



**TTP1625**

## **First MTR South Western Railway Limited**

### **Sole Reference Document**

#### **1 DETAILS OF PARTIES**

1.1 The names and addresses of the parties to the reference are as follows:

- (a) First MTR South Western Trains Limited whose Registered Office is at 4th Floor Capital House, 25 Chapel Street, London, United Kingdom, NW1 5DH ("South Western Railway") ("the Claimant"); and
- (b) Network Rail Infrastructure Limited] whose Registered Office is at 1 Eversholt Street, London NW1 2DN ("Network Rail") ("the Defendant").

1.2 Other parties relevant to this dispute are CrossCountry and Great Western Railway. In terms of what the desired outcome is for the claimant in this dispute, there are no third parties involved. However, it is the impact of decisions made by the defendant which involves services operated by other Timetable Participants that has led to this dispute being raised.

#### **2 THE CLAIMANT'S' RIGHT TO BRING THIS REFERENCE**

2.1 This matter is referred to a Timetabling Panel ("the Panel") for determination in accordance with Conditions D2.6, D2.7, D4.2 and D4.6 of the Network Code. South Western Railway is dissatisfied with the decision made by Network Rail in respect of the revised paths of Sunday services between London Waterloo and Poole / Weymouth in the 2020 Subsidiary Timetable.

- 2.2 South Western Railway also refers matters whereby Network Code Part D has been put to one side in the Timetable Change process without understanding the consequences to passengers.

### **3 CONTENTS OF REFERENCE**

- 3.1 This Sole Reference includes:
- (a) The subject matter of the dispute in Section 4;
  - (b) A detailed explanation of the issues in dispute in Section 5;
  - (c) In Section 6, the decisions sought from the Panel in respect of
    - (i) legal entitlement, and
    - (ii) remedies;
  - (d) Appendices and other supporting material.

### **4 SUBJECT MATTER OF DISPUTE**

- 4.1 This is a dispute relating to the impact of actions of Network Rail during the drafting period of the 2020 Subsidiary New Working Timetable.
- 4.2 This dispute arises over how Network Rail have acted with regard to Network Code clause D2.6.3 in the Timetable Preparation Period from D-40 to D-26 where timetable compilation should be in accordance with the duties and powers set out in Condition D4.2.
- 4.3 At D-27, the Managing Director of Network Rail Southern Region wrote to South Western Railway informing that Network Rail would not support the sale of additional track rights in the May 2020 Timetable.
- 4.4 This decision has led to a number of issues, each of which are detailed in Section 5 of this document.

## **5 EXPLANATION OF EACH ISSUE IN DISPUTE AND THE CLAIMANT'S ARGUMENTS TO SUPPORT ITS CASE**

### **5.1 Loss of revenue through flexing of Sunday London Waterloo to Poole / Weymouth services**

- 5.1.1 South Western Railway bid for several timetable enhancements and additional services in the Priority Date Notification Statement for the 2020 Subsidiary Timetable. This was submitted at D-40 on Friday 9<sup>th</sup> August 2019.
- 5.1.2 One of the schemes involved improved Sunday Main Line services operated by South Western Railway between London Waterloo and Weymouth. CrossCountry have held an aspiration for faster journey times on Sundays between Southampton Central and Bournemouth which can only be unlocked by changes to South Western Railway services. In developing the May 2020 Timetable, South Western Railway worked closely with CrossCountry to deliver a revised plan that gave benefits to both parties.
- 5.1.3 The Sunday Main Line scheme was approved by the Wessex Timetable Change Risk Assessment Group (TCRAG) held on Tuesday 27<sup>th</sup> August 2019 subject to the outcome of risk assessments on the impact to track, category, power availability and track circuit reliability. The minutes from this meeting were issued on Monday 23<sup>rd</sup> September 2019.
- 5.1.4 An additional non-mandatory Strategic TCRAG was held prior to this on Monday 17<sup>th</sup> June 2019, with no issues identified in relation to this scheme.
- 5.1.5 South Western Railway received a letter from Network Rail Southern Region on 25<sup>th</sup> October 2019 setting out an expectation that the sale of Track Access Rights required for the all new services in the Subsidiary 2020 Timetable would not be supported if South Western Railway applied for them. Directions within this letter had little or no involvement from the Capacity Planning within Network Rail which sits in the System

Operator function. The reason for this stance was related to operational performance which was not raised at either TCRAAG meeting.

- 5.1.6 There is no clause within Network Code D.4.2 to facilitate such a decision taking place and therefore no process to deal with such as event.
- 5.1.7 The Network Rail Capacity Planning team producing the 2020 Subsidiary New Working Timetable continued to validate the additional and amended services as bid at D-40, ignoring the letter from their Southern Region colleagues.
- 5.1.8 At D-26, South Western received the New Working Timetable with a letter from Capacity Planning offering paths for all bar seven schedules bid for. These seven schedules are not related to this dispute. There was also a table within the letter detailing how the May 2020 PDNS Work Packages were included in the Publication of the New Working Timetable, knowing that South Western Railway would not have the support of Network Rail Southern Region when the sale of Access Rights takes place later in the process.
- 5.1.9 As directed in the letter from Network Rail Southern Region, South Western Railway prepared a revised proposal for the May 2020 Timetable, largely based on the December 2019 Timetable. South Western Railway submitted this revised proposal to Network Rail Capacity on 11<sup>th</sup> November 2019.
- 5.1.10 Ahead of the submission of the revised proposal, South Western Railway wrote to the other timetable participants with interacting services updating them on the situation with our services in the May 2020 Timetable. This email (see Appendix 3) informally requested their support in helping to reinstate the South Western Railway services in paths as per the December 2019 Timetable.
- 5.1.11 A revised Publication of the New Working Timetable for May 2020 was received from Network Rail Capacity Planning on Friday 3<sup>rd</sup> January

2020. Contained within this timetable was a number of journey time extensions to Sunday afternoon London Waterloo to Poole services, which subsequently knocked onto the following London Waterloo to Weymouth services. The fourteen services impacted are listed in the Notice of Dispute in Appendix 1. A number of the flexed services were offered in paths non-compliant with the Timetable Planning Rules which led to further extended journey times once corrected. The TPR non-compliances were around the time required for detachments of units to take place at Bournemouth, which were detailed in the rolling stock workings provided with the revised proposal. Other issues were found where next workings at Poole were not retimed, replatformed or no longer required due to the changes to the inbound workings.

5.1.12 It was agreed between the South Western Railway Train Planning Unit and the Network Rail Capacity Planning Wessex Team to prioritise the re-validation on weekend services over weekdays to limit the impact on Informed Traveller timescales.

5.2 Network Rail disregard for Network Code Part D and associated industry timetable development processes

5.2.1 The decision by Network Rail Southern Region to inform a timetable participant between D-40 and D-26 that access rights will not be granted for any timetable enhancements appears to be unprecedented. It is an occurrence not covered within Network Code Part D.

5.2.2 However well-intentioned, the decision to make this intervention at D-29, given that TCRA took place at D-37 and three weeks prior to the Publication of the New Working Timetable, gave no time for such a large-scale retraction of the timetable bid without impacting timetable participants, their customers in the form of passengers and freight end users.

5.2.3 The South Western Railway service enhancements had been reviewed by Industry PMO set up following the May 2018 Timetable

implementation issues affecting GTR and Northern services. The Industry PMO made no attempt to stop these changes taking place.

5.2.4 The briefing paper in Appendix 4 is dated soon after South Western Railway received the letter from Network Rail Southern Region. It details options for dealing with reversions of work packages between D-40 and D-26 but needs further development to address issues which have led to this dispute being raised.

5.2.5 In the Strategic TCRA Meeting previously referred to, Network Rail Wessex Route shared that an Invitation to Tender was to be put out to undertake performance modelling of the proposed May 2020 changes. South Western Railway has seen no evidence of this modelling being used in the decision-making process which led to the letter detailing that track access rights would not be granted.

### 5.3 Lack of coherence between Network Rail Southern Region and Capacity Planning

5.3.1 The decision by Network Rail Southern Region to inform a timetable participant between D-40 and D-26 was done with little or no communication with the Capacity Planning function to understand the impact of such a decision being made.

5.3.2 This lack of understanding has led to the situation where some South Western Railway services, which were due to be enhanced in the May 2020 Timetable, are now worse than in the current December 2019 Timetable.

## **6 DECISION SOUGHT FROM THE PANEL**

- 6.1 South Western Railway seeks the following outcomes relating to each of the items raised in Sections 4 and 5, relating to the failure of Network Rail to adhere to Network Code clause D2.6.3 by not acting in accordance with the duties and powers set out in Condition D4.2:
- 6.2 In terms of the extended journey times to the affected services, South Western Railway seeks the chair to order Network Rail to compensate South Western Railway as a remedy to cover the revenue loss from the post D-26 changes to the affected London Waterloo to Poole / Weymouth Sunday services for the duration of the May 2020 timetable, recognising that TTP cannot determine the sum, but that will fall to ADRR.
  - 6.2.1 This dispute draws parallels to the recent ARDC Determination on TTP1520, where Network Rail were ordered to pay compensation to Freightliner until the timetable can be corrected. Although the Hearing Chair is unable to determine the amount of compensation, the figure stated in Section 5 details the revenue loss South Western Railway will incur during the May 2020 Timetable Period.
  - 6.2.2 For Network Rail to reinstate both the South Western Railway and CrossCountry paths to where they are in the current December 2019 Timetable would place the industry in breach of its T-18 licence obligations, leading to considerable Informed Traveller and Train Crew Diagram rework for both operators, so the panel is not asked to consider this.
  - 6.2.3 The [REDACTED] revenue loss has been modelled using MOIRA software and reflects the duration of the 2020 Subsidiary Timetable period.
  - 6.2.4 In the upcoming Priority Date Notification Statement for the December 2020 Timetable, South Western Railway will be seeking a reinstatement of current paths operating for these services in the December 2020 Timetable.

- 6.3 In terms of the second issue raised, South Western Railway asks the hearing chair to determine that Network Rail displayed disregard for Network Code Part D and associated industry timetable development processes in the way it chose to deal with issues relating to the impact of making changes to the services planned to be operated in the May 2020 Timetable. South Western Railway seeks the hearing chair to order to challenge Network Rail to propose a set of measures to avoid a repeat occurrence at such timescales.
- 6.4 In terms of the third issue raised, South Western Railway asks the hearing chair to determine that Network Rail's Southern Region and Capacity Planning functions did not work in a coherent and timely manner in dealing with the issues relating to the impact of making changes to the services planned to be operated in the May 2020 Timetable. South Western Railway seeks the hearing chair to order to challenge Network Rail to propose a set of measures to avoid a repeat occurrence.

## **7 APPENDICES**

- 7.1 The following documents are contained in the appendices at the end of this document:
- 1 – Notice of Dispute from South Western Railway
  - 2 – John Halsall Letter from Network Rail Southern Region dated 25 October 2019
  - 3 – SWR update on May 2020 timetable Update to other Timetable Participants
  - 4 – HCPC\_930 Briefing Paper: OPSG Preparing contingency for rewinding TT Change



## 8 SIGNATURE

For and on behalf of First MTR South Western Trains Limited.

A handwritten signature in black ink, appearing to read 'Andy Roberts', with a large, stylized flourish above the name.

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Signed

**Andy Roberts**  
**Train Planning Manager**  
**South Western Railway**

