**TTP2517, TTP2521**

**Network Rail Limited Defence Submission**

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

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

1. First Greater Western Limited whose Registered Office is at Milford House, 1, Milford Street, Swindon. SN1 1HL (“Great Western Railway”, “GWR”) ("the Claimant"); and
2. Network Rail Infrastructure Limited whose Registered Office is at Waterloo General Office, London SE1 8SW (“Network Rail") (“the Defendant”).

1.2 Network Rail agree with the list of potentially affected third parties as listed within the Claimants Sole Reference Document.

**2 CONTENTS OF THIS DOCUMENT**

This Response to the Claimant’s Sole Reference includes:-

1. Confirmation, or qualification, that the subject matter of the dispute is as set out by the Claimant in its Sole Reference, in the form of a summary schedule 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. 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.
3. Any further related issues not raised by the Claimant but which the Defendant considers fail to be determined as part of the dispute
4. The decisions of principle sought from the Chair in respect of

(i) legal entitlement, and

(ii) remedies;

1. Appendices and other supporting material.

**3 SUBJECT MATTER OF DISPUTE**

Network Rail does not dispute GWR’s right to bring this dispute in accordance with Condition D5 of the Network Code insofar as the Network Code and ADRR are applicable.

This is a dispute in relation to the allocation of capacity to account for a possession (“RoU”) at Easter 2025 decisioned by Network Rail to enable the renewal of Switches and Crossings (S&C) and associated plain line track at Acton East, with other works under cover including building of the new Great Western Main Line station at Old Oak Common. There have been a number of previous disputes regarding this section of the network (TTP2243, TTP2244, TTP2245, TTP2260, Elements of TTP2251, 2453, 2454, 2455, and 2456) and a number of similarities occur. For this dispute, Network Rail submits that there are two issues at play.

Firstly, the holistic capacity of the two-track timetable being implemented. Network Rail submit that the maximum number of trains that can run to ensure a robust timetable is 14.5 trains per hour (tph). In previous disputes, the Claimant argued that this assessment is incorrect, and that the allocation should be 15.5tph. All of the previous disputes regarded closures of the main lines between Ladbroke Grove and Acton West where the 2TT applied between these locations. The disputes this time regard a closure of the relief lines between Ladbroke Grove and Southall, where the 2TT required applies over a longer distance (approximately 7 miles compared to approximately 3 miles).

In this dispute, on this point the claimant seeks to argue that Network Rail should operate 16tph in certain hours regardless of the effect on performance, prioritising overall capacity in their favour. At this stage the claimant has not yet offered information which shows how a TPR compliant timetable could be constructed.

Secondly, the claimant seeks to argue that if the overall capacity is not increased, then the distribution of capacity between Operators should be amended in their favour by removing one or two services from MTR, reducing the number of services which MTR can operate to either 4 or 5. The claimant has identified 12 individual one hour slots where this should apply across three of the four days at Easter 2025. The Claimant appears to be seeking this remedy in the form of a substituted decision under Network Code Condition D5.3(c).

The Claimant has not disputed the validity or justification provided by Network Rail for the possession itself, nor for the dating of the possession. The Claimant is disputing capacity as noted above. At this time, Network Rail have not yet offered the Timetable back to Timetable Participants.

The dispute brought by GWR relates to Network Rail’s application of the Decision Criteria under D4.6 of the Network Code.

**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 Network Rail accepts that these possessions are being sought to undertake S+C renewals at Acton East Jcn, with other work activities piggy backed into the access.

4.1.2 Network Rail accepts that the dispute is with regard to the overall cap and allocation of services within the overall cap at Easter 2025 on Good Friday, Easter Saturday, and Easter Monday. Network Rail accepts that GWR is neither disputing capacity nor the allocation of capacity on Easter Sunday 2025.

4.1.3 Network Rail accepts that the area of dispute is with regard to the claimant not agreeing with Network Rail’s application of the Decision Criteria under D4.6 of the Network Code

**4.2** **Issues where the Defendant qualifies or refutes the Claimant’s Case.**

4.2.1 In 4.5, the Claimant states that this “will severely damage GWR customer journeys, net industry viability and GWR and industry reputation.” The Claimant has failed to quantify the extent of the damage they are claiming on their own business and is silent on the damage to other Operators’ journeys which would be caused by reallocating paths from other operators to the Claimant. It is silent on the damage to other Operators’ reputation. It is also noted that ‘’reputation’’ is not strictly a consideration contained within D4.6.2.

4.2.2 Also in 4.5, the Claimant raises concerns regarding the possible outcomes of overcrowding on its services. The Claimant is silent regarding these issues affecting other Operators.

4.2.3 In 5.1, the Claimant states that “Network Rail has provided too much weighting to performance and insufficient to the carrying of demand”. Network Code Part D provides the industry with clear processes to build and amend a timetable, culminating (if required) in the consideration and application of the Decision Criteria under D4.6. It is submitted that when Network Rail is faced with a request to add paths into a timetable, it will assess the information available at the time. The Claimant had not provided a timetable bid based on 16tph at the time the decision was made. Additionally, we note that even if there may be paths available that are technically TPR compliant, accepting those trains may not be the right decision. Whilst we accept that Network Code Part D does not explicitly express Network Rail’s ability to limit the number of trains, it clearly provides the framework within which Network Rail can manage timetable changes, ensuring that capacity, safety and performance (amongst other factors) are balanced and met to best achieve the Objective.

4.2.4 In 5.2 when considering demand for GWR services, the Claimant states that Network Rail has “ignored this in order to optimise punctuality”. Network Rail totally refutes the charge of “ignoring” data. The Decision Criteria require Network Rail to weight and balance the Decision Criteria, and to consider these criteria for all affected Operators. Network Rail submit that this is a delicately balanced nuanced matter, and that others may reasonably make slightly different interpretations about the weighting and balancing of the criteria, when considering the matter from their commercial viewpoints. Network Rail submit that the decisions that it has made in this case are not unreasonable ones based upon the information available to it.

4.2.5 Network Rail is not seeking to enhance the chance of a high performing railway, but rather seeks to stabilise performance considering the historic low levels of Two Track Timetable performance.

Any increase above 14.5tph is not palatable for Network Rail. The Wales and Western Region is listed on the ORR’s regulatory escalator for performance. ORR have completed an investigation into Wales and Western performance finding the region in contravention of license condition 1. The region is having to take steps to “secure the operation and maintenance of the network in accordance with best practice to meet the reasonable requirements of persons providing services relating to railways in respect of the facilitation of railway service performance to the greatest extent reasonably practicable.” Creating and / or accepting a poor performing timetable is not an acceptable outcome for any Timetable Participant, nor is it acceptable to Network Rail in view of the ORR having completed an investigation into Wales and Western performance finding the region in contravention of licence condition 1.

Typically, all operators wish to run more services. Often, they wish to run more services than there are existing paths. Network Rail are obligated to make decisions regarding the allocation of capacity in line with the Network Code and submit that is what has happened in this instance.

Network Rail does recognise that there is a trade-off between performance and the need to carry the passengers on offer. Network Rail is of the view that 14.5 tph best delivers the Objective in this case.

4.2.7 In 5.8, the Claimant proposes removing services from other timetable participants (specifically mentioning MTR-EL). Network Rail notes that MTR-EL are a participant in this dispute process and will make various points in their own submission. When making any decision, Network Rail must consider the holistic requirements of all timetable participants across the whole of the affected period. It must consider the requirement for a fixed and regular timetable which the Elizabeth Line business model and operating model is based upon. Network Rail must also consider the safety implications within Inner London deep level stations. Notably the potential for queues to develop on the platforms within those stations when services running beyond Paddington onto the GWML which may affect operation on the whole of the Elizabeth Line with knock on effects across the Anglia Route. Network Rail must also consider that it is not normally possible to simply remove one service in one direction from the timetable for such an operating model.

4.2.8 In 5.11, the Claimant provides their interpretation of the Decision Criteria. As noted above, this is very much a nuanced matter. Network Rail cannot agree with the point made in 5.11.(b) where the assertion is made that meeting demand must override all other matters, including both safety and performance.

4.2.9 Network Rail submit that taking an RoU on the GWML between Ladbroke Grove and Southall over the four days of Easter does not represent exceptional circumstances because planned maintenance and upgrades are routine during holiday periods when passenger flows are lower. This scheduling typically seeks to minimise disruption to regular commuters and allow for a more efficient completion of necessary engineering works. The rail industry often uses these extended periods to undertake significant projects/ works that cannot be completed during shorter windows, ensuring the long-term safety performance and reliability of the infrastructure.

**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 Appendix One shows the chronology of the data gathering exercise which commenced in March 2024. The Claimant argument in this Dispute Hearing is that based on expected passenger numbers, travelling in the usual manner, there are certain times across the Easter Weekend when passenger demand exceeds the number of seats available. Network Rail is not disputing this data, whether based on past numbers or future projections for growth.

There are a number of strategies used by Timetable Participants across the whole of the network which are very regularly used to deal with these matters. The absolute backstop is a “do not travel” message, and Network Rail points out, in the strongest possible terms, that this is absolutely nowhere near being proposed, and has never been discussed.

“InterCity” style Operators such as GWR use yield management processes to manage passenger numbers on their services on longer distance passenger flows. This is used to direct passengers towards more lightly loaded services and away from densely loaded services. The Claimant has not provided any information to indicate why this cannot be used to smooth loadings across a wider time period to avoid overloading in the 12 one-hour slots identified and has defaulted to ‘we need more trains’.

There are several occasions over the foreseeable future when access to / from Paddington Station will not be available, normally due to construction activities for the new London Old Oak Common HS2 Station. On each of these occasions, passengers from the North Cotswold Line and Oxford itself are directed onto Chiltern Railways services between Oxford and Marylebone. This provides journey opportunities on rail for all of these passengers, and helps protect overall industry income. During ongoing discussions with the Claimant, they have not advised why this route cannot be used to provide seats for passengers travelling between the Cotswolds / Oxford and London / beyond. Network Rail recognises that there is commercial competition between Operators for the market on this route, but this option would help deal with passenger numbers into and out of Paddington at Easter 2025.

**4.4** **Why the arguments raised in 4.1 to 4.3 taken together favour the position of the Defendant**

4.4.1 14½ tph is a historic high for the quantum of services operated through this area during two track timetable operation. Capacity allocations were increased a few years’ ago following the introduction of fully electric train fleets.

Network Rail Western Route is currently on the ORR’s regulatory escalator for failing to reach performance targets. Creating and / or accepting a poor performing timetable is not an acceptable outcome for any Timetable Participant.

Network Rail is aware of the aspirations of GWR to have additional paths allocated to them at Easter weekend which is the subject of this dispute, and previously on other weekends which were the subject of TTP2453-2456. This contributed to extensive workstreams to understand the demand and develop a train plan which took place collaboratively for over a year. Network Rail has used the outcomes from this work to make decisions regarding overall capacity.

In this respect, Network Rail would also refer to paragraph 91 of the ORR appealed determination for TTP 1174 (Appendix E) in which the ORR opined (as binding precedent) that they considered “that the provisions of the Network Code envisage that there will be circumstances where Network Rail may not achieve the Objective by including all requested train Slots in the WTT, even where there are no conflicts with other proposals or the Rules. This might include where requested Train Slots would, if accepted in the WTT, give rise to a clear and substantial safety or performance concern”.

4.4.2 Network Rail has demonstrated that it has followed the Network Code Part D throughout. It has requested up to date and relevant information from impacted operators, and where received the information has been analysed and accounted for when considering our next steps. On this basis, it is submitted that the position taken by Network Rail to date is a reasonable one.

4.4.3 The Region is seeking to take steps to “secure the operation and maintenance of the network in accordance with best practice to meet the reasonable requirements of persons providing services relating to railways in respect of the facilitation of railway service performance to the greatest extent reasonably practicable.”

**5** **DECISION SOUGHT FROM THE CHAIR**

5.1 Network Rail seeks confirmation that it has the capability and entitlement under Network Code Part D to decide to limit capacity (in this case the number of trains per hour) provided those decisions are justified by reference to the application of the Decision Criteria based on the information available to us at the time in line with the determinations in TTP2453 - 2456.

5.2 Network Rail seeks confirmation that it’s allocation of that capacity is justified by reference to the application of the Decision Criteria based on the information available to us at the time.

5.3 Network Rail seeks confirmation from the Chair that exceptional circumstances are not applicable in this instance as claimed by GWR.

5.4 Network Rail confirms that no costs are sought on this matter.

**6 APPENDICES**

A. Chronology **(Commercially Sensitive)**

A1 Chronology with embedded Commercially Sensitive emails removed

B. Passenger Demand Analysis **(Commercially Sensitive)**

C. Two-Track Timetable Performance Analysis

D. Two-Track Timetable Performance Analysis commentary

E. Extract from TTP 1174

F. Network Rail Indicative Decision Criteria

**7 SIGNATURE**

For and on behalf of

Network Rail Infrastructure Limited

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signed

Tony Worgan

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name

Tony Worgan

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Position

Route Access Strategy Manager

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_