

Defendant
T Patrick-Bailey
First
TPB1
11 September 2020

IN THE MATTER OF PART D OF THE NETWORK CODE

AND IN THE MATTER OF TIMETABLING DISPUTE TTP1746

BETWEEN

GRAND CENTRAL RAILWAY COMPANY LIMITED

Claimant

and

NETWORK RAIL INFRASTRUCTURE LIMITED

Defendant

**WITNESS STATEMENT OF
TOBY PATRICK- BAILEY**

I, **TOBY PATRICK-BAILEY**, of Network Rail Infrastructure Limited, 1 Eversholt Street, London, NW1 2DN will say as follows:

- 1 I am the Head of Planning and Performance at Network Rail for the North & East Route. I am accountable for engineering access planning activities and train service performance strategies covering the former London North Eastern and East Midland geographies, which includes the East Coast Route. This includes making decisions on behalf of Network Rail in respect of the Engineering Access Statement, and in respect of Network Rail Variations.
- 2 My career for the past 14 years has focussed on the planning processes outlined within Network Code Part D, holding a number of positions at both managerial and leadership level. For the last circa 5 years I have served as a Network Rail nominated member of the Timetabling Pool of the Access Disputes Committee.
- 3 I make this statement on behalf of Network Rail Infrastructure Limited (**Network Rail**) in response to the notice of dispute issued by Grand Central Railway Company Limited (**Grand Central**) on 18 August 2020 and the directions made by the Hearing Chair in these proceedings on 7 September 2020.
- 4 The purpose of this witness statement is to explain:
 - 4.1 the background to seeking the disputed access;
 - 4.2 the consultation process undertaken with the operators; and

4.3 how the Decision Criteria was applied by Network Rail pursuant to D4.6 of the Network Code.

5 The documents to which I refer in this witness statement are in a bundle marked **TPB1**.

6 Unless indicated otherwise, all statements herein are from my own knowledge, from knowledge derived from the documents referred to below and on the basis of information obtained from the Defendant's records. Where statements are not from my own knowledge or from knowledge derived from the documents referred to below, I indicate the source of those statements, and they are true to the best of my knowledge and belief.

A. BACKGROUND

7 The Kings Cross Re-Modelling (**KXR**) project is a critical infrastructure project to renew life expired track and signalling infrastructure in the station throat and enables, alongside other projects in the East Coast Upgrade, an additional 1½ Long Distance High Speed train paths per hour in/out of Kings Cross station.

8 The renewal of life expired assets, and enhancement of the infrastructure has been complicated for the industry to deliver owing to the nature of the train service into a major London terminus and scale of infrastructure works required, including to non-Network Rail owned infrastructure beneath the railway. After encountering challenges in addressing how to retain a train service during the works, in November 2017 KXR was re-planned to be delivered in 2021 with enabling access in 2020. This timescale achieved the optimum balance of engineering access and train services to meet demand, when train service frequency through the Thameslink core was expected to support passenger handling plans. This occurred prior to my involvement.

9 An Access Oversight Board (**AOB**), chaired by the Managing Director of LNER and with members drawn from Network Rail, affected train operators, passenger representative groups and the Department for Transport, has been utilised over recent years as an industry forum to provide oversight and direction for the access and timetable plans in support of the East Coast Upgrade, of which KXR is one element. Grand Central is represented at the AOB by Richard McClean. I have been a member of this Board since January 2020. Monthly meetings of the AOB took place during the relevant period for this dispute by Microsoft Teams and were very well attended. Papers were circulated to all members of the AOB in advance of meetings to support the items to be discussed at the meeting and Minutes of the meetings were taken and circulated after the meeting to the members of the AOB.

10 Enabling works in 2020 were scheduled to be delivered in a number of partial closures of the King's Cross station area over a number of weekends. These typically enable in the region of 9 trains per hour to operate to/from King's Cross. Further, 5 x 54 hour all line blocks at King's Cross which prevent access to the station were planned in Weeks 49, 12, 23, 34 and 35 (later adjusted to a partial closure). This originally included the delivery of a signal commissioning rehearsal in Week 23, which is the engineering work that underpins the Restriction of Use that is the subject matter of the dispute. This access had been established through the relevant provisions of Part D in respect of the Engineering Access Statement (**EAS**) and Network Rail Variations with more than 12 weeks' notice (D3.4) relating to the December 19 and May 20 timetable periods. The relevant parts of the EAS are exhibited at **Appendix 1** of **TPB1**.

11 The partial closure from Christmas 2020 to March 2021 in the December 20 timetable period presents the greatest challenge for the KXR, reducing the midweek train

service over a sustained period time whilst still seeking to provide sufficient capacity for the different passenger markets affected. After consultation with the AOB throughout January 2020, I took the decision to publish within the EAS (part of the “Rules”) at D-44 a partial closure plan which was different to the draft Rules as published at D-59, which I considered better enabled the industry to deliver to the needs of passengers and freight users. This decision was endorsed by the AOB in February 2020.

- 12 By late February 2020, Network Rail was committed to delivering KXR in line with the plan published within the EAS, and my team was leading collaborative work with train operators, overseen by the AOB, to make progress with the timetabling activity required to achieve the timescales described within Part D of the Network Code, and supporting the complex passenger handling and demand modelling necessary to support the partial closure.
- 13 In March 2020, as the industry responded to the emerging COVID-19 challenges, the AOB considered and supported a deferral of the partial closure by a year in light of the emerging instability experienced by all parties. This predominantly related to the proximity to critical Part D milestone dates – chiefly D-40 for the December 20 timetable period which would incorporate the midweek timetable over constrained infrastructure – and secondly due to the halting of driver training to deliver the planned train service. Grand Central was represented at a meeting of the AOB held on 24th March 2020 by Richard McClean. A copy of the minutes of the meeting are at pages **Appendix 2 of TPB1**. The minutes record Mr McClean's view as *“passenger handling plan needs some refinement but in a good place, but the project should be reprogrammed for a later implementation due to resource constraint”*. Taking on board the recommendation of the AOB, I instructed my team to make the necessary alterations to the Engineering Access Statement and deferred the partial closure by a year.
- 14 Alongside this recommendation, the AOB requested that Network Rail consider further options for the delivery of the KXR partial closure, potentially utilising a strategy that enabled about two thirds, rather than one half, of the station to be available during midweek periods. I provided an analysis of the timetable and access plan implications in support of this review, and to validate whether the changes would enable an improved level of train service for passengers. This culminated in a detailed assessment comparing two differing delivery strategies, the results of which were presented to the AOB on 28th May 2020. The outputs of the assessment are included as an appendix to Grand Central's Sole Reference Document (Appendix B).
- 15 These outputs (at Appendix B) are not directly relevant to the Restriction of Use that is the subject matter of this dispute. However they demonstrate the consistency in Network Rail's position with regard to the requirement for the delivery of a signalling commissioning rehearsal in an all line block in advance of any partial closure, and in addition the volume of weekend disruption associated with the assessed strategy.
- 16 The assessment was presented to the AOB on 28th May 2020 and a copy of the minutes from that meeting are attached at **Appendix 3 of TPB1**. The revised strategy was recommended to be taken forward for inclusion within the Engineering Access Statement for the timetable commencing December 2021, whilst retaining as much of the scheduled enabling work as possible in 2020 in order to enable a significantly disruptive portion of the KXR (renewal of Camden Sewer beneath the infrastructure) over Christmas 2020. Grand Central were invited, but did not attend this AOB.
- 17 At the meeting it was noted that this strategy would be subject to further consideration of costs, with a headline forecast of £29m additional costs (vs £270m baseline), and

that the strategy improved the numbers of train services during the midweek at expense of more weekends of disruption. I informed the AOB at the meeting that I considered this delivery strategy preferable based on my application of the Decision Criteria using the information available to me at the time and pre-COVID passenger data. The AOB endorsed the recommendation and I instructed my team to begin preparations to include it within Network Rail's planned changes to the Rules for the December 21 timetable at D-64.

- 18 As this delivery strategy required changes to the signal commissioning stages, the signalling commissioning rehearsal scheduled for Week 23 was no longer applicable, and would need to be delivered in 2021 once signalling data had been developed in support of the revised strategy. The use of the existing Restriction of Use in Week 23 of 2020 was therefore repurposed in support of readiness for the works on Camden Sewer which was outlined to, and endorsed by the AOB at the meeting on 28 May 2020.
- 19 A further meeting of the AOB took place on 25th June 2020. At that meeting the AOB considered the potential to recover the delivery of KXR in 2021 based on the clearer impact of COVID-19 at that stage. It was then clear that there was the ability to deliver engineering work with social distancing; undertake industry timetabling activity at short notice; and that reduced train service levels could meet the forecast of ongoing lower passenger ridership than pre-COVID levels. It was recognised that the recovery of KXR would also enable infrastructure at King's Cross that would support the planned December 2021 timetable change with its associated journey time and capacity benefits.
- 20 The AOB meeting was presented with a proposed delivery strategy to deliver the main partial closure from October 2020 to December 2020 with a radically different access strategy owing to the significantly reduced passenger ridership. I supported the presentation with an analysis of the timetable and capacity impact. The implications of this strategy on the ability to operate a train service was not considered acceptable even with reduced passenger volumes. Network Rail was then challenged by the AOB to propose the half station closure in an '*as quickly as possible*' option that would accommodate the reduced COVID passenger demand at the next AOB in July. Grand Central was represented at this AOB meeting by Richard McClean.
- 21 In response to this challenge, Network Rail presented to a meeting of the AOB on 23 July 2020 an approach with delivery of the partial closure from late February 2021 to early June 2021 (the minutes and presentation appear at **Appendix 4 of TPB1**). The pack for this meeting, which set out the proposed week 29 possession and rationale, was circulated in advance to the AOB members, including Grand Central. The presentation identified the necessary changes in 2020 to achieve this delivery period. Grand Central was invited, but did not attend the meeting of this AOB, with apologies being received from Mr McClean. I outlined a detailed assessment of the implications for train services, drawing on my knowledge of capacity allocation, the network-wide access plan and the timetabling work led by my team in relation to this proposal.
- 22 At the meeting on 23 July 2020, I specifically identified the need to deliver the signalling commissioning rehearsal in October 2020, and that this could not be achieved in the previously established period (Week 23). I outlined detailed options for the signalling commissioning rehearsal to be accommodated, which included a review of possible weeks when the works could be undertaken, train service implications and the provision of information to passengers. The latter was expressly considered in respect of the network-wide timetable recovery plan being implemented following the disruption to passenger information caused by the COVID pandemic,

and the low levels of passenger demand experienced. I proposed that Week 29 was utilised to deliver this work because:

- 22.1 the informed traveller recovery plan established with industry incorporated Week 29 and passenger information systems could be adjusted in line with this network-wide plan;
- 22.2 the diversionary routes are able to operate broadly unconstrained and without hindrance of diversions, which enables the industry to maintain as short a journey as possible for rail users;
- 22.3 connections could be maintained between rail replacement road services and other train services in an effective manner at identified transfer points between services such as New Barnet, St Albans, Bedford, St Neots, Doncaster and York;
- 22.4 the necessary lead times and engineering work compatibility to undertake the signalling commissioning rehearsal could be achieved in support of enabling a partial closure to occur in early 2021 in line with the benefits and considerations described in paragraph 20 of this witness statement namely that reduced train service levels could meet the forecast of ongoing lower passenger ridership than pre-COVID levels and that the recovery of KXR would enable infrastructure at King's Cross that would support the planned December 2021 timetable change with its associated journey time and capacity benefits; and
- 22.5 the complex requirements of conflicting engineering works which prevent efficient utilisation of assets and/or reduce the ability to deliver a train service that meets demand could be achieved. These requirements were agreed with the AOB to provide a framework for the planning of all line closures of the East Coast Main Line with a supporting robust train service in place, and feature principles to consider with regard to the Brighton Main Line, the West Coast Main Line, the Midland Main Line, the West Anglia Main Line, the TransPennine Main Line, routes throughout Cambridgeshire for both freight and passenger services, and routes between the ECML and MML in South Yorkshire.
- 23 The above factors were in line with those that had been considered as supporting a number of all line blocks on the route throughout 2019 and 2020 and which have not been challenged by the operators.
- 24 I could not identify any other week that enabled this combination of factors to be achieved.
- 25 Following endorsement of the proposal to recover by the AOB, I instructed my team to immediately enact the provisions of Part D 3.5 to formally propose the Restriction of Use for Week 29 to mitigate as far as possible the late notice of the proposal, noting that the existing delay to passenger information and lower passenger ridership had significantly altered what might be considered normal industry preparedness to implement late notice change.
- 26 I am informed by Ed Akers of Network Rail that he contacted Richard McClean shortly after the meeting on 23 July 2029 by telephone to discuss the proposal and position of the AOB, and to invite a response to the proposal.
- 27 It is this Restriction of Use that is the subject matter of the dispute.

CONSULTATION

- 28 The consultation for recovery of KXR had significant complexities. This was because alterations to the access plan were needed over a period of about 2 years spanning many different provisions of the Network Code (from additional Restriction of Use in 2020 to withdrawing the intended access from the EAS covering December 2021).
- 29 For changes to the access plan which cannot be consulted and established by TW-26, the industry recognised approach is to apply the conditions of D3.5, even if alterations to the train service can still be implemented by TW-12. Therefore, the Restriction of Use in support of the signalling commissioning rehearsal in Week 29 was proposed pursuant to the Condition D3.5
- 30 Network Rail's approach to doing so is to advise of a proposed change to the Restrictions of Use, outlining the restriction (as it would appear within a Weekly Operating Notice) in a formal written proposal, commencing a 10 day consultation period in which timetable participants are invited to respond. This was undertaken in respect of the Restriction of Use for Week 29 on the 24th of July 2020, and provided at of Grand Central's SRD.
- 31 The Restriction of Use was accepted by the majority of timetable participants affected. Grand Central provided a written response to members of my team on the 29th July (provided as Appendix E to Grand Central's SRD) within the consultation period.
- 32 Following appropriate consideration of the responses received during consultation, and utilising the Decision Criteria and Objective described in D4.6, I made the decision that Network Rail would implement the Restriction of Use in Week 29. My thought process is outlined in paragraphs 39-41 below. Having made this decision, I instructed my team to proceed with the issuing of a decision notification to implement the Restriction of Use in Week 29, which was undertaken on the 14th August 2020.
- 33 Recognising the impact of this decision, and the need to establish a regular framework by which further consultations could be supported with regular dialogue, I instructed my team to establish weekly consultation meetings with the operators, by which proposals, decisions and rationale in respect of changes to the plan could be more easily discussed.
- 34 The first of these meetings could not occur owing to calendar commitments until the 21st August 2020 via Teams. Grand Central was represented by Nick Watson. At this meeting, my team articulated the high level rationale that underpinned Network Rail's decision to implement the Restriction of Use in Week 29, at which Mr Watson confirmed that Grand Central would object subject to satisfactory compensation arrangements being agreed. The meeting continued to discuss the interventions to the timetable in support of the RoU in Week 29, and then further to cover other weeks affected.
- 35 These meetings continue on a weekly basis, and have received positive engagement from the operators, including Grand Central. They are used to gain clarity of the detailed implications of Network Rail's proposals on train services, alignment of train service plans to deliver a service to passengers and end users and to inform Network Rail's application of the decision criteria.

C. APPLICATION OF DECISION CRITERIA

- 36 As Head of Planning and Performance for the North & East Route, it was ultimately my responsibility to apply the Decision Criteria and to reach a decision on the late access proposal that was made for Week 29. This is a responsibility that I take

seriously and which I can confirm was undertaken properly prior to a final decision being made.

- 37 Given my experience and membership of the timetabling panel, I am acutely aware that Condition D4.5.1 requires the application of the Decision Criteria in accordance with Condition D4.6.
- 38 To assist the Panel, I describe below the thought process that I went through when making my decision.
- 39 I was conscious when making my decision that the overriding objective is 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 and in achieving the Objective I needed to consider the application of the considerations listed in Condition D4.6.2
- 39.1 I therefore considered whether there were any considerations that I did not think were relevant to the decision as to whether to take possession in week 29. I did not think that considerations at paragraphs (h), (k), and (l) were relevant. I consider these relevant only in making decisions during the development of the New Working Timetable. I also considered that there was little evidence to suggest that consideration (i) had much relevance to the decision.
- 39.2 Given the absence of a current Route Utilisation Strategy for the ECML, I did not consider there to be significant applicability of criterion (g), although I did consider that taking the possession was consistent Network Rail's CP6 business plan through the delivery of KXR in 2021 and also with industry strategy to implement a timetable change in December 2021. I considered that the remaining criteria should receive greater weighting.
- 39.3 With respect to criterion (a) I considered that King's Cross throat is a life expired asset which is subject to ongoing life extension works. The remodelled King's Cross layout supports the introduction of new and faster services on the ECML from (currently) December 2021 which could not be accommodated if deferred again, and that the signalling rehearsal requirement was on the critical path to achieving delivery of the KXR programme. I further considered the options available in respect of utilisation of existing planned disruption, noting that to do so would prevent other activities being delivered due to compatibility with other works. Although an all line closure already existed in Week 34, to utilise this would result in the removal of other engineering work, notably the renewal of 2x S&C units at Finsbury Park due to work compatibility, and also requiring other signalling works at King's Cross requiring an all line closure to be moved from Week 34 to an undetermined date, but that would still be required prior to the partial closure.
- 39.4 Allied to consideration (a) is consideration (c) which is relevant here because the life expired assets are impacting the ability of the network to perform to its normal capability. As a life expired asset operating with ongoing life extension works, a number of track and signalling asset failures have been observed affecting train service performance. The introduction of the signalling commissioning rehearsal features as a key step in the critical path to the full renewal of the asset which would reduce such incidents, and sustain higher performance for all ECML operators as well

as interactions across the network at key nodes such as the Thameslink core and with services across the Pennines and thence via the Castlefield Corridor¹.

- 39.5 Having satisfied myself that there was sufficient merit in implementing a Restriction of Use, I then turned to considering the level of train service that could be operated to satisfy the Objective. I took the view that considerations at (b), (d) and (e), were relevant in assessing whether the proposed approach to deliver the engineering work in week 29 is proportionate to the disruption to the network timetable.
- 39.6 I thought that Week 29 represented an opportunity to deliver engineering work at King's Cross during a period of lower passenger demand arising from the COVID pandemic, and with the optimum balance of available alternatives - the diversionary routes would be able to operate a full, and in some instances with a strengthened service. I anticipated the operation of at least 3 Long Distance High Speed trains per hour to St Neots, linking to GTR 12 car Bedford services operating unconstrained to St Pancras, providing capacity in addition to connections at Doncaster and Sheffield to access the Midland Main Line. I knew that the attainment of this level of service in support of equivalent restrictions in other weeks (for example, Week 12 in 2020) has successfully provided a train service to passengers that meets demand. I also considered the implications for freight services, drawing on the availability of gauge cleared alternative routes to/from the ECML at Peterborough for intermodal traffic to/from Cambridgeshire, and the availability of the WCML for services to/from the North West and West Midlands.
- 39.7 I also considered the commercial viability of the anticipated level of train service for the operators under (f) and whether it represented effective utilisation of resources under (j). For consideration (f) I gave particular consideration to the arguments raised by Grand Central in its objections. I firstly considered that the Informed Traveller process had not been undertaken in respect of Week 29, with no amended timetable plan provided to passengers at TW-12. I considered this prevented any erosion of customer confidence as the timetable plan could be delivered in line with the wider network. I also noted the current passenger volumes and the associated impact on operator revenue, surmising that whilst the RoU was proposed with less notice than would be expected by industry norms for disruption of this nature, the existing delays to the provision of passenger information due to the COVID pandemic would create a level of passenger suppression, notwithstanding the current low levels of demand observed across the network. I then further considered this with regard to the potential to undertake the signalling rehearsal later, potentially into 2021, noting that demand recovery in any intervening period would increase losses experienced by all timetable participants, including Grand Central.
- 39.8 In considering specifically Grand Central's response, I noted its concern about the revenue it would lose due to the possession. I recognised that Grand Central would consider operation by it of services to/from Peterborough was unlikely to be commercially viable drawing from my experience of its approach to previous weekends with equivalent restrictions in place, but that operation as far as York on Sunderland services would enable some mitigation to any revenue loss whilst enabling passenger transfer to other services., I surmised that implementing a RoU at the earliest opportunity whilst passenger demand was very significantly reduced would actually mitigate Grand Central's revenue loss in the medium to long term.

¹ Following the decision to implement the RoU in Week 29, it should be noted that in August 2020 Platform 0 at King's Cross was required to be taken out of use for a period of time owing to infrastructure issues, which also occurred for a prolonged period of time in 2019.

- 39.9 Given the current position with respect to franchised operators, I did not consider that these commercial considerations carried the same weight as with regard to Open Access operators. I considered the commercial implication of delivering the signalling rehearsal beyond May 2021, when another Open Access operator is due to operate services which would not have included KXR within its plans (given it was intended to be delivered prior to their operation) and the potential implications of deferring industry benefits of the December 2021 timetable change. I also noted the support of other affected operators in respect of the timing of the Restriction of Use and that they carried the vast majority of passengers that would be affected by this possession
- 39.10 As I was not aware of the specific contracts and costs involved in respect of this specific element of KXR (i.e. with the signalling system supplier), I could only consider the potential costs involved of the deferral and re-phasing to a new delivery strategy, which I was aware had been forecast and presented to the AOB as in the region of £20m to £30m. As I couldn't isolate costs solely in respect of the signalling rehearsal work at the time of making my decision I did not consider the costs to Network Rail of deferring the works as a relevant factor under consideration (f)
- 39.11 With respect to criterion (j), my considerations related predominantly to the fact that the train service that could be implemented was consistent with equivalent weekends throughout 2020, which have been delivered in a manner that enabled the adjustment of existing stock and crew workings to deliver the train service anticipated. I gave specific consideration to the ability of LNER to resource the train service, given the restriction in Week 29, operation of electric services to/from Edinburgh on the Saturday owing to an RoU north of Newcastle, but noted that LNER were aware of this restriction and remained supportive of implementing the signalling rehearsal in Week 29 with an amended diagramming approach to utilise bi-mode assets on Anglo-Scottish services.
- 40 Having considered which considerations were relevant and applied them to the proposed possession I then decided which were the most important considerations and gave them what I considered to be appropriate weight in the circumstances bearing in mind the Objective as described in D4.6.1, in doing so I thought that:
- 40.1 Considerations (a) and (c) require the delivery of the engineering work, and given the life expired nature of the asset they should be given the greatest weighting.
- 40.2 Considerations (b), (d), and (e) demonstrated that an effective train service in support of the engineering work could be implemented in the week 29 possession and this view was supported by the majority of train operators.
- 40.3 I thought that consideration (f) supported delivering the Restriction of Use at a time of low passenger demand as this would result in a lower overall loss for operators. I did not think that the timing of when the operators would suffer that loss (i.e. it would be incurred in week 29 rather than at a later date) outweighed the importance of the considerations outlined within criteria (a) and (c).
- 41 As a result of taking all these considerations into account I came to the view that notwithstanding Grand Central's objections to the possession in week 29 the relevant considerations were heavily in favour of the possession taking place in week 29.

Dated: 11th September 2020

I believe that the facts stated in this witness statement are true.



Toby Patrick-Bailey

Defendant
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