criteria, are of particular relevance and are attached at Appendix "B".

E Submissions by the Dispute Parties

18. The written statements served by GWR, Network Rail and TfL are published on the Access Disputes Committee's website. Further to the directions letter dated 14 May 2018, Network Rail provided further details of the proposed works showing a division of activity between Crossrail construction work and CP5 domestic work.
19. In making an opening statement to the hearing, GWR stated the crux of the issue to be that GWR does not believe Network Rail's decision to impose the level and scope of possessions to be justified by the Decision Objective, or to be reasonable in light of the urgent need to recover quickly for the industry the benefits the significant investment in the route has facilitated. GWR suggested that the plan for renewals and maintenance could be accommodated by a 16-hour two track railway on Saturday nights followed by an 8-hour one on Sundays. This would enable, in the view of GWR, the core weekend traffic to be accommodated during the 4-track timetable window.
20. GWR told the Panel there had been a high level of investment in the Western Route. Crossrail operations had begun, the GWML was being electrified and new electric multiple units were operating between London and Didcot allowing diesel sets to be cascaded to the west. There is a need for a return on this investment next year. A four track Sunday Timetable would generate over £14 million per annum more revenue for the industry than a two track one.
21. GWR suggested that a 4-track Working Timetable should be produced allowing Network Rail to approve access rights. Once a Working Timetable exists, trains can be taken out and those remaining be re-timed to meet a two track availability on any particular weekend when justified by specific work. GWR is resourced to deal with such a position.
22. GWR stated that the transfer of funds between railway industry parties is irrelevant for the operation of the overriding Decision Objective. What is important is that decisions should be taken that facilitate the movement of traffic in the most efficient and economical manner.
23. In an opening statement to the hearing, Network Rail stated that the Western Route has seen a significant investment in the infrastructure and the level of investment has resulted in the requirement for a more intensive two track railway operation during construction works.
24. Initial discussions between Network Rail and all relevant train operators began in the summer of 2017 and identified a requirement for a 2-Track Timetable (2TT). Formal publication of 2TT in Version 0 of the EAS followed in September 2017 and 2TT in Version

1 was issued in October 2017. GWR then disputed the requirement for a 2TT at a time, in the view of Network Rail, that afforded no opportunity to re-plan the work. The requirement for a 2TT remained in Version 2 of the EAS and this was formally disputed by GWR on 23 February 2018.

25. As to the Crossrail works, Network Rail stated that in the event of Sunday working not being available as presently planned, the enhancement of stations would not be completed in accordance with present target dates. With regard to CP5 domestic work, Network Rail stated that if the current planned possessions were not made available, failure to complete the work in a timely manner would compromise performance owing to temporary speed restrictions and an increased risk of service affecting failures. There would be significant cost implications arising from the loss of required access, for both Crossrail enhanced station work and CP5 domestic work.
26. Network Rail confirmed that post-May 2019 it would be possible to accommodate the additional paths sought by GWR and this had been reflected in CP6 plans.
27. Network Rail stated that it had reached agreement with the Greater West Programme Board that as a consequence of the requirement for 2TT access on Sundays during the Principal Timetable Period, the December 2018 timetable change would not be implemented until 10 February 2019.
28. GWR declined to making a closing submission. Network Rail made a closing submission emphasising a number of key points. It had detailed the work that needed to be completed and an important factor for any change of plan would be Crossrail project costs and Network Rail's own costs. Furthermore, there would be disappointment for a number of relevant local authorities if the planned possessions did not go ahead.

F Oral evidence at the hearing

29. In response to questions from the Panel, GWR provided the following answers.
30. GWR had considered Network Rail's response to the directions letter of 14 May 2018 but considered details of the work specified to be done at the relevant locations to be generic. There were no specific plans for individual locations and the spreadsheet provided by Network Rail appeared to be populated by a lot of 'cutting and pasting'. GWR had no wish to delay the Crossrail project and accepted that platform extensions would require track possessions. However, there was other station work where track possession time was not necessary. GWR wanted a plan that ensured the availability of those sections of track not required for works. GWR's proposals were provided to Network Rail in response to Versions 1 and 2 of the EAS.
31. In practical terms the Section 4 of EAS as presently formulated specifies a 2TT for 29 hours between Ladbroke Grove and Dolphin Junction. There are further restrictions of use between Slough West and Kennet Bridge Junction which effectively means Reading shown in Section 7 of the EAS. The WTT is constructed based on the 2TT between Ladbroke Grove and Dolphin Junction, but needs to be amended each week through short term planning due to the Section 7 items.
32. GWR considered that discussions with Network Rail as to construction work and the possessions sought, could have been better. GWR had received no information with regard

to the effect on passenger management at stations, or whether it would be possible to run trains through stations when work was being undertaken behind the yellow line.

33. GWR accepted that CP5 domestic work (Southall East S+C renewal, Ealing Broadway and Hayes PLTR and Slough tamping) all needed to be done and had not objected to the possession to deliver these works, including possession for preparation and follow up works. GWR had also not objected to the possession to deliver these works, including possession for preparation and follow up works. GWR had also not objected to any possession before 02 January 2019, the date that the enhanced service is required by the DfT. GWR wanted to examine each weekend's work programme but, despite GWR's requests, Network Rail provided no feedback.
34. GWR's Service Level Commitment requires an increase for most main line routes from 1 to 2 trains per hour. Much time had been spent by GWR and Network Rail in trying to find solutions, but the extra Paddington to Cardiff train each hour and the extension of the Bedwyn to Newbury local service to Paddington were problematic. There was no flexibility with the DfT unless train slots were rejected or flexed by Network Rail, and the only extra train slot had been granted to MTR.
35. GWR was aware that the December 2018 timetable change had been discussed at the Greater West Programme Board with a suggestion that the change would not be implemented until 10 February 2019. GWR had received no further information and was working to an implementation date of 2 January 2019 as per its franchise commitment.
36. As to the Decision Criteria, GWR suggested that bringing money into the industry is a Decision Consideration item. This, together with capability, means that GWR needs to examine closely each possession requirement shown in the EAS in order to ascertain whether it is necessary. GWR offered the view that if a possession is for maintenance, then Network Rail regards the matter as a safety issue and all other Considerations fall away.
37. In relation to Network Rail's offer for the December 2018 WTT, GWR was informed on 21 May 2018 that the Monday to Friday timetable would be offered at TW-26 and the weekend timetables would be offered at TW-22.
38. GWR suggested that its enhanced services would not work around MTR timetabled trains and, in the view of GWR, MTR would need to rebid, although in reality Network Rail could simply flex MTR's bid.
39. In response to questions from the Panel, Network Rail provided the following answers.
40. Network Rail stated that the EAS specifies works requiring a two track railway between Ladbroke Grove and Dolphin Junction nearly every weekend from Week 37 to Week 7. The works are either for maintenance or Crossrail enhancement. There will be three exceptions: Week 46 (when the Chiltern route will be closed and trains diverted); and Weeks 4 and 6 (when the West Coast Main Line will be closed and there will be a need to create capacity). Most of the works to the west of Slough are for Crossrail construction activity on the stations.
41. Network Rail stated that the activities to be completed, including preparation, core work and follow up, require the periods of times shown in documentation provided for the Hearing. The possession times are based on core track renewal time required. The plain line track renewal jobs do not necessarily need the full 27 hours, but there are other activities that do require the full 27 hours.

42. The Station Change procedure had been carried out for the relevant station works. There are a number of funders for the work, including the Crossrail project.
43. Network Rail stated that it would not be possible to run Crossrail trains until station work has been completed. Crossrail trains run under Driver Only Operation using cameras linked to equipment fixed on station infrastructure. The Crossrail timetable can operate at the inner stations without further works, but the outer stations from West Drayton westwards need to be focussed upon for implementation of the December 2018 Timetable for operational functionality. At a later point during the questioning, there was a suggestion on the part of Network Rail that the new Crossrail timetable could operate without the station works being completed by May 2019.
44. The time taken to complete a platform extension depends on the relevant length. A length 30 metres can generally be completed in 27 hours. The requirement is generally 30 to 60 metres per platform, but the largest task is 200 metres. There are 12 platforms to be completed. Longer possessions are also needed for tasks such as crane lifts for installing footbridges and passenger lifts. If there were to be a limitation of 8-hour possessions, then it would not be possible to do crane lifts for some footbridges and passenger lift installations. The consequence would be to extend the building work plans for several years.
45. There is little work activity that can be kept behind the yellow line and therefore closing stations to passengers, but maintaining train movement, is not a viable option. In the case of Ealing Broadway it was possible for there to be special arrangements which enabled the station to be used.
46. Network Rail stated that it had worked on the basis of 27-hour possessions and that every station would be worked on at the same time for the full duration of the possession.
47. Network Rail was unable to answer whether it would have sufficient time to make alterations to the WTT if it were directed to open the route as a four track railway. In particular, Section 7 from Period B onward would need looking at in conjunction with works requirements.
48. Network Rail recognised that GWR sought further information as to the works to be completed during the planned possessions but, since similar works had been undertaken over a number of years, Network Rail considered the effect should be understood by GWR.
49. *The Access Framework Principles*, issued by Network Rail in March 2016, have no legal status but serve as a signpost. The Principles give guidance regarding the planning of possessions and associated arrangements that need to be put in place. The Panel noted that the Access Framework Principles for this part of the Network had not been updated since March 2016 so it was effectively an out of date document.
50. Network Rail stated that the Decision Criteria are normally considered as an intuitive exercise. Network Rail makes too many decisions to be able to write down its assessment of the Decision Criteria for each case. Formal notation of Decision Criteria Considerations is only completed for items that are formally disputed. Consideration of the Decision Criteria in the present case was undertaken by Network Rail on receipt of the Version 1 of EAS responses from GWR and in preparation for the hearing, although nothing was written down to record that assessment of the Criteria.

51. In relation to the present case the Decision Criteria are 'something we think about' but do not always write down. Furthermore, Network Rail confirmed that in responding to GWR, no reference to the Decision Criteria was made when explaining its decision.
52. The Decision Criteria in the Network Code is not referenced for every decision, but 'memory' of the Condition is refreshed from time to time.
53. In terms of information needed from GWR in order to consider the Decision Criteria, Network Rail was aware of the requirement by GWR for an enhanced service, as similarly sought by MTR. Network Rail balanced GWR's stated requirement against outputs that could be provided by Network Rail, together with necessary maintenance work and available funding. The Network Rail decision was then advised to Train Operators.
54. In the application of D4.6.3 of the Network Code, Network Rail considered there was a maintenance requirement and, therefore, Consideration (a) was particularly relevant. Consideration (e) was relevant in relation to the work provided by Network Rail. Consideration (c) was also relevant having regard to the Elizabeth Line (Crossrail service).
55. As to the application of D4.6.3 of the Network Code between individual Timetable Participants, Network Rail stated Considerations (a) and (c) were key. Considerations (d) (e) and (j) were relevant regarding train operators with a demand. Consideration (c) was to be ranked highest due to the expectations of operators followed by Consideration (a) in view of Crossrail project implementation.
56. In reaching its conclusion that Considerations (a) and (c) were the most important, Network Rail did not request any factual information from GWR. By way of example, no information was sought regarding passenger loadings, and it was Network Rail's expectation that additional capacity would be taken forward into 2019. No attempt was made by Network Rail to tackle the challenge of achieving extra GWR trains on a two track railway.
57. During the period of Panel questions, it became apparent that a compromise might be achieved between the Dispute Parties. An adjournment was arranged to enable discussions to be continued. I explained how Condition D5.3.1(a) might apply if a compromise could not be reached for the determination to capture as an undertaking. The Dispute Parties returned to state that a compromise had been reached, but upon further questioning as to the detail, it became clear that an agreement had not been reached. In these circumstances the Panel needed to proceed to a determination.

G Interested Parties

58. MTR Corporation (Crossrail) Ltd was present at the Hearing but filed no evidence. I invited its two representatives to provide the Panel with any comments as to its position. In summary, MTR supported the Network Rail case and said that any delay in the implementation of the Network Rail programme would have a substantial impact on MTR.

H Analysis

59. A central issue in this determination is the application of The Decision Criteria by Network Rail in accordance with Condition D4.6 of the Network Code, which is set out in full in Appendix "B".
60. ADR Rule A7 provides that in reaching a determination each and every Forum shall:

- (b) *Be bound by any relevant decision of the ORR on a Regulatory issue and any relevant decisions of the courts.*

61. On 15 February 2018, the ORR made a determination in respect of an appeal by Network Rail against Determination TTP1174 of the Timetabling Panel, dated 14 November 2017. Although the facts at issue differ from those in this case, relevant guidance was provided by the ORR. At paragraphs 59 to 68 of the appeal decision the ORR addressed the question of the role of the Decision Criteria. It is relevant to this determination to set out an extract from that appeal decision:

(Para. 61) ORR considers that it is fundamental to a proper understanding of the provisions relating to the Decision Criteria that the wording of D4.6 imposes an obligation on Network Rail. The provisions do not confer an entitlement or power. The obligation is to achieve the Objective (applying the Considerations) where Network Rail 'is required to decide any matter'. In relation to the compilation of the WTT, Network Rail's obligation is reinforced by the language of Condition D4.2.1.

(Para. 65) ORR does not agree that 'decisions' are required only when there is a conflict between Access Proposals or with the Timetable Planning Rules. Network Rail's responsibility for compiling the WTT means that, in practice it must decide whether to include, vary or reject each Train Slot requested in an Access Proposal (doing so in accordance with the provisions of Part D). Any such decision is binding unless overturned by an appeal.

The wording of the Network Code therefore strongly supports the interpretation that Network Rail has an obligation to apply the Decision Criteria to all of the decisions it makes and we see no reason why a limitation should be implied. The nature of the Objective and Considerations are such that they are of relevance generally to the compilation of the WTT. It is entirely consistent with the purpose of the Decision Criteria that they should apply to all decisions which Network Rail makes in compiling the WTT, so that there is a consistent driver in decision making which affects the interests of many and varied parties. In contrast, we do not consider that it would align with the purpose of the Decision Criteria if Network Rail was only required to apply them in certain circumstances.

62. In my directions letter of 14 May 2018, I asked Network Rail when it had 'considered its 2 track railway proposal for each Sunday in relation to the Decision Criteria and how it reached its conclusions'. Also, 'when (and how) these assessments were communicated to FGW'. In reply, Network Rail stated that 'Decision Criteria considerations are normally done as an intuitive exercise, and are not formally noted'. Formal notation of Decision Criteria considerations is only done for items that are formally disputed.

63. Chambers Twentieth Century Dictionary defines 'intuitive' as 'the power of the mind by which it immediately perceives the truth of things without reasoning or analysis'. In my view there are a number of reasons why such an approach does not accord with the requirements of Condition D4.6 of the Network Code. In this case the decisions required to be made by Network Rail were complex and varied and required both reasoning and analysis following the completion of a fact gathering exercise, which should have included obtaining information from the relevant timetable participants including GWR. In my view D4.6 imposes on Network Rail an obligation to make decisions based on judgements

founded on proper reasoning and analysis. An intuitive exercise does not satisfy the requirements of D4.6 of the Network Code.

64. Panel questioning of Network Rail as to its approach to the application of the Decision Criteria established a number of further concerns. Contrary to the approach directed by ORR in TTP1174, Network Rail confirmed that the Decision Criteria were not considered for making every decision, but 'memory of the Condition is refreshed every now and then'. Such an approach does not in my view satisfy the requirements of D4.6. of the Network Code.
65. In my view, the Decision Criteria place an obligation on Network Rail to obtain relevant factual information so that in the application of the Decision Criteria, Network Rail can make informed decisions. In applying both the Objective and the Considerations it is unlikely that Network Rail can be in possession of all relevant facts that need to be assessed. Condition D4.6.3 requires Network Rail to 'reach a decision which is fair and not unduly discriminatory as between any individual affected Timetable Participants or as between any individual affected Timetable Participants and Network Rail'. Such a balancing exercise cannot be achieved, in my view, without a substantial engagement with the Timetable Participants. It was evident from the questioning of both GWR and Network Rail that such engagement had not taken place between the Dispute Parties. It was clear to the Panel that there had been a breakdown in communication between the Dispute Parties. Network Rail had failed to explore with GWR the details of the proposed works and the methodology for delivery of those works.
66. In my view, Network Rail made an incorrect assumption when it informed the Panel that similar works had been undertaken over a number of years and that the effect should therefore be understood by GWR. Such an assumption evidences the lack of engagement on the part of Network Rail and illustrates two important failings. Firstly, Network Rail's failure to fulfil its obligation to gather relevant information from Timetable Participants in order to make an informed decision. Secondly, and most importantly, Network Rail's failure to apply the Decision Criteria in making its relevant decisions. It is common ground that prior to the commencement of this dispute Network Rail had not informed GWR of the detail of its application of the Decision Criteria in reaching its decision.
67. The Panel, in questioning Network Rail, sought to understand when, in the present dispute, Network Rail had first made a decision having applied the Decision Criteria. In answer to the question, 'where do we see your consideration of the Decision Criteria?', Network Rail replied that it was in preparation for the hearing. In my view, D4.6 requires Network Rail to have applied the Decision Criteria at a much earlier stage during the preparation of the 2TT, and it was clear from the evidence that Network Rail had failed to do so.
68. For all the above reasons the Panel is satisfied that Network Rail has failed to demonstrate that it has complied with Condition D4.6 of the Network Code and in those circumstances Network Rail is not entitled to construct a timetable based on a 2TT between Ladbroke Grove and Dolphin Junction, from December 2018 to May 2019.
69. The Western Route has seen significant investment in the infrastructure to support electrification, new trains, more services and the new Elizabeth Line Crossrail service during CP5. I acknowledge that this has created a substantial volume of work for Network Rail. I appreciate that this determination will add to its burdens. However, the importance of the project does not release Network Rail from complying with a fundamental requirement of the Network Code. If Network Rail permits me to offer a learning outcome from this

determination it is to amend its procedures to demonstrate that it has applied the Decision Criteria from the outset. There is a need to engage fully with Timetable Participants when there is a dispute both as to the gathering of relevant information and the explaining of decisions by reference to the application of the Decision Criteria.

I Determination

70. Having carefully considered the submissions and evidence, and based on my analysis of the legal and contractual issues, it is my determination that Network Rail shall be directed that the WTT is to be constructed on the basis of a four track railway during the Principal Timetable from December 2018 to May 2019. As a consequence of this direction Network Rail will be required to negotiate relevant engineering access.

71. No application has been made for costs and I do not consider there to be any reason to make such an order.

72. I confirm that, so far as I am aware this determination and the process by which it has been reached are compliant in form and content with the requirements of the Access Dispute Resolution Rules.

A handwritten signature in black ink, appearing to read 'S. E. Murfitt'.

Stephen Murfitt
Hearing Chair
7 June 2018

APPENDIX "A"

TEXT OF DIRECTIONS LETTER SENT TO THE DISPUTE PARTIES ON 14 MAY 2018

I have read the Sole Reference documents which you have provided for the Timetabling Panel hearing scheduled for 24 May 2018 and now issue the following Directions to assist the conduct of the hearing:-

1. By 16 00 on Friday 18 May 2018, Network Rail is to provide FGW (Robert.Holder@gwr.com) and the Committee Secretary with the following information:
 - (a) Showing the division of activity between "CP5 domestic work" and "Crossrail construction work", say exactly what works are intended to be delivered on each of the Sundays and which aspects of these works are safety critical;
 - (b) Say whether any of the works in (a) above could have been completed sooner than the date now planned;
 - (c) State the effect of any delay to the works (as now planned) being delivered – or the works not being carried out at all; and the associated cost.
 - (d) Say when Network Rail considered its 2-track railway proposal for each Sunday in relation to the Decision Criteria and how it reached its conclusions; and also say when (and how) these assessments were communicated to FGW.
2. Upon receipt of the information from Network Rail regarding the detail of the intended works, FGW is to review it in relation to its stated view that the works can be accomplished whilst the full, amplified new train service is accommodated over a less restrictive version of 2-track operation between Paddington and Reading. FGW is to attend the Panel hearing prepared to respond to questioning about this.

APPENDIX "B"

EXTRACT FROM THE NETWORK CODE, PART D (July 2017)

D4.6 The Decision Criteria

- 4.6.1 Where Network Rail is required to decide any matter in this Part D its objective shall be to share capacity on the Network for the safe carriage of passengers and goods in the most efficient and economical manner in the overall interest of current and prospective users and providers of railway services ("the Objective").
- 4.6.2 In achieving the Objective, Network Rail shall apply any or all of the considerations in paragraphs (a)-(k) below (the "Considerations") in accordance with Condition D4.6.3 below:
- (a) maintaining, developing and improving the capability of the Network;
 - (b) that the spread of services reflects demand;
 - (c) maintaining and improving train service performance;
 - (d) that journey times are as short as reasonably possible;
 - (e) maintaining and improving an integrated system of transport for passengers and goods;
 - (f) the commercial interests of Network Rail (apart from the terms of any maintenance contract entered into or proposed by Network Rail) or any Timetable Participant of which Network Rail is aware;
 - (g) seeking consistency with any relevant Route Utilisation Strategy;
 - (h) that, as far as possible, International Paths included in the New Working Timetable at D-48 are not subsequently changed;
 - (i) mitigating the effect on the environment;
 - (j) enabling operators of trains to utilise their assets efficiently; and
 - (k) avoiding changes, as far as possible, to a Strategic Train Slot other than changes which are consistent with the intended purpose of the Strategic Path to which the Strategic Train Slot relates.
- 4.6.3 When applying the Considerations, Network Rail must consider which of them is or are relevant to the particular circumstances and apply those it has identified as relevant so as to reach a decision which is fair and is not unduly discriminatory as between any individual affected Timetable Participants or as between any individual affected Timetable Participants and Network Rail. Where, in the light of the particular circumstances, Network Rail considers that application of two or more of the relevant Considerations will lead to a conflicting result then it must decide which of them is or are the most important in the circumstances and when applying it or them, do so with appropriate weight.
- 4.6.4 The Objective and the Considerations together form the Decision Criteria.