

TTPs1706/1708

Directions and Rule H18(c) Note – 10 Aug 20

Network Rail responses:

The nature of these Disputes

1. I note that in paragraph 4.4.3 of NR's Response to GBRf, paragraph 4.2.11 of its Response to Freightliner, and in a number of other paragraphs it is suggested that these are Access Disputes rather than Timetabling Disputes, but on each occasion Network Rail takes this point no further than what appears to be an observation.
 - *Network Rail submit that the Disputes that have been brought by both GBRf and Freightliner are in relation to an access decision taken by Network Rail. Both operators have requested a ruling (in one form or another) from the Panel in relation to the Access over Manea Bridges and whether or not this should proceed as planned. Neither operator has requested that Panel issue a ruling or direction regarding a timetable decision notwithstanding that similar hearings have been undertaken using the TTDP hearing format. Network Rail submit that at this stage in proceedings, no offer for any paths has been made to any operators. The most recent actions undertaken have been to publish the capacity study and request that operators submit their Access Proposals to Network Rail by Wednesday 12th August 2020 under Network Code D3.5. Once Network Rail have received the Proposals we would then look to accommodate/ reject or modify as per our obligation under D3.4.11.*

2. In the interests of ensuring that time is used productively on the hearing date, it must be clarified **as soon as possible** whether Network Rail is intending to submit that the Panel has no jurisdiction to determine these Appeals.
 - *Network Rail have no particular objection to this matter proceeding as a Timetable Dispute rather than an Access Dispute Adjudication. We would ask that both Freightliner and GBRf confirm that it was their intention to bring this matter as a Timetable Dispute rather than an Access Dispute. In the event that they confirm that this was to be a Timetable Dispute, Network Rail request confirmation from Panel as to whether the operators are now time barred from bringing an Access Dispute in relation to Manea Bridges and that as a result the access decision by Network Rail has not been appealed. However, Network Rail also note, as stated above, that past hearings related to access decisions have been referred to TTDP hearing and has no wish to challenge this.*

3. I hope that without prejudicing the hearing of any application that Network Rail wishes to submit, which will be decided on its merits, that Network Rail will note that the Secretary's e-mail on 1448 on 22 Jul 20 (relating to GBRf, and similarly in relation to Freightliner) invited Network Rail to advise her within five Working Days if it had any objection to the matter being progressed as a Timetabling Dispute. No objection was raised by Network Rail, so at first sight it would appear that Network Rail is estopped from raising such an objection now.
 - *Network Rail note the comments from the Panel and would refer to our above comments. Network Rail have no objection as to how this hearing is classified.*

Network Rail's duties under the *Wildlife and Countryside Act 1981* ('the Act')

4. Will Network Rail please confirm whether the work on the bridges will be achieved solely by rail access, or will require road access?
 - *Access will be by road and rail.*
5. Behind this question is my understanding that Network Rail is defined as statutory undertaker by S28G of the Act. Under S28H a statutory undertaker is only required to give notice to Natural England, '*... before carrying out, in the exercise of its functions, operations likely to damage any of the flora, fauna or geological or physiographical features by reason of which the site of special scientific interest is of special interest*'.
 - *Access will be by road and rail.*
6. Noting that Network Rail's request was submitted under S28H, will Network Rail please confirm **by 1700 on Wed 12 Aug** how it has assessed that the bridge repair work will be likely to cause damage of the kind set out in S28H, so requiring consent from Natural England. What damage does Network Rail think that the work is likely to cause, and why?
 - *Network rail does not intend to damage the flora and fauna and our agreement with NE is to reduce the impact on nesting and migrated birds including protected species (black tailed godwit). The concern of NE is the light pollution, noise (particularly from rivet busting) and movement of people along the structure caused by our works.*
7. If, alternatively, Network Rail differs from this interpretation of its duties, please explain why.
 - *Network Rail believes our duties include the impact of our works on protected and nesting birds.*

Network Change

17. Will Network Rail please confirm **by 1700 on Wed 12 Aug** whether the Network Change procedure has been implemented in respect of any TSR falling within the Part G definition.
 - *The conversion from TSR to PSR normally applies where there is no remedial actions available either due to design or access within 6 months. Ultimately conversions are fraught with difficulties as it is not in the Operator's interest to convert and alter timetables accordingly and the require a sequence of meetings and reviews to take place spread of a number of months. With this particular failure mode it is not best practice to keep this defect in the system over a long term.*
 - *We are not implementing the change procedure in this case as the defects cannot be left in situ due to the extraordinary nature of the deterioration risk. We will if unsuccessfully completely remove the asset from use to progress the rectification works.*

Developments since the submission of Sole Reference Documents

23. The Hearing Chair assumes that further discussions will have been taking place between the Parties. It would assist the Panel if all Parties could provide a brief summary **by 1700 on Wed 12 Aug 20** of how many services of both Freightliner and GBRf have still not been accommodated with end-to-end paths through the SLW, or have been found diversionary routes.

Latest position from NR :

FOC	Total No	Completed	Percentage Completed	In Progress	Potential Percentage Completed	Outstanding	Commentary
Freightliner	113	75	63%	15	80%	23	Movement in both 'Completed' and 'In Progress' Focus is on the diversions via London to start understanding circuits and resourcing
DBC	61	42	69%	9	84%	10	A few outstanding queries with DBC Awaiting completion of diversions via London
GBRf	551	388	70%	48	79%	115	Completion in some aggregate's services A couple of outstanding trains for later weeks in IM
TOTAL	725	505	67%	72	81%	148	