

**IN THE MATTER OF PART D OF THE NETWORK CODE**

**AND IN THE MATTER OF THE ACCESS DISPUTE RESOLUTION RULES**

**AND IN THE MATTER OF TIMETABLING DISPUTES TTP 1064; 1065; 1066; 1069; 1071;  
1073; 1075**

**BETWEEN:**

**(1) ABELLIO SCOTRAIL LIMITED ("ASR")  
(2) DB CARGO (UK) LIMITED ("DBC")  
(3) FIRST GREATER WESTERN LIMITED ("GWR")  
(4) XC TRAINS LIMITED ("XCTL")  
(5) GB RAILFREIGHT LIMITED ("GBRf")  
(6) ARRIVA RAIL NORTH LIMITED ("ARN")  
(7) EAST COAST MAIN LINE COMPANY LIMITED ("VTEC")**

**Claimants**

**v**

**NETWORK RAIL INFRASTRUCTURE LIMITED ("NR")**

**Defendant**

---

**NR's RESPONSE TO HEADS A AND B ISSUES  
APPENDIX 4  
NR'S RESPONSE TO THE SUBSTANTIVE PARTS OF GWR's SRD**

---

**Introduction**

1. This document should be read in conjunction with NR's Response to Heads A and B Issues dated 12 April 2017 (the "Response").
2. Abbreviations as used in GWR's SRD are adopted in this Response. References to Paragraphs are to Paragraphs in GWR's SRD.

**Overview of NR's Response to GWR's SRD**

3. NR denies that GWR is entitled to the relief it seeks, or to any relief, for the reasons set out in this response to GWR's SRD and the Response.
4. GWR accepts in its SRD (at Paragraph 4.3) that NR has "*on the face of it*" achieved the requirements to consult with GWR on its proposal, but then goes on to argue that at no stage has NR provided sufficient justification for any proposal made or decision reached. Accordingly, NR briefly sets out the history of the consultation to demonstrate how NR consulted fully with GWR and took their representations into account.

**Relevant Chronology**

5. The chronology relevant to the consultation with GWR and the application of the Decision Criteria.

## TPR Forums

6. The Network Code obliges NR to consult on the TPRs. The TPR forum is the main way it does that. For the Western route, all operators on the route were invited; however, as no freight representatives attended the forum of 12 September 2016 (as detailed below) one forum was called specifically for the freight operators.
7. TPR forums had been held in relation to previous versions of the TPRs but, in relation to the 2018 version, additional efforts were made due to the volume of proposed changes. NR set up TPR forums for 22 August 2016, 12 September 2016, 21 September 2016 and 3 October 2016.
8. The TPR forum held on 22 August 2016 was attended by seven representatives of NR, one from GB Railfreight, one from Freightliner, one from Cross Country, one from Heathrow Express and one from GWR. The meeting discussed SPA recommendations from TRIP Paddington Station to Ladbroke Grove (SPA report ref 449). The minutes in respect of this forum can be found at the first Annex to this document (**Annex / Tab 1/ p.48-52**).
9. The TPR forum on 12 September 2016 was attended by eight representatives from NR, one from Heathrow Express, two from GWR and one from Cross Country. The meeting discussed SPA recommendations from TRIP Didcot to Basingstoke (SPA report ref 450). The minutes in respect of this forum can be found at **Annex / Tab 1/ p.56-59**.
10. The TPR forum on 21 September 2016 was attended by freight operators only. The meeting was attended by four representatives of NR and one from GBRf and one from Freightliner in order to discuss the report that had been discussed by the passenger operators at the meeting of 12 September 2016. As no freight operators had attended the meeting of 12 September 2016 NR decided to call a freight only meeting to ensure that they were satisfied with the proposals. The minutes in respect of this forum can be found at **Annex / Tab 1/ p.60-62**.
11. The TPR forum on 3 October 2016 was attended by five representatives of NR, one from Crossrail, one from Freightliner and three from GWR. During the course of this meeting the attendees reviewed the TRIP Paddington to Reading headway recommendations. The minutes in respect of this forum can be found at **Annex / Tab 1/ p.66-69**.
12. To the extent that comments on a proposed change to the TPRs are properly presented to NR, for example supported by reasons and evidence, NR carefully considers these. If a TOC provides evidence that what NR has done is incorrect or is not in line with the Decision Criteria, NR will always change it. However, when a TOC simply states that it does not agree, or it inconveniences the TOC, NR is not able to allow that TOC to dictate the development of the rules.
13. The TPR forums were usually minuted.

## Impact Assessment

14. As may be seen at paragraph 29 below, GWR advised NR that they needed to understand the impact of the proposed changes in more detail. NR agreed to provide this. The scope was agreed and NR prepared an Impact Assessment which was shared on 23 January 2017.

## Prior to Consultation Obligations In Part D

15. On 17 August 2016 NR emailed the attendees, who were representatives of the TOC and FOCs (**Annex / Tab 3/ GWR / p.1287**). NR sent modelling outputs and TPR proposals to be discussed at the meeting. The SPA report ref. 449 included a section addressing Junction Margins Proposals and Reasoning. It also included the TPR recommendations in full for GW 103 from Paddington to Uffington. SPA report ref. 0448 addressed Reading Station Junction Margins.
16. The first forum met on 22 August 2016 (minutes as amended can be found at **Annex / Tab 1/ p.48-52**). GWR representatives attended this meeting along with representatives of other Timetable Participants. GWR raised various queries throughout the meeting in respect of Reading rolling stock and Paddington rolling stock. GWR expressed their concern in respect of large uplifts as they stated this would not be based on real time data and stated that they would need further observations to back up the modelling. GWR also raised concerns about increasing signalling but agreed with the modelling in principle. The collaborative nature of this forum meeting is readily apparent from the minutes, which show ongoing consultation and a general consensus that the modelling and output were deemed satisfactory in principle but with certain adjustments needed.
17. Following the circulation of the minutes of 22 August 2016 GWR requested clarification of some points as they were concerned that the minutes conveyed that they were agreeing to points that they disputed (**Annex / Tab 3/ GWR / p.1289**). The minutes were subsequently changed to record that agreement was with the modelling in principle, but that GWR had not given their consent for timetable implementation (**Annex / Tab 3/ GWR / p.1293** and **Annex / Tab 1/ p.48-52**) and GWR were satisfied with the change (**Annex / Tab 3/ GWR / p.1288**). This email discussion is relevant as it demonstrates GWR's satisfaction with the process, the modelling and the consultation - what they objected to was the product of the modelling and the impact of the proposals.
18. On 12 September 2016 (**Annex / Tab 1/ p.56-59**) the TPR Forum met. Again, GWR representatives attended this meeting along with representatives of other Timetable Participants. The discussions on modelling included an update on Crossrail modelling and discussion of various issues, with the minutes recording consultation, discussion and general agreement with the principle of the modelling. For example, the Forum discussed the Reading West Junction, about which GWR now complain, but Mr Cambourne of GWR made no comment at this meeting.

19. Following the Forum meeting on 12 September 2016 an internal e-mail was circulated within NR detailing the action points (**Annex / Tab 3/ GWR / p.1307**). It is apparent that NR followed proper procedures of consultation and consideration of the responses it had received. There had been no general 'policy decision' to proceed.

**D-64 (16/09/16) to D-60 (14/10/16): NR shall consult with timetable participants in respect of any proposed changes to the rules**

20. NR hosted a Forum meeting on 21 September 2016 (**Annex / Tab 1/ p.60-62**), but this was for FOCs only, as NR sought their input prior to finalising Version 1.0 of the TPR. While not expressly relevant to the complaint GWR makes, this demonstrates that NR consulted fully before issuing the TPR. DB Cargo were invited to confirm which days suited for the forum to take place but no response was received.
21. On 3 October 2016 (**Annex / Tab 1/ p.66-69**) NR hosted a final TPR Forum meeting before the issue of Version 1.0 of the TPR. At this stage NR's consultation had led to the Timetable Participants responding to consultations so that NR could and did consider that they were addressing potential issues. Representatives of NR, GWR, Crossrail and Freightliner attended this meeting. NR introduced the purpose of the meeting as *"to go through the recommendations in detail and ensure that as a group you are satisfied with the logic and if not we can agree next steps for re-work/removal where necessary."* GWR requested that TRIP look at stopping headways, as they stated that they could not agree to proposals where they could not understand the impact. NR proposed that there be a timetable Impact Assessment to start by 10 October 2016 once its remit had been agreed between the operators and TRIP. NR then circulated the latest version of its "Paddington to Reading & Reading to Didcot Parkway Non-Stop Headways" document with values and details of methodology (**Annex / Tab 3/ GWR / p.1309-1360**).
22. The main operator feedback during the forums was that the operators wanted to know how NR had reached the values, and therefore the SPA reports were discussed in turn, and the graphs were looked over to quantify them. They did not question the methodology, but focused on the impact on their passengers.
23. NR had to balance the various demands of the operators, itself and system capacity and did so through the forums. NR's aspiration via the forums was that everybody would know what was coming at version 1, not that they would necessarily agree it. That was not the purpose of the consultation and nor was it possible. There had never been full agreement throughout the TPR forums, especially due to the then unknown, and unknowable, impact on the operators' train services.
24. Prior to each forum the TRIP team (who led the forums) supplied the operators with reports to relate to forum (as NR sets out in the above examples). At the forums the attendees went through the reports line by line with the intention that each figure be discussed. The

operators either disputed or agreed with the recommendations or sometimes provided alternative views, all of which NR took into account.

**D-59 (21/10/16) – NR shall provide to all timetable participants a draft of the revised rules**

25. On 21 October 2016 NR published Version 1.0 of the 2018 TPR.

**D-59 to D-54 (25/11/16) - NR shall consult with timetable participants; timetable participants may make representations in respect of any changes they propose or objections they may have to the draft rules**

26. NR provided a summary document (**Annex / Tab 3/ GWR / p.1361-1365**) detailing the changes between version 4 of the 2017 TPR and this Version 1.0 of the 2018 TPRs. NR ended this note by inviting responses as follows: *"If you wish to respond to or require any additional information regarding the amendments listed above please do so by emailing the Timetable Production Manager listed below by the Friday 25 November 2016."*

**D-54 (25/11/16) to D-44 (03/02/17) – NR shall consider representations and objections**

27. On 11 November 2016 GWR provided its response to Version 1.0 of the 2018 TPR (**Annex / Tab 3/ GWR / p.1366-1381**).

28. GWR raised concerns with 11 sections of version 1.0 and made 23 additional requests or referred to items previously requested that were not included in version 1.

29. The main request made by GWR was for an impact assessment to be conducted to understand the impact the proposed changes would have on the timetable. The TRIP team organised an analysis to be done prior to version 2, but NR had already proposed such an Assessment on 3 October 2016, and GWR had not responded with its proposals or agreement.

30. NR received this request for an impact assessment at a time when that process had not started although, as set out above, NR had proposed that it be carried out and had hoped it would be carried out earlier. NR included Mr Paul Stevens, who was to carry out this assessment, in the Forum meeting of 12 September 2016 in order that he could be part of the consultation before starting any assessment. The meeting to agree its remit was held on 18 November 2016 but was not minuted.

31. NR and GWR did not meet to discuss the concerns that GWR raised in its 11 November 2016 letter, but NR proceeded to investigate these matters.

32. Laura Freeman of NR wrote to GWR on 17 January 2017 (**Annex / Tab 3/ GWR / p.1382-1384**) to provide an update and a response. That response addresses issues (a) to (d) of GWR's disputed decisions in this Dispute. Ms Freeman wrote as follows:

*"The concerns that you've mentioned around the impact of TRIP proposals on the WTT and continued service level commitments for GWR have been duly noted. Capacity Planning is extremely sensitive to operators concerns regarding the impact of TRIP proposals on the WTT and have taken significant steps to allay any fears. A thorough timetable impact study was commenced on 4th November 2016 to fully understand the impact of TRIP Western proposals. The study is at an advanced stage and we hope to share the findings with our industry partners before Version 2 publication. The decision on what TRIP proposals will be progressed beyond Version 2 will largely be influenced by the findings of this study. If implementing TRIP proposals would present a reduction in available paths that would in turn affect service level commitments then NR Capacity Planning would seek to derogate the recommendations with the support of the Department of Transport and the ORR."*

33. In relation to the final issue that GWR raises in its SRD, that of Reading to Cogload Junction Headway, NR wrote that there would be an opportunity to discuss this at the next TPR Forum. NR asked GWR for evidence of relevant correspondence that the current values were "correct".
34. NR circulated the draft of the Timetable Impact Assessment to the TPR Forum attendees including GWR on 23 January 2017 (**Annex / Tab 3/ GWR / p.1386-1404**). This impact Assessment included:
  - 34.1 An executive summary which concluded that *"the overall impact is positive, with the timetable and infrastructure being able to accommodate the vast majority of train services. There are six train paths where a decision would be required to amend the existing use of capacity between passenger services, freight services and ECS services (details in section 2)"*. This is important, as it shows that the study balanced overall impact, rather than focusing on single consequence.
  - 34.2 At part 1.2, a detailed "Methodology" section, which explained how NR worked out the proposed changes to the planning margins.
  - 34.3 At part 2.1, a section on Headway TRP improvements which stated that *"The values are in general a betterment of the current planning rules with a reduction for class 1 passenger services, either no change or a slight increase to values for following class 2 stopping passenger services and a higher increase in values following freight services so reflecting the results from the TRIP modelling findings."*
  - 34.4 The Assessment then provided detailed sections on each route section.
  - 34.5 The Assessment provided, at part 2.2, analysis of the junction margin TPR improvements, including those which form the basis of GWR's complaints in this Dispute.
  - 34.6 The Assessment provided a response to GWR:

**"Great Western Railway:** *No changes to services on the Main Line (ML) Ladbroke Grove to Foxhall Junction. It was found that minimal retiming to services was required on the Relief Lines (RL) and if required to retain a service pattern these timings can be made to accommodate this by using the PB principle. The interaction with freight services may require a redistribution of capacity, also, two ECS services will require looking into with the possible solution in re-diagraming or short time stabling at Royal Oak."*

- 34.7 It then addressed each of the five decisions which GWR disputes.
35. It can be seen that NR considered GWR's representations and objections, as it had throughout this process.

**D-44 (3/2/17) – NR shall issue the final revised rules (v2)**

36. On 3 February 2017 NR published Version 2.0 of the TPR.
37. NR also published a document with specific commentary (**Annex / Tab 3/ GWR / p.1405-1406**) on 3 February 2017.
38. On 23 February 2017 GWR wrote to NR providing its formal response to Version 2.0 of the 2018 TPRs (**Annex / Tab 3/ GWR / p.1407-1410**). The letter noted, and thanked NR for, a meeting on 13 February 2017 to discuss matters and to consider implementation strategy. This letter raised two objections:
- 38.1 On 24 January 2017 GWR had requested more details of the re-timings on the route. In November 2016 GWR had suggested a flexing spreadsheet with "*clear details on a train by train basis for any required changes*"; and
- 38.2 GWR were concerned that the proposals may not have been validated to ensure that they are compatible with future timetable requirements for the route.
39. It should be noted that GWR's first objection (para. 38(1) above) related to a request only made on 24 January 2017, which NR is in the process of responding to. This also related to specific timetable timings, not the changes to the rules themselves. The objection does not relate to the present stage of the timetable process (i.e. the timetable rules), but instead the actual timetables.
40. The second objection related to future timetable requirements, which are not a relevant concern for the consultation process under discussion in this Dispute.
41. GWR's 23 February 2017 letter then provided the details of its objections to the decisions which it now puts to the Panel for determination. Each of the first four objections contained the same statement:

*"A table was provided within the impact assessment along with general comments. Trains were listed as requiring some retiming and other combinations, but no list by headcode or further details were provided about the specific train amendments required.*

*As such GWR cannot properly assess how its ability to meet its Service Level Commitment is affected by the proposals so will now lodge a Timetable Dispute regarding the matter"*

42. GWR's objection in relation to the final headway value increase was that it believed the change would increase the journey time of services in certain instances, and absent an impact Assessment, GWR cannot assess its ability to meet its Service Level Commitment.
43. Despite there being no obligation to do so, NR had committed to provide this analysis to allay GWR's fears. The analysis is time consuming and NR will provide it as soon as possible, and before the hearing date for this Dispute.
44. GWR could have established what had happened in each service as a result of the information provided to them when they requested further details in respect of the headways. If GWR considered that the material they had been given was unclear at that stage they could and should have sought clarification rather than simply demanding the particular information and model outcomes that underlie this dispute. GWR were given a spreadsheet with head code information on 2 March 2017 (**Annex / Tab 3/ GWR / p.1411-1414**).
45. GWR now demand 'flexings' and detailed list of times; NR is in the process of obtaining this information for GWR.

#### **D-41 (24/02/17) – End of appeal period**

46. On 14 March 2017 NR invited representatives from GWR and XC to attend a meeting on 20 March 2017 to try to address their concerns. In advance, the parties corresponded. GWR distilled its objections in an email dated 14 March 2017. The reason that is relevant to the dispute before the panel was described as follows:

*"We haven't had the full details of the trains you wanted to flex when the TRIP impact assessment was done - we need to understand what retimings you needed precisely within that study so we can ensure we would remain SLC compliant in order for us to agree to the proposals and be compliant with our franchise agreement. We asked for details when the remit for the study was agreed and I explained why I needed them."*

47. To conclude, the impact assessment demonstrates that there is fundamentally no detrimental effect on GWR services. GWR have asked for more specific detail to be confident that they will still meet the Service Level Commitment. NR is committed to providing it.



## **Application of Decision Criteria**

48. There is no requirement in the Network Code Part D for NR to publish the Decision Criteria (Network Code Part D 2.2.6, 4.1.1), but they do so here to assist the Panel and demonstrate to GWR that they have taken the proper criteria into account, as GWR has argued at Section 4.2 that the dispute arises in part over application of the Decision Criteria.
49. In carrying out this exercise, NR constantly think about making a balanced decision but there is no requirement to put this in writing.
50. NR always focuses on the objective first: sharing capacity, safe carriage of passengers (and goods), in the most efficient and economic manner, in the overall interest of users and providers. As network providers, NR does not like to have to make this point to TOCs and FOCs as their clients, but their individual preferences cannot be the only consideration.
51. The relevant Decision Criteria taken into account when making the changes to the 2018 TPRs, and the weighting applied to them by NR, were:
- 51.1 (a) Maintaining, developing and improving the capability of the network – NR was looking to fine tune the capability of the network in and on the Western route as a whole by fine tuning the building blocks of the timetable. The Train Planning Rules on this occasion were to reflect what the network was capable of – NR placed a HIGH WEIGHTING on this criterion.
- 51.2 (b) Spread reflects demand – there was limited impact to this; NR was not removing GWR trains or changing call patterns – NR placed a LOW WEIGHTING on this criterion as there is no change.
- 51.3 (c) Maintaining and improving train service performance – the intention was that more accurate TPRs enable (but do not necessarily provide) better performance – NR placed a HIGH WEIGHTING on this criterion.
- 51.4 (f) Commercial interests of NR or any Timetable Participant – NR accepts that the TPR changes may cause additional cost to TOCs but this is offset in the industry by the reduction in Schedule 8 compensation. More accurate data will lead to a reduction in delays – NR placed a MEDIUM WEIGHTING on this criterion.
- 51.5 (j) Enabling operators to utilise assets efficiently – TOCs are currently unable to use assets efficiently as trains are arriving late and cannot be turned around in time. Paddington and Reading, for example, are particularly vulnerable to this and will benefit from the development of the TPRs – NR placed a MEDIUM WEIGHTING on this criterion.
52. Considerations (d), (e), (g), (h) (i), (k) and (l) were not applicable.

53. In addition, the criteria cannot be applied to just one TOC. While GWR is the largest operator on the Western Route, the majority of the network subject to this analysis affects all TOCs in Western. TRIP changes have also been applied nationally.

#### **Response to Section 4 of GWR'S SRD**

54. The nature of the dispute in Section 4 of GWR's SRD is noted. It is accepted that this is presented as a timetable dispute, but for the reasons set out below and in the Defence it is denied that GWR is entitled to the relief sought or any relief.
55. At paragraph 4.1 GWR introduce the dispute as a dispute regarding the method by which train services are timetabled. This is not actually the case – GWR's stated objections throughout the period of consultation do not relate to the method and the methodology, but the actual impact on the timetable which is at present unknowable. GWR have wrongly issued a Dispute Notice at the stage of the timetable revision process which relates to agreeing timetable planning rules, when their concern relates to the later stage of fixing the actual timetable. GWR's Dispute is premature. GWR should wait until the timetable has been developed – and, if it considers that issues remain, it will have another opportunity to raise those at that stage. It may be that GWR are not affected when the timetable is completed.
56. GWR lists the relevant rules at Paragraph 4.2, and NR accepts that these are the appropriate rules which it has followed, as set out above. GWR has provided no evidence or argument that there is any detrimental effect by introducing the new rules and NR considers that these new rules assist it in maintaining, developing and improving the capability of the network.
57. As to Paragraph 4.3:
- 57.1 GWR argues that NR does not have sufficient information to enable it to consider a decision according to the Decision Criteria and Objective. As NR demonstrated to GWR, its NPR rules proposals rely on detailed information which it has demonstrated to GWR through the reports and assessments conducted and discussed at the forums. The modelling is widely accepted as accurate and the information then says what services should run. NR relies on Appendix 1 to NR's Response and to the witness statement of Matthew Allen. NR sets out a history of the TRIP process and its constituent parts, and explains why the TRIP and ODA methodology is appropriate and how decisions taken in reliance on TRIP meet the requirements of the Decision Criteria.
- 57.2 GWR are effectively making decisions on what the modelling says is physically possible for the network, without any modelling of their own.
- 57.3 GWR quotes the applicable sections of the TPRs and then states that *it "accepts that each of these elements has been achieved on the face of it to timescale"* - this is a significant admission that NR has met its obligations.

- 57.4 GWR's argument that follows cannot be supported, when it states that *"at no stage has sufficient justification been provided by NR for any proposal made or any decision reached notwithstanding representations made by GWR and many other train operators to the rationale..."* The TRIP programme was signed off at national task force level and the history and reason for TRIP is well known in the operator community and GWR, rightly, does not appear to be making a general objection to TRIP. In any event, GWR held forums to discuss the justification for each change at which GWR went through each line item. GWR's individual objections to a limited number of changes do not support the broad claims GWR makes in the third paragraph of Paragraph 4.3.
- 57.5 In the fourth paragraph of Paragraph 4.3 (top of p.5 of the SRD) GWR argues that NR has *"progressed a policy decision of itself ruthlessly without considering the effect on its own product, on its ability to meet contractual needs with train operators, on the needs of end users or on the performance output sought."* It provides no evidence to support this broad and unjustifiable assertion. There is no evidence to support it – NR consulted and carried out an Impact Assessment to consider these very effects.
- 57.6 GWR goes on to state that there have been calls for the impact of the proposals on performance, but that nothing has been forthcoming. As can be seen from the chronology of consultation and NR's proposal for and then production of an Impact Assessment, this argument is unsupportable.
- 57.7 GWR makes a statement that a reduced capacity and capability may have certain consequences. There is no suggestion or evidence from GWR that it will have a reduced capacity and capability, and this argument is no more than a general statement of potential consequences of an as-yet undetermined change. It cannot support GWR's claim for the relief it seeks, that none of the decisions it complains of should be implemented.
- 57.8 GWR then states that it cannot wait for a published Working Timetable before it takes action. This is exactly what it can and should do, if it feels that the process behind the fixing of that timetable does not meet the appropriate criteria. GWR has issued this Notice of Dispute at the wrong time.
- 57.9 GWR asserts that it cannot permit changes to be made to the TPR that *"do or may affect delivery of the SLC or of future known service requirements."* This complaint is no more than speculation as to unknown consequences of future decisions, and GWR provides no evidence or argument to tie this to any of the Decision Criteria, for the reason that this objection does not relate to revision of TPRs but is a concern over future timetabling.
- 57.10 GWR's next objection suffers from the same flaw. GWR argues that passengers will be affected, yet has not given details how any of the decisions complained of will affect passengers, or how such an effect is the consequence of a failure to consult or a failure to apply the Decision Criteria.

- 57.11 In short, much of GWR's description of the Subject Matter of the Dispute in Section 4 does not address the test GWR sets itself when it argues that the dispute arises over condition 4.1 of Part D of the Network Code.
- 57.12 GWR concludes section 4.3 with a complaint that it has seen no evidence that NR has provided train operators with its reasons for changing the TPR. GWR has attended forums and held meetings with NR at which methodology and reasons have been given. NR has also conducted an Impact Assessment. GWR's real complaint is a different one, as analysed above, and it is not a complaint that can properly be raised at this stage of the timetable revision process.
- 57.13 The Impact assessment is a proof of concept document that applies the rules to factual circumstances. It tells NR and operators what the potential impact of introducing new values to the timetable would be. However, the variation in service pattern, rolling stock, infrastructure changes and other developments mean that the Impact Assessment can only be a snapshot in time as to whether those values work at the time of producing it. Once the timetable itself is drafted and circulated, GWR have a right to raise proper disputes in relation to it at that stage. The timetable process started on 3 March 2017. There are 14 weeks to finalise up to D26. Rule D3.3 sets out the procedure for GWR to submit timetable variation requests to NR ("TOVRs"). The intention is that the timetable is developed between D-40 and D-26. Following D-26, TOCs can make requests for changes (bids).
- 57.14 GWR's real complaint appears therefore to be that there may be timetabling concerns in due course, rather than a genuine dispute with the rules (or any particular rule) or the methodology underlying such rules.

#### **Response to Section 5 of GWR's SRD**

58. As to Paragraph 5.1, it is admitted that NR must consider the driver of the proposed change and the effect. The chronology above sets out clearly how NR has done this, and how it has consulted with GWR throughout.
59. GWR makes a telling admission where it states that "*GWR supports improved performance and has agreed to Timetable Planning Rules change where it is clear there is no adverse impact of GWR's present or aspired product.*"
60. GWR appears to be asserting some right of veto over a change that has an adverse impact on what GWR is presently doing, or may do in future. This cannot be correct – as the Decision Criteria provide at D 4.6.3 (f) NR must consider the commercial interests of NR and any (which here must mean all, and in particular in this context all Western) TTPs. Competing interests must be fairly balanced. If GWR sets out the details of any adverse impact (which it has not), then NR must consider that, but is not obliged to accept GWR's perception of its own (potential) narrow commercial interests as determinative.

61. GWR argues that it has received no evidence to support the impact. This is denied, as NR has provided detailed evidence including the Impact Assessment, which shows that it has applied the Decision Criteria and Objective.
62. NR are working towards providing further information to GWR in order to meet any concerns. These concerns are of a possible and undefined impact and GWR cannot rely on this speculation to object to the five decisions it disputes.
63. GWR concludes by referring to concerns over potential implications of future development on the Great Western Main Line enhanced service provision. This argument is not an argument for the present, or for this Dispute. When concrete proposals are made in relation to Great Western Main Line enhanced service provision, there will be appropriate consultation and GWR can raise a dispute at that time if it considers that appropriate.

## **Conclusion**

64. GWR argues that a dispute has arisen over the interpretation of the parts of the Network Code that relate to revision of the TPRs. NR has set out in this Appendix how it properly consulted with GWR throughout the timetable revision process. NR applied the relevant Decision Criteria to the TPR revisions, in particular by taking into account all relevant evidence to evaluate the impact of its proposals. NR has responded to GWR's concerns over the five decisions GWR disputes, as NR details from paragraph 38 above. NR continues to consult and will respond to any further points GWR raises throughout the timetable revision process.
65. GWR may have concerns over the actual timetable at the point that NR publishes those proposals, and GWR is able to raise concerns at that stage of the process.