
TIMETABLING PANEL of the ACCESS DISPUTES COMMITTEE

Determination in respect of disputes reference TTP625, TTP685, TTP733 and TTP872

*(following a hearing held at 1 Eversholt Street, London on 23 March 2016
and reconvened on 6 April 2016)*

The Panel:

Clive Fletcher-Wood Hearing Chair

Members appointed from the Timetabling Pool

Peter Warhurst	elected representative for Franchised Passenger Class, Band 1
Tamzin Cloke	elected representative for Franchised Passenger Class, Band 2
Ian Kapur	elected representative for Non-Passenger Class, Band 2
Elaine Folwell	appointed representative of Network Rail

The Dispute Parties:

For Freightliner Ltd and Freightliner Heavy Haul Ltd, (together, "FL")

Jason Bird Engineering & Access Planning Manager

For Network Rail Infrastructure Ltd ("Network Rail")

Shona Elkin	Timetable Production Manager - South East
Matthew Allen	Head of Capacity Planning Controls
Andrew Bray	Timetable Production Manager - Scotland (present 23 March only)
John Thurgood	Operations Planning Project Manager (present 23 March only)
Paul Woodcock	Observer (present 23 March only)

Interested party:

For DB Cargo (UK) Ltd ("DBC")

Stan Kitchen Timetable Strategy Manager

In attendance:

Tony Skilton Secretary, Access Disputes Committee

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1 Introduction, Substance of Dispute and Jurisdiction

- 1.1 On 2 August 2013 Freightliner Ltd and Freightliner Heavy Haul Ltd jointly notified dispute with Network Rail in relation to Network Rail's decisions regarding Version 4 of the Timetable Planning Rules applicable to the New Working Timetable Publication for 2014 (in effect, the subsidiary timetable for introduction in May 2014). The dispute was brought under Condition D2.2.8. of the Network Code as applicable at the time and the Secretary registered it as TTP625.

In notifying the dispute, FL indicated its intention to work with Network Rail in the hope of resolving all the issues without requiring a Timetabling Panel hearing to be expedited.

- 1.2 On 27 February 2014 Freightliner Ltd and Freightliner Heavy Haul Ltd jointly notified dispute with Network Rail in relation to Network Rail's decisions regarding Version 2 of the Timetable Planning Rules applicable to the New Working Timetable Publication for 2015 (in effect, the principal timetable for introduction in December 2014). The dispute was brought under Condition D2.2.8 of the Network Code as applicable at the time and the Secretary registered it as TTP685.

In notifying the dispute, FL again indicated its intention to work with Network Rail in the hope of resolving all the issues without requiring a Timetabling Panel hearing to be expedited.

- 1.3 On 1 August 2014 Freightliner Ltd and Freightliner Heavy Haul Ltd jointly notified dispute with Network Rail in relation to Network Rail's decisions regarding Version 4 of the Timetable Planning Rules applicable to the New Working Timetable Publication for 2015 (in effect, the subsidiary timetable for introduction in May 2015). The dispute was brought under Condition D2.2.8 of the Network Code as applicable at the time and the Secretary registered it as TTP733.

In notifying the dispute, FL again indicated its intention to work with Network Rail in the hope of resolving all the issues without requiring a Timetabling Panel hearing to be expedited.

- 1.4 On 31 July 2015 Freightliner Ltd and Freightliner Heavy Haul Ltd jointly notified dispute with Network Rail in relation to Network Rail's decisions regarding Version 4 of the Timetable Planning Rules applicable to the New Working Timetable Publication for 2016 (in effect, the subsidiary timetable for introduction in May 2016). The dispute was brought under Condition D2.2.8 of the Network Code as applicable at the time and the Secretary registered it as TTP872.

In notifying the dispute, FL again indicated its intention to work with Network Rail in the hope of resolving all the issues without requiring a Timetabling Panel hearing to be expedited. FL did, however, at this point place on record a list of its Timetable Planning Rules issues which remained unresolved.

- 1.5 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.

- 1.6 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".

- 1.7 The abbreviations used in this determination are as set out in the list of parties above and in this paragraph 1.7.

"ADR Rules" means the Access Disputes Resolution Rules
"FOC" means Freight Operating Company

"ORR" means Office of Rail Regulation (subsequently Office of Rail and Road)
"Secretary" means the Secretary of the Access Disputes Committee
"SRT" means Sectional Running Time
"TPRs" means Timetable Planning Rules
"Website" means the website of the Access Disputes Committee
"WTT" means Working Timetable

2 Background, history of this dispute process and documents submitted

2.1 On 30 November 2015 FL reported to the Secretary that having now arrived at the stage of Version 1 of the Timetable Planning Rules applicable to the New Working Timetable Publication for 2017 being issued by Network Rail for consultation, a number of the dispute issues still remained to be addressed. The Secretary proposed to the Dispute Parties that a Timetabling Panel should be convened to deal with the issues and recommended that the four dispute registrations should be heard together in the interests of efficient and fair resolution. Having obtained their agreement, the situation was represented to the Allocation Chair, who on 5 February 2016 ordered accordingly pursuant to ADR Rule B20.

2.2 I was appointed as Hearing Chair on 5 February 2016 and 23 March 2016 was then set as the date for the hearing. At my request, the Dispute Parties were required to provide Sole Reference Documents. The proposed Panel hearing was duly notified by the Secretary direct to parties which clearly might wish to become involved in the dispute proceedings and also generally by means of the Website.

2.3 After I had read the material which was provided by FL with the Notice of Dispute for dispute TTP872, on 11 February 2016 it was suggested to FL that its Sole Reference Document should - if not already intended - clearly distinguish between decisions being sought on points of principle and those decisions being sought on points of detail.

2.4 FL provided its Sole Reference Document to the required timescale of 19 February 2016. It was helpful, to Network Rail and to the Panel, that FL provided a clear distinction between points of principle and points of detail in its Sole Reference Document. FL also broke down the elements of the various disputes as follows:

1 National

1a - Train Service Requirements for Network Service Trains

1b - Procedure for Amending the Values in the Timetable Planning Rules

2 East Anglia

2a - Stratford SRTs and margins

2b - Upminster platform reoccupation

3 Scotland

3a - Craigo

3b - Headways Hamilton and R&C (Rutherglen & Coatbridge) line

4 Sussex

- Platform re-occupation Victoria and Brighton

- Headways Clapham Junction to Balham, South Croydon and Redhill

- Planning note at Brighton.

FL explained its view that Items 1a, 1b and 3a were largely dealing with points of principle, the remaining elements being largely of detail.

The Dispute Parties and the Panel used these Item numbers and headings throughout the dispute process.

2.5 Having read the considerable volume of material provided by FL, on 26 February 2016 I issued Directions requiring FL to clarify certain matters by 2 March 2016, to enable

Network Rail to address them fully in its Sole Reference Document (which was due on to be served on 11 March 2016). FL complied with the requirement and Network Rail duly served its Sole Reference Document on 11 March.

- 2.6 In accordance with 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 16 March 2016 the other members of the Panel and the Dispute Parties were advised that I did not consider there to be any overarching issues of law arising out of the submissions received; I noted that there were some issues of contract interpretation which formed part of the substance of the dispute to be determined and I further noted that there might also be requirement for consideration of the extent of the powers of a Timetabling Panel.
- 2.7 Abellio ScotRail Ltd and DB Schenker Rail (UK) Ltd - subsequently renamed DBC - declared themselves to be interested parties but in the event only DBC decided to attend the hearing.
- 2.8 Having read Network Rail's Sole Reference Document and noted that agreement had already been reached by the Parties on a number of issues, on 21 March 2016 I issued further Directions intended to alert the Parties to points on which the Panel would wish to be addressed at the hearing.
- 2.9 The hearing of the dispute opened on 23 March 2016. At the opening of the hearing the Dispute Parties confirmed that agreement had already been reached between them on certain of the issues - being Items 2b and 3a - but both Parties wanted the agreed items to be recorded in this determination as being formal undertakings given willingly for the purposes of this dispute determination. I agreed that this would be appropriate, subject to reserving the right of the Panel to ensure that the agreements were recorded in clear language which would be comprehensible to readers who had not been involved in these Disputes.
- 2.10 Next I clarified the order in which the Dispute Parties thought it appropriate to address the remaining issues. Item 2a was FL's priority for attention and Item 1a was Network Rail's priority. The Dispute Parties believed that they might yet be able to settle Item 3b between themselves and hoped to propose a form of words to be captured in this Determination document. It was decided to deal with Item 1a first, followed by Item 2a, and then the remainder. As we were dealing with a number of disputes on widely differing issues I directed that we should receive the Dispute Parties' opening statement for each issue and then deal with that issue, rather than hearing the opening statements for all issues at once. The Dispute Parties therefore provided their opening statements on an issue by issue basis and were then questioned by me and the other members of the Panel on the issue under consideration at the time, with an opportunity to make a closing statement on each issue.
- 2.11 During the discussion of Item 1a it became apparent that the Dispute Parties could reach an agreement on the points remaining in dispute. Therefore the Panel did not have to reach a decision on this Item.
- 2.12 We turned next to Item 2a, heard the Dispute Parties' submissions and questioned them. After a short adjournment we advised them of the Panel's decision on this point.
- 2.13 At this stage it was thought inappropriate to start hearing another of the remaining major Items in dispute, so the hearing was adjourned to 6 April 2016.
- 2.14 Prior to adjourning for the day, the Dispute Parties reported that they had reached agreement which settled Item 3b and that a form of words would be provided.
- 2.15 At the opening of the adjourned hearing the Parties advised the Panel that Item 4 had now been agreed, with the request once again for that agreement to be recorded within this Determination.

2.16 When the adjourned hearing turned to the final Item (1b), for the reasons discussed below it was agreed that FL would withdraw its dispute on this Item, as it would be more productive for currently registered Disputes relating to Version 2 of the 2017 TPRs to be heard soon, rather than to reach any decision on 2016 TPRs which are no longer capable of influencing the construction of WTTs.

2.17 I confirm that I have taken into account all of the submissions, arguments, evidence and information provided to the Panel over the course of this dispute process, both written and oral, notwithstanding that only certain parts of such material are specifically referred to or summarized in the course of this determination.

3 Relevant provisions of the Network Code and other documents

3.1 Versions of the Network Code Part D dated 29 June 2012 and 13 July 2015 were applicable to matters to be determined in this dispute; there were no differences between the two versions which became relevant to this dispute.

4 National train service requirements for Network Services trains (Item 1a)

4.1 Submissions made by the Dispute Parties

4.1.1 FL's principal submission was that Section 3 of the National TPRs provides a list of service for which "Capacity needs to be provided on the network to facilitate Network Rail's National Delivery Service operations for the distribution of materials for engineering work on the network, Network Measurement trains and the Seasonal/Railhead treatment trains." FL submitted that the list is almost always out of date, containing trains that either do not run, do not run sufficiently regularly to merit inclusion in the WTT, or which have been significantly revised. Network Rail afforded itself a flex of +/- 30 minutes on all these trains but was not prepared to offer such opportunities in terms of the Firm Rights of Access Beneficiaries.

4.1.2 In its response document, Network Rail accepted that that it did not update the National TPRs as regularly as its customers might like. However, Network Rail did not agree that it must reflect the Network Services train slots in the TPRs precisely as described in the WTT, explaining that the slots are specifically referred to as being "preliminary", thus providing a degree of protection to Network Rail within the creation of the WTT for maintenance and safety-related activities associated with these trains.

4.1.3 Network Rail did not consider this to be an Access Proposal situation, regarding inclusion of Network Services trains within the WTT as being consulted as part of the establishment of the National TPRs.

4.1.4 Network Rail did not consider "Strategic Capacity" to be a suitable mechanism for managing safety-critical movements on the Network, noting that the principle of Strategic capacity is that it can be claimed by any Train Operator Variation Request throughout the period of the WTT, which would erode Network Rail's ability to monitor and maintain the Network to maintain safety.

4.2 Oral exchanges at the hearing

4.2.1 Following constructive dialogue with the Panel, the Dispute Parties adjourned to draft terms of agreement between themselves concerning this issue. Having reserved editorial rights, a form of words was agreed by the Dispute Parties and endorsed by the Panel which should provide clarity to assist the Dispute Parties and other Timetable Participants in their future dealings.

4.3 Analysis and consideration of issues and submissions

- 4.3.1 As explained above, during the hearing of this Item the constructive exchanges between the Dispute Parties enabled them to reach an agreement in broad terms during the hearing. The Panel thought this issue sufficiently important that it requested and obtained a draft of the agreed terms from the Dispute Parties before the end of the first day's hearing. The Panel records the revised version of the agreement in this Determination. Nonetheless, I think it worth recording views expressed by the Panel during this part of the hearing.
- 4.3.2 At the opening of this Item the Panel emphasised its recognition of the essential nature of the Network Service trains operated on Network Rail's behalf, to ensure the safety and integrity of the Network. But the importance of these services did not, in the opinion of the Panel, justify capacity being restricted if Network Services were allocated paths in the WTT either on days on which it was known that they were not going to run, or on a contingency basis.
- 4.3.3 The Panel then turned to the basis on which Network Rail includes its services within the WTT, given that Network Rail is clearly not an Access Beneficiary and cannot be seen as making an Access Proposal to permit the Network Services to operate. The way in which 'Timetable Participant' is contrasted to Network Rail in the Network Code suggests that it would be a very strained interpretation to define Network Rail as a Timetable Participant. All that said, it would be patently absurd for Network Rail not to be able to obtain paths for Network Services. The specific question of Network Rail's authority to include Network Services in the WTT was not before the Panel, so it put this aside for resolution (if necessary) on a future occasion.
- 4.3.4 In response to Network Rail's unwillingness to allocate Strategic Capacity to these services, for fear that a Timetable Participant might submit a competing bid for any such path, the Panel observed that in such circumstances Network Rail would be duty-bound to apply the Decision Criteria, with the Panel assuming that Network Rail would give priority to its Network Service over any competing bid. While the Panel could obviously not bind any future Timetabling Panel dealing with a Dispute emerging in those circumstances, this Panel had no doubt that in any Dispute of that kind it would have no hesitation in supporting a decision by Network Rail to give priority to its Network Service.

4.4 The Dispute Parties' agreement regarding Item 1a

I record that the Dispute Parties have reached the following agreement:

- (a) Network Rail supports the principle that Network Services should appear in the WTT as dated services, matching the dates on which they are actually planned to run within that version of the WTT.
- (b) Network Rail undertakes to review the list of Network Services currently shown in the National TPRs and will remove from the list those no longer required.
- (c) Network Rail will share with Timetable Participants the frequency with which Network Services will run.
- (d) Network Rail will also explain to Timetable Participants its reasons for including those Network Services which will remain in the National TPRs.
- (e) Between each version of the National TPRs Network Rail will consult, in a

transparent way, the reasons why those Network Services still remaining in the list are required to run, which will enable any affected Timetable Participant to express concerns and explore Network Rail's reasons.

- (f) In deciding which Network Services will still be listed in the National TPRs, Network Rail will apply the Decision Criteria, which will enable any Timetable Participant to appeal against any Network Rail decision affecting its services.
- (g) Within the next occurring Timetable Development cycle, Network Rail will endeavour to deconflict the commercial aspirations of freight operators where there is recognised to be a clash with a required Network Services path. Irrespective of what might have applied in the previous WTT and notwithstanding Network Rail's published decisions regarding the forthcoming version of the TPRs, a Timetable Participant will be expected to indicate its dated requirements when submitting its Access Proposal prior to D-40.

5 National procedure for amending the values in the TPRs (Item 1b)

5.1 Submissions made by the Dispute Parties

- 5.1.1 FL's principal submission was that Section 5 of the National TPRs outlines a procedure for amending values that was new to the 2016 TPRs, but in FL's view it was inadequate and did not achieve the purpose for which changed methodology was proposed - despite extensive industry consultation. FL noted, by way of example, that there was an attempted definition as to how a SRT should be calculated but key terms within it - such as what is meant by a "timing point" and where that might be (precisely) at any particular location - went undefined. FL concluded that the entry in the National TPRs fell considerably short of providing methodologies for TPR calculation that did not leave room for ambiguity in interpretation.
- 5.1.2 Network Rail did not agree, saying that this part of the TPRs was the product of workshops and meetings with various Timetable Participants over time; it was, Network Rail noted, a statement of the "methodology that Network Rail will apply when generating new or amended TPR values" [Section 5 of the National TPRs]. Network Rail was of the view that this part of the document allowed for flexibility and collaboration.

5.2 Oral exchanges at the hearing

- 5.2.1 Network Rail reminded the hearing that the National TPRs decision document for 2016 was already applying so the industry was in the situation that amendments could not easily be made retrospectively: in Network Rail's view the opportunity had passed and Timetable Participants should only look forward. In that connection, Network Rail advised the hearing that the WTT coming into effect in December 2016 using Version 2 of the TPRs for 2017 contained differences such that - in Network Rail's view - many of the disputed items in the 2016 TPRs had fallen away.
- 5.2.2 At this stage, therefore, I raised the question as to whether an early hearing to determine the Disputes relating to Version 2 of the 2017 TPRs, involving all Dispute Parties, might be more useful than a determination relating to the 2016 TPRs before this Panel, which might be of historical interest rather than of real use to the industry. I proposed an adjournment to allow the Dispute Parties to discuss this possibility.
- 5.2.3 Following this adjournment, the Dispute Parties indicated their intention to meet during April 2016 to review in detail the concerns being expressed by FL and to involve other freight operators in that dialogue.

- 5.2.4 The hearing was advised by the Secretary that there was an underlying dispute registered from FL in respect of Version 2 of the TPRs for 2017; that dispute was not before this Timetabling Panel but there remained time - if arranged promptly - for it to heard by a Panel at the present stage of the 2017 timetable development process. Further, other FOCs had also registered disputes in respect of Version 2 of the TPRs for 2017.
- 5.2.5 FL then withdrew this item (Item 1b) from the dispute before this Panel on the understanding that arrangements would be made for the hearing of its dispute regarding Version 2 of the TPRs for 2017 to follow shortly after the intended review meeting with Network Rail.
- 5.2.6 DBC, attending as an interested party, observed that FL was making a number of very valid points in relation to TPR methodology and agreed that a Panel hearing involving all other Dispute Parties (to the registered Disputes relating to Version 2 of the 2017 TPRs) to follow a detailed review meeting was a sensible way forward.
- 5.3 Analysis and consideration of issues and submissions
 - 5.3.1 As recorded above, this Item was withdrawn by FL at the adjourned hearing on the basis that an early hearing of currently registered Timetabling Disputes relating to Version 2 of the 2017 TPRs would be more productive than reaching a decision on TPRs which were used in constructing WTTs which are now in final form. Further, the Disputes concerned involve other FOCs as well as FL, so potentially bringing wider considerations before the Timetabling Panel which will determine those Disputes.
 - 5.3.2 Again, however, points were made before this Item was withdrawn which may assist Timetable Participants, or indeed future Panels.
 - 5.3.3 FL had invited the Panel to strike down the entire section of the TPRs dealing with this topic. In its Sole Reference Document Network Rail submitted on this point that it was required to consult Timetable Participants, but that it was itself responsible for creating TPRs and it was entitled to issue TPRs which had not been agreed by all Timetable Participants if agreement could not be obtained. In discussion Network Rail agreed that in such an event a right of appeal to a Timetabling Panel arose if any aspect of those TPRs was not acceptable to any Timetable Participant. With this expansion to Network Rail's position, and without reaching a formal Determination on the point, the Panel agreed that Network Rail's statement of its position was correct. For this reason alone the Panel felt that it would not be an appropriate decision for it to order the removal of a complete section of the TPRs, but would instead be required to determine issues in dispute on an item-by-item basis.
 - 5.3.4 As this Item was withdrawn, the Panel did not determine any point within it, but in its introductory remarks the Panel explained its understanding of the importance of TPRs which had the confidence of the industry, and indicated its preliminary view that a section of the TPRs which did not, just as one example, define what is meant by a 'Timing Point' might not be as useful as it should be. It emphasised that this was merely one example, but that its preliminary view was that a number of the points raised by FL were worthy of consideration.

6 East Anglia: Stratford SRTs and margins (Item 2a)

- 6.1 Submissions made and outcomes sought by the Dispute Parties
 - 6.1.1 FL's principal submission can be summarized as being that whilst there had been some meeting of the minds between FL and Network Rail (and Network Rail had indicated willingness to reduce the SRTs between Forest

Gate Junction and Stratford to a value with which FL was content), there remained - in FL's view - an entire issue that the SRTs and margins for freight train transits through this complex area had not been adequately addressed.

There were some 20 possible different moves across the layout and FL had provided Network Rail with a counter-proposal which sought to address all of these combinations, but it seemed to FL that Network Rail was unwilling to undertake the comprehensive task of reviewing all of the SRTs, junction margins and allowances involved. FL reported that it was currently able to time certain train movements to travel compliantly across the layout faster than some slower trains; FL considered that a holistic view should be taken for the area, otherwise performance concerns of Network Rail would not be adequately addressed.

Network Rail had provided little evidence of the need for it to make significant increases in allowances and junction margins for services following freight trains at Stratford. FL believed that its counter-proposal demonstrated what was actually achievable, whilst offering a balance between capacity and performance - and it also avoided any necessity to examine whether some elements should have been the subject of the Network Change procedure.

In its Sole Reference Document FL provided detailed examples of its concerns and also observed that Network Rail had not complied with the requirement of a previous Timetabling Panel determination that the TPRs applicable prior to the December 2012 Timetable Change Date should be restored with effect from the December 2015 Timetable Change Date.

- 6.1.2 The determination which FL sought from the Panel in relation to the Stratford area was:
- (a) That Network Rail's proposals for changes to SRTs, allowances and junction margins are unreasonable and should be struck out;
 - (b) That suggestions for changes to the TPRs should not solely concentrate on performance (perceived or actual) at the expense of other factors such as capacity - a balance needs to be made; and
 - (c) That Network Rail should accept FL's counter-proposal of 5 November 2015 in full and ensure that the changes to SRTs are implemented in the December 2016 WTT, and that the changes to junction margins and allowances are reflected in the next available version of the 2017 TPRs.
- 6.1.3 In its Sole Reference Document Network Rail explained that it had interpreted the previous Timetabling Panel determination in a different way from FL and was confident that it had complied appropriately.

Network Rail maintained the position which it had adopted during the course of the hearing of Timetabling Disputes TTP371/513/514/570/571 in that it considered that its decision regarding the amended TPRs at Stratford accurately reflected the capability of the Network. Network Rail was now able to say that it was satisfied that the timetable between Forest Gate Junction and Stratford was robust; it performed well and Network Rail had no concerns regarding SRTs and junction margins, nor regarding allowances except for the dwell time for trains at Stratford station (which was on account of passenger volumes and not part of this dispute).

Network Rail also noted in its Sole Reference Document that it had concluded a fresh review into the SRTs on 28 July 2015 as part of ongoing dialogue with FL. In relation to the resulting proposal, Network Rail reported that FL had indicated being minded to accept reduction of the SRT from

Forest Gate Junction to Stratford Platform 10 down to 4 minutes and to leave all other SRTs at 5 minutes.

6.2 Oral exchanges at the hearing

- 6.2.1 In making its opening statement, FL reported the this issue had now reached a stage whereby there was some meeting of minds between the Dispute parties in that Network Rail was willing to reduce the SRTs for the most commonly-used link between Forest Gate Junction and Stratford to a value with which FL was content. The issue remained, however, that this consensus still did not address the whole issue of freight transits over the complex area in question, there being some 20 different moves for trains across the layout between Forest Gate Junction and Stratford, depending on the points of entry and exit and the crossovers used. FL had produced a counter-proposal which sought to address all of these combinations, but Network Rail was apparently unwilling to fully review the SRTs and allowances on this section. Without giving holistic attention, FL did not believe that the performance concerns of Network Rail could be to have been adequately addressed.

The junction margins at Stratford were included in this issue; Network Rail had provided little evidence of the need for the significant increases in allowances and margins following freight services; FL's counter-proposal indicated what FL believed to be achievable whilst providing appropriate balance between capacity and performance, yet without needing to examine the detail of what had been anticipated through the Network Change process - and what had not.

FL believed its counter-proposal to address all the concerns about transit times and junction margins, and that it should be implemented.

- 6.2.2 In its opening statement, Network Rail noted that this was not a dispute concerning Part G of the Network Code (Network Change). Further, Network Rail said that holistic reviews had been undertaken for the routings from Forest Gate Junction to Stratford which trains usually use.

For some 4 years FL had been maintaining that Network Rail had made no detailed or reasonable justification for changes which Network Rail had made to the TPRs. Network Rail said that FL was factually incorrect as substantial evidence had been provided over the years.

A previous Determination had required Network Rail to carry out its obligations with regards to its duty to consult and in the event of not doing so, then the TPR values in use prior to 2012 were to be applied. Network Rail had complied with or discharged its obligations with regards to consultation through the Anglia TPR Forum that had been meeting since August 2013. Network Rail had made known its position with regards to the Decision Criteria through the Anglia TPR Forum, through documents sent to FL over the past 4 years and through its consultation of the TPRs from D-64 onwards.

FL had provided some very detailed desktop calculations as to why, for example, the SRTs should be 3 minutes but put forward no instances of trains taking 3 minutes. FL was stating that numerous trains take 4 minutes; Network Rail agreed that some trains do take 4 minutes, but some trains take 7 minutes. Network Rail agreed that desktop studies are useful but considered that where trains are actually operating on the Network, observational data and data derived from actual train running is of more real and robust value.

Network Rail had undertaken a capacity study during the summer of 2013

and this concluded that there was less capacity for freight trains in the December 2012 WTT than there had been in the December 2010 WTT, but not for reasons of TPR changes alone, the process for amending the WTT being a continuous one.

The current timetable was operating without delays between Forest Gate Junction and Stratford. The timetable that operated prior to December 2012 was one that accrued a very high level of delay; 'very' meaning the highest level of attributable timetable delay on the Network. This caused significant disruption to all operators' services. Investigation of the situation indicated revised SRTs to be necessary and Network Rail had satisfied itself that the revised SRTs were not excessive.

FL had offered no evidence as to the operational robustness of its counter-proposals and had not considered how any degradation in operational performance might be assessed or managed in terms of risk and impacts to other operators.

NR had made its decision with regards to the most appropriate TPR values for Stratford but its proposal to alter one specific value to 4 minutes remained (this being the "Pass to Pass" value for all freight trains for all timing loads from Forest Gate Junction to Stratford Platform 10).

- 6.2.3 Taking one example of the TPRs put forward by Network Rail, the Panel explored with the Dispute Parties the fact that "Pass to Pass" timings for freight trains between Forest Gate Junction and Stratford had tended to be increased to 5 minutes, leading to a seemingly absurd situation of "Pass to Pass" timings of 5 minutes yet the associated "Start to Pass" timings being only 4 minutes. The Panel thought that intuitively the "Start to Pass" timings should be longer than the "Pass to Pass" timings so Network Rail was asked to explain the logic of the "Start to Pass" timings being shorter than the "Pass to Pass" timings. The Network Rail representatives were unable to give explanation.
- 6.2.4 FL observed that there are four entry points to Forest Gate Junction and a train can cross the junction in various ways, giving the possible 20 different ways mentioned previously. These movements required different amounts of time and FL's counter-proposal addressed this situation. FL's proposed timings used the timetable as the base and assumed all green signals then divided the time into the distance to be covered, there was then subjective addition giving an allowance for approach control. Altogether, this gave SRTs of from 3½ minutes to 7 minutes. To do more accurate modelling to allow for the effects of approach control would require a system that operators do not have. FL considered that 4 minutes worked very well.
- FL understood that Network Rail's methodology had been to take an average of running times: FL considered this to be unacceptable because if there is an adverse signal being approached, that will affect measurement.
- 6.2.5 Explaining its criticism of FL's desktop exercise as compared against its own averaging exercise, Network Rail explained that it though FL's calculations to be based on the best case scenarios whereas Network Rail's calculations were based on "real life". Network Rail was satisfied that it had adopted the most resilient timings through the area having reacted to benchmark SRT values against modelled values and observed values.
- 6.2.6 The Panel clarified with Network Rail that SRTs are defined as being "the times allowed for trains of specified Timing Loads to travel between two specific timing points". Network Rail then explained, however, that it also had an underlying objective of the relevant trains performing satisfactorily and that 50% was considered to be the appropriate performance principle for this

particular restricted part of the Network, whereas 75% might be considered suitable elsewhere. Network Rail also took the view that the 50% principle removed variables which might arise through differences in professional driving styles. FL could not agree that performance should be a consideration in calculating SRTs.

- 6.2.7 Asked then to comment regarding the actual values which had been put forward by FL, Network Rail explained that during July 2015 a study had been made of two selected trains using six of the possible 20 routes between Forest Gate Junction and Stratford; the study used over 30,000 journeys and gave a SRT of 5 minutes for all 6 of the those routings when the 50% principle was applied. Network Rail did not consider the "Start to Pass" timing to be relevant, saying that it would not plan to stop a freight train anywhere in the area so only "Pass to Pass" timings were required. However, FL advised that it did have some "Start to Pass" trains which waited in the area before moving out onto the Great Eastern Main Line.
- 6.2.8 FL had referred to a "slot acceptance" issue between the integrated control centres at Liverpool Street and Upminster. Network Rail reported that the problem had been remedied and the systems between the two signalling centres were now interfacing satisfactorily.

6.3 Analysis and consideration of issues and submissions

- 6.3.1 This was the only Item actually to be decided by the Panel. In approaching it the Panel was conscious of the fact that this Item was bringing back before a Timetabling Panel some of the issues raised in Disputes registered as TTP371/513/514/570/571. I was especially conscious of this point because I chaired the hearing of those Disputes.
- 6.3.2 A preliminary point arose in that FL suggested that Network Rail was required by the Determination in TTP371, etc to revert now to the 2012 TPRs. In a preliminary Direction I explained why I did not consider this to be the case, as Network Rail would only have been required to do so if it had failed to consult operators in developing the TPRs now in dispute. The fact that Network Rail had now consulted permitted FL to raise a fresh dispute about the outcome of that consultation, but did not require the restoration of the 2012 TPRs which was required by TTP 371, etc *if* Network Rail had failed to engage in consultation after the outcome of that Dispute.
- 6.3.3 The Network between Forest Gate Junction and Stratford is extremely busy and virtually all freight trains have to cross other running lines on flat junctions to reach the North London Line. The tension between performance and capacity is arguably as acute here as in any other part of the Network. In this context I refer here part of the Determination of TTP371, etc, in which I expressed concern about '*...fossilising possible reductions in the capacity of the Network*'.
- 6.3.4 This Panel was also conscious of the tension between performance and capacity, and therefore the importance of accurate SRTs and junction margins in the TPRs was understood, with them having to be accurate and credible if they were to be of any use.
- 6.3.5 The Panel listened attentively to the Dispute Parties explaining the different methods which they had used to identify what they thought were appropriate SRTs for various possible routes. The Panel did not have the tools available to decide which Dispute Party was right in respect of each individual SRT, so was having to judge between the competing methods and the results set out by Network Rail.
- 6.3.6 Factors influencing the Panel's approach included Network Rail's admission

that it could not explain why in some cases 'Pass to Pass' times were longer than 'Start to Pass' times; that many of Network Rail's SRTs were simply a blanket 5 minutes; and that FL's counter-proposal did appear to have taken account of the 20 possible routes which a freight train can take between Forest Gate Junction and the North London Line, which Network Rail frankly admitted it had not done, concentrating its efforts on only 6 possible routes.

- 6.3.7 On balance, therefore, the Panel concluded that it had more confidence in the values in FL's counter-proposal than in the timings set out by Network Rail in the relevant TPRs and that FL's figures were more compelling.
- 6.3.8 Having reached this conclusion, the Panel then considered the appropriate remedy. All affected operators must be consulted on TPRs, and this Dispute involved only two FOCs. Therefore the Panel decided that it was not open to it to order that FL's counter-proposal should be adopted, but it was clearly not going to support the continuation of Network Rail's TPRs. It was on these grounds that the Panel decided that the appropriate remedy was to determine that for the next version of the TPRs Network Rail shall consult all affected operators, using FL's counter-proposal as the basis for that consultation.

6.4 Determination of Item 2a

- 6.4.1 Having considered carefully the submissions and evidence, and based on my analysis of the legal and contractual issues, my determination (of this Item 2a) is that with a view to establishing agreed values, **Network Rail shall for the next version of the TPRs consult revised SRTs for the Stratford area using FL's values as the basis for that consultation.**
- 6.4.2 Having conferred with the other members of the Panel, I summarised the substance of my determination of this Item 2a to the hearing as confirmed above.
- 6.4.3 On announcing this decision I reminded the Dispute Parties that the question of junction margins still had to be addressed. Network Rail suggested adopting the same procedure as in respect of SRTs. FL indicated willingness to accept a standard 3½ minutes as a compromise position. I now record this as being my expectation of Network Rail when consulting the next version of the TPRs.

7 **East Anglia: Upminster platform re-occupation (Item 2b)**

7.1 Submissions made and outcomes sought by the Dispute Parties

- 7.1.1 FL's principal submissions were as follows:
- 7.1.2 Network Rail's advised that an error had been made with regards to the interpretation of TRACSIS report information.

7.2 The Dispute Parties' agreement regarding Item 2b

I record that the Dispute Parties have reached the following agreement:

- (a) The platform re-occupation value proposed for Upminster station is incorrect; a planning value of 2 minutes should apply. Current headways of 3 minutes are to remain unaltered. Network Rail will correct the error in the next appropriate version of the TPRs, preceded by a suitable advisory note regarding the amendment.

8 Scotland: Craigo (Item 3a)

8.1 Submissions made and outcomes sought by the Dispute Parties

- 8.1.1 FL's was concerned that following discontinuation of a Network Change proposal to close Craigo signal box, the TPRs were not now showing the contractual opening times, regardless of whether it was to be manned in the normal course of events.
- 8.1.2 Network Rail's agreed that the TPRs should represent the contractual opening times of the signal box.

8.2 The Dispute Parties' agreement regarding Item 3a

I record that the Dispute Parties have reached the following agreement:

- (a) The TPRs should represent the contractual opening times of the signal box and Network Rail will correct this in the next appropriate version of the TPRs, supported by a suitable advisory note regarding the amendment.

9 Scotland: Headways on the "Hamilton Circle" and the R&C line (Item 3b)

9.1 Submissions made and outcomes sought by the Dispute Parties

- 9.1.1 FL was concerned that following resolution of a previous Timetabling Dispute revised headways for the Hamilton Circle had been proposed in Version 1 (the consultation document) for the 2016 TPRs and were acceptable to FL but the Version 2 decision document reverted to the previous, unsatisfactory position.
- 9.1.2 Regarding the R&C line, a previous Timetabling Dispute had been resolved through Network Rail agreeing to revert to the 2012 TPR headways and to then review the headways upon introduction of new electric passenger services: neither had occurred and FL maintained that the current TPR entries do not reasonably represent the capacity of the line. A further factor had arisen in that the line is to be resignalled during 2017 but no revision to the TPRs had yet been proposed by Network Rail.
- 9.1.3 Network Rail explained that First ScotRail had objected to the Hamilton Circle headways being amended and Network Rail had accordingly decided to revert to the original proposal, particularly noting that there was at present no freight activity booked in the WTT.
- 9.1.4 Network Rail accepted it had previously undertaken to reinstate the previous R&C line TPR headways and apologised for mistakenly not having done so.

9.2 The Dispute Parties' agreement regarding Item 3b

I record that the Dispute Parties have reached the following agreement:

- (a) Network Rail will work with FL and Abellio ScotRail to review the established headway rules for Sc023 "Hamilton Circle", giving consideration to FL's proposal and recently analysed observed data. When a joint proposal had been produced, this will be subject to the usual consultation through the TPRs forum.
- (b) Network Rail will reinstate the previous TPR headways on the R&C line.
- (c) Following previous attention to better differentiate between services using the

R&C line, joint work should be focused now upon TPR matters associated with forthcoming resignalling.

10 Sussex (Item 4)

10.1 Submissions made and outcomes sought by the Dispute Parties

- 10.1.1 FL's disagreed with a number of changes which had been introduced in the Sussex TPRs, largely on the basis that there was lack of supporting evidence for changes or inconsistencies in the reasoning which had been provided.
- 10.1.2 FL had concerns regarding amendments to platform re-occupation margins and junction margins at Victoria station ("Central" side) and at Brighton station (where there was also concern regarding a planning note).
- 10.1.3 FL considered that Network Rail had failed to take account of variations in freight train performance in proposing headway amendments between Clapham Junction and Balham, whilst finding headway changes in the South Croydon and Redhill areas to be illogical.
- 10.1.4 Network Rail's responded that it had endeavoured to undertake the various changes in a transparent manner with all operators concerned and was satisfied that its decisions had been taken with due regard to the Decision Criteria and notified to operators with explanations. Within this process, three days had been set aside January 2015 for operators to participate in joint operational observation but FL had not taken up the invitation. A considerable amount of work had been undertaken to re-cast hourly off-peak freight paths on the Brighton Main Line in conjunction with a re-cast of the passenger timetable introduced in December 2015 and Network Rail considered the freight situation to be more operationally robust than hitherto. The standard freight path between Clapham Junction and East Croydon had been retimed as for a Class 7 train but there were, additionally, some bespoke path timings. Network Rail considered it had determined the most appropriate TPR values for the Victoria, South Croydon, Redhill and Brighton areas.

10.2 The Dispute Parties' agreement regarding Item 4

I record that the Dispute Parties have reached the following agreement:

- (a) Platform re-occupation and junction margins for both Victoria and Brighton stations will be reconsidered with a view to creating matrices similar to that which exists at Liverpool Street. A working group of subject matter experts - including FL representation - will be formed by Network Rail to undertake observational analysis and data analysis. The resulting matrix proposals will be consulted as part of the South East TPR forum prior to D-64 for the WTT to be introduced in December 2017.
- (b) Network Rail accepts that the planning note regarding Brighton station should be removed and replaced by a rule. Network Rail will liaise with FL regarding drafting in order to take the matter forward.
- (c) Network Rail will re-write the headway rules for the South Croydon and Redhill areas to take into account conditionality based on the variety of possible movements and stopping patterns at both locations. Following this exercise, the revised wording and values will at the latest be consulted upon at the South East TPR forum meeting in June 2016.
- (d) Network Rail will consider conditionality for headway rules at Clapham Junction in order to offer provide more granular headway opportunities.

11 Recommendation

- 11.1 Very many Timetabling Disputes which are registered by the Secretary are settled through discussions between Network Rail and the relevant operator without requirement to proceed to a Timetabling Panel hearing. That this has become the case as the privatised railway industry has matured is to be applauded.
- 11.2 However, where a dispute relates to the TPRs, there is realistically little time in the timetable development process to allow protracted discussion concerning a decision document before the next stage in the process arises. As a consequence, the WTT to which the dispute relates and subsequent iterations - amended further to reflect evolving operational circumstances - could be considered to be legally flawed, whilst attempting to address issues retrospectively creates many difficulties due to the involvement of many parties. The ADR Rules expect disputes to be resolved in a timely manner and these are clearly reasons for so doing.
- 11.3 As seen in dealing with these disputes TTP625, TTP685, TTP733 and TTP872 and in the previous Timetabling Panel determination of disputes TTP371/513/514/570/571, various factors such as complexity, changes of personnel and other issues attracting higher priority can lead to drift in attending to the disputed TPRs.
- 11.4 Accordingly, I recommend that the Secretary should make arrangements for Timetabling Disputes relating to TPRs to be heard promptly following their registration.

12 Determination

- 12.1 So far as required and having considered carefully the submissions and evidence, and based on my analysis of the legal and contractual issues, my determination is as set out in paragraph 6.4.1 above.
- 12.2 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.



Clive Fletcher-Wood
Hearing Chair

19 April 2016