

TTP2318 and TTP2320

Ninth Directions, issued on 29 December 2023

1. These Directions are issued to assist Network Rail ('NR') in drafting its submissions, and the other Dispute Parties in drafting their responses to NR's submissions.
2. In paragraphs 11, 15 and 17 of the Seventh Directions, which include some of the questions to be addressed at the adjourned hearing, the words 'Flexing Rights' are capitalised, thus indicating that this is a defined term. On further consideration, and on re-reading Part D, I think that the capitalisation of Flexing Rights is potentially misleading, as the drafting of this section of Part D implies a wider ability to flex services than solely that outlined in the defined term.
3. The limitations of the power conferred by the defined term should be contrasted with the extent of NR's duty in D3.4.8 to consult with any operator directly or indirectly affected by any Restriction of Use, and NR's powers in Condition D3.4.9, which says: *'To facilitate the planning of any Network Rail Variation, Network Rail may require that any Timetable Participant shall submit a revised Access Proposal in respect of any Train Slot'*. As the Parties will understand, these Disputes are dealing with Network Rail Variations and for future reference I note that although Conditions D3.4.8 and D3.4.9 appear in the section of Part D dealing with Network Rail Variations with more than 12 weeks' notice, Condition D3.5.2 also applies both provisions to Network Rail Variations with less than 12 weeks' notice.
4. Reflecting on the language used by those in the industry, in this and previous TTPs, it seems that me that a number of those involved, including me, have on occasion inaccurately used the defined term 'Flexing Rights', when we actually mean to refer to all powers of NR to amend the existing WTT services in order to allocate capacity on routes affected by a Network Rail Variation.
5. Paragraph 14 of the Seventh Directions, seeking examples of NR flexing WTT services to accommodate past diversions, is an example of using the word 'flexing' in this broader sense.
6. In drafting the remaining submissions and responses, therefore, the Parties should interpret the words 'Flexing Rights' in the questions in the Seventh Directions as covering not only the term defined in Part D, but also of any other power enabling NR to flex the services of operators whose services are being diverted, and to flex the services of any other operator whose WTT services operate over the diversionary route(s).

[Signed on the original]

Clive Fletcher-Wood

Hearing Chair, TTP2318 and TTP2320