TIMETABLING PANEL of the ACCESS DISPUTES COMMITTEE

Determination in respect of dispute reference TTP1630
(following a hearing held via videoconference, on 16 April 2020)

The Panel:

Andrew Long	Hearing Chair

Members appointed from the Timetabling Pool

David Fletcher	elected representative for Franchised Passenger Class, Band 2
Ian Kapur	elected representative for Non-Passenger Class, Band 2
Hannah Linford	appointed representative of Network Rail

The Dispute Parties:

West Midlands Trains Ltd ("WMT")

James Carter	Network Access Manager
Ashley Wilkes	Project Manager
David McConnochie	Timetable Manager
Kevin Wapplington	Timetabling Consultant (external)

Network Rail Infrastructure Ltd ("Network Rail")

John Thurgood	Timetable Production Manager (North West & Central)
Keiran Quinn	Performance Improvement Coordinator
Adam Hodgson	Policy Advisor
Helen Bendall-Jones	Timetable Planning Rules Specialist (North West & Central)
Anthony Briedis	Operational Planning Production Manager (North West & Central)

Interested parties:

Freightliner Heavy Haul Ltd.
Not represented

First Trenitalia West Coast Rail Ltd

Alex Grimes	Timetable Development Manager

XC Trains Ltd.

Patrick Lawless	Timetable Development Manager

DB Cargo (UK) Ltd.

Quentin Hedderly	Network Capacity Manager

TfW Rail Services

Steve Whitley	Head of Operations Strategy

In attendance:

Tamzin Cloke	Committee Secretary ("Secretary")

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A Background and Jurisdiction

1. Dispute TTP1630 was raised by WMT by service of a Notice of Dispute on 13 February 2020 in respect of Network Rail's decisions in relation to the Timetable Planning Rules for 2021, Version 2. The dispute was brought on the basis that, amongst other items, Network Rail had included new minimum station dwell values, with which WMT did not agree. On 13 March 2020 the Secretary received a request from Network Rail to expedite the hearing.

2. I was appointed as Hearing Chair on 25 March 2020 and I satisfied myself that the matters in dispute included grounds of appeal which may 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.

3. In its consideration of the Parties' submissions and its hearing of the Disputes, 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'.

4. The abbreviations used in this determination are set out in the list of Parties above, in this paragraph 4 and as otherwise defined in this determination document:

- "ADR Rules" mean the Access Dispute Resolution Rules and "Rule" is construed accordingly
- Decision Criteria means Network Code Condition D4.6
- "Chapter H" means Chapter H of the ADR Rules
- "Part D" means Part D of the Network Code
- "SRT" means Sectional Running Time
- "TPR" means Timetable Planning Rules
- ''TTP'' means Timetabling Panel
- ''Amendment Procedure'' means the Procedure for Amending the Timetable Planning Rules

B History of this dispute process and documents submitted

5. 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 notified generally by means of the website and by email to those identified as potential interested parties by the Dispute Parties.

6. On 31 March 2020 WMT served its Sole Reference Document, in accordance with the dispute timetable as issued by the Secretary.

7. On 06 April 2020 Network Rail served its Sole Reference Document in accordance with the revised dispute timetable as issued by the Secretary on 03 April 2020.

8. Freightliner Heavy Haul Ltd., First Trenitalia West Coast Rail Ltd, DB Cargo (UK) Ltd., TfW Rail Services Ltd. and XC Trains Ltd. declared themselves to be interested parties. All were represented at the hearing, save for Freightliner due to last minute unavailability.

9. On 15 April 2020 the Dispute Parties were advised – for the purposes of ADR Rule H18(c) – that so far as there were any relevant issues of law, there were no issues of

pure law, the issue being the proper construction of the relevant parts of the Network Code against the findings of fact that are determined.

10. The hearing took place on 16 April 2020. Panel members made relevant declarations of interest/connections. The Dispute Parties made opening statements, responded to questions from the Panel concerning various points and were given the opportunity to make closing statements. The interested parties were given the opportunity to raise points of concern.

11. I confirm that the Panel had read all of the papers submitted by the Dispute Parties and 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 materials are specifically referred to or summarised in the course of this determination.

C Outcomes sought by the Dispute Parties

12. In its sole reference document, WMT requested that the panel determine:

    (a) that Network Rail had not provided sufficient justification for its proposal to extend the dwell times from 45 seconds to 1 minute, including quantification of the benefits, nor (in accordance with the Guiding Principles in the National TPRs) considered whether the outputs could be delivered by alternative options instead;

    (b) that in progressing the proposed changes to the TPRs through to version 2, Network Rail had not applied the Decision Criteria as required under D4.1.1;

    (c) for the two reasons above, that the proposed amendments to the TPRs for the 2021 timetable should be removed.

13. Network Rail asked the Panel to determine that: it had adhered to Network Code Condition D2.2.2 and acted in accordance with the duties and powers set out in Condition D4.1; it did not display disregard for Part D but instead worked with WMT in a pragmatic and reasonable way to undertake revisions to the TPRs identified as being required; the final version of the TPRs as published at D44 in relation to the December 2021 timetable should remain in force.

D Relevant provisions of the Network Code and other documents

14. The versions of the Network Code Part D and the ADR Rules dated 26 September 2019 were applicable to these dispute proceedings.

15. The following sections of the Amendment Procedure (*Procedure for amending the Values in the Timetable Planning Rules* in the National TPRs, dated 7 February 2020), were particularly relevant and are appended in Annex "A": 6.1.1; 6.1.2; 6.2.1 to 6.2.3; 6.2.5; 6.2.7; 6.2.12; 6.8.2 to 6.8.6

16. Condition D4.6 was particularly relevant and are appended in Annex "B".

E The decision and appeal

17. On 7 February 2020 Network Rail issued Version 2 of the proposed TPRs for the North West and Central Region in accordance with Network Code Condition D2.2.3. That included a decision to increase minimum station dwell times for Class 350s from 45 seconds to one minute for the following stations in the Coventry Corridor – Canley, Tile Hill, Berkswell, Marston Green, Lea Hall, Stechford and Adderley Park.

18. On 13 February 2020 West Midlands Trains issued a Notice of Dispute in relation to the above decision in accordance with Network Code 2.2.5.. The Notice had also disputed both some issues in relation to a junction margin and to a proposal to increase minimum station dwell time at Hampton in Arden, another station in the Coventry Corridor. To the parties' credit, those two other disputes have been resolved. The appeal is properly brought to a Timetabling Panel; the issues between the parties are largely those set out at paragraphs 12 and 13 above. In particular Network Rail says that it followed the proper process, complied with the relevant Rules and had sufficient evidence to justify the decision, whereas WMT says there has been insufficient evidence to justify the rule change and that the Decision Criteria have not been correctly applied.

19. Network Rail's case was that, based on the Quartz data, a) at no station is the median average dwell of 45 seconds achieved and b) the use of a 30/60 second alternating pattern for dwells in the Coventry Corridor, even where 45 seconds median is achieved, puts trains out of path and causes sub threshold delay transmitted elsewhere. Network Rail said that '*to continue to use the 45 second dwell value is to continue to plan to fail by creating delay within the train plan and would be planning to deliver poor performance'*. WMT did not accept that the evidence supported this conclusion. Network Rail also advanced an argument based on WMT's alleged failure to comply with procedural requirements.

F Performance in the Coventry Corridor

20. The 'Coventry Corridor' is a shorthand phrase for the section of railway directly connecting Birmingham New Street and Coventry. It has intermediate stations at the eight stations originally in dispute, plus the major station at Birmingham International, which is located halfway between Birmingham New Street and Coventry (with four of the eight stations on each side of Birmingham International). Although the Corridor commences at New Street, some journey timings referred to below are taken from Proof House Junction, just to the east of New Street, so as to eliminate the effect of awaiting paths, platforms etc. at New Street.

21. There are numerous different types of services operating through the Coventry Corridor by a number of Train Operating Companies, as reflected in the Interested Parties to this dispute. The fastest services are those operated by Avanti (previously Virgin) between Birmingham New Street (many originating and terminating further to the north and west) and London Euston. The regular pattern is for three trains per hour at high speed stopping only at Birmingham International, Coventry and usually one other station.

22. West Midlands Trains operate services also between Birmingham New Street and London Euston through the Coventry Corridor, but via Northampton. WMT also operates local services. WMT is the only operator with services stopping at the stations in dispute. There are varying stopping patterns for those stations. Some trains also continue beyond Birmingham in a (broadly) north westerly direction.

23. There are long distance XC Trains services passing through the Corridor. Those services also stop in the Corridor at Birmingham New Street, Birmingham International and Coventry but not at the intermediate stations. Transport for Wales also operates services in the Coventry Corridor, often with services to the mid Wales coast starting/terminating at Birmingham International. Freight also passes through the Coventry Corridor. The Daventry International Rail Freight Terminal is some 13 miles or so to the east of Coventry.

24. The Coventry Corridor only has one Up (to London) and Down (to Birmingham) Line. The only point at which trains can pass is at Birmingham International if the train to be passed is held in a platform.

25. The potential problems can easily be seen. A high number of services of different speeds with (very) limited passing opportunities traverse the Coventry Corridor. One of the more obvious is that if services present themselves at either Proof House Junction or (more often) Coventry late/out of sequence, or if there are delays within the Corridor, then this may affect other services. Sometimes faster services can find themselves held behind slower and stopping trains. The effects, in the modern and busy railway, can spread beyond the Corridor.

26. The stations in dispute are located either within the built up areas of Birmingham and Coventry or are at habitations in the Warwickshire countryside between those cities. As such, a major use of the train services from those stations is for commuting into Birmingham (and, to a much lesser degree, Coventry).

27. There was a dramatic reduction in the Coventry Corridor performance with the introduction of the May 2019 timetable which made significant changes intended to improve and expand services, many of them as part of WMT's new franchise. Those changes did not include changes to the dwell times at the stations in question; they remained at 45 seconds for 350s per relevant station, as they had been for many years, planned as an alternating 30/60 second pattern. Network Rail states that PPM for the Coventry Corridor deteriorated from 81.06% in Period 1 2019/20 to 67.95% in Period 3 2019/20. There was considerable publicity about this; the issue of WMT performance came under public and political scrutiny. Everyone was (to put it mildly) frustrated. It was in everyone's interest to improve performance including Network Rail and WMT. Something had to be done.

28. Network Rail's explanation for the subsequent focus on dwell times included '*Prior to the May 2019 timetable change the Euston-Liverpool (WMT) services (which called at most stations on the Coventry Corridor) terminated at Birmingham New Street and had a circa 15 minute turnaround time. This masked poor performance in the Coventry Corridor and from the introduction of the May 2019 timetable, when this group moved to through trains with a reduced dwell of 7 minutes with a detach move*

when the issue became more prominent. Due to the loss of time on the Coventry Corridor this delay transferred north of Birmingham' . The Liverpool services were of course only one aspect of poor performance, other changes had related to giving Rugeley a WMT direct service to London; that had not worked out well.

29. There have since been changes and improvements. In October 2019 Long Buckby calls were removed from some of the Euston-Birmingham - Rugeley/Crewe services to enable more right time arrival at the Coventry Corridor. This resulted in an immediate improvement in PPM for arrivals. Importantly, calls at some Coventry Corridor stations were removed from long distance services and replaced by a self-contained shuttle service between Birmingham New Street and Birmingham International which has, it appears, made a significant improvement to performance.

30. More changes are to be implemented for the May 2020 timetable, intended to improve further the chances of right time presentation at Coventry. One of WMT's submissions is that it would be more appropriate, in the circumstances, to await to see how the timetable operates with all incremental changes so far planned.

31. In May/June 2019 the Coventry Corridor was selected for review following the (particularly) poor performance in the area. Dwell times and Sectional Running Times were to be examined. The Network Code Part D contains a procedural timetable for amending the TPRs. Key provisions can be summarised as follows. By 2.2 there is to be a review of the TPRs in Weeks D64-D44. 2.2.5 provides that Network Rail must issue final revised rules by D44 and 2.2.6 states that Network Rail must provide reasons. By 4.1.1 all decisions are to be made by applying the Decision Criteria in 4.6, which is set out in Annex B. A right of appeal is provided in 2.2.6. D5 provides that the appeal is to a Timetabling Panel. The Panel's powers when deciding the appeal are limited by reference to 5.3.

32. Network Rail published the proposal to amend the station dwell times in Versions 0,1 and 2 and consulted with industry parties from mid 2019 onwards. The decision in dispute was made by Network Rail on 7 February 2020, namely to proceed with amended minimum dwell values for the seven stations remaining in dispute. The Panel is satisfied that (and it does not appear to be disputed by WMT) that the appropriate publication and consultation process was followed by Network Rail.

33. WMT indicated in late November 2019 in its D54 response to Version 1 that it did not support the Draft Rules. WMT became much more actively engaged in January 2020. WMT attended Network Rail offices on 9 January 2020 to discuss the Timetable Study (see below). WMT then supplied its own manual observations taken over one day. At the 20 January 2020 Timetable Study meeting WMT expressed disagreement with the outputs from the timetable Study and on 22 January at the South and Central Forum WMT objected to the proposed amendments to the dwell times.

34. There was however one other major change during the process. Network Rail said '*From the outset it was Network Rail's intention to review SRTs on the Coventry Corridor as part of this workstream*'. This was a sensible plan. Clearly if, say, a timetabled dwell time was routinely a few seconds short of achieved dwell times this can be compensated for if, say, the subsequent timetabled Sectional Running Time

happens to be ten seconds longer than routinely is needed in practice. Sectional Running Times and Dwell Times naturally go together.

35. In November 2019 it was decided to proceed with reviewing dwell times without simultaneously reviewing SRTs. As Network Rail says '*the decision was taken in November 2019 that due to time constraints in obtaining and reviewing SRT data this was no longer an option. Given the long lead times of the TPR process and coupled with poor performance in the Coventry Corridor, Network Rail did not want to miss an opportunity to realise a performance benefit in the December 2020 TT'.* Network Rail accepts that a review of SRT values is required.

36. Accordingly there was a potential proposal to amend upwards values in the TPRs. This is an important decision. The National TPRs set out a 'Procedure for Amending the Values in the TPRs' ('the Amendment Procedure'). Some of the key provisions are set out in Annex A to this Decision. Those provisions repay careful study. The Amendment Procedure places heavy emphasis on an evidence-based process, robust methodology, active involvement of potentially affected parties and a balanced decision.

37. There are some points to note. Firstly, the proposal was to increase *minimum* dwell times in the TPRs. The effect of implementation of a rule specifying a minimum would be, of course, to compel that all dwell times for the seven stations would always be (at least) sixty seconds, for all times of day and in both directions throughout the day whatever the circumstances. Conversely (of course) higher values than whatever minimum is specified could be included later in the timetable planning process for specific circumstances/services. WMT says that they intended to have some increased dwell times on specific services for the 2021 timetable. Further, 6.8.4 of the Amendment Procedure states that, where necessary and appropriate, differential station dwell times for different combinations of eight factors shall be used, including time of day, peak loading and method of dispatch.

38. There is a second point of general application in relation to the data. Because the aim is to use data to specify a minimum, care must be taken to choose an appropriate category of observed number. The aim is to produce a figure showing what is usual, typical, normal in terms of dwell time. This means that arithmetic (mean) averages are inappropriate – on 5 observations if the figures are 4 at 45 seconds plus one of two minutes, the mean dwell time is 60 seconds. So medians are often used instead and/or outliers excluded. Outliers will usually indicate that other unusual factors are at play (wheelchair assists at a small station for example). But the rules that set the exclusion of outliers are an important part of the exercise. During this decision there is frequent reference to data which produces averages, whether mean or median; it is always necessary to remember that the purpose is to find the right *minimum.*

39. The third general point is about use of 45 second dwell times. As 6.2.12 of the Amendment Procedure states '*rounding will apply to all technical values.to express planning values in multiples of half minutes and be compatible with downstream systems'* . Accordingly, although the minimum dwell times for these seven stations are shown as 45 seconds in the TPRs, that is effected in the timetable by alternate dwells at relevant stations of respectively 30 seconds and 60 seconds. Part of Network Rail's case is that this is, in itself, potentially a problem. An actual dwell time

of 50/51 seconds (or indeed even 45 seconds) puts a train out of path and, particularly when combined with other factors, can lead to different signal aspects and a process of accumulation of sub-threshold delay, which gets transmitted elsewhere, ultimately resulting in above-threshold delays. The Panel acknowledges the relevance of this submission. Having said that, 45 second dwell values (resulting in alternate 30/60 seconds) had been applied consistently in the Coventry Corridor for many years and were still to be applied at other stations in the Network. Network Rail said that the particular sensitivities of the Coventry Corridor made a 45 second dwell time ineffective in achieving right time operation.

40. Paragraph 6.2.3 of the Amendment Procedure specifies that, if necessary, a Timetable Impact Assessment Study must be undertaken. Such a Study in relation to Version 1 was undertaken to incorporate both the dwell time and other proposed changes. The Study was shown to relevant parties in the consultation process and to the Panel. The Study recited that there had been opposition from operators whose concerns included the general loss of capacity and the need to extend journey times. The conclusion and recommendation of the Study states '*this study has considered a) whether the current quantum of train service could be maintained in the Coventry Corridor as well as b) the flexing that would be required for the current quantum of service to be accommodated…This study has confirmed that the values proposed for the Version 1 of the 2021 TTPR can support the full quantum of train service in the current timetable..Although the full quantum can be maintained, a number of flexes to multiple operators will need to be applied. These will include journey time extensions as well as the removal of calls or the International extensions of WMT 'shuttle services'*. The Study had proposed four 'flexing' options for consideration but had not decided between them. The Study recommended progressing the proposed rules into Version 2 (having acknowledged that the Study related only to the SX service pattern). The Study did not tackle the issue of the quantification of the respective benefits and disadvantages of the proposal.

41. 6.2.1 of the Amendment Procedure sets out four potential courses of action when a deficiency in timetable delivery has been identified. Timetable change is the fourth and final course listed. 6.2.2 is more explicit about priority saying that '*prior to altering TPR values upwards, the aim should be to enhance operational delivery'*. 6.2.5 states that change proposals '*must be considered in the context of any potential need to apply increased and decreased values together as part of an holistic improvement*.' The conclusion is clear; upward increases in values are only to be included in TPRs after careful evaluation of proper evidence, firstly having considered other options.

42. There is a fourth general point; at the risk of stating the seemingly obvious, it is very important that the timings are accurate. As the Panel observed at 5.2 of TTP 1065 (et al) '*The Panel regards TPRs as a key building block in constructing the WTT. They need to be as accurate as possible; if too optimistic the timetable is unachievable; if too pessimistic, capacity is restricted unnecessarily'*. The need for accuracy is particularly acute in this case; Network Rail's case is that median dwells of 50/51 seconds render inappropriate/unachievable a timetable with timetabled dwells of 45 seconds (albeit in an alternating 30/60 pattern) - thereby necessitating a minimum 60 second dwell for all seven stations. It would not take much difference in the numbers to significantly affect the balance between optimistic and pessimistic. Even on Network Rail's case a 5 or 6 second shortfall in timetabled dwell time per station

results in a 10 or 9 second potentially unused time per station. This is very sensitive to small changes, for example of three seconds. If the achieved dwell time is 47/48 seconds rather than 50/51 this changes the balance to 2 or 3 second lateness against 13 or 12 second unused time (again all per station). The ratio of shortfall time to potentially unused time shifts from 1 in 2 to approximately 1 in 5. In short, a three second variation could make a big difference in what the right decision might be.

G Analysis of the dwell time data

43. Network Rail's case was that the dwell time data showed actual dwell times typically of 50/51 seconds, justifying an increase of minimum dwell times from 45 seconds to 60 seconds. WMT's case (5.6 of its sole reference document) was that actual Network Rail manually observed data showed 'averaged out' actual dwell times at the seven stations varying between 45 and 49 seconds, with even lower timings of 41-45 seconds from its own day of observations.

44. There were three sources of dwell time information available to Network Rail at the time of the decision. These were respectively Quartz data, the Network Rail (joint with industry parties, but see below) manual observations on 28 August and 5/6 November 2019; and finally the WMT manual observations on 16 January 2020. The sources (emphasis added) of evidence were agreed in accordance with 6.2.7 of the Amendment Procedure; however, the accuracy of Network Rail's evidence was not accepted by WMT.

45. The WMT observations on 16 January 2020 suggested that 90% of the 84 observed dwell times were in the range 35-50 seconds, only five were in excess of 59 seconds, of which two had wheelchair assists and one followed a previously cancelled train. Network Rail's summary of these timings in its App J produced average total median dwells of respectively 41 and 45 seconds. There were also apparently some instances of early arrival and/or trains taking less time between stations than allowed by timetabled Sectional Running Times.

46. Those observations, which might otherwise undermine Network Rail's case, were, of course, only one day. They are few in number and not done by parties jointly. They may reflect the particular circumstances of the one day. The most that observations from one day are likely to do is to raise questions rather than provide answers. Network Rail rightly sought to rely on data sources containing many more timings.

47. The Quartz data did not have the difficulty of low numbers of observations. The train count for the Down direction was 56,926 with a median of 50 seconds and for the Up direction a train count of 47,311 trains with a median of 51 seconds. The figures are said to have been compiled from average running days from December 2018 to October 2019 where trains were said to be in path. This lengthy period included various different experiences in the Coventry Corridor, including the upheaval and poor performance after the introduction of the May 2019 timetable.

48. Network Rail relied heavily on these figures. In both their Sole Reference Document and in the opening submissions (delivered both orally and in writing) Network Rail stated that 'this is 23% over the 45 seconds in the Up and 22.5% in the Down'. Exceeding timetabled dwell times by 23% and 22.5% would be a serious cause for

concern. But those percentages are simply wrong. 51 seconds is 13% more than 45 seconds and 50 seconds is 11% more than 45 seconds.

49. But more important is what is being measured, particularly in circumstances where just a handful of seconds may make a significant proportional difference to both excess dwells over 45 seconds and to potentially unused time below 60 seconds. 6.8.2 of the Amendment Procedure provides that station minimum dwell times are '*for trains to be at a stand in a station, from when train wheels stop on arrival to when wheels start on departure'.*

50. Network Rail explained that Quartz data uses 'TRUST and TD data feeds' that '*tracks trains at the berth level which provides to the second accurate timings and accurate plotting of train locations* ***then applying the berth offset***' (emphasis added). The explanation was therefore that the figures produced were a combination of timings produced a) automatically from track circuits etc but measuring at different locations than specified in 6.8.2 of the Amendment Procedure and b) an adjustment for the berth offset. The berth offset was said to '*be calculated manually. The NW&C Route is the PDQS team going out to the platform for several hours, over several days, taking an average of all traction that uses that station.'* Network Rail were unable to explain to the Panel's satisfaction how the manual calculations were performed so as to produce a meaningful dwell time for timetable planning purposes – in effect, how the PDQS team measure from the train passing the signal until the wheels stop (and conversely from wheel start to passing a subsequent measuring point). That understanding is necessary to ensure that the Quartz data, minus berth offset, precisely measures 'wheels stop to wheels start'. Network Rail relied on these being industry figures widely applied for other purposes including by WMT.

51. There is also the issue of which dwells are respectively included and excluded from the Quartz data relied upon. Network Rail said at the hearing *'the outliers have been removed and that is any trains arriving later than 15 seconds before planned departure time, assuming the minimum possible dwell time and removed any trains with more than 3 minute dwell times delay assuming they were delayed for other factors'.* In relation to the latter point this means that trains that have a dwell time of 150 seconds are included in the figures at a station with usual dwell times of 45 – 50 seconds. Three minutes is a high threshold particularly when given the sensitivity to the decision of the key dwell times.

52. On the former point Network Rail could not explain the rationale for the exclusion of trains arriving later than 15 seconds before planned departure time, responding that those figures were supplied by Amey Consulting who provided the data, other than to say that its intention appeared to be to exclude late running trains. If the dwell time was set at 30 seconds (in the case of alternating 30/60 second dwells) this would appear to exclude trains arriving 16 seconds later than timetabled. There was also no mention of the exclusion of early arrivals, which might distort the figures.

53. The Network Rail observations were carried out jointly, over three days 28 August and 5/6 November 2019. There was a conflict between the parties' Sole Reference Documents as to what figures were produced as a result. As set out above, WMT's conclusion was that the average actual observed time varied between 45 and 49 seconds. This was based on detailed timings for each observation which are

contained in WMT's App 4. Analysis of App 4 confirms that for most stations the average dwell time is between 46 and 49 seconds, that timings of less than 30 seconds are never achieved, that timings above 60 seconds are rare (and include outliers such as assisted passenger boarding) and that the longer dwell times occur mostly in the peaks, but that during off peak times close to 45 seconds is usual.

54. By contrast the summary of the joint observation data in Network Rail's Appendix J produces 'average median dwell times' in each of the directions of respectively 50 and 51 seconds. It appears, of course, somewhat strange that data from joint observations could produce differing conclusions by different parties as to what that data says about dwell times. There were two possible reasons for the discrepancy. First, the Network Rail material includes further observations not included in WMT's App 4. In written answers to questions Network Rail stated that the data also included observations from *'daily runs between 16/10/19 and 07/11/19*'. Appendix J (said to be agreed) has 216 observations, almost twice as many as shown in WMT App 4. It appears that what has happened is that the 'daily runs' observations have been included in Network Rail's App J; the detail of the timings for the daily runs were not shown to the Panel. It is theoretically possible that the reason for the discrepancy is that the timings on the 'daily runs' were (very) significantly worse than on the joint observations; but that seems quite unlikely and would have merited disclosure to the Panel.

55. But there is another issue – the figure produced by Network Rail of 'average median dwell time' from those observations. What is an 'average median'? The figures supplied are consistent with a calculation as follows. First, for each station, find a median for the observations for each time of day observed. So at Stechford in the Down direction these show – in the am peak one dwell at 73 seconds, in the pm peak one dwell at 55 seconds, daytime seven dwells having a median of 47 seconds. Those three 'medians' of 73, 55 and 47 seconds produce an arithmetic average of 58 seconds from the nine trains (NB however Network Rail's total in its App J of 7+1+1 is shown as 8, rather than 9). But the <u>one</u> train at 73 seconds has apparently had the same weighting as the median of 47 seconds for <u>seven</u> trains, which gives disproportionate emphasis to the one observation of 73 seconds. 58 seconds seems an unrepresentative figure to produce from these nine observations, seven of which have a median of 47 seconds.

56. But then 'average median dwells' per station in each direction are then themselves averaged. Again an arithmetic mean of the medians appears to be used without (apparently) giving weighting to the number of observations – the 58 seconds for the average median at Stechford from a total of nine observations is apparently given equal weighting to the medians from three other stations with respectively 27,26 and 24 observations. The overall effect seems to be, for example, to give (twice) a disproportionate weighting to one peak station dwell of 73 seconds at Stechford.

57. The Panel was not satisfied that the 'average median dwell time' for Network Rail observations (which had produced an outcome of 50/51 seconds) had been calculated in a way that was methodologically sound; it appears to be an average of averages of median dwell times, without proper weightings in achieving averages. This is important particularly as it produces a different outcome from the actual specific

Network Rail observation figures shown in App 4 of the WMT Sole Reference Document.

58. Conclusion on dwell times. The Panel is not satisfied that there is sufficient evidence to justify Network Rail's conclusions on dwell times. The results of all of the observations where full information has been given (which is contained in WMT App 4) produces medians of either 41-45 or 45-49 seconds. That is both the consequence of the arithmetic and the general sense of those timings. Network Rail's figures of 'average medians' of 50/51 seconds from the joint observations is produced only after applying a methodology that appears unreliable and after adding results from daily runs whose individual results have not been shown. The Quartz results had a very high number of observations during a long period (including of very poor performance) but which relied upon manual adjustments whose methodology was not entirely clear. More significantly, in addition, the criteria for which timings were included/excluded had a (very) high threshold for exclusion; again because of the sensitivity, exclusion by reference to a lower threshold might have resulted in a median much closer to the dwell time manual observations.

59. Network Rail also relied upon the figures and charts in its App C. The intention was to provide evidence that (median) trains lost time in the Coventry Corridor. In response to analysis/questions from the Panel Network Rail said *'as a generalised summary WMT in the Down lose around 90 seconds in the Corridor, throughout the day; and in the Up don't lose additional lateness..*' Network Rail also noted the worst additional lateness was in the Evening in the Down (for both WMT and Avanti services) and that daytime Up services had lost a little time by Birmingham International but regained it by Coventry (figures showed some daytime Up services gaining time in the Corridor).

60. The conclusion that the Panel reaches on App C is that it does evidence some problems in the Corridor; but the variances of results for time of day and direction tend to point away from the best solution being a blanket increase in dwell times.

H The respective benefits and disadvantages of the proposal/the Decision Criteria

61. In deciding whether to proceed with the proposal it is necessary to determine whether there is a robust timetable (see e.g. Amendment Procedure 6.1.2) and robust for operational usage station dwell times. Furthermore, there needs to be a balanced decision, applying the Decision Criteria. This will include comparing the operational gains and losses from the proposal. The principal gain articulated was in the robustness of the timetable, from the perspective of removing both a minimum dwell of 45 seconds which is (allegedly) below that actually achieved and also the 30/60 alternate dwell pattern which was said to be problematic in the Coventry Corridor. The principal downside is that the uplift in minimum values increases timetabled journey time and may restrict capacity.

62. Network Rail's contention that the timetable would be more robust if the minimum dwell values for all station dwell values were increased to 60 seconds is undoubtedly correct. Network Rail is right that such a timetable would help to eliminate the chance of any excess dwell being transferred along and beyond the Corridor. The contention however that a timetable with seven dwells of sixty seconds would better reflect what

actually happens on the day was unproven; indeed the observations suggest that 45 seconds is (much) closer to reality than 60 seconds.

63. Similarly the Network Rail contentions re the alternate 30/60 second dwells; there was an assertion that these caused problems and the Panel recognises that they may well do so on occasions. Context is important. This includes cause and effect; the May 2019 problems were not caused by any dwell time change as there was none. So it is necessary to understand the extent of any problem caused by dwell time, such as sub threshold delay, when other causes are in play. The evidence is very sensitive to small differences. There are timetable changes that have been implemented but yet to have been evaluated. There are disadvantages as well as advantages of the proposal. The dwell times are being implemented without the SRTs being reviewed. 30/60 second dwells have applied in the Coventry Corridor and elsewhere for many years. All these factors suggest that there needs to be a robust evidence base for the proposed rule change.

64. However, there was very little (if anything) by way of quantification. What is important is the extent of delay caused by those dwell times and the extent to which the proposed increase in dwell times will improve performance both within and outside the Corridor. On disadvantages, the Timetable Impact Assessment aimed to evaluate whether the same quantum of service could be timetabled. It did not attempt to quantify the downside of extended timetabled journey times. The Study's answer on whether the quantum of service could be retained in the Corridor was a qualified 'yes'. However, the qualification is important. Some flexing would be required for one regular service with four possible options to be decided between. Significantly one option was to remove the relevant Birmingham International shuttle service, introduced precisely to improve performance in the Corridor and (according to WMT) a success in doing so. A comparison on the performance benefits of two different and potentially conflicting measures, namely increased dwell times and the shuttle, would have been useful. Similarly, an evaluation of the potential for unused time in the timetable and its impact would have assisted.

65. The Panel's conclusion is that, both in respect of minimum dwell times of 45 seconds, and as implemented by alternate 30/60 second dwells, there has been insufficient evidence to justify the proposed rule change.

66. Decision Criteria. Network Rail supplied a table showing its application of the Decision Criteria. There were two minor points. First there was a 'N/A' against commercial interest of parties. Whilst initially surprising, Network Rail explained that WMT had made no representations about commercial interests so it was understandable that this did not feature in the Decision Criteria scoring. The highest weighting (5/5) was given to '*maintaining and improving train service performance'* focussing on the percentage of booked dwell times being achieved, varying (it was said) from 63% at Tile Hill to 11% at Marston Green. This is a good point, but the balancing questions are, even if these figures are entirely accurate, a) what is the cumulative effect of the difference from booked 45 second dwells (a difference which was usually a handful of seconds only) and b) whether that should result in a universal increase in minimum values. The Decision Criteria consideration '*that journey times are as short as possible*' was given a weighting of 3/5. Network Rail's reasoning was largely based on the Timetable Study and included that although booked journey times would increase

they would more closely match actual journey times; and that the journey time increase was limited because few trains called at all stations. The Panel did not seriously disagree with the weightings given by Network Rail in the Decision Criteria; however, as Network Rail had correctly submitted, '*accuracy underpins almost all of the Considerations within the Code'.*

67. Differentials. Differential station dwell times are permitted/encouraged where appropriate by 6.8.4 of the Amendment Procedure for factors such as time of day, loading patterns and dispatch arrangements. The Network Rail observations at WMT App 4 also showed a noticeable pattern re the peak/daytime split (there were no night or evening observations recorded in the figures at WMT App 4). The daytime medians recorded (admittedly from small samples) were 40, 45, 46, 46, 50, 45 and 43 seconds in the Up direction and 48, 47, 45, 47, 72 (based on two trains), 53 and 46 seconds in the Down. This reinforced the impression that during the daytime off peak the manual observations showed timings very close to 45 seconds. The timings from all the observations showed some regular, at times marked, variations. These were usually as would be expected from the characteristics of the Corridor; longer times in the peaks, more pronounced in the morning in the Up direction, which are consequences of commuter traffic into, and out of, Birmingham. And more delays on the Down, consequent on trains originating from London arriving late at Coventry. Network Rail's view, based on the Network Rail interpretation of the data, was that the station dwells are problematic throughout the day, even if more so during the peaks; the Quartz data implied that the peak/off peak difference was not huge.

68. Network Rail were asked whether differential dwell times had been considered in the (slightly different) sense of different minimum dwell times for each of the seven stations. The answer was 'yes', but the idea had been rejected principally because of the difficulty (in a timetable with varying stopping patterns at the seven stations) of getting appropriate and consistent 30/60 second pairings between consecutive stations. There are, of course, many possibilities – one raised for the first time at the hearing was always to have a 60 second stop at the final node (i.e. the last station before Birmingham New Street or Coventry) to catch up lost time even if all six previous stations had had 50 second actual dwells. There are many varied possibilities. The decision is not simply between 'minimum 60 second dwells at all stations all day in both directions' and an equivalent alternative of always 45 seconds (achieved by alternate 30/60) - but whether something in between might work more effectively than a minimum of either 45 or 60 seconds. It transpired that Hampton in Arden (the eighth local station in the Corridor) had been resolved after receipt of WMT's Version 1 response on the basis of a 30 second minimum dwell because of Network Rail figures showing a typical 41 second dwell. Network Rail explained that the thinking was that if all the other seven stations had 60 second dwells then there would be some time at the other stations rendering sixty seconds for Hampton in Arden excessive. If this was an Network Rail attempt to be constructive in seeking to reach an agreement, it was well intentioned; it did however raise for WMT the question of why a minimum station dwell always 11 seconds shorter than typical observed dwells (30 v 41) was appropriate when Network Rail resisted minimum dwells only 5/6 seconds shorter than Network Rail's figures for station dwells in the other stations in dispute (45 v 50/51). However, in fairness, when the booked dwell at other stations is 30 seconds (as part of a 30/60 pattern) Network Rail could point to a

minimum dwell 20 or so seconds shorter than Network Rail's figure of 50/51 seconds for a typical dwell.

69. Procedural argument. Network Rail also advanced an argument based on WMT's alleged failures to engage sufficiently during the process. Network Rail cited TTP 1064 in which it is said '*for an appeal to be successful the TOC/FOC must have engaged with Network Rail constructively throughout. Any blanket dismissal of proposals from Network Rail or any unwillingness to explain the TOC/FOC's reasons for disagreeing with such proposals is unlikely to persuade the Panel that such a decision should be overturned'* . Network Rail also complained that '*Despite WMT coming to the Network Rail offices in Milton Keynes and running through the capacity study to inform their timetable bid, they did not submit their December timetable to reflect the new dwell values and therefore have not acted within the spirit of D5.4 by assuming that the reversal of the Network Rail decision is a foregone conclusion'* It is correct that WMT's active engagement started in earnest in January 2020. However, the WMT response must be seen in context. It is to be recalled that until November 2019 it was envisaged that SRTs would be reviewed alongside station dwell times. WMT's principal point/argument was clear throughout – was there enough evidence to justify the proposed rule change? This case is very different from the facts of TTP 1064, where there appears to have been a much more generic challenge to the proposed rules. Whilst earlier active engagement from WMT would have made things easier all round, any failings are not such as to disqualify WMT from being able to bring, or succeed in, this appeal.

I Conclusions on findings requested by the parties

70. The Panel's conclusions on the findings/outcomes requested by the parties as set out in paragraph 12 above is as follows. First the Panel concludes that there was insufficient justification and evidence for a new Timetable Planning Rule requiring a minimum dwell time of 60 seconds at all seven stations. The evidence of the dwell times was insufficient for the reasons set out in the relevant section above. The manual observations for which there was underlying data supplied did not support a dwell time of 50/51 seconds but something (in the context) significantly closer to the current minimum dwell time of 45 seconds. The manual observation figure of 50/51 seconds contended for by Network Rail was based on an unreliable arithmetic method and/or additional observations for which there is no underlying data available. The number of manual observations was also low (in the context of disputed timings) for the purpose of a new minimum rule. The Quartz data was also not sufficient because of a lack of understanding of what Quartz measures and how that converts to a meaningful dwell time. This was for two reasons; first the relationship between the physical measuring points and dwell times for TPR purposes and secondly the (important) rules for the inclusion/exclusion of timings, especially potential outliers such as 150 second dwells.

71. Secondly, the benefits and disadvantages of the proposal have not been sufficiently quantified. The context is that there was not a clear cause and effect relationship between Coventry Corridor performance and the dwell times; the deterioration in performance in May 2019 had been principally caused by other factors. It would be important to have analysis of how much of the delay would/could/might be alleviated

by implementation of 60 second dwell times. This is against the background that the proposal had obvious downsides including (even on Network Rail's figures) of inserting potentially unused time into the timetable. Further, the Timetable Study had shown that there would need to be some 'flexing' including the possible removal of a Birmingham International shuttle service introduced precisely to deal with Coventry Corridor lateness. This potentially presented a choice between two different methods – dwell times versus the shuttle. There needed to be some reliable assessment of the benefits/disadvantages both generally but in particular between two different, but potentially incompatible, ways of attempting to ameliorate Coventry Corridor lateness.

72. These two conclusions need to be seen in the context that there are potential viable alternatives that may provide a better solution to the problems identified by Network Rail than a prescribed minimum dwell of 60 seconds for all seven stations. These are numerous but include, for example, increasing the minimum dwell time to 60 seconds at one or more of the worst performing stations, whilst leaving shorter dwells at one or more other stations. Another alternative in these circumstances was to amend dwell time rules only at the same time as amending the corresponding Sectional Running Times; it needs a stronger case than that advanced to justify increasing minimum dwell times without also considering corresponding SRTs.

73. The Panel accepts Network Rail's submission that it adhered both to the letter and spirit of Network Code Conditions D2.2.2 and D4.1 and that Network Rail correctly followed the prescribed procedures. The Panel also does not seriously disagree with the weightings applied by Network Rail in the application of the Decision Criteria. However, those points cannot overcome the Panel's conclusions on the adequacy of the material relied upon.

74. It follows that the appeal is allowed. The effect is to overturn the decision to proceed at Version 2 with the proposed amended minimum dwell time of 60 seconds for all of the seven stations in dispute. The Panel's further powers are limited by reference to Network Code D5.3.1. The Panel may by D5.3.1(c) substitute an alternative decision but only in exceptional circumstances. The Panel does not consider that there are exceptional circumstances in this case.

75. The Panel does have power, by virtue of D5.3.1(a), to give general directions to Network Rail as to the result to be achieved but not as to the means by which it shall be achieved. The Panel does not give such a direction. The only thing the Panel wishes to say is that the Panel would be content if agreement were achieved in the near future somewhere between the parties' respective positions of minimum 60 second for all seven stations as against no more than 45 seconds dwells for any of the seven stations. But whether such an agreement can be reached is for the parties not the Panel.

76. It may be worth recording what this decision does not decide, lest there be any scope for misunderstanding. Quartz data may well be, in appropriate circumstances, a key element of evidence; however it must be properly understood and the way it is used should produce a meaningful dwell time for timetable planning purposes. Similarly the Panel does not say that changes to station dwell times must always be considered alongside Sectional Running Times; having said that, there will need to be a good case for dealing with them separately.

J Some further comments

77. Interested parties attended the hearing and listened to the opening submissions and the questions and answers. They were given an opportunity to comment. XC Trains did so making two principal short points. First, XC Trains felt that proposing to amend dwell times on this Corridor (with its particular characteristics) but without looking at Sectional Running Times at the same time was 'fatally flawed'. Secondly, that a better understanding was needed of when a minimum 60 second dwell time was needed by reference to, for example, the origin of the train - and that in some circumstances 30 seconds might prove sufficient.

78. The dispute parties had both expressed a spirit of collaboration. Indeed it was somewhat surprising that this matter reached a Timetabling Panel when it seemed that there might well have been ground on which the parties could reach agreement. It did not seem that the intended spirit of collaboration had achieved results in practice. The Panel does not seek to, nor does, find blame on either side. However, as a pointer for the future, this dispute might have had a better chance of resolution if WMT's active involvement had begun earlier and, more importantly, had then included some practical suggestions about alternatives to the proposal.

79. The hearing was held by video link due to Covid 19 restrictions. After some initial inevitable technical issues the arrangements worked. I am grateful to everyone involved for their patience and constructive approach notwithstanding the novelty and challenges. In particular I am grateful to the Committee Secretary for her indefatigable efforts in arranging the technology, solving the technical issues on the day and enabling participation. Whilst this was a successful way to hold a hearing during lockdown it however should not be seen as a model for post-lockdown. Getting everyone around a (physical, not virtual) table for timetabling panels is much better.

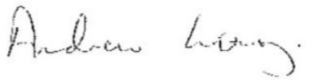
K Determination

80. Having carefully considered the submissions and evidence and based on my analysis of the legal and contractual issues, my determination is as follows.

81. WMT's appeal - against Network Rail's decision in Version 2 of the TPRs for the North West and Central Region, 2021 Timetable amending to sixty seconds the minimum station dwell times for the seven stations in dispute – is allowed.

82. No application was made for costs.

83. 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.



Andrew Long
Hearing Chair
04 May 2020

Annexes

Annex A: relevant extracts from the National TPRs, *Procedure for amending the Values in the Timetable Planning Rules*

6.1.1 and 6.1.2

6.1.1 The purpose of this section is to set out clear principles and a robust methodology for determining Timetable Planning Rules (TPRs) when generating new or amended values for inclusion into route specific TPRs. This methodology should be used by Network Rail and Timetable Participants when proposing or supporting TPR changes, unless another methodology is deemed appropriate, agreed and documented by all parties concerned.

6.1.2 The construction of a robust timetable needs to balance safety, capacity and performance expectations and the aspirations of all stakeholders involved, recognising that the application of these rules should provide for current and anticipated service levels, coming to a balanced decision using the Decision Criteria set out in D4.6 of the Network Code.

6.2.1 to 6.2.3, 6.2.5, 6.2.7 and 6.2.12

6.2.1 Where a deficiency in the delivery of the timetable has been identified, there are four potential courses of action to consider:

(a) Revise operational activities
(b) Infrastructure interventions
(c) TPR review
(d) Timetable change

6.2.2 In respect of proposed upwards revisions of TPR values, the aim should be to enhance operational delivery prior to altering TPR values. This approach must be agreed by the parties with defined outputs and delivery timescales, whereby all parties accept the risk of performance under-delivery in the interim as a result of delaying TPR change. All stakeholders are responsible for reviewing and optimising their own operational delivery performance.

6.2.3 The impact of a TPR value change must be considered by all parties concerned and if deemed necessary, a timetable impact assessment undertaken.

6.2.5 All TPR change proposals must be considered in the context of any potential need to apply increased and decreased values together as part of an holistic improvement.

6.2.7 Changes to individual TPRs will be supported by evidence showing how the values were developed. Sources of evidence are to be agreed by the affected parties.

6.2.12 A process of rounding will apply to all technical values generated through this methodology in order to express planning values in multiples of half minutes and be compatible with downstream systems.

6.8.2 to 6.8.6

6.8.2 Station Dwell Times are the minimum time shown in timetables for trains to be at a stand in a station, from when train wheels stop on arrival to when wheels start on departure.

6.8.3 It includes time for doors to be released open, for passengers to leave and join the train, doors to be confirmed shut and for the train to be dispatched.

6.8.4 Where necessary and appropriate, differential station dwell times shall be created for different combinations of:

- Time of day
- Loading patterns
- Rolling stock

- Station staffing arrangements
- Attaching and detaching
- Catering
- Crew changes
- Miscellaneous operational instructions

For example, Driver Only Operation and guard-worked despatch arrangements may result in a material difference in total station working time, as will peak passenger loadings.

6.8.5 Where no station-specific minimum value is specified a standard value of half a minute will apply.

6.8.6 Timetable Participants are responsible for ensuring that station dwell times are robust for operational usage, and takes account of local operational railway characteristics.

Annex B: relevant extracts from Part D of the Network Code

4.6 **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;

(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; and

(l) no International Freight Train Slot included in section A of an International Freight Capacity Notice shall be changed.