

**Statement of Defence for determination by Access Dispute Adjudication  
("ADA06") in accordance with the provisions of Chapter G of the ADR Rules**

**1 DETAILS OF PARTIES**

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

- (a) First Greater Western Limited (Company number 05113733) whose Registered Office is at Milton House, 1 Milton Street, Swindon, SN1 1HL ("FGW") ("the Claimant")
- (b) Network Rail Infrastructure Limited (Company number 2904587) whose Registered Office is at Kings Place, 90 York Way, London N1 9AG ("Network Rail") ("the Defendant").
- (c) Network Rail's point of contact is [REDACTED]  
[REDACTED]  
[REDACTED]
- (d) First Greater Western's point of contact is [REDACTED]  
[REDACTED]

1.2 Network Rail agrees with the content of paragraph 1.2 of FGW's submission in that the outcome of this dispute could impact upon other train operating companies.

**2 THE DEFENDANT'S RIGHT TO CONTEST THIS REFERENCE**

- 2.1 This matter is referred to an Access Dispute Adjudication ("ADA") as set out by the Claimant at paragraph 2 of the Statement of Claim.
- 2.2 For the avoidance of any doubt, Network Rail believes that this matter is referred to an ADA for determination by FGW in accordance with Clause 13 of Schedule 4 to the Track Access Contract (Passenger Services) dated 8 December 2006 between Network Rail and First Greater Western (the "TAC"). The relevant clauses of the TAC are set out in the Statement of Claim.

2.3 Pursuant to clause 13.2 of the TAC, FGW notified Network Rail on 18 November 2010 that it disputed certain aspects of a statement provided to FGW under the procedure detailed in clause 13.1. As set out in paragraph 2 of the Claimant's Statement of Claim, the parties have accordingly proceeded through the steps set out in clause 13.3 until clause 13.3 (f), which states that the parties may require that the dispute be resolved by the relevant ADRR panel.

2.4 This dispute has been referred to Access Dispute Arbitration in accordance with Chapter G of the ADR Rules. This Statement of Defence is made pursuant to rule G17 (b) of those rules.

### **3 CONTENTS OF REFERENCE**

3.1 This Statement of Defence includes:-

- (a) The subject matter of the dispute as set out by the Claimant in its Statement of Claim, in the form of cross-referenced responses where possible to the issues disputed by the Claimant in the Sole Reference, identifying which the Defendant agrees with and which it disagrees with in Section 4;
- (b) A summary of the dispute in section 5;
- (c) A detailed explanation of the Defendant's arguments in support of its position on those issues where it disagrees with the Claimant's Reference, including references to Documents or contractual provisions not dealt with in the Statement of Claim, in section 6;
- (d) The decisions of principle sought from the ADA in respect of
  - (i) legal entitlement and
  - (ii) remedies;in Section 7
- (e) Appendices and other supporting material in Section 8.

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

- 4.1 The specific subject matter of the dispute is largely as described by paragraph 4.1 of the Statement of Claim.
- 4.2 Network Rail and FGW agreed that a certain amount of compensation was due to FGW in accordance with Schedule 4 of the Track Access Contract for a Type 2 RoU, following the cancellation of strike action. That compensation has already been paid by NR to FGW amounting to £[REDACTED].
- 4.3 The dispute, however, arises through the parties' different interpretations of the requirement for Network Rail to pay 'train planning and diagramming costs' pursuant to the definition of "RoU Direct Costs" in paragraph 1 of Schedule 4 to the TAC.
- 4.4 FGW submits that the costs payable by Network Rail specifically include all train planning costs incurred whether in addition to the normal day to day costs of running the business or not; and Network Rail believes that only clear and identifiable costs to FGW's business over and above the day to day running costs of the business are payable. Network Rail believes that FGW ought to have to demonstrate to Network Rail that it had actually incurred costs as a result of the RoU and that they were reasonable.
- 4.5 FGW and Network Rail agree that paragraph 2.6(b) of Schedule 4 to the TAC (Appendix A) applied to the RoU in question, and compensation was calculated accordingly. There was no formulaic compensation given as is normally the case through Schedule 4 because formulaic compensation relies on the timetable for a day (at 22.00 the day before that day) being different from that normally operated and by that time (22.00 the night before) the normal timetable had been reinstated. However, FGW had incurred costs as per paragraph 6 of Schedule 4 (Appendix B) and where additional cost had been incurred Network Rail paid compensation.
- 4.6 In determining the amount of compensation payable under paragraph 6 of Schedule 4, the parties must refer to the definition of "RoU Direct Costs" in paragraph 1 of Schedule 4 to the TAC (Appendix C). This dispute concerns a

claim by FGW for the sum of £[REDACTED] (the "Disputed Sum") in relation to the value FGW has attributed to the time incurred by FGW's train planning and diagramming staff working on matters connected to the RoU during the course of their normal contracted hours of employment.

- 4.7 The Defendant submits that the operation of Schedule 4 to the TAC does not grant the Claimant a right to be compensated for the Disputed Sum.

## **5 SUMMARY OF DISPUTE**

- 5.1 In April 2010 Network Rail was facing industrial action in the form of strikes by signalling staff who were members of the RMT and TSSA unions. This was expected to take place over four working days, between Tuesday 6<sup>th</sup> April and Friday 9<sup>th</sup> April 2010 inclusive and, because it would cause access to the Network to be restricted, Network Rail accepted that in FGW's case, this would meet the definition under Schedule 4 of the Track Access Contract of a Type 2 RoU.
- 5.2 The action, had it taken place, would have restricted the ability of Train Operators and Network Rail to run trains. On the 1<sup>st</sup> April 2010, the signalling staff ballot which had resulted in the proposed industrial action was ruled invalid by a court and the industrial action (i.e. reduction in capability of the Network that it drove) and RoU was therefore cancelled. This Information was relayed promptly to FGW.
- 5.3 Because of the planned strike action Network Rail had given notice to Train Operators of a RoU (pursuant to Schedule 4 to the TAC) and the need for operators to prepare a skeleton timetable based on the restricted parts of the Network that remained available. This involved operators having to bid to Network Rail for amended, cancelled and additional train services. Even though the Restriction of Use was cancelled, FGW claimed compensation under Clause 2.9(c) of Schedule 4 to the TAC (Appendix D).

- 5.4 As stated in the Statement of Claim, it is agreed by the parties that all steps set out in the TAC to assess and resolve this dispute have been undertaken by the parties in a timely and compliant manner.

**6 EXPLANATION FROM THE DEFENDANT'S PERSPECTIVE OF EACH ISSUE IN DISPUTE**

- 6.1 As has been stated by FGW in their Statement of Claim at paragraphs 6.1 and 6.2, this dispute arises over a difference of interpretation as to the ability of FGW to recover 'train planning and diagramming costs' pursuant to the definition of 'RoU Direct Costs' in paragraph 1 of Schedule 4 of the TAC.

**The TAC**

- 6.2 Given that the issue arises out of a cancelled RoU, it is worth setting out the contractual context which gives rise to a claim. Paragraph 2.9(c) of Schedule 4 of the TAC states that FGW, in certain circumstances, has the ability to recover costs even where a proposed RoU has been cancelled. It further states that costs are those categories of costs which FGW would have been able to recover under Schedule 4 had there been no change to or cancellation of the RoU in question.
- 6.3 Therefore, regardless of whether there had been a cancellation, the provisions at paragraph 2.4 of Schedule 4 of the TAC would apply and that places an obligation on Network Rail to make payments to FGW in respect of a Network Rail Restriction of Use calculated in accordance with paragraphs 2.5 to 2.7 and 2.10 of Schedule 4 where applicable. It was agreed between the parties that the RoU was a Network Rail Restriction of Use.
- 6.4 It was agreed between the parties that in this instance and the case of FGW, the RoU in question was a Type 2 RoU and as a result the relevant paragraph of the TAC to consider is paragraph 2.6, which describes payments to be made in relation to a Type 2 RoU. FGW and Network Rail agreed that paragraph 2.6(b) applied and that compensation should be calculated accordingly, applying the compensation provisions of paragraph 6 of Schedule 4. In order to apply the compensation provisions in paragraph 6 it is necessary to classify whether

expenditure can be defined as "RoU Direct Costs", because in such claims Network Rail is only obliged to pay FGW compensation for "RoU Direct Costs".

- 6.5 The definition of "RoU Direct Costs" is contained in paragraph 1 and states:

*"RoU Direct Costs" means the aggregate amount of:*

- (a) bus and taxi hire costs;*
- (b) publicity costs;*
- (c) train planning and diagramming costs; and*
- (d) other costs directly related to the organisation and management of the Train Operator's response to a Type 2 Restriction of Use,*

*reasonably incurred by the Train Operator as a result of a Type 2 Restriction of Use, adjusted by:*

- (i) adding any increase in RoU Variable Costs; and*
- (ii) deducting any decrease in RoU Variable Costs;*

- 6.6 This definition includes a number of elements which are central to this dispute, namely that:

- (a) the definition describes these costs as 'Direct';
- (b) the costs must be reasonably incurred by FGW; and
- (c) the costs must be incurred as a result of a Type 2 RoU.

These elements are considered further below.

#### **The nature of the 'costs' claimed by FGW**

- 6.7 Network Rail understands that the Disputed Sum claimed by FGW as 'costs' represents the deemed cost to the company of its employees working on train planning and diagramming matters that related to the planned RoU. At Appendix E is an email exchange from ██████████ (FGW) to ██████████ and ██████████ (Network Rail) dated 25 June 2010, in which FGW responds to queries about the Disputed Sum posed by Network Rail. The email contains Network Rail's question and FGW's response. This exchange demonstrates that

the work in question was undertaken within the ordinary course of employment of FGW staff. The email reads:

**NR to FGW** - *"The hourly rates quoted in the claim for train planners, station staff and the revenues and fares team need some explanation to confirm how these rates are calculated. I am aware of data protection restrictions; however, in order to recommend the claim for approval it would be helpful to understand what these rates encompass e.g. are they overtime rates, do they include shift premiums (where applicable), NI and Pension costs?"*

**FGW response to NR** - *"The hourly rates used are based on the salary of the individual, plus any allowances they get (this only applies to 2 colleagues), such as flexibility/on call allowance, uplifted for NIC and Pension Costs. They are basic rate, not overtime, and shift premiums are not applicable."*

- 6.8 There then follows an exchange about the appropriate levels of those alleged costs, leading to a reduction in the sum claimed by FGW from £[REDACTED] to £[REDACTED] (i.e. the Disputed Sum). For the purpose of this dispute Network Rail is not disputing that FGW's employees undertook some work but, pending determination of this matter, Network Rail reserves the right to challenge the quantum of the time and cost incurred further if necessary.
- 6.9 Therefore, it would appear to Network Rail that where train planning and diagramming staff are required to work longer hours than usual during a particular day to meet an urgent demand, FGW does not pay overtime to its staff. Rather, the relevant members of staffs' hours are accordingly reduced on a day when there is less urgent demand for that planner's time. This 'time off in lieu' system means that FGW employees do not work over and above their standard or contracted hours. Further, FGW do not make any extra payments or allowances to its staff in respect of this work, they simply manage a workload according to demand. The staff who dealt with this Type 2 RoU only worked the hours they are required to work under their terms of employment, at no additional cost to FGW.

### **Network Rail's Position**

- 6.10 Network Rail does not dispute that reasonably incurred train planning and diagramming costs may be payable by Network Rail in appropriate circumstances, pursuant to the definition of RoU Direct Costs. For example, where a train operator has had to recruit staff in order to meet demand in relation to a major project or has paid overtime to current employees in relation to a peak in workflow. In all cases, Network Rail would require the train operator to identify those costs and demonstrate that they have been paid. However, Network Rail does not accept that this definition allows FGW to claim its train planning and diagramming costs that were incurred in the ordinary course of its business and at no extra cost to FGW. It follows that if FGW has not incurred any costs, there is nothing for Network Rail to compensate.
- 6.11 Even if FGW's payment of employee salaries (that includes the work giving rise to the Disputed Sum) was deemed to represent an actual 'cost' to FGW (which is not accepted), Network Rail does not accept FGW's interpretation of the operation of the definition of "RoU Direct Costs" (paragraphs 6.6 and 6.7 of the Statement of Claim) or that such 'costs' would be payable. The defined term naturally requires these costs to be 'direct' i.e. they must be directly linked to the cause of the expenditure or loss; the Type 2 RoU (in this case the proposed but cancelled strike). It also requires that the costs incurred are reasonable and are incurred as a result of a Type 2 RoU.
- 6.12 Notwithstanding Network Rail's primary position that there is no cost or loss to FGW, there can be no direct link between the RoU in question and FGW's 'cost' (i.e.) contractual salary payments to its employees. Subject to the terms of the employment contracts, these salaries are payable by FGW regardless of the type of work they are undertaking. It cannot be said that the employees' salaries have been paid as a consequence of a particular Type 2 RoU. As the payment of the salaries was not caused by the RoU, the payment cannot fall within the requirement of the definition that any costs must be incurred 'as a result' of the RoU. The work undertaken by FGW's staff may have been necessary (subject to any further challenge as to quantum) as a result of the RoU, but there was no



actual cost to FGW incurred as a result of the RoU in question. Therefore there is no "RoU Direct Cost" capable of recovery.

- 6.13 Further, if what FGW is claiming are on the face of it deemed to be costs as envisaged under the definition of RoU Direct Costs, Network Rail does not accept that it is reasonable for FGW to be compensated for train planning and diagramming 'costs' that are payable as a part of their ordinary business. FGW would effectively be double recovering. If the RoU had never been planned in the first place, FGW's employees would still have been paid the same salary.

#### **The Schedule 4 Regime**

- 6.14 Network Rail believes that the operation of the definition of RoU Direct Costs is clear. The requirement for the costs to be direct, reasonably incurred and as a result of a particular RoU means that FGW would need to demonstrate that it has incurred an actual cost which it can attribute to the RoU. It has not made any payment to its employees "as a result of" a Type 2 RoU and there is therefore nothing for which Network Rail must compensate FGW. However, Network Rail recognises that FGW has sought in its submissions to rely on what it believes is the intention of Schedule 4 of the TAC. Network Rail does not consider that such submissions are relevant for the purpose of determining this issue, but given FGW's reliance on them in support of its case, Network Rail has briefly addressed them below.
- 6.15 FGW's argument at paragraph 6.5 of its Reference is also contrary to the ORR's desired intention to avoid unnecessarily burdensome systems for data process (Appendix F at 5.72 (e)). FGW suggests that if Network Rail's position was correct, then there would be very few if any claims in the country because the train operators would be geared up to cater for all RoUs as part of the normal hours of duty. In Network Rail's submission, it must be in the best interests of the industry to minimise claims.

#### **FGW's Business**

- 6.16 In response to paragraph 6.9 of the Statement of Claim, Network Rail submits that in making its franchise proposals and in undertaking the business of a train operator, FGW had and has an obligation to plan for and pay the ordinary

running costs of such a business. The scenario envisaged by paragraph 6.9 of the Statement of Claim is not helpful for the purposes of this dispute, as it is not a scenario which has ever been contemplated as realistic by Network Rail, any other industry party or the ORR's CP4 Final Determination. Such a scenario was not, in Network Rail's view, considered to be the aim of Schedule 4, or a part of the consideration when setting Network Rail's incentives. It is accepted in the industry that there will be some disruptive possessions requiring short term train planning. RoUs are, and have been historically, a key requirement for undertaking maintenance and renewals of the Network. TOCs therefore know that their train planning teams will be required, to a greater or lesser extent, to assist in planning in these kinds of circumstance. It is for FGW to determine how to manage that assistance. The salaries for planning employees were an anticipated cost which would, in Network Rail's view, have formed part of FGW's franchise bid. This allocation is planned into the operation of the business and, specifically in relation to train planning and diagramming, is represented by the method of working described in paragraph 6.9 above

#### **Current and Previous Practice**

- 6.17 Where appropriate, Network Rail may, in certain circumstances enter into agreements with TOCs in advance of Type 2 RoUs to fund resources where this can be justified through identifiable benefits to the project. Such resources will be those relevant to the benefits realisable and could, where appropriate, involve TOC train planning where such staff have been specifically hired to respond to a particular or series of particular Type 2 RoUs, such as a substantial project. The RoU would have to be of such a type that additional work over and above the usual will be necessary and Network Rail would then seek to agree in advance the principles and amount of compensation to avoid the potential for arguments afterwards. Network Rail would expect the TOC to demonstrate that such costs have been reasonably incurred. There is a clear distinction between such additional and identifiable costs which the TOC has incurred (which Network Rail will pay if reasonable) and costs which the TOC suggests it incurs when its existing staff respond to a type 2 RoU.

6.18 On occasion during CP3, Network Rail did make small payments to TOCs for claims associated with Significant RoUs that may have been relating to base operating costs, as suggested by paragraphs 6.16 and 6.17 of the Statement of Claim. However, these payments were made where those costs were nominal and where it was more pragmatic not to analyse those costs, but to simply settle on a commercial basis. They are certainly not what NR would regard as true costs to the TOC business and there is not, and has never been, a policy of generally paying such costs. Further, CP4 is a different regime to CP3 and the claims process has significantly evolved and improved during that period, to the extent where Network Rail now has far more information from claimants. In any event, Network Rail does not consider that at any time during CP3 (or, for the avoidance of doubt, any period) that it adopted responsibility for any of the ordinary base costs of the business of a train operator or for this kind of 'cost' in particular.

## **7 DECISION SOUGHT FROM THE PANEL**

7.1 The Defendant seeks a determination from the Adjudication that:

*Matter of Principle:*

- (i) the Disputed Sum is not an "RoU Direct Cost" as defined in paragraph 1 of Schedule 4 to the TAC;

*Specific conclusions deriving from those matters of principle*

- (ii) as a result of the decided principles above, the Defendant is not liable to pay the Disputed Sum of £[REDACTED] to the Claimant;
- (iii) the Claimant's claim be dismissed; and
- (iv) any costs not catered for by the provisions of the Network Code are borne by FGW.

## **8 APPENDICES AND ANNEXES**

8.1 The Defendant confirms that it has complied with AD Rule G17 (b) (vi) of the Access Dispute Resolution Rules, which requires that

*"Copies of the following documents shall also be annexed and cross referenced to the reference:*

*(a) the relevant extracts of contractual Documents containing the provision(s) under which the referral to the ADA arises and/or provision(s) associated with the substance of the dispute; and*

*(b) the relevant extracts of any other Documents referred to in the defence.*

AD Rule G17 (b) (vi)"

The following Annexes are attached:

Appendix A - Paragraph 2.6 of Schedule 4 to the TAC

Appendix B - Paragraph 6 of Schedule 4 to the TAC

Appendix C - The Definition of "RoU Direct Costs contained in Paragraph 1 of Schedule 4 to the TAC

Appendix D - Paragraph 2.9 of Schedule 4 to the TAC

Appendix E - Email exchange between [REDACTED] FGW and [REDACTED]  
[REDACTED] of Network Rail dated

Appendix F - Extract from 'Criteria and procedures for the approval of track access contracts' (ORR November 2009)

9 SIGNATURE

For and on behalf of

Signed

Position

CUSTOMER RELATIONSHIP EXECUTIVE  
NETWORK RAIL



## **Appendix A**

### **2.6 Type 2 Restriction of Use**

- (a) Except where paragraph 2.6(c) applies, Network Rail shall make payments (in accordance with the procedure in paragraph 13) calculated in accordance with paragraphs 3 and 4 to the Train Operator in respect of any Type 2 Restriction of Use.
- (b) If either party reasonably believes or expects that the difference between RoU Direct Costs calculated in accordance with paragraph 6 and the costs calculated under paragraph 4 would exceed £10,000 then that party will be entitled to require that the costs be calculated in accordance with paragraph 6 by serving an RoU Claim Notice within the time periods set out in paragraph 2.8.
- (c) Following a request in accordance with paragraph 2.6(b), if it is agreed or determined that the difference between RoU Direct Costs calculated in accordance with paragraph 6 and the costs calculated under paragraph 4 exceeds £10,000 then the relevant party shall make payments to the other (in accordance with the procedure in paragraph 13) calculated in accordance with paragraphs 3 and 6.

## **Appendix B**

### **6 RoU Direct Costs compensation for Type 2 Restrictions of Use**

#### **6.1 Compensation arrangements**

- (a) Following receipt of an RoU Claim Notice in respect of a Type 2 Restriction of Use, Network Rail and the Train Operator shall (if they have not already done so) commence negotiations in respect of the RoU Direct Costs compensation to be paid by one party to the other in respect of such Type 2 Restriction of Use and, subject to paragraph 10, shall continue such negotiations in good faith until they are concluded.
- (b) Once the compensation referred to in paragraph 6.1(a) has been agreed or determined (and has been compared against any amounts calculated under paragraph 4 together with any other amounts paid or due to the Train Operator from Network Rail in relation to such Restriction of Use) then, in the event of:
  - (i) a shortfall for the Train Operator, the compensation to be paid by Network Rail to the Train Operator shall be the full amount of the RoU Direct Costs actually incurred by the Train Operator less any amounts calculated under paragraph 4 which have already been paid or are due for such Restriction of Use and any other amounts in respect of any RoU Direct Costs received by the Train Operator from Network Rail in respect of such Restriction of Use; or
  - (ii) an overpayment by Network Rail to the Train Operator, the compensation to be paid by the Train Operator to Network Rail shall be the difference between the amount received by the Train Operator which was calculated under paragraph 4 and the RoU Direct Costs actually incurred by the Train Operator in respect of such Restriction of Use.
- (c) Network Rail shall include in the statement provided by it in respect of each Period under paragraph 13.1(a) details of the compensation agreed or determined under this paragraph 6 and paragraph 10 to be payable in respect of any Type 2 Restriction of Use taken in that Period and that compensation shall be due and payable by the relevant party to the other in accordance with paragraph 13.1.



## **Appendix C**

### **"RoU Direct Costs"**

means the aggregate amount of:

- (a) bus and taxi hire costs;
- (b) publicity costs;
- (c) train planning and diagramming costs; and
- (d) other costs directly related to the organisation and management of the Train Operator's response to a Type 2 Restriction of Use,

## **Appendix D**

### **2.9 Changes to Restrictions of Use**

- (a) Where a single Restriction of Use falls within the definition of one type of Restriction of Use and there is a change which means that no Restriction of Use occurs or that the Restriction of Use occurs as another type of Restriction of Use, then that Restriction of Use shall be treated, for the purposes of the calculation and payment of compensation, as if it had always been the latter type of Restriction of Use (or, where applicable, as if it had not been a Restriction of Use).
- (b) For the purposes of paragraph 2.9(c), a Restriction of Use shall be deemed to be taken if and to the extent that it results in any difference between timetables of the type referred to in the definition of "Restriction of Use" when notified, whether or not the restriction giving rise to that Restriction of Use was subsequently cancelled in whole or in part.
- (c) Where a change to a Restriction of Use reduces the impact of the Restriction of Use and accordingly changes its type or means that there is no Restriction of Use in accordance with paragraph 2.9(a), the Train Operator may, within 28 days of the date on which the change to the Restriction of Use was notified to the Train Operator by Network Rail, serve a notice on Network Rail which sets out any costs to which the Train Operator is already committed or has already incurred and any costs associated with responding to the Restriction of Use (both before and after the change). The Train Operator shall be entitled to recover such costs provided that such costs are reasonable and were properly committed or incurred in the circumstances. For the purposes of this Clause 2.9(c), references to "costs" shall mean those categories of costs which the Train Operator would have been entitled to recover under this Schedule 4 for that type of Restriction of Use which the Restriction of Use was classified as prior to its change.

## Appendix E

**From:** [REDACTED]@firstgroup.com [REDACTED]  
**Sent:** 25 June 2010 14:43  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Planned Industrial Action Claim - NR queries

Hi [REDACTED]

[REDACTED] forwarded your email to me. I am not quite sure what backup you have been given, but I will try to resolve your queries:

- The hourly rates quoted in the claim for train planners, station staff and the revenues and fares team need some explanation to confirm how these rates are calculated. I am aware of data protection restrictions; however, in order to recommend the claim for approval it would be helpful to understand what these rates encompass e.g. are they overtime rates, do they include shift premiums (where applicable), NI and Pension costs?

The hourly rates used are based on the salary of the individual, plus any allowances they get (this only applies to 2 colleagues), such as flexibility/on call allowance, uplifted for NIC and Pension Costs. They are basic rate, not overtime, and shift premiums are not applicable

- Could you please review the hourly rates claimed to ensure that they accurately reflect the cost "reasonably incurred" by FGW as a result of the proposed Type 2 RoU (assuming that this is the element of S4 being utilised as the claim mechanism). For example, the rate quoted for [REDACTED] appears to reflect the old rate paid for by the Reading project team. Given that this is not a project related RoU, and the agreed costs for project related claims have now reduced anyway, items referring to these historic project rates will be rejected without revision or further justification from FGW

[REDACTED] is indeed the only colleague that we charged at the old project rate, I take your point that this is not a project and will agreed to using the same methodology for him as the other colleagues who worked on this "disruption". This brings the cost of [REDACTED] down to [REDACTED].

- Could you review the timesheets for [REDACTED] and [REDACTED] under the train planning costs as the dates on the timesheets do not correspond with the date of the claim.

I have asked a colleague in Train Planning to review these timesheets, he will respond on Tuesday - as he is currently assisting with the Glastonbury folk.

- Could you please review the timesheet for [REDACTED] under the train planning costs. This states 3 hours worked and the summary claims for 4 hours.

I have reviewed this - there was an error in a link, this reduces our claim by [REDACTED]

- For the revenues and fares costs can you confirm whether time sheets exist for these staff and whether these hours are based on logged hours worked or whether they are estimates of the proportion of time these people spent undertaking the activities detailed.

Timesheets were completed by my colleagues in revenue and fares, I will arrange for these to be forwarded to you asap

Let me know if you have any more queries. as I said to [REDACTED] i am happy to come over to Western House anytime, for both this and the NASR claim.

Best Regards

[REDACTED]  
Senior Financial Analyst  
First Great Western  
Internal: [REDACTED]  
External: [REDACTED]  
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## **Appendix F**

**PTO**



Critera and procedures for the approval of track access contracts

- (d) formulaic revenue compensation is based on operator specific Schedule 8 payment rates, with discounts available depending on the notification provided by Network Rail to the train operator which reflect the likely impact on operators and revenue;
- (e) different revenue compensation algorithms apply where a train-bus-train movement misses monitoring points, or for a high-speed diversion;
- (f) formulaic cost compensation encompassing compensation for rail replacement buses (with compensation differentiated by type of train operator) and changes in train mileage (with compensation differentiated by type of rolling stock).

5.72 Generally, we would expect franchised passenger track access contracts to incorporate the template Schedule 4 as it appears in the model passenger contract. However, where applicants are seeking a bespoke regime, we would want to be sure that it would:

- (a) incentivise Network Rail to plan possessions early and to manage them efficiently;
- (b) incentivise the parties to limit the effects of possessions on the passenger timetable;
- (c) ensure that no perverse incentives are caused between different operators' possessions and performance regimes;
- (d) not alter the value of Network Rail's expected cash flows; and
- (e) not require unnecessarily burdensome additional systems for processing data.

5.73 Franchised passenger train operators pay for the possessions regime through access charge supplements. The sum of these access charge supplements is equal to the total expected compensation payments Network Rail will pay to operators for withholding access to the network<sup>62</sup>.

<sup>62</sup> Access charge supplements for franchised passenger operators are set out in Table 26.3 of the Determination of Network Rail's outputs & funding for 2009-14.

2.1.6

All the Train Operators indicated that rail replacement buses were the most significant costs. Our analysis of the 80 sample possessions is shown below in Table 2.1<sup>4</sup>

Table 2.1 – Analysis of Sample Possessions by Type of Cost.

Type of Costs	RoU % of Total Costs	SRoU % of Total Costs
Rail replacement costs	44%	30%
Other costs	56%	70%

significant  
factor in costs  
of SRoU non-SRU

Re Statement  
para 6.11

2.1.7

ATOC provided us with data from an exercise undertaken to investigate the scale and type of possession costs experienced by Train Operators eleven of whom provided data. The overall split between bus costs and other costs for each category of possession in 2006/2007 is shown below in Table 2.2

Table 2.2 – Rail Replacement Bus Costs as a Percentage of Total Costs (2006/07).

Operator	Bus Costs (£'000s)			Total Costs (£'000s)			% Total Costs		
	RoU	SRoU	Part G	RoU	SRoU	Part G	RoU	SRoU	Part G
1	147	0	365	147	0	365	100%	100%	100%
2	175	0	175	175	0	175	100%	N/A	9%
3	330	44	140	503	580	210	76%	76%	75%
4	117	122	0	1134	1111	0	100%	48%	N/A
5	473	0	0	473	473	0	100%	78%	N/A
6	235	212	0	324	350	9	91%	63%	89%
7	236	0	0	236	0	0	100%	N/A	N/A
8	1408	155	0	1408	564	0	100%	96%	N/A
9	1660	0	120	1660	0	1500	100%	N/A	80%
10	1813	0	306	2664	184	612	68%	53%	50%
Total	470	1	712	475	0	712	100%	N/A	100%
11	9,550	2,989	2,927	10,550	4,075	5,233	59%	78%	56%
12	402	0	0	5,000	0	0	8%	N/A	N/A

2.1.8

The data above confirms that rail replacement bus costs are the most significant costs to Train Operators. However, it is likely that the data overstates the proportion of total costs since Schedule 4<sup>1</sup> disruption is not normally compensated for costs, except in the case of a Major Project Notice, hence costs other than buses may be difficult to identify.

2.1.9

We concluded that rail replacement bus costs should lie at the heart of any proposed cost compensation mechanism. Chapter 3 of this report describes our detailed analysis of this type of cost and our development of a compensation mechanism.

<sup>4</sup> Note: This ignores the impact of changes in train mileage (whether positive or negative) which in many cases were not supplied by Train Operators.

<sup>1</sup> An exceptional case.