

TTP2517 and TTP2521

Fourth Directions and Rule H18(c) Note – 1 November 2024

I am grateful to all Parties for their timely submissions. In these directions, I refer to Network Rail as NR, First Great Western Limited as GWR, and MTR Elizabeth Line as MTREL.

These Directions require specific actions in some cases by Parties. Some paragraphs within these Directions are intended to help the Parties prepare for the hearing by setting out the process which the Panel might adopt in dealing with some topics.

These Directions are not intended to provide an exhaustive survey of the matters which the Panel may wish to explore. Unless specified otherwise any expression which is capitalised is intended to be a reference to the relevant term as defined by Part D of the Network Code.

For all Parties

1. From the Parties' submissions the following appear to be common ground:
 - (i) These references are expressly authorised through Condition D2.2.14 of Part D¹;
 - (ii) There is no applicable Possession Strategy Notice²;
 - (iii) NR is in principle entitled to a possession via a Restriction of Use ("RoU") in connection with proposed works during the Easter 2025 weekend ("the Decision").
 - (iv) The relevant possessions are being sought to undertake track and associated renewals at Acton East Junction, alongside HS2 related works at Old Oak Common;
 - (v) The points in dispute are (a) the overall quantum of trains paths available during the two-track railway possession, and (b) the allocation of the two-track railway capacity between train operators.
 - (vi) GWR is entitled to bring this dispute in accordance with Condition D5 of the Network Code insofar as the Network Code and ADRR are applicable.
2. The Parties are asked to confirm **at the hearing** whether this is correct.

Chronology

3. NR has provided a chronology attached as appendix A1 to its SRD (subject to my decision on confidentiality as set out in my Third Directions). The Panel will wish to understand **at the hearing** whether that chronology so far as it goes is agreed between all the Disputes Parties.

¹ GWR's SRD refers to Condition D2.2.8. I infer that this is intended to be a reference to what is now Condition D.2.2.14 in the provisions of Part D which are in force from 5 August 2024.

² Noting GWR's statement in para 2.1 of its SRD, GWR is asked to explicitly confirm at the hearing that the disputed access under these references was not previously disputed under TTP2315 (GWR's existing dispute against Network Rail's Old Oak Common Possession Strategy Notice, issued in 2023).

4. The Parties are asked at the hearing to confirm what relevant further actions have taken place since the July 2024 hearing relating to references TTP2243, TTP2244, TTP2245, TTP2251 and TTP2260.

TPR compliance limits and capacity modelling

5. The Panel wishes the Parties to explain **at the hearing** what the TPR-compliant limit is on tph.
6. The Panel wishes NR to confirm **at the hearing** what work has been done on comparing the performance impact of additional tph, against 14.5tph, if the answer to question (5) is more than 14.5tph. The Panel particularly wishes to understand what other options have been modelled and whether it is possible to build a timetable which is TPR-compliant with more than 14.5tph.
7. The Panel wishes GWR to address **at the hearing** whether it accepts NR's contention that it is not normally possible to remove one service in one direction from the timetable for the operating model which applies to the proposed possession.
8. The Panel wishes GWR to come ready **to the hearing** to address points raised by MTR and NR in their SRDs about practical alternatives to GWR obtaining additional paths (such as demand-based pricing or yield management processes to manage passenger numbers).

Exceptional circumstances

9. **At the hearing**, the Panel wishes to understand GWR and MTREL's response to NR's challenge that planned maintenance and upgrades are routine during holiday periods when passenger flows are lower.
10. Taking into account the ORR's decision on appeal in reference HAL/TTP003 **at the hearing** the Panel wishes to understand whether GWR contends that the Panel has sufficient data before it to safely substitute its own decision.

Rule H18(c) Note

Rule H18(c) requires me to 'identify and to itemise in written form....all relevant issues of law raised by the dispute'.

The issues of law which arise are:

- (1) Whether the provisions of Part D entitle NR to limit capacity as a consequence of a possession (in this case the number of trains per hour) provided those decisions are justified by reference to the application of the Decision Criteria as specified in Condition D4.6;
- (2) Whether NR, as a contractual fact-finder, acted reasonably in making the Decision;
- (3) Whether, and to what extent, NR took into account the Objective, as defined in Condition D 4.6.1, in making the Decision;
- (4) Whether in its application of the Decision Criteria, NR erred in law;
- (5) Whether the remedies the Parties seek are available to the Panel under Condition D5.3.1 and Rule H50 of the ADRR, and in particular, whether Condition D5.3.1(c) is engaged; and
- (6) If Condition D5.3.1(c) is engaged should the Panel substitute an alternative decision in place of the Decision and, if so, what should that be.

The remaining issues are ones of contractual interpretation.

[Signed on the original]

Paul Stevenson
Hearing Chair TTP2517 and TTP2521