

***Defendant's Response to a Sole Reference to a
Timetabling Panel in accordance with the provisions of
Chapter H of the ADR Rules effective from 1 August 2010
(and as subsequently amended)
Timetabling Dispute TTP1122***

1 DETAILS OF PARTIES

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

- (a) *XC Trains Limited whose Registered Office is at 1 Admiral Way, Doxford International Business Park, Sunderland, SR3 3XP ("XCTL") ("the Claimant") ("the Claimant"); and*
- (b) *Network Rail Infrastructure Limited whose Registered Office is at 1 Eversholt Street, London, W1 2DN ("Network Rail") ("the Defendant").*
- (c) *Abellio ScotRail Abellio Scotrail Ltd, Registered in Scotland, whose Registered Office is at 5th Floor, Culzean Building, 36 Renfield Street, Glasgow, G2 1LU ("ASR") ("dispute party").*

2 CONTENTS OF THIS DOCUMENT

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

- (a) Confirmation, or qualification, that the subject matter of the dispute is as set out by the Claimant in its Sole Reference, in the form of a summary schedule cross-referenced to the issues raised by the Claimant in the Sole Reference, identifying which the Defendant agrees with and which it disagrees with.
- (b) A detailed explanation of the Defendant's arguments in support of its position on those issues where it disagrees with the Claimant's Sole Reference, including references to documents or contractual provisions not dealt with in the Claimant's Sole Reference.
- (c) Any further related issues not raised by the Claimant but which the Defendant considers fall to be determined as part of the dispute;
- (d) The decisions of principle sought from the Panel in respect of
 - (i) legal entitlement, and
 - (ii) remedies;
- (e) Appendices and other supporting material.

3 SUBJECT MATTER OF DISPUTE

- 3.1 Network Rail agrees with the claimant that this is a dispute regarding the running order of XCTL trains and ASR trains between Uddingston Junction and Glasgow Central in the Principal 2018 Working Timetable (WTT).
- 3.2 Network Rail does not agree with the claimant that the changes are unnecessary and made in a manner that goes beyond Network Rail's role as contained in Network Code Part D. This is discussed in paragraph 4.1 (e).
- 3.3 Network Rail agrees with the claimant that the dispute arises over the interpretation of Condition D4.6 of the Network Code. Network Rail confirms that the Decision Criteria documented in the claimant's Appendix F is correct.
- 3.4 Network Rail does not agree with the claimant that there was a failing to act in accordance with Network Code Part D2.6.2 (b). This is discussed in 4.1 (f).

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

4.1 Preparation of the New Working Timetable

- (a) Network Rail applied the applicable Timetable Planning Rules (TPRs) for the Principal 2018 WTT. A significant number of SRTs were amended for this revision of the TPRs. A table has been provided in Appendix A summarising the changes relevant to this appeal.
- (b) NR are obliged to ensure that the New Working Timetable published at D-26 conforms with the Rules, as stated in D4.2.2(a).
- (c) The claimant failed to exercise rights for any of their train slots in their Principal 2018 Priority Date Notification Statement. ASR exercised their rights in their Principal 2018 Priority Date Notification Statement in accordance with D2.4.
- (d) Network Rail believes it has satisfied the requirements of D4.2.2(b), by ensuring that the Principal 2018 WTT is consistent with Exercised Firm Rights of each Timetable Participant. Neither the claimant's EH01 service group which includes all 7 of the

claimants train slots in question, nor the ASR HA06 service group which includes all 7 of the ASR train slots in question have interval protection or journey time protection in the relevant Track Access Contract.

(e) The claimant states in 5.1 (p) that, "XCTL believes that there is no power given to NR by the Network Code that allows for unilateral decisions regarding the structure of the timetable, such as the one in this case". D4.2.2(c) states that, "Network Rail is entitled to exercise its Flexing Right". Network Rail believe that this is what they have done in this case by amending a train slot between D-40 and D-26; "to vary a train slot (D1.1.11 **Flexing Right** (b) arising from a Rolled Over Access Proposal)...in any way within and consistent with the Exercised Firm Rights of the relevant Timetable Participant...in any way without limitation".

(f) The claimant states in 5.1 (c) & (d) that NR changed their intentions with regards to the train slots in question. This is the very nature of the process followed by NR during the Timetable Preparation Period. NR attempts to keep timetable participants regularly informed of their intentions (as outlined in D2.6.2), and in doing so, there is a high likelihood that NR will, at times, appear to have changed their intentions during the Timetable Preparation Period. The short period between the update NR provided on Monday 22nd May and the contrasting update provided by NR to the claimant on 25th May proves that NR acted to inform the claimant as soon as practicable of their changed intentions.

(g) A relevant example of where NR has used its Flexing Right in relation to the claimant is for services arriving into Edinburgh Waverley from both Glasgow Central and from England. During the Principal 2018 Timetable Preparation Period, NR applied revised TPRs on the East Coast Main Line (ECML), in the same manner as on the West Coast Main Line (WCML.). The claimant didn't specify these changes as part of their Access Proposal, but in achieving The Objective, NR applied its Flexing Right to provide an optimised timetable. The outcome of this work is shown in the tables below.

Table 1 - Comparison of May17 WTT vs Dec17 WTT arrivals at Edinburgh Waverley
(Weekdays)

	Journey time increased by <2 minutes	Journey time increased by 1 minute	No change to journey time	Journey time reduced by 1 minute	Journey time reduced by <2 minutes
Up arrivals (ex Glasgow Central)	0	5	4	1	0
Down arrivals (ex England)	1	1	5	7	1

Table 2 - Comparison of May17 WTT vs Dec17 WTT arrivals at Edinburgh Waverley
(Saturdays)

	Journey time increased by <2 minutes	Journey time increased by 1 minute	No change to journey time	Journey time reduced by 1 minute	Journey time reduced by <2 minutes
Up arrivals (ex Glasgow Central)	0	2	6	1	0
Down arrivals (ex England)	0	1	6	5	3

Table 3 - Comparison of May17 WTT vs Dec17 WTT arrivals at Edinburgh Waverley
(Sundays)

	Journey time increased by <2 minutes	Journey time increased by 1 minute	No change to journey time	Journey time reduced by 1 minute	Journey time reduced by <2 minutes
Up arrivals (ex Glasgow Central)	0	3	3	0	1
Down arrivals (ex England)	1	3	4	2	4

(h) NR would be interested for the claimant to provide evidence of the commercial impact on them of the changes outlined in tables 1, 2 & 3. As the claimant has stated that there is a negative commercial impact for them due to the decisions made by NR in relation to the 7 train slots in question, NR would like to understand what the net difference is between the overall favourable changes in journey times for services to

Edinburgh Waverley, when compared with the overall adverse changes in journey times for services to Glasgow Central.

(i) As part of their Access Proposal, the claimant provided a copy of the maximum journey times permitted in their Service Level Commitment (SLC) with the Department for Transport (DfT). An extract from this is included as Appendix B. This does not cite any journey times to or from Glasgow Central, instead Edinburgh Waverley. It was NR's understanding prior to D-26 that the key commercial consideration for the claimant was England – Edinburgh Waverley journey times, followed by Edinburgh Waverley – Glasgow Central journey times.

(j) NR has continued to work up to D-26 and subsequently post D-26 with the claimant to achieve a timetable outcome for Principal 2018 WTT which suits their aspirations. NR have optimised the journey times for the claimant between Edinburgh Waverley – Motherwell – Glasgow Central whenever possible, see Appendix D. NR has also undertaken a series of meetings with the claimant to seek a resolution to this appeal.

4.2 Application of the Decision Criteria

(a) Where NR is required to decide any matter in Part D, paragraph 4.6.1 provides that: "...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 ("the Objective)".

(b) In achieving the Objective, NR is to apply "any or all of the considerations" in paragraph 4.6.2(a)-(k) ("the Considerations").

(c) The claimant states in 5.2 (a) that, "with no competing aspirations in the Access Proposals of XCTL and ASR it was not necessary for NRIL to make a decision to amend any schedules". As stated in 4.1 (e), NR do not agree with this statement.

(d) In undertaking a major review of the WCML timetable in Scotland for Principal 2018 WTT (last substantial review was in Principal 2015), NR's objective was to; rectify any train slots which historically were non-compliant with the TPRs, to ensure journey times were kept to a minimum for all Timetable Participants, and to use the opportunity to standardise (where able) the pattern of the timetable throughout the day to ensure

consistency and familiarity in delivery for all users of the Network which will result in improved performance.

(e) The claimant did state that they support the principle of standard hourly arrival times at Glasgow Central for long distance services; however, they expressed a preference against a 3 minute journey time increase in order to achieve the pattern, as detailed in Appendix C.

(f) NR disagrees with the statement made by the claimant in 5.2 (c). NR has outlined the two options that were under consideration, and articulated their reasons for the decision that was made.

(g) Comments on each of the points raised by the claimant, referenced to the relevant Consideration as shown in D4.6.2 (a)–(l):

High Weighting

a) "Maintaining, developing and improving the capability of the Network"

NR believes that the Network capability will be maintained or improved with the application of a standardised timetable, repeating hourly throughout the day. It is a model used on other rail networks in the world to deliver high levels of operational performance.

NR found in favour of the ASR 2Bxx arriving in the xx:12 slot at Glasgow Central with this consideration.

c) "Maintaining and improving train service performance"

SRT changes to all passenger operators (except Virgin Trains East Coast & Caledonian Sleepers) will convey the benefit of increased timetable resilience with associated reductions in sub-threshold time loss and more flexible recovery from perturbation, meaning an overall improvement in performance.

Data supplied by Scotland Route suggests a 58% correlation between the claimant's 1Sxx long distance service presenting late at Uddingston Junction and late arrival to Glasgow Central for the ASR 2Bxx, with

attendant impact of compromised turnaround & late departure ex Glasgow Central of next working.

The TPRs state the minimum values but consideration can be given to planning with a greater value than the minimum where desirable. NR believe that providing a longer turnaround for the ASR 2Bxx services will aid performance given the nature of the routing of these services (see Appendix E for diagram). A down Lanark service will have four converging or diverging moves at junctions in 11 miles between Law Junction and Uddingston Junction, which is a factor in the right time arrival statistic for this service group at Glasgow Central of 48%, some 10% points below the overall Glasgow Central 'all trains' right time arrival percentage. The three 2Bxx Lanark services in question (SX) have a right time arrival figure into Glasgow Central of 41%, 31% and 27%. The move to a more standard arrival time for the 2Bxx Lanark services into Glasgow Central is designed to also improve the right time departure of Glasgow Central – Lanark services. Right time departures for 2Bxx Lanark services from Glasgow Central are 66.5%, with the average for all ScotRail departures from Glasgow Central at 92%. Improved right time departure towards the WCML reduces the inherent performance risks to the benefit of the customers of all timetable participants in this corridor.

NR found in favour of the ASR 2Bxx arriving in the xx:12 slot at Glasgow Central with this consideration.

e) "Maintaining and improving an integrated system of transport for passengers and goods"

NR considered what connections would be provided from each of the two scenarios. For the train arriving at xx:12 the first available connection would be into the xx:27 all stations to Barrhead. This is the only connection opportunity which is broken, as the next departure at xx:30 to Ayr is available for either train slot. There is an xx:43 departure to Kilmarnock which would provide a journey opportunity for Barrhead

passengers, albeit not the intermediate stations between Glasgow Central and Barrhead.

NR found in favour of the ASR 2Bxx arriving in the xx:12 slot at Glasgow Central with this consideration as NR believe that there would be greater quantum of passengers affected if the connection into the xx:27 Barrhead (all stations) service was lost from the ASR 2Bxx Lanark service.

j) "Enabling operators of trains to utilise their assets efficiently"

NR considered how the options would affect utilisation of both train crew and rolling stock for each timetable participant. As outlined in consideration (c), NR believes that there is a benefit to having an increased turnaround at Glasgow Central for the ASR 2Bxx Lanark services. In providing 8 minutes for the turnaround, it provides ASR with time to perform attaches/detaches as required to utilise their assets efficiently. With the claimant occupying the xx:15 arrival slot at Glasgow Central, they are then able to exploit the use of a longer platform (platform 1 or 2 vice platform 3 which can only accommodate 5 vehicles) than the xx:12 arrival slot is able to use.

NR found in favour of the ASR 2Bxx arriving in the xx:12 slot at Glasgow Central with this consideration.

Considered as material

b) "That the spread of services reflects demand"

NR's decision is not being challenged.

d) "That journey times are as short as reasonably possible"

NR understands the aspiration for both Timetable Participants to have the shortest journey times practical whilst maintaining compliance with the Rules. NR considered the implications for the claimant of having a journey time extension, when their main competition for passengers is alternative modes of transport. NR considered the opportunity to accelerate the 2Bxx ASR Lanark services through all hours of the day, as

a service group which conveys high volumes of passengers, to have a positive impact on their experience of using the Network.

NR found in favour of the ASR 2Bxx arriving in the xx:12 slot at Glasgow Central with this consideration.

f) "The commercial interests of Network Rail (apart from the terms of any maintenance contract entered into or proposed by Network Rail) or any Timetable Participant of which Network Rail is aware.

NR discussed the commercial impact with both Timetable Participants with respect of the decision in question and neither the claimant or ASR was able or inclined to share any information with NR. The claimant did however share commercial information with NR on 9th August 2017, and ASR shared commercial information with NR on 21st August 2017.

NR was unable to weight this consideration in favour of either Timetable Participant, as the information wasn't available at the time of making the decision.

g) "Seeking consistency with any relevant Route Utilisation Strategy "

NR's decision is not being challenged.

5 DECISION SOUGHT FROM THE PANEL

5.1 Matters of principle:

(a) That NR is entitled to exercise their Flexing Rights in accordance with D4.2.2. Confirmation sought that this entitlement is not limited to when access proposals are competing for the same train slot.

(b) That NR has considered and applied the decision criteria in accordance with D4.6.1 and D4.6.2.

(c) That NR has fulfilled its obligation to D2.6.2 during the preparation of the Principal 2018 WTT.

5.2 Specific conclusions deriving from those matters of principle:

- (a) That the panel uphold the decision of NR to allocate the xx:12 arrival train slot at Glasgow Central to ASR and to allocate the xx:15 arrival train slot to the claimant.

6 APPENDICES

The Defendant confirms that it has complied with Access Dispute Resolution Rule H21.

Extracts of Access Conditions/ the Network Code are included where the dispute relates to previous (i.e. no longer current) versions of these documents.

All appendices and annexes are bound into the submission and consecutively page numbered. To assist the Panel, quotations or references that are cited in the formal submission are highlighted (or side-lined) so that the context of the quotation or reference is apparent.

Any information only made available after the main submission has been submitted to the Panel will be consecutively numbered, so as to follow on at the conclusion of the previous submission.

7 SIGNATURE

For and on behalf of Network Rail
Infrastructure Limited

Signed



Print Name

Andrew Bray

Position

Timetable Production Manager [Scotland]

The Appendices

APPENDIX A – TABLE OF REVISED SRTs APPLICABLE TO THE APPEAL

APPENDIX B – EXTRACT FROM THE CLAIMANTS ACCESS PROPOSAL IN RELATION
TO MAXIMUM JOURNEY TIMES

APPENDIX C – EXCHANGE OF EMAILS FOLLOWING THE CLAIMANTS VISIT TO NR ON
25/05/17

APPENDIX D – EXCHANGE OF EMAILS TWO DAYS PRIOR TO D-26

APPENDIX E – ROUTING OF ASR 2BXX LANARK TO GLASGOW CENTRAL SERVICES,
PROVIDING CONTEXT FOR INTERACTIONS WITH WCML TRAFFIC.

APPENDIX A – TABLE OF REVISED SRTs APPLICABLE TO THE APPEAL

SRT changes for trains routed from Edinburgh Waverley – Glasgow Central via Carstairs including alternative routes as published in v2 2018 TPRs [Scotland]

Traction Type	SRTs increased	SRTs decreased
150	3	3
158	2	0
185	5	2
221	5	1
221T	6	1
318	3	1
350	4	4
380	1	2
390	7	2

APPENDIX B – EXTRACT FROM THE CLAIMANTS ACCESS PROPOSAL IN RELATION
TO MAXIMUM JOURNEY TIMES

CrossCountry December 2017 – Access Proposal
Introduction

Maximum Journey Times

CrossCountry would like to take this opportunity to remind Network Rail of the maximum journey times, as stated in our Service Level Commitment with the Department for Transport. All services are bid to Network Rail on the basis that they must not exceed the journey times below. When validating the December 2017 timetable, we ask Network Rail to offer paths that are compliant with these journey time requirements.

	Monday – Friday	Saturday	Sunday
Plymouth – Edinburgh	8 hrs 52 mins	8 hrs 52 mins	8 hrs 52 mins
Edinburgh – Plymouth	8 hrs 48 mins	8 hrs 48 mins	8 hrs 50 mins

APPENDIX C – EXCHANGE OF EMAILS FOLLOWING THE CLAIMANTS VISIT TO NR ON
25/05/17

From: David Fletcher <[REDACTED]>
Date: 29/05/2017 18:11 (GMT+00:00)
To: Andy Bray <[REDACTED]>, Scott Paul <[REDACTED]>, Ashton Charlotte <[REDACTED]>
Subject: Carstairs - Glasgow Central

Andy/Paul/Charlotte

I know this is probably a silly question, but...
I don't suppose there's any way of retiming Virgin's Euston - Glasgow via Birmingham, such that it arrives into Central at xx12? Can LNW do anything to hand it to you sooner? Whilst we understand and support the idea of using standard arrival times at (Glasgow) Central every hour for long distance trains, we would much prefer it if it could be done without adding 3 minutes to most of our Glasgow-bound trains.

Thanks

David

David Fletcher

Timetable Strategy Manager
CrossCountry
[REDACTED]

APPENDIX D – EXCHANGE OF EMAILS TWO DAYS PRIOR TO D-26

From: David Fletcher [redacted]
Sent: 07 June 2017 16:00
To: Bray Andrew
Cc: Nathan Thompson
Subject: GLC arrivals
Importance: High

Andy

I was also hoping to catch up with you about Glasgow Central arrival times. Whilst I can completely see where you're coming from on standardising the arrival times to xx15, as per Virgin Trains, it does somewhat hit us in the fare box, due to the longer journey times.

It's a difficult one.

It could be partially mitigated by running later from Edinburgh and by getting the current off-pattern trains (the ones that take longer than normal) on to the standard pattern.

I'd appreciate a conversation tomorrow if you're available.

Thanks

David

From: Bray Andrew [redacted]
Sent: 08 June 2017 08:05
To: David Fletcher [redacted]
Cc: Nathan Thompson [redacted]; Scott Paul [redacted]
Subject: RE: GLC arrivals

Morning David,

I've asked Dave Ross to investigate whether any of the 1Sxx departure from Edinburgh Waverley to Glasgow Central can have extended dwells at Waverley, and still achieve the xx:15 arrival into Glasgow Central. We should have an answer on this fairly quickly today.

It would be good to have a chat about it, I'm available around lunchtime today or alternatively any time tomorrow (probably earlier the better).

Thanks,

Andy

APPENDIX E – ROUTING OF ASR 2BXX LANARK TO GLASGOW CENTRAL SERVICES, PROVIDING CONTEXT FOR INTERACTIONS WITH WCML TRAFFIC.

