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**TIMETABLING PANEL of the ACCESS DISPUTES COMMITTEE**

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**Determination in respect of dispute references TTP1706 and TTP1708**  
(following a hearing held via videoconference, on 13 August 2020)

**The Panel:**

Clive Fletcher-Wood                      Hearing Chair

Members appointed from the Timetabling Pool

Peter Warhurst                      elected representative for Franchised Passenger Class, Band 2  
Jason Bird                              elected representative for Non-Passenger Class, Band 2  
Matt Allen                                appointed representative of Network Rail

**The Dispute Parties:**

Network Rail Infrastructure Ltd ("Network Rail")

George McIntosh                      Head of Planning and Performance, Anglia Route  
Simon Thick                             Director Route Asset Management, Anglia Route  
Phil Broad                                Senior Programme Manager, Anglia Route  
John Dwerryhouse                      Project Manager (Change), Anglia Route  
Paul Diamond                            Operation Planning Project Manager, System Operator  
Adam Hodgson                          Policy Advisor, Capacity Planning Controls Team

Freightliner Group Ltd ("Freightliner")

Peter Graham                          Rail Strategy Manager  
Robin Nelson                            Timetable Manager  
David Smith                              Engineering Access Manager

GB Railfreight Ltd ("GBRf")

Jack Eagling                            Head of Timetabling & Long-Term Traincrew Planning  
Darren Pell                                Engineering Access Manager  
Ian Kapur                                 Head of Strategic Access Planning  
Liam Day                                  Commercial Director

**Interested parties:**

XC Trains Ltd.

Jo Davey                                 Head of Planning

DB Cargo (UK) Ltd.

Graham White                          Access Manager (South)

Govia Thameslink Railway

Robert McCarthy                      Head of Train Planning  
Michael Kempster                      Amended Planning Manager

Abellio East Midlands

Duncan Campbell

Train Planning Manager

Abellio East Anglia  
*Unrepresented*

**In attendance:**

Tamzin Cloke  
Kirstina Vasiljeva  
Alistair Rusholme

Committee Secretary (“Secretary”)  
Network Rail (observing for professional development)  
Network Rail (observing for professional development)

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## **A Background and Jurisdiction**

1. Dispute TTP1706 was raised by GB Railfreight (“GBRf”) by service of a Notice of Dispute on 18 July 2020 in respect of Network Rail’s Decision to take late notice access for the ‘Manea Bridges blockade’ in Weeks 21 and 23 to 26, 2020. The dispute was brought on the basis that GBRf disagreed with the Decision. On 28 July 2020 the Secretary received a request from GBRf to expedite the hearing.
2. Dispute TTP1708 was raised by Freightliner Group (on behalf of Freightliner Ltd. and Freightliner Heavy Haul Ltd.) by service of a Notice of Dispute on 23 July 2020, in respect of the same Network Rail Decision. The dispute was brought on the basis that Freightliner had requested full details of services that would need to be retimed, diverted or cancelled before agreeing to the possession and this information had not been provided. Freightliner felt that the Decision put its contractual obligations to its customers at risk, and therefore that the Decision Criteria had not been taken properly into account, or applied correctly prior to publishing the Decision. The Notice contained a request to expedite to an immediate hearing.
3. I was appointed as Hearing Chair on 29 July 2020 and I satisfied myself that the matters in dispute included grounds of appeal which may be heard by a Timetabling Panel convened in accordance with Chapter H of the ADR Rules to hear an appeal under the terms of Network Code Condition D5. I maintained this conclusion in spite of suggestions by Network Rail in its Sole Reference Documents that these Disputes were more properly access disputes. (Network Rail confirmed at the opening of the hearing that it was content for the matters in dispute to be determined by this TTP).
4. In its consideration of the Parties’ submissions and its hearing of the Disputes, the Panel was mindful that, as provided for in ADR Rule A5, it should ‘reach its determination on the basis of the legal entitlements of the Dispute Parties and upon no other basis’.
5. The abbreviations used in this determination are set out in the list of Parties above, in this paragraph 4 and as otherwise defined in this determination document:
  - “ADR Rules” mean the Access Dispute Resolution Rules and “Rule” is construed accordingly
  - “Decision Criteria” means Network Code Condition D4.6
  - “Chapter H” means Chapter H of the ADR Rules- “ORR” means the Office of Rail and Road
  - “Part D” means Part D of the Network Code
  - “TSR” means a temporary speed restriction
  - “TTP” means Timetabling Panel

## **B History of this dispute process and documents submitted**

6. At my request (and as permitted by ADR Rule H21), the Dispute Parties were required to provide Sole Reference Documents. The proposed Panel hearing was notified generally by means of the website and by email to those identified as potential Interested Parties by the Dispute Parties.
7. On 30 July 2020, following an application made by the Secretary on behalf of the Dispute Parties, the Allocation Chair ordered that the two dispute references be resolved together on

the grounds that they concerned the same, or similar, subject matter and that it would be in the interests of efficient and fair resolution to do so.

8. On 03 August 2020 Freightliner served its Sole Reference Document, in accordance with the dispute timetable as issued by the Secretary. On 04 August 2020 GBRf served its Sole Reference Document, in accordance with a revised dispute timetable, as issued by the Secretary.
9. Having sought confirmation that it might reply in separate Sole Reference Documents, on 07 August 2020 Network Rail served both its Sole Reference Documents in accordance with a further revised dispute timetable as issued by the Secretary.
10. DB Cargo (UK) Ltd., Abellio East Anglia Ltd. (“AEA”), Govia Thameslink Railway Ltd., Abellio East Midlands Ltd. and XC Trains Ltd. declared themselves to be Interested Parties. All were represented at the hearing, save for AEA due to a longstanding prior engagement. AEA sent a statement, which was circulated by the Secretary to the Panel and Dispute Parties on its behalf.
11. Directions were issued on 04 August 2020 and 10 August 2020. These Directions were intended both to elicit further information from the Parties and to give guidance as to how the Panel was likely to approach certain issues that had been raised. These Directions and each Party’s responses appear on the website of the Access Disputes Committee.
12. On 10 August 2020 the Dispute Parties were advised – for the purposes of ADR Rule H18(c) – that the principal issue of law arising was whether ‘exceptional circumstances’ (as defined in D5.3.1(c) of Part D) had arisen; the remaining issues being the proper construction of the relevant parts of the Network Code.
13. The hearing took place on 13 August 2020. The Dispute Parties made opening statements, responded to questions from the Panel concerning various points and were given the opportunity to make closing statements. The Interested Parties were given the opportunity to raise points of concern.
14. I confirm that the Panel had read all of the papers submitted by the Dispute Parties and Interested Parties and I confirm that I have taken into account all of the submissions, arguments, evidence and information provided to the Panel over the course of the dispute process, both written and oral, notwithstanding that only certain parts of such materials are specifically referred to or summarised in the course of this determination.

### **C Outcomes sought by the Dispute Parties**

15. In its sole reference document, GBRf requested the panel to determine that:
  - (a) Under Condition D5.3.1(c), NR should adopt its ‘DEFCON0’ access proposal to address the immediate concerns relating to the timbers within the rail bridge structures between Ely and Peterborough as a substitute for ‘DEFCON4’. GBRf noted that Condition D5.3.1(c) should only be exercised in exceptional circumstances but, considering the potential impact that NR’s current decision would have on its business, and the extremely late notice of the blockade, GBRf considered this to apply.
  - (b) Under Condition D5.3.1(a), NR reviews its access proposals for the outstanding Manea works and proposes, with thorough industry consultation, a programme of

works between July and October 2021 (subject to the outcome of 6.1 (c)) that would be acceptable to affected operators.

- (c) Under Condition D5.3.1(a), that further work should take place with Natural England to fully understand the existing restrictions at Manea and widen the currently small access window in that location.
- (d) Under Condition 5.3.1(a), that Network Rail must accept that complex access requests, such as the proposed Manea blockade, require considerable and meticulous planning to be delivered successfully and there must be a mechanism in place for a Timetable Participant to recover all of its associated additional costs and lost revenues.

16. Freightliner asked the Panel to determine that:

- (a) Restrictions of Use with such a significant impact on timetable participants, where they can reasonably be planned to do so (as Freightliner believed was the case here) should be planned through the Engineering Access Statement, and should not be the subject of late notice requests;
- (b) that Network Rail had not applied the Decision Criteria outlined in D4.6.2 correctly, failing to properly consider the interests of timetable participants, and incorrectly weighting criteria;
- (c) that, having failed to accommodate all train services as requested by operators, Network Rail should have reconsidered their proposals for this RoU, and looked (sic) at alternative options to complete this work;
- (d) that Network Rail should withdraw its Decision document for the RoU, and re-plan this work to take place in line with Engineering Access Statement timescales as per D2.2.3.

17. Network Rail asked the Panel to determine, with relevance to TTP1706:

- (a) that Network Rail had complied with the requirements of the Network Code in reaching its decision regarding the RoU in dispute;
- (b) to uphold the decision taken by Network Rail and to confirm that the RoU should progress as planned;
- (c) to confirm that the GBRf request relating to Natural England and compensation mechanisms fell outside the remit of the powers confirmed on the Panel by the Network Code
- (d) that the decision in relation to the RoU for Manea Bridges should be upheld under D5.3.1(b);
- (e) that the completion of any commissioned Capacity Study is not a prerequisite in making a decision as to whether or not a possession is to be taken.

18. Network Rail asked the Panel to determine, with relevance to TTP1708:

- (a) that whilst preferable to plan Restrictions of Use via the Engineering Access Statement, in certain circumstances, this may not be viable and is recognised as a valid circumstance via Network Code Condition D3.5;
- (b) that it had applied the Decision Criteria in a compliant manner;
- (c) that all timetabling matters and capacity allocation for affected services should always, and necessarily, follow a decision for access;
- (d) that the direction requested by Freightliner for the access to be withdrawn be rejected;
- (e) that, pending the outcome of TTP1706, the Panel confirm the possession as planned.

#### **D Relevant provisions of the Network Code and other documents**

- 19. The versions of the Network Code Part D and the ADR Rules dated 01 April 2020 were applicable to these dispute proceedings.

#### **E Submissions by the Dispute Parties**

- 20. The Parties' opening and closing statements appear at Annexes A and B, respectively.

#### **F Oral evidence at the hearing**

- 21. My introductory remarks included seeking confirmation from Network Rail that it was content for these Disputes to be dealt with by this TTP, which was confirmed. I explained that no one was underestimating the difficult situation faced by all Parties, but the Panel was unable to recollect any Restrictions of Use on this scale being imposed at such short notice in the 10 years since the current dispute resolution structure was adopted. (I discounted the Kilsby Tunnel blockade this year as a valid comparator).
- 22. I also noted that, uniquely in my experience, a Party had advanced the argument that exceptional circumstances under D5.3.1(c) had arisen. GBRf set this out in its Sole Reference Document, a submission which Freightliner later adopted. Network Rail also submitted that exceptional circumstances had arisen, albeit for different reasons. I pointed out that the Panel could uphold Network Rail's Decision, but if it did not do so then I was not prepared to grant Freightliner's request simply to quash the Decision but do no more, as I thought that an impractical decision for the Panel to reach at this stage.
- 23. If, therefore, we were not to uphold Network Rail's Decision, then in theory we could give a direction to Network Rail specifying the result to be achieved but not the means by which it should be achieved (pursuant to D5.3.1(a)), or substitute an alternative Decision under D5.3.1(c) if we concluded that exceptional circumstances had arisen. However, my own perception was that there was simply insufficient time now remaining to give a D5.3.1(a) direction to Network Rail, so the Panel might be faced with a binary decision between upholding Network Rail or substituting an alternative Decision. None of the Parties dissented from this analysis.

24. A further introductory point was that in assisting the Panel to consider the legal entitlements of the Parties, history may be relevant, but that the Panel would not be seeking to apportion blame for the current situation to any Party.
25. The Parties then gave their opening statements, which are at Annex A.
26. My first question to Network Rail was whether there had been a change of emphasis since submitting its Sole Reference Document, with more emphasis now being placed on safety. The response was that Network Rail felt that its position – based on a new inspection regime following a specific incident – may not have been fully understood or considered by the Claimants.
27. The next question referred to the fact that at the date of the hearing the majority of the firm rights of the Claimants had still not been accommodated ; what confidence did Network Rail have as to what could be achieved in the period remaining before the first blockade? A long answer led to a clear statement that Network Rail would not be able to accommodate all traffic, although it was still examining all options to accommodate as much freight traffic as possible.
28. In the light of this statement the Panel then explored with the Claimants the prospects of procuring road transport to replace trains that were unable to run. The Claimants explained that they did have experience of procuring road transport at short notice, but at this stage they did not know what would be required and when, during the busiest period in the year for container traffic. It was also pointed out that during the proposed Restrictions of Use parts of the A14 would be shut on most nights. GBRf also read out an e-mail from Hutcheson Ports (the operators of Felixstowe) pointing out that Network Rail had only recently drawn their attention to the likely restrictions and requesting that suitable steps should be put in place to mitigate the effect of the works before they were implemented.
29. This section was closed with confirmation that shipping schedules are organised well in advance and ships cannot be re-directed at such short notice.
30. The questioning then turned to the alternative solution proposed by GBRf of adopting Network Rail's DEFCON0 solution. Network Rail stated that this would not address the required amount of timbers in the time available. It was pointed out that GBRf's figures (which had not be challenged by Network Rail) calculated that all the Red timbers could be removed this year, although the Panel accepted that deterioration was continuing. Network Rail's response was that the Red timbers had been assessed as having 6 months' life in April.
31. A point made by Network Rail was that DEFCON0 was discounted as it was not felt to address the problem in a timely manner. A more detailed explanation included a reference to Network Rail's (presumably Anglia Route's) workbank having expanded dramatically and the non-linear nature of deterioration of the timbers. Network Rail accepted that it was not in a comfortable position, but emphasised that the work needed to be done. In this section of the discussion a view expressed by Network Rail was that Claimants had not raised 'a total objection' to the DEFCON4 solution.
32. The question of the TSRs in place was then discussed, with agreement that none was currently lower than 20 mph. At a later stage it was confirmed that if necessary a reduction to 5 mph could be applied to reduce the effect exerted on the timbers by trains, but that this would still be a risk.



33. The possibility of Network Rail over-interpreting the restrictions imposed by Natural England was then raised. Network Rail commented that a larger footprint and accelerated access was required because of the scale of the problem.
34. Network Rail was asked whether there was any option between DEFCON0 and DEFCON4 that would meet its requirements this year. The effective answer was no, but it was pointed out that in accessing Red or Orange timbers it might be possible to deal with Yellow timbers at the same time. Allowances had necessarily been made in view of the degree of uncertainties that existed.
35. The next issue discussed was the likely need for further work in future years. Clearly the more timbers that could be dealt with now would reduce future work, noting that steelwork already planned for 2021 had now been postponed to 2022. The length of the possessions and the work to be achieved, including mobilisation and demobilisation times was explored. Within this section both Claimants confirmed that if further disruptive work was required next year they regarded this as a price worth paying. Option DEFCON 2 was discussed briefly, noting that it would require a 14 day blockade with no single line working. It was then discounted by all Parties.
36. The questioning then turned to train planning, with the Panel seeking to understand how this influenced Network Rail's application of the Decision Criteria; Network Rail was asked to explain its assumptions about the amount of freight traffic which could be diverted. The answer included the statement that this was the process which Network Rail was 'currently walking through at the moment'. Network Rail offered to provide further information after the next break, although in the event this was not provided (but nor was Network Rail pressed to do so). Network Rail observed that it preferred planned to unplanned disruption, but that if planned access could not go ahead then an alternative could be an unplanned closure of the line.
37. In questions between the Parties the need for Network Rail to obtain consent from Natural England, and any applicable restrictions, was explored further. The answers were not entirely specific and it remained unclear as to exactly what restrictions apply and under what circumstances a derogation might be obtained. It was clear from recent experience that a catastrophic failure made a derogation easier to obtain, but Network Rail did understand that the proposed works did require consent.
38. The matrix of work required provided in April 2020 had not been updated, although there had been a recent inspection, it was thought two weeks ago, which confirmed that the timbers needed replacing within the originally estimated timings.
39. The possibility of obtaining more evidence of the current state of the timbers was raised, but I observed that this would not be available in time to assist the Panel, which had to make its decision that day.
40. Network Rail observed that although passenger numbers were low, capacity requirements remained high because of the need for social distancing. This led to a discussion about the potential effect on passenger operators of any flexing or other adjustments at this stage.
41. Network Rail did not wish to address questions to any of the Claimants.

42. None of the Interested Parties wished to raise any questions. In a statement CrossCountry emphasised its wish to improve the dire performance of this Service Group. Abellio East Midlands supported CrossCountry, also explaining the steps that it had taken to operate during the period of the Restrictions of Use and emphasising the value of carrying out work of this kind while passenger numbers were low. Abellio East Midlands therefore supported the Decision as it stood. In response to a question from me the difficulties faced by the passenger operators were explained, although it was accepted that they would cope.
43. Network Rail was asked if there was any option (other than DEFCON4) that it would prefer to offer than to have the Panel potentially substituting an alternative Decision. Network Rail did feel able to propose any alternative.
44. Network Rail wished to emphasise the responsibility placed on the Asset Engineer, querying the effect of over-ruling him, given Network Rail's responsibilities for its assets. I made it clear that these duties were understood, but in considering the legal entitlements of the Parties the Asset Engineer could not have a veto. The Panel would of course accord a considerable degree of weight to that engineering opinion, but that was not the only matter which the Panel had to consider.
45. After a break the Parties made their closing statements, which appear at Annex B .

## **G Analysis/Observations and Guidance**

46. In both Directions issued before the hearing, and during the hearing, the Panel gave repeated reminders of our duty to decide these Disputes, '*...on the basis of the legal entitlements of the Dispute Parties and upon no other basis*' (ADRR A5). We thought it necessary to regard the legal duties placed on Network Rail to maintain a safe Network (by, for example, the *Railways Act 1993* and the *Health and Safety at Work, etc Act 1974*) as having the same effect as a legal entitlement.
47. This view was reinforced by the Objective set out at the head of the Decision Criteria (D4.6 of Part D), '*Where Network Rail is required to decide any matter in this Part D its objective shall be to share capacity on the Network for the safe carriage of passengers and goods in the most efficient and economical manner in the overall interest of current and prospective users and providers of railway services*'.
48. By the end of the hearing the Panel was faced with the need to decide between the safety issues in the discharge by Network Rail of its duty to maintain the Network, and the legal entitlements of the Claimants. We were assisted by the authority of the ORR in its Determination of the appeal against the decision in TTP102.
49. The principle behind TTP102 was mentioned by me during the hearing; this authority was specifically drawn to the attention of the Parties in the Directions issued on 10<sup>th</sup> August 2020. While TTP102 was dealing with the then-existing 'Procedure for Altering the Rules of the Route/Rules of the Plan' (now Engineering Access Statement and Timetable Planning Rules) I regard the principles set out by the ORR as still being of general application.
50. The most relevant paragraph of the ORR's Determination is paragraph 25, which says, '*Although the Panel appears to have considered the safety of the line, which is listed as one element in Criterion D6(a) of the Decision Criteria (see paragraph 7 above), it appears*

*to have concentrated on that element exclusively without reference to other pertinent criteria. None of the Decision Criteria has priority over the others. Further, the Panel does not appear to have considered whether Network Rail took due account of EWS and FHH's business concerns. Section 3.1.3, which operates only so as to accelerate the timescales involved in the consultation process, does not remove the requirement for Network Rail to take all these considerations into account'. [As stated above, the Decision Criteria now appear at D4.6; safety now appears in the Objective rather than being an individual Consideration. I do not consider that these differences weaken the principle set out by the ORR].*

51. While not diminishing the authority of TTP102, this Panel was faced with a much less stark situation than that facing the Panel deciding TTP102. In its submissions and at the hearing Network Rail referred to the possibility of the line having to be closed, but that was not an immediate threat and it was accepted that an interim step would be the imposition of a 5 mph TSR (in place of the current TSRs, none of which is less than 20 mph).
52. At the hearing I observed that Network Rail appeared to have 'increased the volume' on safety issues in its opening statement, in comparison with its Sole Reference Documents, but to Network Rail's credit the Panel did not consider that it was over-egging the safety issues. The Panel did recognise that the problem at Manea has been long-standing. It did not feel that it had time to delve into the history of recent work, nor did it necessarily think that it would be constructive to do so, but as no work at all was carried out in 2019 it will recommend that Network Rail reviews this history to decide what lessons may be drawn from it.
53. It was accepted by the Panel that the timbers involved fall into different categories, many of which need replacing with various degrees of urgency (defined as Red, Orange and Yellow in the submissions). GBRf's Sole Reference Document submitted that only 37 timbers were defined as Red, so requiring replacement within 6 months, which amount to only 3.5% of the number of timbers across the four structures. This calculation was not challenged by Network Rail. However, the Panel noted that Network Rail's assessment dated from April 2020, that new standards had been introduced and new instruments achieved a better knowledge of the state of the timbers; and that deterioration was difficult to estimate in advance. The Panel also accepted that the passage of time will lead to Yellow timbers becoming Orange and Orange timbers becoming Red, although not in a way that lends itself to easy calculation.
54. Digressing: the Panel was not impressed by the length of time that appears to have elapsed between this information being available to Network Rail and any real steps being taken towards rectifying these problems.
55. The Panel also noted that in contrast to the uncertainties which it was accepted existed, Network Rail was relying on a precise date of 31<sup>st</sup> March 2021 by which the Orange timbers would be life-expired, claiming that restrictions imposed by Natural England would prevent Network Rail from achieving this date for the replacements of these timbers if its Decision not upheld. In contrast, Network Rail's document entitled 'Manea' Wheel Timber Renewal Campaign' document, dated May 2020, defines Orange timbers as being required to be renewed 'within 1 year' by 'Summer 2020', apparently contradicting the date of 31<sup>st</sup> March 2021.
56. The Panel was not convinced by Network Rail's reliance on the degree of restriction placed on its activities by Natural England. In the pre-hearing Directions it was pointed out that

Network Rail is a Statutory Undertaker, so that in the discharge of its duties it is placed under fewer restrictions than other organisations. At the hearing it was explained that in earlier emergencies Natural England has granted derogations to permit urgent work to be carried out. The Panel recommends that Network Rail should review the exact scope of its duties under the *Wildlife and Countryside Act 1981* with a view to understanding whether it is entitled to access to the Manea Bridges for longer than it currently thinks is permitted.

57. Summarising at this point: while the Panel accepted the need to replace timbers on the Manea Bridges, it was not persuaded by Network Rail's calculations of exactly what needed to be replaced by when, on which Network Rail relied in its Decision to impose the Restrictions of Use challenged in these Disputes. It formed the view that - for understandable reasons - a number of engineering uncertainties still exist. The Panel recognised that these uncertainties could work either way, to speed or slow work, but concluded that total reliance could not be placed on the details claimed by Network Rail in justifying its stance.
58. The Panel noted that the Interested Parties who spoke were already planning to provide alternatives to their usual services during the Restrictions of Use and generally supported the Restrictions of Use as planned. The Panel took account of these views, but even allowing for the fact that none of the Interested Parties had chosen to join as Dispute Parties, it did not seem (from the limited information available to the Panel) that the legal entitlements of the Interested Parties would be compromised significantly; certainly not to compare with the position of the Claimants as assessed by the Panel by the end of the hearing.
59. Turning to the Claimants: the position at the date of the hearing was that only 23 days before the first blockade no more than one-third (at the most) of the Claimants' scheduled services due to run between Peterborough and Ely had been accommodated, either by using a diversionary route or through the single line working at Manea. Network Rail was challenged on its confidence that these problems could be solved in time; it was confident that solutions would be found, but against the background of the discussions between the Parties before and after the Decision, and the position even on the day of the hearing, the Panel was unable to share that confidence.
60. The Claimants pointed out that, as Network Rail knew, the Restrictions of Use were to be imposed during the busiest time of the year for container traffic. The Panel sought to understand the practicability of procuring road transport to replace trains that were unable to run. It accepted the difficulties of doing so at short notice, Covid-19 notwithstanding. Further, at this stage the Claimants still had no idea of what road movements would be required and when, so making it even more difficult (if not practically impossible) to procure road transport. As another point, the Panel noted that during the Restrictions of Use planned work by Highways England would close parts of the A14, the key trunk route duplicating this rail route to Felixstowe, on most nights, thus making road substitution even more difficult.
61. The Claimants submitted that they would suffer substantial revenue losses and incur considerably increased costs if Network Rail's Decision was upheld. Figures were submitted for consideration, but it was accepted that the uncertainties over potential solutions meant that these could be no more than best guesses. The Panel did accept that substantial losses and increased costs would be incurred if the Restrictions of Use went ahead.

62. All this led to the balance to be struck being refined into relatively simple terms: on Network Rail's side there is a need to replace timbers, some of which must be replaced urgently, others can be done so over a longer period which would allow the D3.4 process to be followed in the normal timescale. To deny Network Rail its planned Restrictions of Use would clearly create a risk, the question being what degree of risk?
63. On the other hand, to uphold Network Rail's Decision would, in the Panel's judgment, place the Claimants in a position in which their legal entitlements simply could not be satisfied. At worst the Claimants risked having to tell commercial customers at very short notice that freight which the Claimants had contracted to move could not be moved by rail, with the real possibility of the Claimants having to tell their customers that nor could it be moved by road at this notice.
64. As well as commercial customers of the Claimants being affected, this would also have an effect on such a tightly run port as Felixstowe. During the hearing GBRf read out an email received from Hutcheson Ports, saying that Network Rail had only very recently alerted the port to the likelihood of any disruption to freight services in the near future. It was agreed that shipping schedules are planned well in advance and were not capable of adjustment at very short notice.
65. This was the first Dispute in which I can remember Network Rail providing its application of the Decision Criteria to Access Beneficiaries when issuing a Decision imposing Restrictions of Use. Hardly surprisingly, Network Rail's application of the Decision Criteria was claimed to justify Network Rail's Decision. Equally unsurprisingly, the Claimants set out in their Sole Reference Documents their objections to Network Rail's interpretation and advanced their own arguments.
66. During the hearing I thought it appropriate to explain which of the Considerations the Panel thought relevant. These were:
- (a) maintaining.....the capability of the Network;
  - (b) that the spread of services reflects demand;
  - (c) maintaining.....train service performance;
  - (d) that journey times are as short as reasonably possible;
  - (e) maintaining.....an integrated system of transport for.....goods;
  - (f) the commercial interests of Network Rail.....or any Timetable Participant of which Network Rail is aware;
  - (i) mitigating the effect on the environment;
  - (j) enabling operators of trains to utilise their assets efficiently.
67. None of the Parties thought it necessary to deal any further with the Considerations at the hearing, although I gave Network Rail the opportunity to question the Claimants on the issue of lost revenue and increased costs (the commercial interests). The Panel's view is that such lost revenue and increased costs are obviously within the Claimant's commercial interests, but that the reputation of the railway as a reliable way of transporting passengers and goods is also a commercial interest. The Panel felt that the risk of letting the Claimants' customers down at very short notice must also be regarded as a commercial interest of the Claimants, and of the railway industry as a whole.
68. In its Sole Reference Documents Network Rail repeatedly asserted that a capacity study was not required before it reached its Decision. At 4.2.1 of its Sole Reference document in response to GBRf, for example, it said, '....that the *[sic]* capacity work is not a requirement

*under the Network Code*'. We did not have time at the hearing to explore the fact that Network Rail agreed with GBRf that it would provide a Capacity Study, regardless of Network Rail's own understanding of its duties.

69. The Panel notes that the National Timetable Planning Rules (TPRs) are defined in Part D as, '*...a document.....necessary to enable trains to be included in the New Working Timetable.....*'. The Panel interprets this as incorporating the National TPRs into the Network Code, but even if the Panel is wrong in reaching this conclusion there can be no doubt that Network Rail is bound by the National TPRs.
70. Section 6.1.1 of the National TPRs, '*...describes the introduction of the Access Impact process to be followed to enable agreement between Network Rail and Timetable Participants for delivering Capacity Study requests relating to the Engineering Access Statement*'. This section of the National TPRs is set out in full in Annex C . Network Rail's Decision clearly falls into one of the higher levels of severity, requiring a Capacity Study. The National TPRs specifically refer to this section as being developed in response to the Determination in TTP773, another authority drawn to the attention of the Parties in pre-hearing Directions
71. Condition D3.5 makes it clear that Network Rail is required to comply with the provisions of D3.4 (other than those specifically excluded) as far as practicable. It is clear that no Capacity Study was prepared, which is hardly surprising given Network Rail's repeated denials that it was under any duty to do so.
72. The Panel therefore found it difficult to understand how Network Rail could have considered its application of the Decision Criteria to have been fully informed without the required Capacity Study having been completed.
73. The Panel then turned to the Decision Criteria, as it thought it necessary to apply its own judgment to the Considerations in case it was to substitute an alternative Decision pursuant to D5.3.1(c). The Panel concluded that Item (a) fell in Network Rail's favour, Item (i) was neutral, the increase in emissions resulting from diversions or slow running through Manea possibly being countered by reducing the impact on the environment at Manea itself; all the remaining items fell in favour of the Claimants, Item (f) especially heavily. It was this Consideration to which the ORR drew particular attention in TTP102. The Panel therefore found that Network Rail's application of the Decision Criteria was seriously flawed and could not be accepted.
74. At the start of the hearing I drew attention to the range of decisions which the Panel was entitled to reach. Clearly if the Panel were to uphold Network Rail's Decision then the matter would be at an end. If, alternatively, we felt unable to uphold Network Rail's Decision then I had made it clear that the Panel would not be considering Freightliner's request simply to quash Network Rail's decision but do no more, as this would simply be unrealistic in the circumstances. However, I did not think that there was sufficient time left before the first blockade for us to be able to give a D5.3.1(a) direction to Network Rail specifying the result to be achieved but not the means by which it should be achieved. Therefore, if we did not uphold Network Rail's Decision, we would effectively have no option but to substitute an alternative Decision, so long as we were satisfied that exceptional circumstances had arisen. None of Parties dissented from this analysis.
75. This is the first Dispute in my experience in which any Party has submitted in its Sole Reference Document that exceptional circumstances have arisen. GBRf and Network Rail

both did so, albeit for different reasons. In the pre-hearing Directions I sought confirmation of Freightliner's position; in response it confirmed that it was also submitting that exceptional circumstances had arisen. (Freightliner also confirmed before the hearing that it supported GBRf's request for the DEFCON0 proposal to be adopted). The view of each Party appears within the documents on the Committee's website. In summary, the Claimants' submissions were based on the scale of the Restrictions of Use and the short degree of notice.

76. This point was raised during the hearing. None of the Panel could recollect any similar case in the period of 10 years since the current Panel structure was established. The possession in the Kilsby Tunnel earlier this year was mooted before the hearing as a possible comparator, but I explained why I did not think that was the case. An imaginative move by Network Rail enabled work to be carried out in the Kilsby Tunnel while services were dramatically reduced because of the Covid19 restrictions. Train Operating Companies were by then under Emergency Measures Agreements, so presumably not unduly concerned by any revenue consequences. In any event, my understanding is that the timetable had been so severely thinned by then that planned diversions via Northampton did not cause undue problems.
77. Our understanding of the likely effect of the Restrictions of Use on the Claimants has been explained above. This left us with our conclusion that there had been no similar Restrictions of Use with such an effect on operators being imposed at such short notice which the Panel could recall. No other comparator was put forward by any Party.
78. We are only aware of formal comments being made by the ORR on the subject of exceptional circumstances in the appeals against the Determinations of TTP985 and TTP1520. The ORR has declined to define exceptional circumstances (which avoids the risk of any case arising which a Panel concludes should amount to exceptional circumstances, but which does not fall into such a definition).
79. In TTP985 the ORR said, '*ORR considers that what may constitute exceptional circumstances will turn on the facts of a particular case. It is for the TTP (or, as the case may be, ORR) to determine whether such exceptional circumstances exist.*' While in TTP985 (which I chaired) the ORR upheld the TTP's Determination, even though the TTP had not explained why it regarded exceptional circumstances as having arisen (relying instead on Network Rail's request for the TTP to reach a decision if deciding not to uphold Network Rail's Decision in that case), it is clear that any Panel concluding that exceptional circumstances have arisen must explain why it reached that conclusion.
80. We did not consider that the ORR's further comments on exceptional circumstances in TTP1520 took us any further in this hearing.
81. In this case the Panel had no hesitation in concluding that exceptional circumstances had arisen. It does not accept Network Rail's reasons for saying so. Instead the Panel accepts the arguments of the Claimants, that the scale of the Restrictions of Use, imposed at such short notice, will have such a significant effect on the operations and businesses of both Claimants as to amount to exceptional circumstances. Therefore the Panel concluded that it was entitled to substitute an alternative Decision in place of Network Rail's Decision.
82. In reality there was only one alternative open to the Panel. In its Sole Reference Documents GBRf requested that the DEFCON0 access proposal should be adopted by Network Rail instead of the DEFCON4 proposal on which Network Rail's Decision was

based. In response to a question from me, in an e-mail timed at 1503 on 7<sup>th</sup> August 2020 Freightliner confirmed that it supported GBRf's proposal. The only other option discussed at the hearing was DEFCON2, but all parties agreed that this was no longer a practicable option. Although asked if it wished to suggest any other alternative during the hearing, Network Rail felt that it had none to offer.

83. The Panel accepted that DEFCON0 was not a perfect solution, especially so shortly before the planned date of the first blockade, but it concluded that it was the only practical alternative Decision that could be substituted for Network Rail's Decision, given its conclusion that it could not uphold Network Rail's Decision. While Network Rail submitted at the hearing that DEFCON0 would not succeed in removing all the timbers that needed to be replaced this year, in its Sole Reference Document replying to GBRf said no more than, *'...progressing with the RoU as planned is more beneficial than amending the delivery strategy to DEFCON0....This is due to the immediate risk to the operational railway that would be imported, especially given the environmental constraints in this area'*.
84. The Panel recognised that DEFCON0 included detailed proposals for the work on the Manea Bridges which may no longer be appropriate. It is for that reason that its Decision was that Network Rail should adopt the DEFCON0 possessions strategy, while giving Network Rail discretion as to what work should be carried out in what order. In the interests of permitting Network Rail to have the greatest possible degree of discretion in organising the work the Panel's Decision also gives liberty to Network Rail to amend any of the DEFCON0 possessions, so long as it obtains consent from all Operators who would be affected, directly or indirectly (see Guidance 87.4).
85. The Panel's alternative Decision appears from paragraph 95 below.
86. The Claimants requested various other orders in their Sole Reference Documents. Some of these were discussed in the pre-hearing Directions, but the Panel declined to adopt any of the other remedies sought by the Claimants, not least because in the time available and the limitations imposed by a video conference hearing it wished to concentrate on the key issues requiring resolution. Some of the orders requested have been included in the guidance within this Determination.
87. The Guidance given by the Panel is as follows:
  - 87.1. That Network Rail should review the history of work carried out at Manea, in particular the fact that no work was carried out in 2019, to establish what lessons can be learned from this experience.
  - 87.2. That Network Rail should review its understanding of its legal duties under the *Wildlife and Countryside Act 1981* to be sure that it is not inadvertently restricting access to Manea.
  - 87.3. That a Capacity Study is formally required in circumstances such as this, to enable Access Beneficiaries being asked to agree to Restrictions of Use to understand which of their scheduled services can be accommodated on the Network, whether by diversion or single line working, to enable them to respond appropriately before Network Rail reaches any Decision on Restrictions of Use.
  - 87.4. That Network Rail should note that proper consultation under D3.4.8 should necessarily also include train operators who could be indirectly affected by



significant train diversions, in order to give it more options in providing alternative capacity where it might reasonably be necessary (as provided for in D3.4.12).

- 87.5. That Network Rail should be reminded of the need to understand the commercial interests of its customers, which appears not to have been the case here. The ORR's Determination of TTP102 is a useful tool for possession planners. Within possession planning Network Rail is reminded of the need to follow the provisions of the National Timetable Planning Rules, especially 6.1.1.
88. I include here the remarks made when announcing the Panel's Determination. I explained that we were not underestimating difficulties involved in any of this, and that included the Panel. The Panel had chosen not to go into the history because this did not seem productive. In considering legal entitlements we were including the safety requirements placed on Network Rail, and Network Rail is required to run a safe railway which my own experience brought home to me. We all recognised the change in standards that had taken place recently, but recognised there were engineering uncertainties and those could go either way. If the line was to be closed on an unplanned basis it would give Network Rail easier access to Natural England, in any event.
89. Turning to the Claimants, the first blockade was due to start in 23 days time and, without wishing to exaggerate, the Panel concluded that there is a real risk of the Claimants being unable to move contracted freight by rail. There remains considerable uncertainty as to what can be offered, so if we were to find for Network Rail then the Panel would be saying to the Claimants that their legal entitlements would be unmet and we are unable to offer any remedy.
90. I concluded exceptional circumstances had arisen and adopted the circumstances set out by the Claimants, not Network Rail; I confirmed I could have chosen to adopt both, but was not doing so.
91. The only other option open was DEFCON0, so I advised that the Panel saw little option but to go that way. Expanding, I noted that, in making a D5.3.1(c) Decision the Panel was saying it is the DEFCON0 possessions strategy that is to be adopted, the Panel was not saying that it's this timber that must be replaced, or that timber, anything else. The Panel was saying that possession strategy is to be adopted and we recognised that it will produce a huge amount of work for engineering, train planning and for the passenger operators communications for the public. I noted that we assumed that we were leaving scope within that for Network Rail to achieve the engineering priorities open to it, specifically giving leave to Network Rail to adjust that possessions strategy if it achieves consent from all affected parties.
92. I offered Network Rail a written copy of the alternative Decision in advance of the final Determination, which Network Rail accepted. This was copied to all involved on 14<sup>th</sup> August 2020.

## H Determination

93. Having carefully considered the submissions and evidence and based on my analysis of the legal and contractual issues, my determination is as follows.
94. **The Panel's decision** is that in place of Network Rail's decision to adopt DEFCON4 (referring to the Parties' Sole Reference Documents) it should instead adopt the DEFCON0 possessions strategy.
95. This entitles Network Rail to take the possessions set out in DEFCON0, but gives no direction to Network Rail as to the details of what work is to be achieved and in what order. It is for Network Rail to identify its priorities to replace as many timbers as possible within the time made available within the DEFCON0 possessions.
96. Without amounting to a direction, the Panel anticipates that Network Rail will wish to explore with Natural England what extensions may be achieved beyond the current limitations imposed by Natural England.
97. Network Rail has liberty to alter any of the DEFCON0 possessions if it obtains consent from all Access Beneficiaries which would be affected, noting Guidance point 87.4.
98. The Panel notes that the Claimants supported the adoption of DEFCON0 and accept that further Restrictions of Use in 2021 (and possibly beyond) will be required as a result of this Decision.
99. No application was made for costs.
100. I confirm that so far as I am aware, this determination and the process by which it has been reached are compliant in form and content with the requirements of the Access Dispute Resolution Rules.



Clive Fletcher-Wood  
Hearing Chair  
24 August 2020

## Annexes

### Annex A - Opening Statements of the Parties

#### Opening Statement of GBRf

TTP1706, Opening Statement. GB Railfreight is confident that the Restriction of Use for attending to Manea Bridges has only been proposed at such short notice because Network Rail has clearly mis-managed its engineering access requirements for 2020.

If Network Rail had been aware of the longitudinal-timber issues at Manea Bridges for so long, as it refers to in its Sole Reference Documents, why did it not properly plan these works throughout 2019, for execution during Summer 2020? By adhering to the established Network Code Part D timescales, discussions on detailed and complex train plan alterations for this exceptional block would have been discussed in good time, rather than the truncated timescales that have now transpired. The lack of such a proposal in the Engineering Access Statement for 2020 year is a failure by Network Rail to adequately manage its maintenance and renewal requirements.

Moreover, and critical to the argument regarding alternative opportunities in which the work could have been carried out, Network Rail did not submit any formal proposals for a similar blockade at Manea Bridges within the Engineering Access Statements in either 2018 or 2019.

GB Railfreight believes this ill-advised decision, to impose a blockade at Manea, has been brought about by Network Rail's mismanagement of its access requirements and that GB Railfreight's business should not be exposed to such potential loss of revenue as a result. An alternative strategy must be adopted.

On 21st May 2020, Network Rail's Freight and National Passengers Operating team led a meeting with Freight Operating Companies regarding possession options for Manea, with five potential strategies presented but without detailed requirements in terms of dates and times of the block. GB Railfreight made its view known that it did not support the 14-day, 28-day or 42-day blockade options, and that a series of weekend possessions was the "least worst" option for its business.

Despite this, Network Rail persevered with its preferred option, 'DEFCON4', a 28-day blockade. Weekly phone calls were then set up by Network Rail, aiming to develop a train plan to accommodate the 28-day blockade proposal. In addition, dialogue continued at the regular, thrice-weekly Freight Operator Resilience calls, focussing on what the key actions that would need to be completed in order for freight operators to support what would be an extremely late-notice and very disruptive set of possessions. In these series of meetings both Network Rail and freight operators agreed that the following would be required:

Timetabling work to understand the level of service that could be accommodated through the proposed Single Line Working between Ely and Manea. An early understanding of the number of diverted freight services that could be accommodated via the Great Eastern Main Line, North London, West Coast and East Coast Main Lines and, critically, which other services along these routes might need to be altered or cancelled to accommodate them.

c) Taking the above two points into account, earliest possible sight of end-to-end timings of freight services proposed to be re-timed or diverted to allow operators to have a clear picture of its services and accurately assess the impact to its business.

When issuing its decision to take the 28-day blockade, Network Rail provided supporting details of its Decision Criteria only for its favoured option. Within this, Network Rail describes the undesirable outcomes that it feels may occur, should the 28-day blockade not take place. However, those very same outcomes, as described, are exactly those that will affect GB Railfreight should the blockade go ahead – i.e. the blockade “will affect a national artery for freight traffic....” and “....will be material to Network Rail’s commercial contracts”.

Capacity and timetabling work. Despite the numerous discussions that have taken place in relation to a revised train plan, Network Rail states, several times, in its Sole Reference Document that capacity work is not a requirement under the Network Code. It fails, however, to state that carrying out some capacity workings are mandated as part of the National Timetable Planning Rules, Section 7. Section 7 of the National Timetable Rules contains an Access Impact Matrix and describes the process to be followed in delivering capacity studies relating to the Engineering Access Statement.

This process has clearly not been followed and that lack of process should not give Network Rail the authority to proceed regardless. This requirement is corroborated in some detail by the determination of TTP773.

Coupled with this, and in response to Network Rail’s SRD Paragraphs 4.2.9 and 4.2.10, GB Railfreight is clear that the requirement for supporting timetabling work was agreed between GB Railfreight and Network Rail long before the quoted 12th June 2020 date.

The impact to GB Railfreight, at the time of writing this statement (17:00 on the 12th August), is that 302 of its Intermodal, industrial mineral, aggregate and Network Rail “network” services do not have identified timetable capacity to viably operate over this four-week period. That situation is no better off than when GB Railfreight submitted its Sole Reference Document. Although regular dialogue suggests that Network Rail has made progress on a small proportion of these, their ability to operate remains far from certain. GB Railfreight notes that Network Rail has deemed its own SCO possession services of sufficient importance to partially lift the possession to allow them to pass through; something that has not been considered when attempting to accommodate freight operators’ commercial flows.

Exceptional Circumstances. In its Sole Reference Document, Paragraph 6.1(a), GB Railfreight stated that it considers that exceptional circumstances have arisen with this timetabling dispute; a position that it maintains. Network Rail, in its Sole Reference Document, has also stated that exceptional circumstances do apply, albeit for a different reason. Legal definitions of “exceptional circumstances” are not entirely clear however it is generally accepted to mean unusual events, unexpected events, and events only likely to happen very infrequently.

The act of even enacting a 28-day blockade (albeit with some limited access) over one of the main trunk freight routes that includes the UK’s busiest port traffic, is unusual, definitely unexpected and not a frequent occurrence. There are 120 freight trains per day (that’s a combined number for both directions, for all freight companies) scheduled across the affected blockade area.

Were the currently proposed DEFCON4 access proposal be permitted to take place, GB Railfreight would be exposed to potential revenue losses of between £3.5m and £4.0m for the month of September, with merely eight weeks’ notice from the point at which a formal access proposal was first issued. GB Railfreight believes there is no mechanism to recover the vast majority of the lost revenue and additional cost that it would incur as a result.

Given that both parties have stated that they consider exceptional circumstances to have occurred in this case, GB Railfreight believes that the Panel is able to determine “exceptional circumstances”

and therefore has it in its power to substitute an alternative decision in place of a challenged decision of Network Rail, as per Network Code Condition 5.3.1(c).

DEFCON0 option. GB Railfreight submits that Network Rail should be seeking access only to replace the 35 timbers highlighted as 'red' and most in need of replacement. Its 'DEFCON0' options enables it to do so. Within its Appendix C2, Network Rail states that it can replace two pairs (four timbers) within a 52 hour possession. On this basis, Network Rail requires nine weekends to replace the 35 timbers most in need of replacement. Network Rail already has resources planned to carry out works at Manea in six of the weekends between now and October and three further weekends remain that could be utilised before the end of October that could be utilised whilst satisfying the current conditions of Natural England.

GB Railfreight notes that the option chosen, 'DEFCON4' proposes to address not just the 'red' timbers but also all 'orange and 'yellow' timbers, some of which do not require replacement until 2022. It is unreasonable for Network Rail to impose such severe disruption on its Customers for works that do not require such urgency. GB Railfreight submits that Network Rail should be seeking access to replace those timbers in 2021 within the timescales set out within D3.4 of the Network Code.

GB Railfreight would ask that Network Rail demonstrates that it has done everything in its power to obtain a greater window of access to Manea outside of the current window of July to October, which would give it greater opportunity to address the timbers identified as 'orange' and in need of replacement by March 2021. It is noted that Network Rail has previously been granted a concession by Natural England to access the site during the Christmas and New Year period. GB Railfreight also notes that Network Rail has built its 2021 access plan to include a series of possessions for Manea bridge strengthening in May and June. Given that Network Rail has already indicated that it considers the current circumstance to be exceptional, GB Railfreight asserts that Network Rail should be approaching Natural England for a concession to enable greater flexibility to access the structures at Manea in 2021. Having failed to do so, Network Rail appears to be artificially and unnecessarily restricting its own ability to access the Manea bridges structures.

GB Railfreight notes that within Appendix C2, Network Rail has not stated safety critical line closures nor catastrophic failure as a potential consequence of adopting its 'DEFCON0' strategy. Indeed, within the same document, Network Rail states that "the works could be approached in this manner" but that it "would be highly disruptive in the first instance over a prolonged period of time". GB Railfreight accepts that disruption over a long period of time is undesirable. However, the disruption and long-standing adverse impact that the four-week blockade would bring to its business is far too great.

GB Railfreight acknowledges that the request to the Panel to substitute 'DEFCON0' in place of 'DEFCON4' may result in the need for extended or additional temporary speed restrictions.

Again, this is likely to be undesirable to many parties but GB Railfreight would urge the Panel to differentiate between safety critical issues and performance issues. GB Railfreight notes that no detail has been provided by Network Rail as to the effect that continued or increased speed restrictions would have on the life expectancy of the timbers within the Manea structures. Given the circumstances, it would expect Network Rail to be considering this as an option. Whilst far from ideal, GB Railfreight asserts that further weekend possessions, with continued or enhanced speed restrictions if required, would be considerably less disruptive to its business than the proposed four-week blockade. GB Railfreight does not consider potential performance issues to warrant such a drastic course of action as Network Rail intends to follow with its DEFCON4 strategy, especially given the last notice of the decision.

Over the last five months, the Covid pandemic has had an enormous detrimental impact on GB Railfreight's business, especially the deep-sea intermodal market. This proposed blockade would deprive GB Railfreight of a key revenue stream, causing huge disruption to our customers and damage the long-term prospects of the railfreight industry as a whole.

Alongside this, the impact of the associated revenue losses will significantly distress GB Railfreight's business. Due to the Covid pandemic, GB Railfreight is already in the process of reviewing its business accordingly, with potential redundancies a regrettable possibility. The revenue put at risk by this proposed blockade may well influence these tough decisions.

Network Rail's casual suggestion that GB Railfreight would be able to simply redeploy its assets rendered inactive by the proposed blockade serves to highlight Network Rail's lack of understanding of its customer's business. The statement gives no consideration to the complexities involved in the compilation of a detailed plan to remove and return the assets for a four-week period of presumed additional, short-term demand elsewhere, whilst also attempting to adapt the train plan to accommodate an unprecedented late notice possession.

Network Rail demonstrates its commercial and operational naivety further by suggesting that GB Railfreight should have undertaken an extensive package of route learning, at its own expense, in anticipation of a decision to impose a 28-day blockade outside of the published possession plan.

Should the blockade go ahead it would be remiss to assume that the demand for haulage will simply pause for four weeks. Significant provision of road haulage would be required, another complex issue that has yet to be considered. There is a well-known shortage of heavy goods vehicle drivers in the UK and sufficient provision to accommodate such a sudden uplift in demand cannot be assumed. With extended journey times brought about by a modal shift to road, many export containers would miss sailings and many import containers would not arrive in time for onwards dispatch.

To exacerbate the situation, the A14 road, the major trunk road between Felixstowe and Ipswich, is planned to be closed in various stages between the hours of 20:00 and 04:00, every weeknight for the duration of the proposed Manea blockade. Consequently, even if sufficient provision of road haulage could be procured at late notice, the highways network is unlikely to be able to accommodate additional demand. At a time when the rail freight industry should be showcasing its benefits to the UK economy as a viable, reliable alternative to road haulage, any momentum that could be gained will be eliminated due to Network Rail.

The rail freight industry was afforded the recognition it deserved during the Covid lockdown for continuing to keep the UK supply chain through its intermodal services during exceptional circumstances. It is a distinct possibility that a second lockdown period may be required in the UK. With road closures already planned, Network Rail would place the entire UK supply chain at risk with its proposed blockade at Manea should a scenario arise.

GB Railfreight asserts that Network Rail has evaluated the effects of its ill-advised decision in an extremely narrow-minded manner. It focuses only upon the effects that it has on its industry alone, with no thought given to the wider impacts across a multitude of industries. If Network Rail better understood its customer's businesses and the impacts that heedless decisions, such as the Manea blockade, could have, then GB Railfreight is confident that Network Rail would realise that the risk of taking an elongated possession of such a critical route carries too greater risk to be implemented and a less disruptive strategy must be adopted in this instance.

There is a viable alternative; 'DEFCON0' is not an option imagined by GB Railfreight, it is a potential strategy that was put forward by Network Rail in its first presentation to operators back in May. GB Railfreight urges the Panel to utilise the powers afforded to it in Network Code Condition 5.3.1(c), brought about by the exceptional circumstance in this case, to direct Network Rail to implement its 'DEFCON0' strategy in place of its 'DEFCON4' strategy.

### Opening Statement of Freightliner

Good morning. Freightliner Limited and Freightliner Heavy Haul Limited (together Freightliner) thanks the Committee for agreeing to hold a hearing in respect of the dispute reference TTP1708. Freightliner lodged the dispute in relation to the Decisions made by Network Rail regarding a package of Restrictions of Use between Ely North Junction and Peterborough in Weeks 23-27 of 2020. Together these Restrictions of Use are referred to as the proposed Manea possessions.

Network Rail formally approached Freightliner's planning team to discuss access arrangements between Ely North Junction and Peterborough in June 2020, with the initial meeting held on the 11th June. While Freightliner understood the rationale for the renewals, at all stages Freightliner made clear that its ability to support the specific access proposed was contingent on being able to operate its critical services and therefore a Capacity Study would be required to understand the impact that the proposed possessions would have on its services. To support this, Freightliner provided a list of trains to Network Rail on the 12th of June. This list contained:

- 1) Those trains which have alternative paths via London already in the timetable that can be used,
- 2) Those trains which will not run during the planned possessions and
- 3) Those trains which will run and only have a path through the possession and therefore require accommodating via the Single Line Working or on a diversionary route.

It is those trains that fall within category 3 above that Freightliner entered discussions with NR in an attempt to ensure that they can be accommodated in the amended timetables. This is a key route for Freightliner, linking the largest container port at Felixstowe with inland terminals across Great Britain. Freightliner has made clear throughout, that our key services must be accommodated to be able to support the proposed possessions, be that through the SLW or with an acceptable diversionary path. Against those discussions NR agreed to undertake a Capacity Study. The importance of understanding the impact on capacity is consistent with Section 7.2 of National Train Planning Rules. In the absence of a completed end-to-end Capacity Study and with no assurance on pathing – including capacity for services to divert via London – Freightliner declined NR's formal request for access on the 6th of July. It is Freightliner's opinion that with Late Notice access requests, agreement for such access has to be linked to the ability to produce an amended timetable, due to the reduced timescales. Nonetheless Network Rail issued a Decision Notice for the RoU on the 15th of July, which included an accompanying document outlining how they had applied the Decision Criteria.

Decision Criteria. Absence of a full Capacity Study: Freightliner cannot understand how the application of the Decision Criteria could be applied absent of a completed Capacity Study, crucially the diverted capacity and end-to-end capacity, and therefore without knowing the full impact of the Restriction of Use on Freightliner's services. The application of the Decision Criteria could only consider the impact on Network Rail's priorities and not Freightliner's. Freightliner believes that with the benefit of a Capacity Study and with the full impact on services known, the application of the Decision Criteria should have led to a different outcome, with a different access strategy being adopted.

Failure to understand impact on Freightliner: The Decision Criteria appears to have been applied absent of a proper understanding of the nature of Freightliner's operations. For instance, the criteria of "Enabling operators of trains to use their assets efficiently" is rated as High for Network Rail – i.e. Take the access. The Network Rail SRD appears to suggest that Freightliner can simply utilise its assets, both in terms of rolling stock and its staff, in other parts of the country and use them for different traffic. This does not reflect the reality of Freightliner's operations, where Freightliner has customer contracts to fulfil based on specific origin and destinations, is limited by paths on the Network and constraints on resources, such as driver route knowledge. It also fails to recognise that freight operators are part of a wider and global logistics chain and that shipping lines are not going to change their global calling patterns and move vessels from one port to another to accommodate a possession on the UK rail network. The proposed block has a significant impact on Freightliner's services and restricts our ability to use our key assets for an extended period of time at the peak time of year. Freightliner is surprised that this isn't weighted differently.

Different access options. Network Rail has presented different access options to address the issues with the timbers at Manea. These have been detailed in the presentation, included as a Network Rail Appendix B1, with the names DEFCON0 to DEFCON5. Each of those strategies would have a different impact on Freightliner's train plan, with some options being far more disruptive than others. The option selected by Network Rail, DEFCON4, has a very high impact on Freightliner's train plan with a 28-day possession of the line.

There are other access strategies presented by NR that would enable them to undertake the critical work, while reducing the impact on Freightliner's train services. This includes the DEFCON0 that involves a long series of weekend 56-hour possessions. This is a possession strategy that Freightliner could better resource and is a similar access footprint to other possessions that have been delivered. However, DEFCON0 is ruled out by Network Rail on various grounds including the wider impact on Network Rail Anglia's delivery programme. While that is a valid consideration, it should be one of a number of considerations that also balances the relative impact on operators' train plans. This does not appear to have been considered. Freightliner would expect to see an application of the Decision Criteria in relation to all of the access strategies to ensure that the priorities of Network Rail and Operators are both considered together in the review of different access strategies.

Request of the Panel. Freightliner has received details from Network Rail of some paths that can be accommodated during the proposed possessions. This confirmation has come in the form of 'dummy paths' that Freightliner can bid against. Our understanding is that to date we have received dummy paths for 33.7% of the schedules over the proposed possessions. Note that not all of these dummy paths are suitable, for example a path for a container train over a route that is not cleared for container traffic. Also the midweek dummy paths are all in one direction (import direction) and therefore we do not have complete circuits. As such it is not currently possible to verify the suitability of the paths from a resourcing or terminal perspective. Network Rail is aware that Freightliner is unable to bid against these dummy paths until it has sight of the holistic train plan. Freightliner's ability to support the proposed possession has always been subject to accommodating all its critical services in the amended timetables. The failure of NR to accommodate so many of these critical services means that Freightliner must request that the proposed RoU be quashed. Freightliner considers that there are exceptional circumstances in this situation that allow the Panel to direct Network Rail to "substitute an alternative decision in place of a challenged decision" under Condition D5.3.1 (c) of the Network Code. These circumstances, which have been outlined by Freightliner in previous correspondence, relate to:

- 1) the very significant duration of the proposed possessions and the impact on Freightliner's train plan,



2) the timing of the blockade during the Autumn, in one of the key periods for intermodal traffic, when it is usual practice for NR to work with freight operators to avoid proposing possessions that significantly disrupt deep-sea intermodal traffic. For instance, the recent blockades of the Felixstowe branch line and the Redbridge Sidings at the Port of Southampton, were all proposed and taken outside of Autumn, and

3) the very late-notice nature of this proposed possession, which Freightliner believes is acting to exacerbate the impact of the possession on the train plan.

The macro-economic situation is also a very relevant consideration. COVID-19 has had a significant impact on the rail freight sector, with reduced volumes across many commodities. This has created a financial challenge for the sector. Delivering increased volumes in the peak Autumn months is therefore crucial for the recovery of the sector. Confidence of customers in the sector will be impacted should this possession go-ahead as planned.

Freightliner is aware that there are some time sensitive works that need to be undertaken at Manea, but Network Rail has previously outlined alternative access strategies that would enable these critical works to be delivered, while reducing the impact on train services. Consequently, Freightliner would support the Panel directing Network Rail to replace its DEFCON4 access proposal with the alternative DEFCON0 access proposal. This proposal would allow Network Rail to undertake the critical works while reducing the significant impact on Freightliner's train plan.

If the DEFCON0 access proposal was instead used, Freightliner would continue to work with Network Rail and other industry participants to agree a suitable access strategy to complete the remainder of the works at Manea. We would expect this access to be agreed in line with EAS timescales to deliver a robust programme of works to the benefit of both Network Rail and operators.

Previous access requests. In Network Rail's SRD they highlight reluctance by parties to agree an access programme to do this work in previous years. In particular that Network Rail "succumbed to an agreement of no intervention in 2019". Freightliner is not aware of any dispute raised by any party surrounding the access programme at Manea in 2019. If Network Rail required critical access to renew the timbers then we would expect them to have issued a decision notice accordingly.

Furthermore, while Network Rail say that in 2018 they "came under pressure not to undertake any works in 2019" and that this "12 month relaxation served to exacerbate the problem of decay in wood..." it does not explain why they did not propose access in 2019 for 2020 within EAS timescales and why this is now being progressed as a very late notice access proposal. As Freightliner highlighted earlier, it is the fact that such a substantial request for access is being made at such late notice that will serve to have such a significant impact on our business.

### Opening Statement of Network Rail

Chair, Panel industry colleagues, good morning. Network Rail submits to this Panel that this dispute is in relation to the disruptive possession required by Network Rail to the area of Network known as 'Manea Bridges'. A dispute which has been brought by both Freightliner and GBRf respectively.

Network Rail wishes to clarify that the issue at hand today is understood to be the dispute of an Access Decision taken by Network Rail and not a dispute regarding a Timetable Decision, for issues

such as train path allocation or accommodation. Notwithstanding this Network Rail are content that the hearing proceeds as a Timetable Dispute Panel as planned and as earlier indicated to the Chair.

Network Rail notes that neither Freightliner, nor GBRf are alleging that Network Rail has breached any part of the Network Code and it is also acknowledged by both that extensive consultation has occurred as required by Section D9.6. A breakdown of which was attached in the appendices to the SRDs.

It is noted that neither operator is alleging that the Decision Criteria have not been applied, but rather that they disagree with the justification of the decision by Network Rail to take this access by reference to Section D4.6.1 and D4.6.2.

Network Rail submits that it has correctly followed the procedures stipulated within the Network Code and it has provided consideration to all of the requirements under D4.6.2 and applied those that were relevant to reach the decision that has been made.

Network Rail submits that it is important to highlight the overriding objective enshrined within the Network Code is to “share capacity on the Network for the safe carriage of passengers and goods...”.

The Chair started this session by stating that a Restriction of Use of this scale at late notice is unprecedented. We agree with this, as it confirms the seriousness of the situation as we see it. During an inspection of these structures in April, carried out following the initial investigation into the Gospel Oak to Barking derailment discovered that timber degradation was a contributory factor. It was noted that the lifespan of many pairs of timbers in this area had reduced due to a faster than anticipated rate of deterioration detected. This has led to this matter becoming an urgent and safety critical one resulting in the disruptive access that is being disputed today. This inspection regime, new in 2020, was implemented across the whole of the Anglia Route and has been recognised nationally as best practise with all routes and regions of Network Rail now compelled to carry them out on this type of timber structure.

The “Manea bridges” sit along a major route between Ely and Peterborough and is a busy section of the Network for both passenger and freight traffic and Network Rail accepts that a Restriction of Use in this area was never going to have no consequence for its operators.

The bridges also sit on an area of land that is subject to legal restrictions and subject to Natural England consent in relation to environmental and conservation issues.

Additionally, the geography of this area also has particular challenges in relation for access for maintenance purposes. The area is subject to planned flooding each year to levels which exceed Network Rail’s working platform height, rendering access impossible on a practical level on top of the legal restrictions due to the fauna of the area.

The combination of these issues: safety, both in terms of the continued use of the structure and for the maintenance workforce; and the environmental with respect to the Natural England conservation area, are central to the requirement for this access at this time.

Gaining access in this area has been a challenge in the past, with small groups of defective timbers managed with the implementation of speed restrictions followed by targeted works, which were balanced against commercial interests as referenced by both operators in their statements. The scale of the risk on this occasion, simply does not now allow for this response. For clarity, Network Rail acquiesced to the operators’ objections in 2019 because the risk of accelerated deterioration

was not known as an issue at that point. The GOB derailment has changed how Network Rail manages the risks around longitudinal timbers as they approach the end of their life. The deterioration and the condition at this site is now beyond the point that short term commercial interests outweigh the immediate safety of the line risk, coupled with the restrictive access window available to us.

Network Rail submits that during this process it has acted openly and with transparency and has consulted with affected operators throughout. Both Freightliner and GBRf have been actively consulted regarding this possession.

Freightliner has requested that the Panel quash the Network Rail decision regarding this possession. It is submitted that such a decision adds unacceptable level of risk to this area of the network which is already classified as safety critical at this point. Network Rail is not prepared to accept this level of risk.

GBRf has requested that the Panel substitute the NR decision for a previously proposed alternate plan referred to as 'DEFCON0'. It is submitted that Network Rail have explained to the operators why this is not a viable option and this has also been detailed within our response documentation. DEFCON0 would simply not keep pace with the levels of deterioration that has been seen and are predicted.

GBRf have noted that the exceptional circumstances may apply in this scenario and Freightliner have confirmed that they have accepted this, this morning. Network Rail agrees with this position, but for different reasons which again we have set out within our response document for the Panel's consideration.

Network Rail asks that the Panel consider all of the evidence placed in front of them and uphold the decision made by Network Rail to take this possession to allow for remedial works to be undertaken as suggested. This will prevent further degradation of the line, mitigate the immediate safety concerns that are presented, with the least possible amount of disruption to rail users, whilst accounting for environmental factors that have come into play. Thank you Chair.

## **Annex B - Closing Statements of the Parties**

### Closing Statement of GBRf

GB Railfreight maintains its position that DEFCON0 would allow those timbers highlighted as 'red' to be replaced before the end of October, within the current Natural England permit through to the end of October 2020. Network Rail has not refuted this within the Hearing. It has presented several reasons, a number of which were not referred to in their Sole Reference Document, as to why taking a longer, more disruptive possession is advantageous to it but has not explored and exhausted every option available to it to address those 'orange' and 'yellow' timbers.

GB Railfreight continues to assert that those timbers not in need of replacement until March 2021 or later should be replaced within possessions for which the necessary complex timetabling work can be concluded in good time. There are several options available to Network Rail to facilitate this.

Options for additional or enhanced temporary speed restrictions or additional permits with Natural England are yet to be explored in thorough detail. GB Railfreight would assert that in the exceptional circumstances we find ourselves, an additional possession during the Christmas window, with concession sought from Natural England, should be very much considered an option.

The irony of the situation regarding Natural England is not lost on GB Railfreight. Were this public body to be aware of the additional volume of road haulage, should it be even possible to source it, that would be brought about by Network Rail's decision, GB Railfreight suspects that it may be led to an alternative decision once presented with the facts beyond its individual area of interest.

For clarity, GB Railfreight estimates that, with the current train plan shared by Network Rail, that up to circa 17,500 road movements would be required for its intermodal and bulk services and road haulage over the four-week blockade period.

Irrespective of the environmental impact, in GB Railfreight's experience, procuring such volumes of road haulage at short notice simply isn't practicable.

The distress that the current decisions place on GB Railfreight, and the array of other business that make up the UK economy supply chain is too huge to allow it to stand. GB Railfreight has no mechanism to reclaim the vast majority of the lost revenue and additional costs that it will incur, should the decision not be substituted for DEFCON0. That is estimated to be in the region of £3.5 - £4m.

At a time of economic recession, GBRf continues to assert that Network Rail is remiss in its application of its Decision Criteria in reaching the decision to implement DEFCON4. There is a huge risk of a catastrophic failure of the UK supply chain should the 28-day blockade be allowed to go ahead. Whilst accepting that Network Rail must manage and mitigate its risk in maintaining a safe railway, GBRf respectfully suggests that, with an intervention between now and October to replace all 'red' timbers, the risk to the national supply chain outweighs that of Network Rail.

GB Railfreight continues to assert that there is a viable alternative to DEFCON4, however unpalatable it might be to Network Rail. GB Railfreight again urges the Panel to utilise the powers afforded to it in Network Code Condition 5.3.1(c), brought about by the exceptional circumstances, to direct Network Rail to implement its 'DEFCON0' strategy in place of its 'DEFCON4' strategy.

### Closing Statement of Freightliner

Thank you to the Hearing Chair and the panel for hearing this dispute at short notice

Nothing we have heard today changes our view that NR has incorrectly applied the Decision Criteria in establishing the block. Freightliner's priorities were not considered in the application, as evidenced by the fact that the full Capacity Study was not even available to NR when the decision criteria was applied. This timetabling work, that underpins this, still appears to be some way off.

Freightliner remains concerned that in three and half weeks we have a significantly disruptive possession and at this stage we have no certainty over our ability to deliver our contractual obligations to our customers. This is more acute given that this possession is planned for the autumn – the peak period for the deep-sea intermodal market and this following the impact that COVID-19 has had on the sector.

Based on what we have heard today, we do not believe that NR applied the Decision Criteria correctly in reaching its decision to adopt the DEFCON4 access strategy. The access footprint of this strategy is substantial and it seeks to renew timbers over and above what is necessary to be done this year. We firmly believe that the proper application of the Decision Criteria would have led to an alternative strategy being adopted. DEFCON0 is an alternative strategy that NR themselves identified as an alternative approach to renew the most critical timbers. We ask the Hearing Chair to direct NR to adopt DEFCON0 given the exceptional circumstances.

### Closing Statement of Network Rail

Chair, panel members, industry colleges, thank you for your time so far today on this hot and stuffy occasion.

Network Rail does not want to be in this position. We find ourselves in this position because of new learning that the route took from an incident, where timber failure was a contributory factor to a major incident. An incident that was not only a serious safety incident but also shut the line for many weeks and caused significant, unplanned disruption to all parties. If we felt we were able to manage this risk within the EAS timeline we would be. Ideally all disruptive access would be planned under the EAS process but sometimes exceptional circumstances come into play, removing the ability to do so. This is fundamentally why section D3.4 and D3.5 exist.

I would like to revisit a few statements from my opening statement:

- neither Freightliner, nor GBRf are alleging that Network Rail have breached any part of the Network Code and it is also acknowledged by both that extensive consultation has occurred as required by Section D8.6. a breakdown of which was attached previously;
- neither operator is alleging that the Decision Criteria have not been applied, but rather that they disagree with the justification of the decision by Network Rail and the decision to this access by reference to Section D4.6.1 and D4.6.2.
- Network Rail has correctly followed the Procedures stipulated within the Network Code and has provided consideration to all the requirements under D4.6.2 and applied these that are relevant to reach the decision that has been made.

Of the options that we have heard today, while DEFCON0 was a potential way forward when the list of access options was first drawn up this was never considered a viable way forward to address the risk of timber failure within the timescales required.

This option, along with the other five was tabled as part of a significant due diligence activity and in the spirit of consultation and transparency.

Network Rail submit that the consultation of this access has been with all industry partners, and not just those bringing the dispute today. Although impacting all operators commercial interests and services, there have been several interested parties, noted today and by correspondence that support the DEFCON4 option as their preferred method of addressing this risk presented by timber degradation at Manea.

Network Rail ask that the Panel consider all of the evidence placed in front of them and to uphold the decision made by Network Rail to take this possession to allow remedial works to be undertaken. DEFCON4 remains the only viable option to mitigate the immediate safety concerns and risks that are presented, with the least amount of disruption to rail users whilst accounting for environmental factors that have come into play. Any other option would risk unplanned disruptions of unknown impact and duration and would run counter to the overriding objective imposed on NR under D4.6.1. Many thanks.

## **Annex C - Extract from the National Timetable Planning Rules**

### **7 Access Impact Matrix**

#### **7.1 Introduction**

- 7.1.1 This section describes the introduction of the Access Impact process to be followed to enable agreement between Network Rail and Timetable Participants for delivering Capacity Study requests relating to the Engineering Access Statement
- 7.1.2 The Access Impact Matrix was created by Network Rail and Crosscountry to jointly resolve Access dispute TTP773. The Access Impact Matrix grades Capacity Studies by severity. Operators will grade their Capacity Study requests from the Engineering Access Statement on their Operator Response Sheet.
- 7.1.3 Network Rail can challenge the grading and a revised or the original grading should be agreed by all parties. Network Rail and the relevant Timetable Participants will jointly agree a delivery date for the requested Capacity Study. Extensions to the delivery date of the requested Capacity Study will need to be agreed by Network Rail and the relevant Timetable Participants.

## 7.2 Access Impact Matrix

	<b>Severity 1</b> <b>Access that impacts on a single service group or single operator</b>	<b>Severity 2</b> <b>Access that effects multiple service groups or operators and / or where capacity is shared by operators</b>
Capacity Study [EAP]	<ul style="list-style-type: none"> <li>• Isolated one off pieces of access that require minor retiming of less than 10 minutes</li> <li>• Regular diversions for Section 5 possessions</li> <li>• Regular diversions for a single piece of access</li> <li>• TSRs that require additional [x] with minor impact on train service (journey time extension no greater than 10 minutes)</li> <li>• Services required to start / terminate short where the planning solution is known</li> </ul>	<ul style="list-style-type: none"> <li>• 2 track timetables outside of normal Section 4 times</li> <li>• High Output possessions with TSRs and line blockages (pattern of services required to confirm line blockage times)</li> <li>• TSRs that require additional [x] for more than one operator</li> <li>• Diversionary routes where capacity will be shared (an understanding of hourly patterns or ability to fit the WTT quantum of trains etc)</li> <li>• Regular diversionary routes for multiple operators (e.g. via Northampton / Hertford Loop etc) where capacity is understood</li> <li>• Services required to start / terminate short where the method of working is not known</li> </ul>
Output requirements	<ul style="list-style-type: none"> <li>• Understanding of the impact on train service group and required capacity</li> <li>• Understanding the impact on standard possession opportunities</li> <li>• Detailed Traffic Remarks by CPPP stage. If post CPPP, included as part of proposal</li> </ul>	<ul style="list-style-type: none"> <li>• Detailed structure for the amended train plan stating additional time, diversionary routes, capacity restrictions by operator and allocated capacity</li> <li>• Understanding the impact on standard possession opportunities</li> <li>• Detailed Traffic Remarks by CPPP stage. If post CPPP, included as part of proposal</li> </ul>



	<p style="text-align: center;"><b>Severity 3</b></p> <p style="text-align: center;"><b>Access that effects one or more operators and that requires significant diversion or retiming (of greater than 15 minutes)</b></p>	<p style="text-align: center;"><b>Severity 4</b></p> <p style="text-align: center;"><b>Double or Triple disruption to one or more operators Disruption that effects one or more operators on more than one route Severe disruption on a primary route of one or more operators</b></p>
<p><b>Timetable Study</b> [EAP &amp; Train planning]</p>	<ul style="list-style-type: none"> <li>•Standard hourly pattern either undeliverable or requires significant amendment (&gt;15 mins)</li> <li>•Where an understanding of the impact on service patterns and connections is required (services back to booked / missing key stations etc)</li> <li>•Potential impact on train crew and unit resources for one or more operators (turnarounds at key stations potentially impacted etc)</li> <li>•Restrictive capacity and / or where booked connections are impacted at key stations (i.e. Birmingham New Street / Leeds / London Terminals etc)</li> <li>•Access that requires the thinning of services to provide capacity for diverted services or degraded working</li> <li>•Access that requires multiple operators to start / terminate at a station that has a complex method of working for turn back moves</li> <li>•Severe impact on ability to move Empty Coaching Stock (possessions effecting depot access or requiring significant retiming [greater than 15 minutes] or diversion)</li> </ul>	<ul style="list-style-type: none"> <li>•Abnormal diversionary routes where capacity and / or the impact on train paths and connections is not easily or fully understood</li> <li>•SLW plans outside of Section 4 where capacity is constrained with significant journey time detriment (of greater than 15 minutes)</li> <li>•Where one or more operators are impacted by more than one piece of access on one or more routes</li> <li>•Where capacity via a diversionary route is severely restricted (single line / absolute block / congested routes / stations etc)</li> <li>•Where an understanding of the impact on service patterns and connections is required (services back to booked / missing key stations etc)</li> <li>•SX blockade of one or more operators' primary routes (WCML / ECML all line block e.g. Wigan / Watford)</li> </ul>
<p>Output requirements</p>	<ul style="list-style-type: none"> <li>•Standard hourly pattern established through detailed timings (as opposed to production of a full timetable for the specific period)</li> <li>•Platforming exercise to understand capacity around any restriction at multi operator stations</li> <li>•Single train timing exercise to understand impact on journey time detriment and / or impact of crew and resources</li> <li>•Train by train timing to demonstrate impact on ECS moves to ensure deliverability of train service</li> <li>•Detailed structure for the amended train plan stating additional time, diversionary routes, capacity restrictions by operator and allocated capacity from output of Timetable Study</li> <li>•Detailed Traffic Remarks for access proposed in V1 / V3 by V2 / V4. For access requested post V2 / V4 included by CPPP. If post CPPP, included as part of proposal</li> </ul>	<ul style="list-style-type: none"> <li>•Full timetable study for every operator effected for the duration of the disruption (with the exception of ECS moves where not applicable)</li> <li><b>or</b></li> <li>•Standard hourly pattern to understand capacity through detailed timings (as opposed to production of a full timetable for the specific period)</li> <li>•End to end journeys to be assessed where applicable (e.g. services that cannot return to a booked path) with no piece of access to be treated in isolation</li> <li>•Decision Criteria grid populated to support capacity allocation</li> <li>•Detailed structure for the amended train plan stating additional time, diversionary routes, capacity restrictions by operator drawn from output of Timetable Study</li> <li>•Detailed Traffic Remarks for access proposed in V1 / V3 by V2 / V4. For access requested post V2 / V4 included by CPPP. If post CPPP, included as part of proposal</li> </ul>