

Network Rail Sole Reference Document

TTP2404

Network Rail's Engineering Access Statement decisions for 2025, Version 2

1 DETAILS OF PARTIES

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

- (a) GB Railfreight Limited whose registered Office is at 3rd Floor 55 Old Broad Street, London, EC2M 1RX ("GBRf ") or ("the Claimant")
- (b) Network Rail Limited whose registered office is at Waterloo, General Office, London, SE1 8SW ("Network Rail") or ("the Defendant")

1.2 Third parties to this dispute may include Freightliner Group Ltd, DB Cargo, Direct Rail Services, Cross Country Trains, LNER, Trans Pennine Express, Northern Trains and *Grand Central Railway Company Limited*

2 CONTENTS OF THIS DOCUMENT

2.1 This Response to the Claimant's Sole Reference includes:-

- 2.1.1 Confirmation, or qualification, that the subject matter of the dispute is as set out by the Claimant in its Sole Reference, cross-referenced to the issues raised by the Claimant in the Sole Reference, identifying which the Defendant agrees with and which it disagrees with.
- 2.1.2 A detailed explanation of the Defendant's arguments in support of its position on those issues where it disagrees with the Claimant's Sole Reference, including references to documents or contractual provisions not dealt with in the Claimant's Sole Reference.
- 2.1.3 Any further related issues not raised by the Claimant but which the Defendant considers fall to be determined as part of the dispute;
- 2.1.4 The decisions of principle sought from the Panel in respect of:
legal entitlement, and
remedies.
- 2.1. 4 Appendices and other supporting material

3 SUBJECT MATTER OF DISPUTE

- 3.1 This is a dispute relating to different Restrictions of Use ("RoU's") published within Version 2 of 2025 Engineering Access Statement.
The different RoU's are:-
- 3.1.1 Eye of the Needle Possessions in Weeks 52 and 8 of Timetable Year ("TTY") 2025. Cross referenced to of Claimants Sole Reference Document items 2 & 4.2 to 4.11.
 - 3.1.2 Eye of the Needle Possessions in Weeks 9, 10, 11, 12, 19, 20, 21 and 24 of TTY 2025
Cross referenced to of Claimants Sole Reference Document items 2 & 4.2 to 4.11.
 - 3.1.3 Possessions proposed on North West Route ("NW") of North West & Central Region and also on North & East Route ("N&E") of Eastern Region in Week 04 of TTY 2025
Cross referenced to of Claimants Sole Reference Document items 2 & 4.12 to 4.18
 - 3.1.4 Possessions proposed NW & N&E in Weeks 16,17,18,19 and 23 of TTY 2025
Cross referenced to of Claimants Sole Reference Document items 2 & 4.12 to 4.18
 - 3.1.5 Chinley blockade proposed in Week 13 of TTY 2025
Cross referenced to of Claimants Sole Reference Document items 2 & 4.19 to 4.21
 - 3.1.6 Possessions proposed on the East Coast Mainline, part of East Coast Route ("EC") of Eastern Region, in Weeks 31,32,33 and 34 of TTY 2025
Cross referenced to of Claimants Sole Reference Document items 2 & 4.22 and 4.23
- 3.2 The RoUs have been established following, or are progressing through the consultation processes outlined within, the Conditions set out in Network Code Part D 2.2, and the dispute relates to Network Rail's decisions concerning Rules under Condition D 4.1 and the application of the decision criteria under Condition D 4.6
- 3.3 In respect of the RoU's detailed within 3.1.1 and 3.1.3 Network Rail accepts the Claimant's rights to bring this dispute however notes the following in respect to the specific items
- 3.3.1 Eye of Needle Possession in Weeks 52.
Possession 3939339 (Claimant's SRD items 2 & 4.2 to 4.11, Defendants SRD reference 3.1.1 & 3.1.3)
The Eye of Needle Possession in Week 52 has already been withdrawn by Network Rail. The claimant was aware of this intention and has indicated verbally and in writing their support in this change formalised.
(see Appendix NRSRD 6)
 - 3.3.2 Week 04 Huddersfield Route Possession
Possession 3977885 (Claimant's SRD items 2 & 4.12 to 4.18, Defendants SRD reference 3.1.3)
Has been formally proposed to be removed to be replaced with a 3 day Eye of Needle closure. The claimant was aware of this intention and has indicated verbally and in writing their support in this change being formalised.
(see Appendix NRSRD 6)

3.4 In respect of the RoU's detailed within 3.1.2, 3.1.4, 3.1.5 and 3.1.6 Network Rail does not accept the Claimant's right to bring this dispute for the following reasons.

3.4.1 Network Rail believes that RoU's published within Version 2 of the 2025 Engineering Access Statement dated on or after Sunday 18th May 2025 (Week 8) are within the 2025 Subsidiary Timetable Period and publication of items within the Subsidiary Timetable are proposals, not decisions.

3.4.2 Any RoUs published within Version 2 of the 2025 Engineering Access Statement date on or after Sunday 18th May 2025 are included to inform consultation in advance of D-64 and therefore the Conditions referenced by the Claimant, 2.2.8 and 2.2.6, do not apply as Network Rail has not yet made a decision in respect of these Rules

3.4.3 In recognising the Hearing Chair's note on 26th March 2024 (Hearing of TTP2404 - preliminary dispute issue) in response to Network Rail's objection raised on 12th March 2024, Network Rail has responded to the Claimant's submission where Subsidiary Timetable items are concerned, without prejudice to any decision it may choose to make within 2025 Engineering Access Statement version 4.

3.5 Colloquial names and abbreviations

3.5.1 Eye of the Needle ("EoTN")

Refers to a possession between Bradley Wood Jn and Healey Mills and Bradley Jn and Dewsbury.

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3.5.1 Eye of the Needle ("EoTN")

Refers to a possession between Bradley Wood Jn and Healey Mills and Bradley Jn and Dewsbury.

Also known as W7 possession type, the possession blocks the location where 2 cross Pennine routes converge on the East, specifically the route between Huddersfield and Stalybridge (sometimes referred to as Diggle route and in Claimant's SRD Huddersfield Route) and the route between Milner Royd Jn and Mirfield (sometimes referred to as the Calder Valley line).

This restriction of use constrains direct journey opportunities between Leeds and Manchester to a single route via Halifax and Bradford

Appendix NRSRD 1 provides further detail.

3.5.2 TRU

Refers to Transpennine Route Upgrade Programme.

3.5.3 Plan B

Refers to change in TRU access position

3.5.4 Freight Access Working Group – (“FAWG”)

Refers to a 2 - weekly meeting between Freight Operating Company (FOC) representatives, TRU representatives and Network Rail route representative.

Appendix NRSRD 2 details terms reference for this meeting

4 EXPLANATION FROM THE DEFENDANT’S PERSPECTIVE OF EACH ISSUE IN DISPUTE

4.1 Issues where the Defendant Accepts the Claimant’s Case

4.1.1 In response to Claimant’s SRD Item 4.3, Network Rail agrees TRU access plans have changed over time and agrees consultation with operators has been continuous. Network Rail also accepts that several different people are responsible for different elements and decisions within the programme including access. The industry visibility of TRU’s plans over a multiple year timeframe in advance of Part D timescales is evidence of the transparency and level of consultation undertaken by Network Rail.

4.1.2 In response to Claimant’s SRD Item 4.3, Network Rail agrees the Claimant stated the need for timetable studies.

4.1.3 In response to Claimant’s SRD item 4.5, Network Rail agrees it sent an email detailing proposed access changes for TRU Plan B and that the claimant responded to this email on 16th January 2024

4.1.4 In response to Claimant’s SRD item 4.7 Network Rail agrees at the FAWG we did state an intent to publish Plan B amendments in Version 2 and that Plan B in respect of Eye of Needle access is a weekend-oriented access proposal except in 2027 when a combination of weekends and a blockade are proposed.

4.1.5 In response to Claimant’s SRD item 4.11 Network Rail agrees it published Plan B in Version 2 and that claimant responded back to the publication and submitted its Notice of Dispute

4.1.6 In response to Claimant’s SRD item 4.12 Network Rail agrees the Claimant made responses for the need for a reasonable diversionary route

4.1.7 In response to Claimant’s SRD item 4.14 Network Rail agree with the statement that a route via Calder Valley is available.

4.1.8 In response to Claimant’s SRD item 4.15 Network Rail agree that the Claimant was advised that RoU’s on the Huddersfield route in the weeks referenced was still Network Rail’s proposal

4.1.9 In response to Claimant’s SRD item 4.16 Network Rail agree with the statement

4.1.10 In response to Claimant’s SRD item 4.17 Network Rail agree with the statement

4.1.11 In response to Claimant’s SRD item 4.18 Network Rail agree with the statement

4.1.12 In response to Claimant’s SRD item 5.4 Network Rail agree with the statement

4.2 Issues where the Defendant qualifies or refutes the Claimant's Case

- 4.2.1 In response to claimants SRD item 4.2 Version 2 of the 2025 Engineering Access Statement did include 10 instances of “Eye of the Needle blocks” GBRF have as described in the Claimant’s SRD taking part in discussions to advise requirements however this does not in Network Rail’s view prevent Network Rail from proposing access that does not wholly align to GBRF’s preferred outcome on all occasions nor should consultations and requests for preferences oblige Network Rail to agree with them particularly given the nature of preferences between Timetable Participants .
- 4.2.2 In response to Claimants SRD item 4.6 there were 5 FAWG between the dates referenced and EoTN was and items on each meeting
- 4.2.3 In response to Claimant’s SRD item 4.7 Network Rail agrees at the FAWG we did state and intent to publish Plan B amendments in Version 2 and that Plan B in respect of Eye of Needle access is a weekend-oriented access proposal except in later years when a combination of weekends and a blockade are considered (which are not the subject of this dispute). Plan B Eye of Needle Access at that time did not differ from Version 1 in the Principal Timetable Period. 2 x Eye of the Needle Possession in Weeks 52 & 8 were retained and within the subsidiary timetable period 4 x Weeks (9,10,11 & 12) the changes were Week 23 moving into Week 24 (within a **re-dated Huddersfield Blockade**) and easement from a 16 day blockade in Weeks 19,20 and Weekend of 21 to weekends only in Weeks 19,20 & 21. Whilst Network Rail accepts this is a change undertaken during the consultation of the Rules it was in reality in an Eye of Needle context a proposal to move 1 weekend possession by a week and remove 10 midweek days of Eye of Needle access.
- 4.2.4 In response to Claimant’s SRD item 4.8 Network Rail does not believe a blockade for 2027 in part of this dispute
- 4.2.5 In response to Claimant’s SRD item 4.9. Network Rail have never declared an intention to not deliver a Timetable Study, and no evidence of this position having been stated is provided. Network Rail has delivered Timetable Studies already in support of Eye of Needle Access and committed to delivering further studies for future access when base Timetable information is available.
- 4.2.6 In response to Claimant’s SRD item 4.10. The email from Network Rail dated 23rd February 2024 is included within the Claimant’s SRD Appendices 2.4, 2.4.1, 2.4.2, Network Rail does not accept we are not providing assurances, we believe the email and other correspondence makes it clear we are not providing assurances, we believe the email and other correspondence makes it clear we anticipate a restriction in weekend services and available capacity via the diversionary route and the rationale associated with the proposed position

- 4.2.7 In response to Claimant's SRD item 4.13 Network Rail agrees the Claimant made responses on the dates submitted but does not agree meetings specifically to deal with the conflicts have not been held. These conflicts have been discussed with the fortnightly FAWG
- 4.2.8 In response to Claimant's SRD item 4.19 Network Rail agrees that the items referenced form part of the Claimant's dispute however believe these are separate items not related to each other with fundamentally different services and freight customers involved
- 4.2.9 In response to Claimants SRD item 4.20 Network Rail The Chinley blockade was discussed through NW&C EAS 2025 Disruptive Proposal Workshops
 2nd May covering Wks 1 - 6 – EAS 2025 minutes issued 5th May (NRSRD Appendix 7)
 13th June covering Wks 13 -19 – EAS 2025 minutes issued 16th Jun (NRSRD Appendix 8)
 25th -26th July EAS 2025 Mop up session minutes issued 3rd Aug (NRSRD Appendix 9)
 Structures Meeting 5th Oct, this was a bespoke meeting to discuss specific items of work, no recorded request from GBRf to discuss Chapel Milton (NRSRD Appendix 10)
 6th Oct diarised meetings established to discuss Significant disruption on NW&C (NRSRD Appendix 11) no recorded request from GBRf to discuss Chapel Milton through planned meetings.
 Engaged with GBRf's comments through EAS V1 & V2 response process (NRSRD Appendix 12)
- 4.2.10 In response to Claimant's SRD item 4.21 Network Rail does not agree it has proposed this access without consideration to the impact on the Claimant's Network Rail has expressly considered the impact balanced with other end-users and Timetable Participants in doing so this prevents unplanned or unforeseen impacts and therefore proactively minimises impact on customers
- 4.2.11 In response to Claimant's SRD item 4.22 Network Rail agrees these have been discussed widely on several meetings including the FAWG however Network Rail believe the notes of these meeting do capture this and have provided evidence in NRSRD Appendix 4
- 4.2.12 In response to Claimant's SRD item 4.22 Network Rail agrees a meeting took place on the date referenced and a follow up meeting is scheduled for 16 April 2024. This further evidences Network Rail's ongoing efforts to meaningfully consult in advance of making a decision at D-54. Network Rail does not believe the volume of biomass services impacted on the weekends proposed justifies movement of this access into a period where footfall on a major passenger route (ECML) would be high. Network Rail has reached this proposal based on the Claimant's previous year's train running information and with wider industry stakeholders including the end user of the product the Claimant's services delivers
- 4.2.13 In response to Claimant's' SRD item 5.1 Network Rail does not believe this is an accurate statement
 Network Rail has reduced the number EoTN RoU's from Plan A to Plan B by 10 days
 It has ensured all EoTN access is proposed to be weekends only and with the recent removal of Week 52 has ensured all EoTN access is during the low burn period.

This is consistent with the principles we have clearly set out with the end user of the biomass traffic and the Claimant's statements regarding seasonal demand

In making these changes Network Rail has been required to consider the implications on diversionary capacity given the seasonal element especially with regard to existing train service provision on diversionary routes

- 4.2.14 In response to Claimant's SRD item 5.2 Network Rail does not agree it has demonstrated a lack of commitment to deliver Timetable Studies, Network Rail's EAS response confirm an undertaking to deliver Timetable Studies and studies have already been completed for similar RoU's that the Claimant is in receipt of or has used. Network Rail have advised the claimant that specific details especially severity 4 studies that require end to end origin and destination validation can only be reliably produced once the applicable base timetable is available or in the case of proposed WTT (Period Blocks) as part of the Timetable development process.
- 4.2.15 In response to Claimant's SRD item 5.3 Network Rail has provided Drax with details of its approach and principles when planning engineering work that impacts services to/from Drax (See NRSRD appendix 5) They have not raised an objection to these principles nor the proposals as they have been submitted. Indeed Drax have confirmed to Network Rail a preference for weekend RoU's in 'low burn' periods over high burn periods and a preference for extended weekend vice midweeks. The proposal as it exists will enable Drax to receive over 75% of trains services each week by ensuring access is constrained to weekends or Bank Holidays and will ensure except the services impacted to/from Tyne in Week 31 and 34 all RoU's are during low burn. We have advised Drax of the requirement and reasons for the weekends out with low burn (Weeks 31 to 34) and they have indicated this is manageable on the proviso we retain routes from alternatives ports which the proposal as published does. As the claimant is aware these particular weeks are subject to alteration, and we continue to work with all parties and the wider industry to finalise a position and date for this access.
- 4.2.16 In response to Claimant's SRD item 5.5 Network Rail highlights that the access on this weekend has been amended (Now proposed to be 3 day EoTN RoU) and the Claimant has indicated a preference for this proposal
- 4.2.17 In response to Claimant's SRD item 5.6 The Claimant is aware of Network Rail's intention to use the Timetable Study for Week 27 of 2024 as a guide as to future capacity arrangements noting the requirement to re-validate against future base TT's. The claimant has stated that thus far, the output of studies were acceptable so far (see FWG appendix)
Network Rail also notes that an EoTN RoU's was planned for Easter Sunday 2024 and this would serve as a reasonable guide as to the likely level of service the Claimant can expect to be able to operate
- 4.2.18 In response to Claimant's SRD item 5.7 Notwithstanding Network Rail's position regarding Version 2 publication not constituting a decision, Network Rail believes it has clearly and

consistently advised the Claimant as to why it has prioritised some service groups over others and why it believes this is reasonable given the seasonal orientating of the proposal.

- 4.2.19 In response to Claimant's SRD item 5.8 the nature and location of the works means that there is no easy alternative option for running any services but this is a intervention to safeguard the future resilience of the route. NRSRD Appendix 12 shows response at V2 so we are looking at a potential diversionary route via Buxton.
- 4.2.20 In response to Claimant's SRD item 5.9 The challenge has been put to the project to further define the requirements as highlighted there is a concern over the ability to maintain the future performance of operations in this area without a significant intervention of this type. There are still potential opportunities to provide a level of service via NW9021 which would need to be co-ordinated with local stakeholders and we have also escalated to the Route the potential benefits of addressing the installation of the Buxton S&C.
- 4.2.21 In response to Claimant's SRD item 5.10 Network Rail does not accept this is true
- 4.2.22 In response to Claimant's SRD Item 5.11 Network Rail believes it has responded to this point previously within this document and does not agree with the statement.
- 4.2.23 In response to Claimant's SRD Items 5.12 Network Rail does not agree that it has failed to consider the commercial impact of any Timetable Participant, Network Rail believe the proposal as that is what they are, demonstrate Network Rail has considered (and continues to consider) the commercial implications of RoU's and this is evidenced in the proposals themselves. Network Rail has not chosen to elect the procedure (Possession Strategy Proposal) as describe in Part D Section 6 of the Network Code therefore Network Rail do not believe the National Planning rules 6.1.1 is relevant in this dispute..

4.3 Issues not addressed by the Claimant that the Defendant considers should be taken into account as material to the determination

- 4.3.1 The Network Rail Production Schedule (NRSRD Appendix 2) outlines the process and timelines informing consultation of the Rules concerning the subsidiary element of 2025 TTY . These dates are consistent with those outlined in Condition D2.2. Network Rail's decisions in respect of the Final Rules for the subsidiary timetable are expected by D-44 (12th July 2024). At time of this TTP hearing, Network Rail has provided the Draft Rules (Engineering Access Statement V3) with responses expected from Timetable Participants by D-54 (3rd May 2024). Therefore Network Rail does not consider an appealable decision has yet been made concerning any ROU within the subsidiary period of TTY2025.
- 4.3.2 The Claimant seeks a determination (Claimant's SRD 6.1a) that Network Rail is found to be in breach of its Track Access Contract, but does not provide any evidence of the failed duties alleged. Network Rail contends that the Network Code Part D enables the proposal and

establishment of Restrictions of Use by Network Rail, and that the associated impact upon Timetable Participants is a factor of the decision making thereof, as opposed to constituting a breach of the TAC.

- 4.3.3 The Claimant seeks a determination (Claimant's SRD 6.1e) that if Network Rail is found to be in breach of its Track Access Contract, which is refuted, that GBRf is awarded "costs and damages". It is unclear what damages can possibly have been arisen given the circumstances outlined in both 4.3.1 and 4.3.2 of this SRD, and no evidence of any such damages is outlined within the Claimant's SRD.
- 4.3.4 The Claimant makes no reference in respect of Network Rail's application of the decision criteria (nor any relevant interpretation of the criteria in favour of the Claimant). Network Rail contends that the information provided to Timetable Participants (including the claimant) in support of its proposals as outlined within this SRD and associated appendices – including the rationale behind proposed prioritisation of capacity allocation on diversionary routes – is an indication of Network Rail's intent to apply the decision criteria and an opportunity for Timetable Participants to provide further information not yet considered in doing so.

5 DECISION SOUGHT FROM THE CHAIR

- (i) That Network Rail has carried out (and continues to carry out) its duties in accordance with the timescales and processes as set out within the Network Code
- (ii) That Part D enables Network Rail to propose RoU's that have an impact on Timetable Participants without constituting a breach of the Track Access Contract
- (iii) That in expediting this dispute to include items within the subsidiary timetable the Claimant has failed to follow the timescales and processes as set out within the Network Code with an intent to prejudice decisions not yet made
- (iv) That Network Rail has not acted in bad faith, and that the proposals are reasonable and that in accordance with Part D 5.7.1 the Claimant is not entitled to any costs, damages or associated relief.

6 APPENDICES

- 6.1 NRSRD Appendix 1 – Eye of Needle Possession Maps and TRU Diversionary Map
- 6.2 NRSRD Appendix 2 – TT Production schedule
- 6.3 NRSRD Appendix 3 – FAWG Minutes 12th Feb 2024
- 6.4 NRSRD Appendix 4 – FAWG Terms of Reference
- 6.5 NRSRD Appendix 5 – Drax Principles
- 6.6 NRSRD Appendix 6 – Week 52 & 4 Alterations
- 6.7 NRSRD Appendix 7 – 2nd May Covering Wks. 1 to 6 EAS 2025
- 6.8 NRSRD Appendix 8 – 10th June Covering wks. 13 to 19
- 6.9 NRSRD Appendix 9 – 25th 26th July EAS Meeting
- 6.10 NRSRD Appendix 10 – Structures Meeting 5th October
- 6.11 NRSRD Appendix 11 – 6th October significant disruption meeting

6.12 NRSRD Appendix 12 GBRf comments EAS V1 & V2