

## **GWR UPDATE 08 08 23 TO: TTP2243, TTP2244, TTP2245, TTP2251 and TTP2260**

### **Third Directions - 04 August 2023**

I direct that parties shall by **16:00 Tuesday 08 August 2023** file responses to the various issues raised below

#### **For the operators**

1. Please can **MTR, HEOC and GWR** confirm whether they agree with NR's statement made in para 4.2.8 of its SRD: The Capacity Study shows GWR running 80% of their normal Sunday services with MTR-EL running 60% and HEX at 50%. If any of them do not, NR should bring to the hearing the evidence it relies upon for making that statement. **GWR has checked against its own services. 80% is provided under the 14.5 plan with 6.5 allocated to GWR, however from Dec 2023, GWR's normal Sunday timetable increases and the proportion allowed for under 14.5 / 6.5 falls to 75%. GWR has not checked the MTR and HEOC values but has no reason to doubt their authenticity.**
2. Do the Parties (**MTR, HEOC and GWR**) accept the assertion of Network Rail, cited in 4.2.10 and referred to elsewhere in the SRD, that 'Creating or accepting a poor performing timetable is not an acceptable outcome for any timetable participant'? Are there circumstances in which the Parties might indeed accept de-prioritisation of performance in order to favour other concerns? **This is not accepted. Indeed the whole thrust of 4.2.10 is false. 1. Any ORR performance escalator is designed to solve the root cause of poor performance, i.e. the renewal, maintenance and rapid repair of the railway such that failure does not occur or where it does not affect the railway for too long. 2. The Timetable Planning Rules are designed to provide a robust timetable. GWR's plan for 15.5 tph / 7.5 GWR is Timetable Planning Rules Compliant. Network Rail is not seeking to change the Timetable Planning Rules. Instead it is seeking to reduce trains to the minimum. More revenue to the industry means more money for day to day operations and investment and a greater need to be met by the Government in its five yearly periodic review awards and in ad-hoc enhancement programmes. Network Rail claims in this paragraph that GWR's plan for 15.5 tph is unworkable because EL ECS crossing moves at Ladbroke Grove have not been accounted for. Network Rail in this paragraph says these moves prevent a further increase in capacity. This suggests that not all MTR services that terminate at Paddington low level from Shenfield/Abbey Wood are turning back at Westbourne Park and instead Network Rail is facilitating some to run ECS to Old Oak Common Depot to swap units or drivers. These ECS moves are taking up capacity at Ladbroke Grove that NR should be allocating to additional passenger services. (This implies the capacity if properly managed is greater than even 15.5 tph.) The timetable as a concept is not designed to prioritise punctuality over any other aspect. If it were no trains would be in the timetable and there would be no late train. Any timetable's prime driver is the attraction of profitable custom through advertised journey opportunity. Usage and reputation sees to the effect of punctuality on demand. These two track occasions are finite and discrete and will have a different effect on customer perception than poor performance day in, day out throughout the week under normal operation. (Similarly there will be a smaller effect on any ORR target.) Punctuality is one of a number of secondary concerns for passengers and potential passengers including ability to**

**get a seat and a through train with catering and toilet facilities. Passengers in the know turning up at Paddington say for Reading, Didcot or Swindon wait for the next train instead of trying to cram on to an already heavily laden service. That's evidence of a need for comfort over punctuality.**

3. In its SRD NR has set out its reasons for its decision restricting access to 14.5 tph. Do the Parties **GWR and HEOC** contend that for those reasons, and in context, that decision was:
  - a. Not made in good faith;
  - b. Irrational;
  - c. Capricious; or
  - d. Inconsistent with the contractual purpose.

If a Party contends that the answer to any of those points is 'yes' it shall set out the gist of its arguments for doing so and shall identify the evidence it wishes to rely upon in support of them.

**(a) GWR believes Network Rail is acting to reduce the risk to performance, and that in good faith it believes this action of capping the number of trains (and in allocating using a strategic planning tool) is the right course to achieve that; GWR believes that Network Rail believes in good faith that the Network Code supports its actions; GWR has never said it believes that Network Rail is not acting in good faith;**

**(b) Network Rail appears to have decided that 14.5 is enough and a limit and has worked to provide what it sees as evidence to support that, even when arguments have been made against it and evidence has been provided by more than one party affected. GWR cannot say Network Rail has acted irrationally. GWR says the reading of the code and the facts and their implication in this case has been read wrongly but not irrationally;**

**(c) is NR guided by a whim? A sudden fancy? GWR believes this not to be the case. This is long lasting and there is a consistent stance here that started months if not a year ago.**

**(d) Inconsistent with the Contractual Purpose (which appears to be to find the optimum solution in view of the circumstances in this case and the application and effect of the Decision Criteria and of its Objective on those circumstances). GWR believes Network Rail has said that it has attempted to do this and GWR believes NR is acting in good faith;**

#### For GWR

4. Please can **GWR** supply a brief clarification of the points in its SRD that NR says it has not understood (NR SRD 4.2.2 and 4.2.20(j)). **(a): NR SRD 4.2.2: This merely shows that the decision should be led by application of the decision criteria, The paragraphs of Part D quoted lead from the discussion about EAS development to the process to be laid down in the Timetable Planning Rules / Engineering Access Statemnet as to how amendments should be made to the EAS. These paragraphs show that such a process is required to have decisions made on the application of the Decision Criteria. The rest of the GWR paper explains how GWR believes application of the Decision Criteria including the**

application of weighting of each element given the circumstances in this case, and of the overarching Objective should have led to a different decision; (b) This is believed to be 4.2.19 j, viz: “efficient use of toc assets (train in revenue earning service attracting custom aids their true efficiency)”; Train operators lease stock in order to gain revenue from the public. To have a train in revenue earning service carrying passengers paying money towards those leasing costs is more efficient use (and effective use) than having them idle in the sidings or depot. Great numbers of trains brings in greater number of passengers unless the market is saturated. The poor loadings on Sunday 11th June compared with other Sundays around it show a worse advertised service generates less income. Less income over the complete fleet is a less efficient use of the fleet;

5. Does **GWR** accept NR's statement in para 4.2.7 of NR's SRD? **It has always been the case that demand on high speed services into Paddington (and other intercity London terminals) has been the highest of the week requiring every trainset to be out in traffic to move the load. They are all out in traffic too in the Monday to Friday peaks but the loadings on Sunday afternoon were higher than even the SX peaks. The revenue from this activity was of course lower on Sundays than SX peaks as the price charged was different. Saturday historically has been the lowest demand day save on Summer Saturdays to and from the resorts. If there had been a tolerance of overcrowding or an overconcern re performance these trains would not have been put into service on Sundays. In recent times growth has particularly affected Saturday and Sunday journeys and there are fewer (proportionately) people having to return on Sundays for work or school nevertheless GWR outperforms all other intercity tocs in having demand very close to pre-Covid levels. Commuting has rebounded especially midweek, leisure is at or greater than pre- Covid and only business travel has changed fundamentally. This is helped by the government’s investment in new trains and electrification for Dec 2019 meaning even post Covid faster and more frequent journeys with less overcrowding.**

#### For the Defendants

6. Please can **NR and MTR** clarify the point NR makes about MTR's ECS service in para 4.2.10 of its SRD: do MTR ECS services use any of the 14.5tph capacity that NR says is available during the possessions in dispute?

**See above.**

For NR

7. Please can **NR** confirm what train service has been offered for Week 29 on 04 August 2023 (i.e. does the train service offered match the Capacity Study for Week 29) (date taken from NR's timeline appendix)?
8. What reply, if any, did **NR** make to Paul Fowler (HEOC's) email on Monday, July 10, 2023 at 8:16 AM (HEOC Appendix 1.5)?
9. In light of paras 4.2.9 and 4.2.10 of its SRD, please can **NR** confirm (by means of yes or no answers) whether the 14.5tph offer is TPR compliant. In the same vein: is the GWR suggestion (GWR Appendix 1) TPR compliant? Are there TPR-compliant ways to offer 14.5tph, 15.5tph or a 16.5tph train service.
10. In the context of NR SRD para 4.2.9 ("In trying to include 14.5tph, Network Rail have also reduced margins wherever possible resulting in consistently tight crossing moves"): Have those margins been reduced below the TPR values? If they have, what is the justification for offering a TPR-non compliant timetable? If they have not, does this suggest that the TPRs themselves, if applied as written, are insufficiently robust to prevent delay and the TPRs are therefore deficient?
11. Does **NR** have a performance breakdown for the Week 11 two track timetable, where they can describe differences between hours where 14.5 tph operated and those where additional GWR services ran?

John Hewitt

04 August 2023