

## **1 DETAILS OF PARTIES**

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

- (a) GB Railfreight Limited ("GBRf") whose Registered Office is at 3<sup>rd</sup> Floor,  
55 Old Broad Street, London, EC2M 1RX; and
- (b) Network Rail Infrastructure Limited ("NR") whose Registered Office is at  
1 Eversholt Street, London, NW1 2DN.

1.2 Third parties to this dispute may include Freightliner Group Ltd., DB Cargo (UK) Ltd., Cross Country Trains, East Midlands Railway, Greater Anglia and Govia Thameslink Railway.

## **2 THE CLAIMANT'S RIGHT TO BRING THIS REFERENCE**

2.1 This matter is referred to a Timetabling Panel ("the Panel") for determination in accordance with Condition D3.5.3 of the Network Code. GBRf is dissatisfied with the decision made by NR to take a 28-day possession between Ely and Peterborough and the unknown level of disruption this would cause to its business.

## **3 CONTENTS OF REFERENCE**

This Sole Reference includes: -

- (a) The subject matter of the dispute in Section 4;
- (b) A detailed explanation of the issues in dispute in Section 5;
- (c) In Section 6, the decisions sought from the Panel in respect of
  - (i) legal entitlement, and
  - (ii) remedies;
- (d) Appendices and other supporting material.

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

- 4.1 On 18<sup>th</sup> July 2020 GBRf raised a dispute with NR [Appendix 1.1] in relation to its decision regarding possessions P2020/2825755, P2020/2825770, P2020/2825757 and P2020/2825758. These four possessions, which between them constitute a continuous four-week access period, were published at late notice on 15<sup>th</sup> July 2020. The dispute was raised pursuant to Condition D3.5.3 of the Network Code as applicable at the time. Following the meeting between NR and affected operators on 28<sup>th</sup> July 2020 [Appendix 3.18] GBRf requested that the dispute be expedited [Appendix 1.2], having grown concerned with NR's lack of progress with its timetabling capacity study. The Secretary duly registered the dispute as TTP1706 [Appendix 1.3]. In notifying NR of its response to the late notice possession request, GBRf indicated its willingness to continue to work towards a plan to accommodate the access sought without requiring a Timetable Panel. However, with given the proximity of the possessions and their complexity, GBRf is now of the view that this is unavoidable.
- 4.2 It is GBRf's view that NR has reached a decision for a disruptive possession without concluding the necessary consultation to a satisfactory level for such a major blockade, as is required within Condition D3.4.4 (a). Consequently, it applied the Decision Criteria incorrectly in reaching its decision set out in Condition D3.4.4 (b).
- 4.3 The proposed possessions, P2020/2825755, P2020/2825770, P2020/2825757 and P2020/2825758 constitute and all line block (ALB) between Ely North Jn and Manea from 23:20 to 05:20 on all weeknights during the blockade period. Single Line Working (SLW) is in place between Ely North and Manea on weekdays from 05:20 to 23:30 and on Saturdays from 05:20 to 16:00 for the duration of the blockade.
- 4.4 During the ALB period GBRf will be required to divert its Intermodal services via London; Appendices 2.1 & 2.2 detail this within map form. Although this is a regular diversionary route, it comes at increased traincrew cost and to deliver this over a four-week period will stretch GBRf's traincrew resource. During the SLW period GBRf flows that can be accommodated through the SLW section will incur extended journey times due to speed restriction in place. This will have knock on effect onto terminal slots, which may preclude the operation of an effective train plan. The wagon sets may not be able cycle around in 24 hours (as they do in the base operation; GBRf does not have sufficient spare wagons to break these 24 hour cycles) and the terminal capacity

may not be available at revised times. Those flows which cannot be accommodated through the SLW sections (of which there are many at the time of submission of the SRD) will also require diversion. Not only is capacity via these routes uncertain during the day, daytime diversions in addition to night-time diversions will likely exceed GBRf's traincrew capacity.

- 4.5 The possession was first consulted on a conference call on 21<sup>st</sup> May 2020, which Ian Kapur of GBRf attended. Within this high-level meeting, it became clear that NR was attempting to add a highly disruptive blockade to the engineering plan at very late notice. Such extensive access would demand a comprehensive amount of planning for affected services on the SLW as well as diverted services. Ordinarily GBRf would expect this type of possession to be planned much further in advance, with a much greater level prior engagement with operators to ensure confidence in its delivery. GBRf's noted at the time that daytime London diverts would likely be required, as per the notes within Appendix 3.1.
- 4.6 At the aforementioned meeting NR supplied a presentation titled 'Manea Campaign for Operators v1.2' [Appendix 3.2]. Page 3 of this presentation shows the life expectancy of the timers currently in place, which is 5 to 10 years. No-where within the presentation does NR indicate when the timbers in question were originally installed and how they have been maintained since. The presentation indicates the NR's preferred option was 'DEFCON4'; the 28-day blockade.
- 4.7 Following the high-level meeting on the 21<sup>st</sup> May 2020, Network Rail requested a further, more detailed meeting on the 4<sup>th</sup> June 2020 to take place on the 11<sup>th</sup> June 2020. This meeting was accepted by representatives of GBRf [Appendix 3.3].
- 4.8 On the 9<sup>th</sup> June 2020 NR supplied, by email, further detail around the SLW working relating to the location sections and additional time to be added into schedules to accommodate SLW [Appendix 3.4]. At this stage GBRf had assumed the ALB part of the summary would be overnight as this would reflect a regular and established plan that GBRf, and other operators, follow or overnight maintenance works on this route.
- 4.9 At the meeting held on 11<sup>th</sup> June 2020 we were taken through the requirements by Network Rail. GBRf were caught unawares that Network Rail were requesting ALB period during the daytime (between 09:00 and 15:00). This would have required a high

number of freight traffic services to divert via the busy Great Eastern Mainline (GEML), North London Line (NLL) and either the East Coast Mainline (ECML) or West Coast Mainline (WCML) during some of the busiest periods of the day. GBRf immediately raised concerns about this and urged Network Rail to move the ALB possessions to an overnight window. GBRf also raised concerns regarding the SLW capacity and the impact of the increased journey time. GBRf reinforced that it would require end to end timings for all flows that has been identified as critical throughout the blockade in enable it to adequately consider NR's additional access proposal. At NR's request. GBRf created a list of affected services. This included prioritisation of its flows, including an indication of the Train Slots that GBRf could afford to cancel to assist NR is securing the access it required [Appendix 3.5]. To discuss, NR arranged another meeting on the 18<sup>th</sup> June 2020 [Appendix 3.6].

- 4.10 NR sent out a status report on the 15<sup>th</sup> June 2020 [Appendix 3.7]. This indicated that the ALB period had been moved to an overnight window as GBRf has requested. This would form part of the material to discuss on the meeting dated 18<sup>th</sup> June 2020.
- 4.11 On the 18<sup>th</sup> June 2020 GBRf attended the meeting to discuss any changes as well as progress. At this juncture timetabling work had taken place only on the SLW sections between Ely North Jn and Manea. GBRf was informed that a separate NR team would conclude the work on end to end timings. It was apparent from the meeting that NR was struggling to accommodate all of the required services in the section proposed for SLW. NR advised that is was exploring an option of splitting the SLW sections to create additional capacity. However, as focus thus far had been solely on the SLW timetabling, work was yet to commence on diverted services. Again, GBRf repeated concerns regarding the service requirement during this blockade proposal. Another meeting was arranged for the 25<sup>th</sup> June 2020 [Appendix 3.8].
- 4.12 At the meeting on the 25<sup>th</sup> June 2020 progress with the timetable capacity study was again discuss. There was little detail to share at this time on the SLW and again no progress on diverting services. Network Rail advised that it was minded to issue an access proposal for the weekend preparatory works (weeks 18 and 21) [Appendix 4.1]. All operators agreed to this but noted that acceptance of these proposal would be dependent upon suitable timetable capacity being identified for the services requiring diversion as a result. GBRf notes that no such Train Slots were ever advised for Week

18 and, at the time of submission if the SRD, no such Train Slots have been advised for Week 21. Another meeting was arranged for the 02<sup>nd</sup> July 2020 [Appendix 3.9].

- 4.13 On the 2<sup>nd</sup> July 2020 NR required some assistance with services which could not be accommodated in the SLW up to 15:00 and also supplied GBRf with schedule prints to peruse. GBRf responded to the queries raised on the 03<sup>rd</sup> July 2020 and 07<sup>th</sup> July 2020 [Appendices 3.10 & 3.11]. There was a progress meeting later that same day to discuss the issues as well. At the meeting on the same day NR advised that it was minded to issue an access proposal for the 28 day blockade (Option DEFCON4). Again, all operators agreed to this but noted that acceptance of these proposal would be dependent upon suitable timetable capacity being identified for the services requiring to run through the SLW or requiring diversion as a result. Another meeting was arranged for the 9<sup>th</sup> July 2020 [Appendix 3.12].
- 4.14 On the 3<sup>rd</sup> July 2020 GBRf received the blockade access proposal from NR, with a mandatory response time of one week [Appendix 4.2].
- 4.15 On the 6<sup>th</sup> July 2020 GBRf received further enquiries from NR in relation to the SLW timetabling capacity study, to which GBRf responded to on the 7<sup>th</sup> July 2020 [Appendix 3.13].
- 4.16 On the 9<sup>th</sup> July 2020 GBRf attended the, now weekly, meeting. As before, very little tangible output was shared. NR advised that it had identified a number of paths through the SLW section but that these had still not been timed end to end. GBRf, again, advises that this would be of little benefit if the SLW paths were not concluded from end to end. As before, work was yet to commence on a schedules diverted away from the SLW section. Another meeting was arranged for the 15<sup>th</sup> July 2020 [Appendix 3.14]. Network Rail also sent further details of the identified SLW timings, to which GBRf responded to on the 15<sup>th</sup> July 2020 [Appendix 3.15].
- 4.17 On the 10<sup>th</sup> July 2020 GBRf declined the 28 day blockade access proposals based upon the lack of confirmation that suitable timetable capacity had been identified to enable GBRf to operate all of its critical flows throughout the blockade [Appendix 3.16].
- 4.18 At the meeting on the 15<sup>th</sup> July 2020 it was made clear by NR that GBRf was unlikely to receive a full complement of end to end timings for SLW and diverted services; the

SLW did not offer sufficient capacity to accommodate all operators services and NR resource had not been secured to investigate diversionary route timings. GBRf stated, in no uncertain terms, its distinct dissatisfaction with this outcome, noting that NR had stated throughout the consultation period that a full timetable capacity study would be provided.

- 4.19 On the same day (15<sup>th</sup> July 2020) NR issued their decision [Appendix 4.3], supplied with their Decision Criteria [Appendix 4.4], but without any concluded timetable capacity study. Contained within this document are timescales within which Network Rail expected operators submit their timetable variations. With no further progress having been made in relation to the timetable capacity study, GBRf issued its Notice of Dispute on the 18<sup>th</sup> July 2020 [Appendix 1.1] based upon a lack of confidence that NR had neither the capacity nor the capability to deliver a complete timetable capacity study to support the access that had been sought.
- 4.20 On the 27<sup>th</sup> July 2020 and 28<sup>th</sup> July 2020 GBRf sent NR an updated service summary tracker highlighting all of its critical flows throughout the blockade and those which, in GBRf's view, required further attention [Appendix 3.17]. NR clarified on 28<sup>th</sup> July 2020 that 'Version 1' within Appendix 3.17 represented the paths available to GBRf in the first two weeks of the blockade and 'Version 2' the paths available in the second two weeks, as per the correspondence within Appendix 3.18. A meeting was held on the 28<sup>th</sup> July 2020 to discuss this summary and the actions required to resolve the outstanding issues [Appendix 3.19]. Again, GBRf maintained a position that is required completed, end to end timings for all of its critical flows throughout the blockade.
- 4.21 At the time of submission of the SRD (10:00 on 4<sup>th</sup> August 2020), GBRf is still yet to receive a completed timetable capacity study to support the access that had been sought.

## **5 EXPLANATION OF EACH ISSUE IN DISPUTE AND THE CLAIMANT'S ARGUMENTS TO SUPPORT ITS CASE**

- 5.1 Network Code Condition D3.4.4 requires NR to consult with affected Timetable Participants and that any decision that is reached is done so on accordance with the Decision Criteria within Condition D4.6. Whilst it cannot be disputed that NR did consult with GBRf in relation to the proposed late notice possession, GBRf feels strongly that its views put forward during this consultation have been largely discounted and the impact of the proposed possession on GBRf insufficiently considered. GBRf repeatedly stated that its acceptance of the proposed access was contingent upon receipt of a complete, end to end train plan and was assured throughout by NR that this would be supplied. It has never materialised.
- 5.2 The access decision made by NR has an enormous impact on GBRf's daily operation. During the early stages of consultation GBRf identified eighteen daily flows that would be affected by the possession [Appendix 3.17]. This was following a process of evaluation by GBRf as to which Train Slots were of greatest priority [Appendix 3.5], leading to 44 schedules being consensually cancelled to assist NR in the development of a train plan to accommodate the works. Those flows identified within Appendix 3.17 are critical to GBRf's operation and anything other than ability to operate each of them throughout the proposed engineering access, with existing loco and wagon resource, is unacceptable. GBRf has commercial contracts with its customers and has sufficient locomotives and wagons to serve these contracts. Were journey times to become unreasonably extended for its Intermodal services, for example, these assets would become insufficient to serve the contract and GBRf would need to employ road haulage to move these time-sensitive containers across the UK to inland terminals and back again to the port to meet ship sailings. The UK rail segment is merely one part of a much larger worldwide logistics chain and to disrupt this, to an unreasonable degree, would mean GBRf could not utilise its assets efficiently, nor could it maintain an integrated system of transport for its goods and customers. It, certainly, could also not mitigate its effect on the environment. These three most important Decision Criteria could not be satisfied.
- 5.3 A number of options were presented for consideration at the meeting held 21<sup>st</sup> May 2020, the majority of which included 'blockade' access proposals of varying duration.

GBRf would question how and why NR has not maintained their infrastructure in a timely manner and thereby allowed itself to arrive at a position whereby such onerous access is required. GBRf notes that 66 of the timbers within the affected structures (23.5%) have already been successfully replaced [Appendix 3.2]. Given this, GBRf would query within which possessions these works have taken place and why the further works cannot be carried out within similar access windows.

- 5.4 GBRf notes that within the presentation detail supplied by NR that 37 timber have been identified as 'red'; requiring replacement within six months. This constitutes only 13% of the number of timbers across the four structures. Given that 23.5% of the timbers have already been replaced without the requirement for a blockade, GBRf considers the proposed four-week blockade to be excessive to address the immediate issue; namely 37 timbers that have been marked 'red' and are in requirement of expeditious attention.
- 5.5 Of those timbers marked red and in need of immediate replacement, only 10 of the 37, or 3.5% of the overall total across the four structures, appear to require a temporary speed restriction of 20mph (based upon the information detailed within NR's presentation). GBRf would challenge NR to demonstrate the access that would be required to replace sufficient timbers to allow the existing temporary speed restrictions to be lifted. GBRf notes that the performance risk brought about by the temporary speed restrictions to be a primary driver behind the access decision within the accompanying decision criteria [Appendix 4.4]. GBRf contests that NR should be taking access at less disruptive times to replace only those timbers that present a safety critical issue but notes that none have been identified as such in the NR presentation [Appendix 3.2]. If a safety critical issue can be avoided through the continued application of temporary speed restrictions then the access to replace the Manea bridge timbers should be requested at the timescales specified within Condition D3.4 of the Network Code.
- 5.6 GBRf notes that within the detail supplied by NR that timbers have been identified as 'orange'; requiring replacement within twelve months. The NR presentation from 21<sup>st</sup> May 2020 [Appendix 3.2] indicates that Option 'DEFCON4' (the 28 day blockade) was preferred as it avoided having to take further until Summer 2022 as it would enable all timbers identified as 'red' and 'orange' to be replaced within the 28 day possession. GBRf considers it highly unacceptable that NR would impose such disruptive access,



with such short notice, to address issues that do not require immediate attention. Notwithstanding Point 5.8, GBRf would expect those timbers identified as orange to be replaced during possessions between July and October 2021. This could be requested at the timescales specified within Condition D3.4 of the Network Code, thereby allowing a thorough amended train plan to be developed and allow operators to put in place adequate plans to resource accordingly.

- 5.7 Within the presentation shared by NR [Appendix 3.2], an option (DEFCON0) was identified that completes all 'red' timbers utilising a number of possessions, up to a maximum of 52 hours in duration, within the identified window of July to October 2020. Whilst noting that this option may have a detrimental impact on other areas of NR's delivery programme, simply transferring the risk to its Customer by taking an extended blockade, as a result of its own inability to adequately plan a works programme, is unacceptable. GBRf would consider the "DEFCON0" access plan to be an acceptable compromise. This would address the immediate concerns of NR by replacing all 'red' timbers, allowing the temporary speed restrictions to be removed and, in turn, addressing those concerns on which NR has placed heavy weighting within its decision criteria; namely safety of the line and timetable performance. The amended train plan to accommodate such an access footprint is one that has operated in previous weekends in 2021, including preparatory works for the Manea bridge structures, and would offer a considerably less disruptive and more robust train plan for GBRf and its Customers.
- 5.8 Within the presentation supplied by NR [Appendix 3.2] it indicates that access to the sites in question can only be made between the months of July and October. Given the severity of the access being sought and the impact it will have on its Customers, GBRf would expect NR to demonstrate to what extent it challenged this restriction with Natural England. Has every effort been made by NR to address those issues that are being raised by Natural England which prevent access to the site between October and July? Are there mitigation measures that could be put place that would extend this window to reduce the impact that NR would have on its Customers?
- 5.9 At an early stage in the consultation period (May 2020), GBRf raised concerns with the various access options that NR was considering. It was highlighted to NR at the time that GBRf expected the proposed SLW to offer insufficient capacity to accommodate its requirements, alongside the requirements of other operators, and that extensive

timetable planning work would be required to identify additional capacity for diverted freight traffic if such engineering access were to be taken. [Appendix 3.1].

- 5.10 Throughout the initial consultation GBRf was assured by NR that a full timetable study would accompany any decision made in relation to the access sought to offer assurance that all of its services could be accommodated. GBRf clearly indicated that any its acceptance of the possession would be dependant upon this detail being supplied [Appendix 3.16]. For such a hugely disruptive proposal, GBRf needs to have sight of the effects of this possession on its services, in advance, so it can see how it would manage its traincrew, terminal operations, end-customers' products and assess the effects on its other rail commitments, UK-wide. With such a hugely altered train plan, with a large amount of GBRf's assets likely to be directly affected, this blockade proposal is different to any other routine possession request.
- 5.11 The accompanying timetable study not only failed to accompany the late notice access proposal from Network Rail on 3<sup>rd</sup> July 2020, it was not been concluded at the point at which NR issued its decision to take the access on 15<sup>th</sup> July 2020. Given that this was a consideration in the Decision Criteria detail supplied by NR [Appendix 4.4], GBRf is at a loss as to how the decision to take the access could be reached without this detail. On the basis that NR could not, and still cannot at the time of submission of the Sole Reference Document, offer any surety of the necessary timetable capacity for GBRf to operate its critical services during the blockade, GBRf felt that it has no choice but to decline the access proposal and refer the matter for determination pursuant Condition D3.5.3 of the Network Code. A Notice of Dispute was duly raised on 18<sup>th</sup> July 2020 [Appendix 1.1] with no discernible progress having been made on the timetable study in the intervening period.
- 5.12 Timetabling Panel Determination TTP210 gives some clear direction as to how Network Rail is expected to carry out its duties when considering specific amendments to the Engineering Access Statement, not least on the aspects of their justification and the impacts upon Train Operators being adequately mitigated. Paragraph 29 in TTP210 states that *"...it is upon Network Rail that falls the burden of demonstrating the good and sound reasons as to why Train Operators should acquiesce in changes, potentially to their detriment, to Rules of the Route and Rules of the Plan that have previously been agreed."* It also goes on to state that *"In particular, if Network Rail does not convince either the Train Operator or a subsequent Dispute Panel, of the case for*

*proposed changes to the Rules of the Route, Network Rail is not entitled to implement those changes or to introduce them into the Condition D4.8 Supplemental Timetable Revision process”.*

- 5.13 Paragraph 31 of TTP210 is crucial to this case and makes clear that, for the Panel to be able to make balanced judgements about the acceptability of this proposed possession, Network Rail must have shared information with the affected Train Operator on the following items, amongst others, viz:
- a) The extent of the contractual commitments between Train Operators and their contracting customers, and an appreciation of the acceptable limits of potential disruption;
  - b) An indication of the scale of the available capacity for diverted traffic on alternative route, together with the extent, if at all, to which Network Rail depends for the delivery of that alternative capacity upon modifications to the Train Slots of other Train Operators not otherwise affected by the amendments to the Engineering Access Statement. This has not taken place.
- 5.14 At the time of submission of this Sole Reference Document, 10:00 on Tuesday 4<sup>th</sup> August 2020, the timetable study remains outstanding. GBRf notes that the access decision document [Appendix 4.3] stated that NR *“will continue to work with you all to resolve any outstanding issues including the confirmation of the amended timetable”*; this simply has not been achieved. Appendix 3.16 highlights that of the eighteen flows that were identified as critical by GBRf, not a single one has had paths identified from end to end and in both directions through the SLW to enable it to run. The only services that GBRf has any certainty over were the possession to be taken as planned would be flows that have regularly diversionary route via London overnight. Given that NR has been working on its timetable study for the proposed blockade for over two months now, GBRf has little confidence in NR's ability to deliver a viable solution for all of its services in the four remaining weeks for the start of the proposed possession.
- 5.15 It should be noted that GBRf would incur significant cost to divert a number of schedules, should suitable access be identified, as it has offered to do to assist NR in acquiring the access it requires. As part of the consultation GBRf has already agreed that it would divert its overnight intermodal schedules via London. GBRf has suggested further daytime diverts, both via London and via Welwyn Garden City to develop a

viable amended train plan. Whilst some of the associated cost of these diversions, should they run, would be recoverable via Schedule 4 of the Track Access Contract, this mechanism is highly unlikely to cover all of the costs to delivering this plan, especially at such short notice.

- 5.16 GBRf notes that even in the event that suitable diversionary timetable capacity is found to allow it to effectively operate its critical flows during the possession, the availability of traincrew to allow trains to run via alternative routes may not be available be to suit. NR appears to have overlooked the fact that there remains considerable outstanding workload to diagram and roster traincrew for the revised train plan, if and when is concluded. GBRf asserts that, at the time of submission of the SRD, it is already too late for any revised train plan to be developed by NR; GBRf would no longer have a sufficient window to develop the traincrew plan required to deliver it.
- 5.17 A considerable programme of driver route learning would be required to accommodate such complex and large-scale diversions, and this would usually take several weeks to achieve. An estimate of the duration and cost of such a route learning package is contained within Appendix 5.2. The situation is exacerbated in the current climate with COVID-19, which prevents FOCs from accessing TOCs driver cabs for route learning purposes; something which is carried out regularly in a normal climate. This supports GBRf's assertion that any access required in September 2020 should be taken in much smaller windows to deal with the immediate problem only; 10 timbers that require a 20mph speed restriction to be in place. The remainder should be planned for 2021, by which time a full route learning programme could be rolled out.
- 5.18 Based upon the current information supplied by NR, GBRf would be prevented from running a number of services unless suitable capacity can be identified [as per Appendix 3.17]. Based on the current information available from NR at the time of submission, GBRf estimates the that it will be financially impacted as detailed below by being unable to operate traffic for its various Customers throughout the blockade. Details of these calculation can be found in Appendix 5.1. Revenue losses of this scale, as a result of NR's poor planning, are simply unacceptable to GBRf.
- (a) Intermodal: £[REDACTED]
  - (b) Sibleco Sand: £[REDACTED]
  - (c) Aggregate Industries: £[REDACTED]

- (d) Cemex: £ [REDACTED]
- (e) Network Rail SCO Networks: £ [REDACTED]
- (f) Network Rail SCO Possession Services: £ [REDACTED]

- 5.19 It should be noted that the figures within 5.18 do not include any downstream claims from GBRf's Customers for the costs of replacement road haulage. Following initial correspondence with third party Customers to explain the possible risk to their business as a result of NR's decision making, a number have already indicated that they may pursue GBRf for the reimbursement of costs for replacement road haulage at late notice. It also needs to be made clear that, with many GBRf services potentially unable to run, several hundred lorries would need to be procured to move customers' boxes. Not only is this highly unlikely to be achievable, but terminals such as the Port of Felixstowe, and the many inland freight terminals, do not have the infrastructure to handle this many additional road vehicles for one day, let alone 28 days. The potential financial exposure is unquantifiable, and it is unreasonable for GBRf to be burdened with such uncontrolled risk as a result of NR's inability to plan engineering access for its infrastructure maintenance within the timescales specified within the Network Code.
- 5.20 With such a period (as is proposed) of being prevented from operating its services, and with the potential of alternative road transport being sought, GBRf holds genuine concerns that some Customers may decide not to return to rail as their chosen mode of transport following the blockade. No compensation regime takes into account the negative reputational impact during in scenarios such as these. GBRf has worked exhaustively over the past two decades, in a highly competitive market, to build relationships with its Customers based on high quality of delivery. Late notice issues of this severity reflect poorly on GBRf, not NR, in their Customer's perceptions. NR gives no consideration to this risk in its decision making, nor would it consider itself accountable should such modal shift from rail to road occur. It is a reflection of the lack of Commercial acumen that exists within NR that access decisions such as the case in point can be reached without a thorough understating of their impacts.
- 5.21 GBRf is firmly of the view that NR has not arrived at the correct conclusion in this instance in reaching its decision to take a 28-day possession between Ely and Peterborough in September 2020. Whilst it is supportive of NR in its requirements to maintain a safe and reliable railway, GBRf believes that a much better compromise

could be reached in this instance. GBRf asserts that a much lesser access window is required for NR to replace those timbers in need of immediate attention. This could be taken in smaller windows at weekends, as detailed within NR's own 'DEFCON0' access plan, when the impact upon its Customer would be much reduced. In turn, this would avoid the need for the extensive timetable study which, in the absence of any tangible output, GBRf has no confidence NR will be able to deliver given the timescales involved. The strategy for the access required to replace the remainder of the timbers not in need of immediate attention should be reconsidered and the necessary access sought in 2021 through the correct process and at the correct timescales. This should include challenging Natural England as to why only the months of July to October are viable options for accessing the sites in questions and what mitigations could be put in place to alleviate this restriction to give a much broader window for works to take place.

## **6 DECISION SOUGHT FROM THE PANEL**

6.1 The Claimant is requesting that the Panel determine that:

(a) Under Condition D5.3.1 (c), NR adopts 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 notes that Condition D5.3.1 (c) should only be exercised in exceptional circumstances but, considering the potentially huge detrimental impact that NR's current decision would have on its business, and the extremely late notice of the blockade, GBRf considers this to more than adequately fulfil this criteria.

(b) Under Condition D5.3.1 (a), NR reviews its access proposals for the outstanding Manea works and proposes, with thorough industry consultation, an acceptable programme of works between July and October 2021 (subject to the outcome of 6.1 (c)).

(c) Under Condition D5.3.1 (a), further work should take place with Natural England to fully understand the existing restrictions at Manea. Greater investigation should take place as to the potential mitigation measures that could be put in place to avoid such a small window of access to such critical items of railway infrastructure.

(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 clear mechanism in place for a Timetable Participant to recover all of its associated additional costs and lost revenues.

## **7 APPENDICES**

### **1 – Dispute Notices**

- 1.1 GBRf Notice of Dispute in relation to possessions P2020/2825755, P2020/2825770, P2020/2825757 and P2020/2825758
- 1.2 GBRf request to expedite dispute
- 1.3 Reference letter from ADC.

### **2 – Maps**

- 2.1 Map showing normal routing of Intermodal, Sand, Aggregate and SCO services
- 2.2 Map showing diverted routing for of Intermodal, Sand, Aggregate and SCO services

### **3 – Meeting Notes and Emails**

- 3.1 GBRf (Ian Kapur) notes from meeting held on Thursday 21<sup>st</sup> May 2020.
- 3.2 Network Rail 'Manea Campaign for Operators v1.2' presentation.
- 3.3 Network Rail invite to meeting held at 11:00 on Thursday 11<sup>th</sup> June 2020.
- 3.4 NR supplied detail of SLW working relating to the location sections and additional time to be added into schedules to accommodate SLW.
- 3.5 GBRf supplied spreadsheet showing all affected services and their respective requirements, based on the assumption of overnight ALB.
- 3.6 Network Rail invite to meeting held at 14:00 on Thursday 18<sup>th</sup> June 2020.
- 3.7 Appendix 3.7 – NR 'Status Report' shared Monday 15<sup>th</sup> June 2020.
- 3.8 Network Rail invite to meeting held at 14:00 on Thursday 25<sup>th</sup> June 2020.
- 3.9 Network Rail invite to meeting held at 14:00 on Thursday 2<sup>nd</sup> July 2020.
- 3.10 Email correspondence between GBRf and NR relating to SLW pathing – dated 3<sup>rd</sup> July 2020.



- 3.11 Email correspondence between GBRf and NR relating to SLW pathing – dated 7<sup>th</sup> July 2020.
- 3.12 Network Rail invite to meeting held at 14:00 on Thursday 9<sup>th</sup> July 2020.
- 3.13 Email correspondence between GBRf and NR relating to SLW pathing – dated 6<sup>th</sup> & 7<sup>th</sup> July 2020.
- 3.14 Network Rail invite to meeting held at 12:00 on Wednesday 15<sup>th</sup> July 2020.
- 3.15 Email correspondence between GBRf and NR relating to SLW pathing – dated 9<sup>th</sup> & 15<sup>th</sup> July 2020.
- 3.16 Email correspondence between GBRf and NR relating to SLW pathing – dated 10<sup>th</sup> July 2020.
- 3.17 GBRf Manea Service Summary Tracker.
- 3.18 Email correspondence between GBRf and NR relating to SLW pathing – dated 28<sup>th</sup> July 2020.
- 3.19 Network Rail invite to meeting held at 09:30 on Tuesday 28<sup>th</sup> July 2020.

#### **4 – Possession Documents**

- 4.1 Manea weeks 18 & 21 preparatory works weekend access decision.
- 4.2 Manea blockade Access Proposal, dated Friday 3<sup>rd</sup> July 2020.
- 4.3 Manea blockade Access Decision, dated Wednesday 15<sup>th</sup> July 2020.
- 4.4 Manea blockade accompanying NR Decision Criteria

#### **5 – GBRf Documents**

- 5.1 Estimated GBRf revenue losses based upon NR supplied train plan at time of submission of Sole Reference Document.
- 5.2 Estimated GBRf route learning costs based upon NR supplied train plan at time of submission of Sole Reference Document.

**8 SIGNATURE**

For and on behalf of GB Railfreight Limited

A handwritten signature in black ink, appearing to read 'Jack Eagling', written in a cursive style.

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Signed

Jack Eagling  
Head of Timetabling &  
Long Term Traincrew Planning