

## TTP1625 – Directions issued on 10 Feb 20

1. The Hearing Chair is grateful to First MTR South Western Railway Limited ('SWR') for the submission of its Sole Reference Document ('SRD').
2. In para 5.1.3 SWR refers to the Wessex Timetable Change Risk Assessment Group (TCRAG); going on in para 5.1.4 to distinguish this from '*An additional non-mandatory Strategic TCRAG*'. **Will SWR please explain as soon as possible how it interprets the difference between the TCRAG and a 'non-mandatory Strategic TCRAG'.**
3. At para 5.1.8 of its SRD SWR refers its receiving the New Working Timetable at D-26, then at 5.1.11 SWR refers to a revised New Working Timetable being received on 3<sup>rd</sup> January 2020. **Will SWR please confirm as soon as possible whether it is accepting the revised New Working Timetable received on 3<sup>rd</sup> January 2020 as the relevant New Working Timetable.**
4. Para 6.2 explains that one remedy sought by SWR is compensation, and why (in 6.2.2) it is not seeking re-instatement of the December 2019 paths. In 6.2 and 6.3, however, SWR is asking for an order '*to challenge Network Rail to propose a set of measures to avoid a repeat occurrence at such timescales*'.
5. If the TTP were to decide in SWR's favour in respect of compensation, then it will in effect have determined that NR failed to follow the Part D procedures and, in all likelihood, that Southern Region and Capacity Planning had not worked together effectively. But the Hearing Chair is not immediately persuaded that a TTP has the power to make broad orders on the lines requested by SWR. A TTP is required to give Observations and Guidance when determining a Dispute, and it seems very likely that if determining this Dispute in SWR's favour the TTP would comment on these issues in its Observation and Guidance, but that is a different matter. **In the light of these comments will SWR please confirm as soon as possible, to assist NR in drafting its SRD, whether it wishes to pursue the remedies sought in 6.3 and 6.4, or whether it will be content to rely on the TTP's Observations and Guidance on these issues if this Dispute were to be decided in SWR's favour.**
6. As SWR will appreciate from the authority of the ORR's Determination of the Appeal relating to TTP1520, a TTP can only award compensation under D5.7.1 if NR has acted in bad faith or unreasonably. Either limb is sufficient, but an allegation of bad faith should be specifically pleaded and supported by evidence. **Will SWR please confirm as soon as possible, not least to assist NR in drafting its SRD, whether it is alleging bad faith on the part of NR, or merely unreasonableness.**
7. **In its SRD NR is invited to explain:**
  - 7.1. the role, constitution and authority of the Wessex TCRAG;
  - 7.2. what performance modelling of the proposed May 2020 changes on the Wessex Route has been commissioned or completed, and what has been done to share the output of such performance modelling with the relevant Operators;
  - 7.3. the relationship between the Southern Region and Capacity Planning and which function has authority over the other.