

1 DETAILS OF PARTIES

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

- (a) GB Railfreight Limited ("GBRf") whose Registered Office is at
5th Floor, 62 - 64 Cornhill, London, EC3V 3NH
- (b) Network Rail Infrastructure Limited ("NR") whose Registered Office is at
Waterloo General Offices, London, SE1 8SW.

1.2 Third parties to this dispute may include Freightliner Group Ltd, DB Cargo and Maritime Transport.

2 THE CLAIMANT'S RIGHT TO BRING THIS REFERENCE

2.1 This reference is brought by GB Railfreight Limited ("GBRf"), a Timetable Participant for the purposes of the Network Code, in accordance with Conditions D3.3.8 and D5 of the Network Code.

2.2 The matter raised concerns Network Rail Infrastructure Limited's ("Network Rail") decision in rejection of a Train Operation Variation Request ("TOVR"), submitted by GBRf, as more particularly described in Section 4 below. This decision was taken pursuant to the Network Code and the Timetable Planning Rules and therefore falls within the jurisdiction of the Timetabling Panel ("the Panel").

2.3 GBRf contends that, in making this decision, Network Rail has:

- (a) failed to comply with Condition D4.3.1 of the Network Code as the TOVR rejection does not contain a valid rejection.
- (b) failed to apply the Decision Criteria appropriately in Condition D4.6.1.

2.4 By reason of those failures, GBRf believes that Network Rail has breached its obligations under the Network Code and the Timetable Planning Rules, both of which are incorporated into the Track Access Contract between Network Rail and GBRf.

2.5 There is one subject matter within this sole reference, which is described in Section 4:

- (a) The rejection of a GBRf TOVR (PELE25SSB000143) for the May 2025 Working Timetable.

2.6 In this case, GBRf's position is that Network Rail has made its decision based on information outside the Timetable Planning Rules ("TPRs") and Part D of Network Code.

2.7 The Notice of Dispute relates to a rejected TOVR for the May 2025 Working Timetable, which is due to end on Saturday 13 December 2025. GBRf nevertheless considers that this reference remains capable of achieving practical results, both in relation to the balance of the May 2025

Working Timetable and the treatment of equivalent services in subsequent Working Timetables, for the reasons explained in Sections 4 to 6 below.

- 2.8 For completeness, the Secretary has reminded the parties of Access Dispute Resolution Rules H59 and H60, which allow a Hearing Chair to make an order for costs if a company brings a case so lacking in merit that the reference should not have been made, or if a Notice of Dispute raises a dispute which appears incapable of achieving any practical result. GBRf notes that it was content for this reference to be determined by correspondence, but did not object to Network Rail's request for a full hearing. GBRf maintains that this reference is well-founded, raises issues of ongoing practical significance, and does not fall within the circumstances contemplated by Rules H59 and H60.

3 CONTENTS OF REFERENCE

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;
 - (i) Issue 1 – Deemed acceptance under Network Code Condition D3.3.8
 - (ii) Issue 2 – Use of Harbour Empowerment Order outside the Rules
 - (iii) Issue 3 – Misapplication of the Decision Criteria
- (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

Rejection of a GBRf TOVR (PELE25SSB000143) for 4L19 [SX] Masborough – London Gateway, which GBRf contents was deemed accepted under Network Code Condition D3.3.8 was compliant will all applicable Timetable Planning Rules, and was rejected by Network Rail solely by reference to time restrictions contained in a Harbour Empowerment Order rather than the Timetable Planning Rules.

- 4.1 The subject matter concerns a GBRf submitted TOVR on the 16th September 2025 [Appendix 1] for one amended schedule for the May 2025 Working Timetable.

4.2 GBRf submitted this amended TOVR to amend one schedule (4L19 [SX] Masborough GBRf – Tilbury 2 GBRf) to terminate at London Gateway GBRf vice Tilbury 2. GBRf submitted this TOVR in good time to support a new to rail freight flow between the two terminals.

4.3 GBRf noted the arrival time into London Gateway of 17:02 [SX], however, this was not contravening any rule contained within the Anglia Route TPRs [Appendix 2].

4.4 On 6th October 2025, GBRf commencing running this service, on behalf of our customer, between Masborough and London Gateway. Since commencing, this service has been a consistent runner between the two terminals, up to six days per-week.

4.5 On 17th November 2025, GBRf noting that there had been no response from Network Rail, requested Network Rail offer this TOVR [Appendix 3]. Network Rail had failed to respond to the request within the five working days and under Condition D3.3.8, was deemed to have accepted the request providing there was no conflict with either the relevant Working Timetable or the Timetable Planning Rules.

4.6 On 19th November 2025, GBRf received a rejection for this TOVR from Network Rail that had been decisioned upon based on the enforcement of the Harbour Empowerment Order [Appendix 4].

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

5.1 Network Code Condition D3.3.8(a-c), requires Network Rail to accept a TOVR if it fails to notify its response in accordance with D3.3.6(g), where the request “*would not give rise to any conflict with the relevant Working Timetable after it is published at D-26, the relevant Working Timetable or the Rules*”. GBRf submitted its TOVR on the 16th September 2025 and Network Rail's failure to respond within five working days meant that, subject to compliance with the Rules, the TOVR was deemed accepted under D3.3.8. On 17th November 2025, GBRf reminded Network Rail of that deemed-acceptance position and requested that the formal offer be made. This reminder was given 61 days after Network Rail would have been deemed to have received the request.

5.2 In Network Rail's rejection of this TOVR, it cited the reason for rejection was that 4L19 [SX] breached the restricted times contained within the Harbour Empowerment Order at London Gateway, these being noted as 0700 to 1000 and 1600 to 1900. There are no rules concerning time restrictions at London Gateway contained within the Anglia TPRs, and under D4.3.1(b[iii]), Network Rail must respond to operator TOVRs conducting itself within the Rules.

5.3 There is a clearly distinguishable difference in Network Rail's obligations to observe the specific, codified 'Rules' that constrain TOVR decisions under Part D and other information that Network Rail

chooses to incorporate into its decision-making process. If Network Rail believes that the Harbour Empowerment Order requires restrictions, there is a formalised code-compliant process (including the consultation of timetable participants) to update the TPRs. Until any such rule is incorporated, TOVRs must be determined by reference to the existing Rules only.

5.4 Additional, the Network Rail Capacity Planning team who rejected this bid on the basis of the Harbour Empowerment Order times, confirms “My team aren’t here to police the HEO” [Appendix 5]. This in reference to another GBRf bid ref. PELE26PSB000007 for 4L19 [SO] which at the point of writing is ‘on hold’ by Network Rail due to ‘breaching’ the London Gateway Harbour Empowerment Order times.

5.5 In lieu of both Network Rail’s breach of Condition D3.3.6 Response Times and Condition D3.3.8 (a-c), this service is currently operating on a weekly Short Term Planning (STP) path and has been operating regularly since the 6th October 2025. This STP process brings additional costs, risks and operational uncertainty to GBRf and its customers, as we don’t have a confirmed forward-looking plan in which to plan. This increases the risk of losing capacity to run this important service and also increases our planning overheads and time spent planning this service.

5.6 GBRf has received offers from Network Rail, for 4L19 [SX] Masborough – London Gateway for both the December 2025 & May 2026 Working Timetables respectively, for which both of the arrival times fall into the same window that Network Rail have rejected the May 2025 TOVR.

5.7 The December 2025 path was offered on the 13th June 2025, originally as a MO/MSX split to accommodate a Network Rail Infrastructure Monitoring train. Through collaboration between GBRf and Network Rail, this was amended to a SX offer on the 04th September 2025. The May 2026 path was offered on the 14th November 2025 as SX.

5.8 GBRf contend that as the schedules have been offered in both the December 2025 and May 2026 Working Timetables, there is no reasoning for Network Rail to reject the May 2025 TOVR.

5.9 In addition, GBRf believes that Network Rail cannot reject a TOVR that is compliant with the applicable Timetable Planning Rules, for additional reasons beyond compliance with those Rules. This very point has recently been determined, by the same Hearing Chair, in reference TTP2591. In that determination, the Panel determined that Network Rail’s decision “to reject the TOVR for other reasons, beyond the issue of whether the TOVR was or was not compliant, is not upheld” and that the compliant TOVR should be accepted into the Working Timetable. That determination has also since been appealed to the ORR, with the original determination upheld.

5.10 Furthermore, reviewing Network Rail’s Decision Criteria for this rejection, GBRf believes that this criteria has been pre-determined and written on the basis of the train being rejected for breaching the Harbour Empowerment Order and is heavily weighted around performance reasons.

5.11 Regarding Decision Criteria (b), that the spread of services reflects demand, Network Rail has stated that there is 'no demand from the port for this train'. GBRf has been operating this service consistently since the 6th October 2025 six days week, carrying both export and import volume. Network Rail state that passenger services would be 'unable to run if 4L19 was stood at Signal 715 waiting to access the branch line'. There is sufficient capacity on the Down Thames Haven Line for 4L19 to stand at Signal LG11, a permissively worked section which can hold up to three services, and to clear the Down Tilbury to allow passenger services to run. This is normal staging practice for trains entering the port [Appendix 6]. Furthermore, London Gateway Port Signal LG11 is listed as a mandatory timing point in the Down Direction in the Anglia TPRs as the 'Network Rail/DP World London Gateway Port boundary entry signal' [Appendix 7], enabling Network Rail to time trains at this location.

5.12 Regarding Decision Criteria (c) of Network Rail's Decision Criteria, its stated that both '4L19HG and passenger services on EA1390 would experience significant negative performance outcomes if 4L19HG was stood at Signal 715 waiting to access the branch line for over an hour'. As explained in above, 4L19 can stand at Signal LG11 the Down Tilbury to enable passenger services to run as planned.

5.13 Points (d) and (e) of the Decision Criteria, are also weighted upon the impact on passenger services, 'any impacted passenger trains will also have their journey times extended' & 'passenger trains will impact any onwards connections passengers have'. There will be no impact to passenger services if 4L19 is sat at Signal LG11 the Down Thames Haven Line or running into the terminal itself.

5.14 Network Rail states 'it is not in Network Rail's commercial interests to cause a delay for which we have to pay compensation' in point (g) of its Decision Criteria. Network Rail would not pay any delay if 4L19 was sat on the Down Thames Haven at Signal LG11 or has entered the port.

5.15 Network Rail also states in point (i) of its Decision Criteria that there would be a 'negative impact on the environment by having a locomotive idling for over an hour, plus any delayed trains trapped behind'. There would not be any trapped trains behind as 4L19 would either be sat a Signal LG11 or in the port itself. Furthermore, its common practice for locomotives to be left idling in terminals to assist with shunting of services as required by our customers.

5.16 Network Rail has stated that 'this use of assets (4L19HG idling and any passenger services trapped behind) is not an efficient use of assets by any of the involved train operators'. GBRf has had an offered path for the return working of 4L19, 4E19 FO/FSX London Gateway – Masborough. By Network Rail rejecting our TOVR for the inbound working, GBRf cannot make a commitment for a firm and continuing efficient use of assets when relying on STP schedules for the inbound train. Equally, passenger train operators would be able to continue their efficient use of assets because 4L19 would not be sitting on the main line.

5.17 Were the Harbour Empowerment Order aspect deemed to be a legal part of decision-making, a properly balanced Decision Criteria would still likely favour the acceptance of 4L19 being accommodated into the Working Timetable. There is proven evidence of demand for the service, it having operated consistently since the 06th October 2025 and, with no performance risk given the train can be held standing at Signal LG11 not impacting any passing main-line traffic. This traffic shift from road to rail, brings environmental benefits by reducing carbon emissions and road traffic.

5.18 GBRf believes that the Decision Criteria have been heavily weighted around “performance” and have been pre-determined based on the rejection of 4L19 for breaching the Harbour Empowerment Order, it has not been a properly weighted set of Decision Criteria. This has also been addressed in TTP2591 and the subsequent determination, Section F paragraph 76 [Appendix 8]. ‘It was put to Network Rail directly that the Decision appeared to be pre-determined and predicted on the level crossing risk, so whatever was set out in the Decision Criteria document, all the other Considerations were rated as low in comparison’.

5.19 Finally, the determination of TTP2591 also stated in Section H, paragraph 167 ‘Network Rail’s Decision to reject the TOVR for other reasons, beyond the issue of whether the TOVR was or was not compliant, is not upheld’. This supports GBRf’s argument that as 4L19 was compliant with Rules, it should not have been rejected by Network Rail as the reason for rejection is beyond the issue of whether the TOVR was compliant or not.

6 DECISION SOUGHT FROM THE PANEL

6.1 The Claimant is requesting that the Panel determines that Network Rail is in breach of its Track Access Contract between Network Rail and GBRf, and of its obligations under Part D of the Network Code and the applicable Timetable Planning Rules, in that it has:

- (a) Failed to comply with the response time requirements in Condition D3.3.6;
- (b) Failed to give effect to the deemed-acceptance mechanism in Condition D3.3.8 in circumstances where the TOVR was compliant with the Rules;
- (c) Failed to conduct itself ‘within the Rules’ when determining the TOVR, contrary to Condition D4.3.1, by rejecting a TOVR that was compliant with the applicable Timetable Planning Rules by reference to additional constraints (the Harbour Empowerment Order time restrictions at London Gateway) which are not incorporated into those Rules;
- (d) Misapplied the Decision Criteria under Conditions D4.6.1 and D4.6.2 by according determinative weight to those additional constraints and by failing properly to balance the factors set out in the Decision Criteria.

6.2 In consequence, and in exercise of its powers under Condition D5.3.1, the Claimant invites the Panel to:

(a) Exercise its specific power under Condition D5.3.1(c) (in the Exceptional Circumstances described in Section 6.2 below), to substitute an alternative decision in place of Network Rail's challenged decision, requiring that:

(i) The rejected TOVR PELE25SSB0143 for 4L19 [SX] Masborough – London Gateway be accepted and offered into the May 2025 Working Timetable;

(ii) Network Rail reviews any other outstanding GBRf TOVRs (PELE26PSB000007 & PELE26PSB000035) for services to or from London Gateway which have been rejected or not progressed solely on the basis of the Harbour Empowerment Order time restrictions at London Gateway, notwithstanding compliance with the applicable Timetable Planning Rules, and reconsider those TOVRs in accordance with the Panel's determination in this reference

6.3 In addition, and having regard to the Principles and the costs powers in the Access Dispute Resolution Rules (including Rules H59 and H60), GBRf invites the Panel to order that Network Rail bear GBRf's Costs of this reference. GBRf relies in particular on:

(a) the matters set out in paragraph 5.4 above, namely that Network Rail's breaches have required the service to operate via Short Term Planning offers, creating ongoing uncertainty and additional planning overheads in circumstances where the TOVR should have been deemed accepted and incorporated into the Working Timetable;

(b) the fact that Network Rail has persisted with an approach which is inconsistent with the Panel's determination in TTP2591, thereby necessitating this further reference to secure compliance with Part D; and

(c) the fact that GBRf was content for this reference to be determined by correspondence, whereas Network Rail requested a full hearing, thereby increasing the overall Costs of the process borne by the industry.

6.4 **Exceptional circumstances**

6.5 GBRf considers that exceptional circumstances do apply, within the meaning of Condition D5.3.1(c) of Part D, it is therefore appropriate for the Panel to substitute an alternative decision in place of Network Rail's challenged decision for the reasons listed below.

6.6 The circumstances are exceptional because:

(a) The central legal issue in this dispute – whether Network Rail may reject a TOVR that is compliant with the applicable Timetable Planning Rules for additional reasons beyond

compliance with those Rules – has very recently been determined in reference TTP2591. In that determination, the Panel determined that Network Rail's decision 'to reject the TOVR for other reasons, beyond the issue of whether the TOVR was or was not compliant, is not upheld', and that the compliant TOVR should be accepted into the Working Timetable. That determination has since been appealed and the origin determination upheld.

(b) Notwithstanding the earlier determination and its subsequent confirmation on appeal, Network Rail has again rejected a TOVR which GBRf contents is compliant with applicable Timetable Planning Rules, this time by relying on time restrictions in the Harbour Empowerment Order at London Gateway which are not reflected in the Anglia TPRs. Network Rail's approach is therefore represents a continuation of the very practice which the Panel has already found to be inconsistent with Part D.

(c) If the Panel were to simply remit the matter back to Network Rail with general directions, there is a real risk that Network Rail would continue to apply the same approach in practice, thereby undermining both the effectiveness of the earlier determination in TTP2591 (and the ORR appeal outcome) and the integrity of the Part D dispute resolution regime in securing timely and predictable access decisions for the timetable participants.

(d) The disputed TOVR supports a new and regular rail freight flow which has already been operating consistently via Short Term Planning offers. The continued need to rely on STP schedules, in circumstances where the TOVR should have been deemed accepted and is compliant with the Rules, causes ongoing operational and commercial prejudice both to GBRf and its customer, and is inconsistent with the efficient and economic use of network capacity that Part D is intended to secure.

6.7 For these reasons, GBRf submits that this reference presents Exceptional Circumstances within the meaning of Condition D5.3.1(c) and that it is appropriate for the Panel to exercise its power to substitute an alternative decision requiring Network Rail to offer the TOVR PELE25SSB0143, and to align its treatment of related TOVRs with the Panel's determination.

7 APPENDICES

1 Dispute Notices

1.1 GBRfs TOVR Submission on 16th September 2025.

1.2 Extract from Anglia TPRs for route EA1420 – planning rules.

1.3 GBRfs Request for TOVR 0143 to be offered.

1.4 Network Rails rejection of TOVR 0143.

1.5 Network Rail Capacity Plannings statement on its position regarding the HEO

1.6 Scheme plan map of Thames Haven area.

1.7 Extract from Anglia TPRs for route EA1420 – timing points.

1.8 TT2591 Determination

8 SIGNATURE

For and on behalf of GB Railfreight Limited

A handwritten signature in black ink, appearing to be 'M Wardrobe', written over a horizontal line.

Signed

Matt Wardrobe
Planning Improvement Manager