

TTP2525

Network Rail Defence Document

1 DETAILS OF PARTIES

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

- (a) Freightliner Limited, (Company number 03118392) whose Registered Office is at The Lewis Building, 35 Bull Street, Birmingham, B4 6EQ and Freightliner Heavy Haul Limited (Company number 3831229), whose Registered Office is at The Lewis Building, 35 Bull Street, Birmingham, B4 6EQ, collectively referred to as ("Freightliner") or ("the Claimant"); and
- (b) Network Rail Infrastructure Limited, whose Registered Office is at Waterloo General Office, London, SE1 8SW ("Network Rail") or ("the Defendant").

1.2 Network Rail believe that First Greater Western Limited are likely to be affected by potential findings in this matter.

2 CONTENTS OF THIS DOCUMENT

This Response to the Claimant's Sole Reference includes:-

- (a) Confirmation, or qualification, that the subject matter of the dispute is as set out by the Claimant in its Sole Reference, in the form of a summary schedule cross-referenced to the issues raised by the Claimant in the Sole Reference, identifying which the Defendant agrees with and which it disagrees with.
- (b) A detailed explanation of the Defendant's arguments in support of its position on those issues where it disagrees with the Claimant's Sole Reference, including references to documents or contractual provisions not dealt with in the Claimant's Sole Reference.
- (c) Any further related issues not raised by the Claimant but which the Defendant considers fail to be determined as part of the dispute;
- (a) The decisions of principle sought from the Chair in respect of
 - (i) legal entitlement, and
 - (ii) remedies;
- (b) Appendices and other supporting material.

3 SUBJECT MATTER OF DISPUTE

- 3.1 Network Rail agree that this is a dispute relating to our Decision to publish changes to the Wales & Western Timetable Planning Rules for the 2025 subsidiary timetable through Condition D2.2.7 and that these updates relate to restrictions in the Westbury station area on Line of Route GW560.
- 3.2 The Wales & Western region has experienced significant change over the last ten years, particularly on the Western route which has influenced performance trends. Train performance in all Network Rail regions has declined in the last three years. Wales & Western's decline has gone further and faster. Network Rail-attributed delay in Wales & Western has increased by 76% compared to 2014-15, the worst of any region. Both operator and Network Rail delay has been increasing in the region, although Network Rail's delay has been increasing at a slightly faster rate.
- 3.3 Network Rail has been collaborating with operators to agree Timetable Planning Rule (TPR) changes on Route GW560 for 20 months.
- 3.4 Collectively, the TPR changes are designed to improve the reporting and timing of trains in TRUST and help to plan trains more accurately. The changes will also more accurately reflect the capability of the network and support improved performance. On this occasion the TPR change was in relation to an identified performance issue.
- 3.5 Appendix A sets out a detailed chronology of events in relation to this dispute and has been created based on record utilisation.

4 EXPLANATION FROM THE DEFENDANT'S PERSPECTIVE OF EACH ISSUE IN DISPUTE

4.1 Issues where the Defendant accepts the Claimant's Case.

- 4.1.1 Network Rail agree with the chronology supplied by Freightliner within their SRD and have provided additional detail as our Appendix A.
- 4.2.1 Network Rail agree with the stance taken in Para 5.9.

4.2 Issues where the Defendant qualifies or refutes the Claimant's Case.

- 4.2.1 Freightliner note within their SRD that they have responded to Network Rail's consultations stating that they disagree with the publication of the proposed values (para 4.14, 4.16 and 4.17). It is clear from the Appendices provided that the objection being raised was because Freightliner believe that "as the associated Network Change has not been established for the Westbury overlaps we cannot accept..." (Appendix 14) and that "Network Rail have no legal right to implement restrictions relating to overlaps at Westbury (Appendix 17). Network Rail have record of any communication from Freightliner detailing their stance about whether the values as proposed are correct, or whether (and why) they believe the previous values were correct. Their SRD is similarly silent regarding the merits of the proposed/decided values. Network Rail submit that we are legally entitled to make such a proposal and decision under Part D.
- 4.2.2 Freightliner claim that there was no response from Network Rail to their objections. Network Rail have held conversations with Freightliner on this matter to inform them that Network Rail considers that it

does have the ability to make these publications – the rationale is detailed later in this paper. There has been no need to respond regarding the merits of the proposed values because these have not been challenged. For details regarding the proposal and consultation of the TPRs, we refer to Appendix A.

- 4.2.3 Para 5.1 of the Freightliner SRD notes that they are “supportive of changes to the TPR values to accurately reflect the capability of the Network”. On the basis that no information has been provided by Freightliner specifying that they disagree with the value proposed, and that the proposed value was to ensure that the TPRs accurately reflect the capability of the network, it would appear that there is no issue regarding the merits of the values.
- 4.2.4 Network Rail refute the claims made with Freightliner’s Para 5.2. Capability of the Network is not predetermined at the stage that a Track Access Contract is entered into. We would question whether Freightliner mean ‘capability’ or meant to write ‘capacity’. There could be an assumption at the point that Rights are granted (be they Firm or Contingent) that capacity exists for these services. Such an assumption is flawed. There is no mechanism that requires Network Rail to offer trains in excess of capacity or capability – indeed this would be deemed unsafe and contrary to Part D. An inability to accommodate all Access Proposals into a timetable may simply be evidence that capacity has been oversold. It is also submitted that TPRs don’t allocate capacity, but rather are a method of capping or retraining capacity and defining available capacity. TPRs can (and do) also change depending upon the timetable specification which can impact capacity.
- 4.2.5 In relation to the first issue raised in Freightliner’s Para 5.3, Network Rail submit that there is no Network Change in play in this scenario. Six years ago, a Network Change (physical) was proposed, consulted, established and implemented. No party recognised the impact in relation to the TPRs and the Rules have operated with a deficiency since then. That Network Change was established and closed.
- 4.2.6 The TPR values proposed and decisioned relate to a performance improvement that has been identified. It is submitted that there is no Network Change requirement here because there is no material change (physical or otherwise) to the operation of the network to the operator.
- 4.2.7 We refute Para 5.4 on the basis that previous ORR binding precedent (TTP807, 808 reaffirmed in TTP2468) is clear – there is no link between Parts D and G and (as per the above para). The ‘cross referencing’ referred to in Para 5.5 was in relation to understanding historic actions and providing context to dispute proceedings only (TTP2468).
- 4.2.8 In Para 5.7, Freightliner opine on Network Rail’s historic position – we request evidence of this. We refute the notion that it is not reasonable to impose capacity restrictions because of local working instructions, failures and unavailable infrastructure. Rather, we submit it is entirely reasonable that Network Rail do this. To take (infrastructure) failures and/or Restrictions of Use as an example, Network Rail are legally entitled to remove access/capacity from operators because i.e. the track is broken. Compensation mechanisms exist to cover this possibility.
- 4.2.9 In relation to Para 5.6 and a quote attributed to a Network Rail Manager – we would ask for clarity and the context in which this was provided. As detailed above, in the scenario presented here, no Network Change is required so the point becomes moot.

- 4.2.10 Network Rail also refute the allegation that there has been a Licence Breach and would ask Freightliner to provide specific details as to why they believe this to be the case, and evidence to support such an allegation. It is submitted that an issue such as a potential breach of Licence is a matter for the ORR.
- 4.2.11 Within Para 5.10, Freightliner claim Network Rail have not communicated evidence that we have considered operators objections. The only objection we are aware of is that Freightliner believe Part G needs to be followed – we have detailed above why this stance is incorrect. We would also refer back to the contents of our Para 4.2.3.
- 4.2.12 Appendix W is a copy of the internal Decision Considerations produced by Network Rail in advance of issuing the decision regarding the overlap values. This shows that the Decision Criteria was at the forefront of our mind when making this decision. The document was not shared with operators because (as far as we were aware) the values themselves were not challenged.
- 4.2.13 Freightliner claim that the TPRs being brought in restrict future growth/ capacity (Paras 4.14 and 5.3) but provide no evidence as to why or how this is the case. Freightliner's desire to potentially run an unspecified service for an unspecified customer at an unspecified time makes it difficult for Network Rail to factor these requirements into the optimal values for the TPRs. Network Rail submits this proposal is optimised and reflects the reality of today's infrastructure and timetable specification. It is submitted that Network Rail by proposing these values has not breach any of Freightliners contractual rights.
- 4.2.14 Network Rail note Freightliner's assertion that this is not an issue that was responded to and seek to address this now. In the May 25 timetable, there are three SX QJ paths through Westbury, but two of those only go into the sidings around Westbury itself. There is also one Su QJ path. Perhaps unsurprisingly, there is capacity for some growth.
- 4.2.15 There are some SX opportunities for additional capacity in this area. However, future growth is more likely to be limited by the speed of freight traffic and the headways on GW500 towards Reading, the single line through Melksham towards Swindon and the availability of loops rather than these margins at Westbury.
- 4.2.16 During the production and validation of May 25 Network Rail identified a handful of trains that were not compliant with the Rules. All have been subsequently accommodated in the May 2025 timetable offer. It is submitted that Freightliner have failed to provide any evidence or explanation as to whether, or how, their Track Access Contract has not been fulfilled in this scenario.
- 4.3 Issues not addressed by the Claimant that the Defendant considers should be considered as material to the determination**
- 4.3.1 Network Rail's obligation is to develop, propose and maintain TPR values that accurately reflect the capability of the Network, ensuring timetables perform to a high standard while also making best use of the infrastructure available and to ensure the safe operation of the railway. This is exactly what Network Rail have set out to do and the change has no link to the Network Change issued six years earlier.

4.3.2 Network Rail have acted in accordance with Network Code Part D for changes to TPRs for the May 25 Timetable. Network Rail have accommodated all of Freightliner's existing services that were impacted by this change.

4.4 Why the arguments raised in 4.1 to 4.3 taken together favour the position of the Defendant

- 4.4.1 Network Rail strives to be proactive in resolving performance issues identified. On this occasion the TPR was identified as insufficient (missing), and this insufficiency did materialise as a performance issue within the timetable. Network Rail Timetabling, Local Operations and Operators GWR/Freightliner worked together and produced TPR values that reflect the capability of the network and improve performance. The values identified and published have never been challenged by an Operator. The initial rationale provided for the dispute by Freightliner is that the original Network Change six years ago stated no TPR change was required for the Network Change. This may have been correct at the time, or all parties misunderstood the implications and impact of the changes. Having identified a TPR deficiency (missing TPR) which causes performance issues, the only course of action for Network Rail was to fix this to improve performance. This is separate to the Network Change issued six years earlier. The new values reflect the capability of the Network.
- 4.4.2 Network Rail would like to highlight the impact of not having these new rules in the TPRs. Since the Network Change has been commissioned in Spring 2019, Network Rail have seen a minimum of 19 trains incidents (delays) attributed to the timetable. This has caused 244 minutes of delay (this is just 502a Network Rail minutes) to the network which impacts passengers and freight customers and is to the detriment of the reputation of the cross-industry railway community.
- 4.4.3 The first incident was issued 19th May 2019 when a signaller advised schedule 1F29 was unable to arrive at Platform 2 at Westbury due to reduced overlap W402 signal with 1C91 departing platform 1 over W845 points, this was due to recent remodelling. A further 18 incidents have occurred since and materialise in the timetable, this has been in both the amended and permanent plan.
- 4.4.4 Network Rail attempted to fix the performance issue through planning interventions using the TPRs present at the time, but all attempted fixes did not rectify the performance issue. This was between 19th May 2019 and 14th March 2023.
- 4.4.5 Since the new TPR values for Westbury overlaps have been established GWR have been planning their services taking cognisance of these new Rules. Early evidence suggests that the identified performance issues are effectively mitigated as a result. Please refer to Appendix X which is a statement from GWR on this matter.
- 4.4.6 Freightliner Limited have never challenged the merit of these Rules or argued that they do not reflect the capability of the operational railway and help support improved performance. Network Rail have already assessed any impact to Freightliner services along with GWR due to this change. All services are still accommodated and have been offered in the May 25 WTT.
- 4.4.7 Within the National TPRs guiding principles and procedure for amending TPRs, there is nothing which is supportive of Freightliner's position that TPRs cannot be amended without support of a Network Change document. There is no contractual link between Network Change and TPR change. We use Network Change to manage material changes to the network, which may, or may not have

implications, but the absence of a Network Change does not prevent Network Rail from making a TPR change, and likewise the presence of one does not guarantee what the TPR change will look like.

- 4.4.8 1.2.2 in the National TPRs states that before an upward revision of the TPRs is enacted, the aim should be to otherwise enhance operational delivery. In this case, the project sponsor did state they would not be able to alter things on the ground, which closes off non-TPR methods of removing the overlap issue (if they won't move the signals or points on the ground, then nothing else will alter the overlaps and so a TPR is needed).
- 4.4.9 Network Rail also quote 1.1.2, of the National TPRs and as the decision criteria assessment for TPR inclusion was conducted the process was followed appropriately. "The construction of a robust timetable needs to balance safety, capacity and performance expectations and the aspirations of all stakeholders involved, recognising that the application of these rules should provide for current and anticipated service levels, coming to a balanced decision using the Decision Criteria set out in D4.6 of the Network Code".
- 4.4.10 Network Rail have identified a deficient/missing TPR from several delays and investigation into those delays, Network Rail have acted upon these investigations in collaboration with Operators to drive forward improvement to train performance. The new rules support a smoother delivery of day-to-day service performance and a better experience for passengers and freight customers.
- 4.4.11 The TPR values have never been objected to. Another Operator is using these Rules in their planning to support improved train performance. Having these Rules within the TPRs aids more effective planning and mitigates against performance issues. The removal of these Rules would be an added risk to train performance on a region that has seen Network Rail-attributed delay increase since 2014-15.

5 DECISION SOUGHT FROM THE CHAIR

- 5.1 Network Rail seeks confirmation from the Chair that:
- 5.2 The decision to publish the V4.1 (May 25) TPR changes in relation to the Westbury overlaps is upheld, and that the values published stand.
- 5.3 There has been no breach of the Network Code Part D from Network Rail in proposing, consulting and decisioning these amended values.
- 5.4 Confirmation that there is no contractual link present between Network Code Part D and Part G in line with TTPs 807, 808 and 2468.

6 APPENDICES

- 6.1 Appendix A – Chronology of Events
 Appendix B – NC607 specification of work and stated impact on TPRs
 Appendix C – Freightliner email accepting NC607
 Appendix D – Email to signal box
 Appendix E – Westbury Signaller explanation of delay
 Appendix F – Draft margin proposal
 Appendix G – Email to operators

- Appendix H – Email from GWRR re overlaps
- Appendix I – Email from Westbury Signaller reviewing information from Freightliner
- Appendix J – Input from GWR as to overlap margins
- Appendix K – TPRS proposes corrected margins to operators
- Appendix L – Request for reverse moves to be included in table
- Appendix M – Page of W&W TPRs 2024 V3
- Appendix N – Freightliner 2024 V3 TPR version response regarding Westbury overlaps
- Appendix O – Page of NC607V1 showing TPR implications
- Appendix P – Westbury overlaps as appearing in W&W TPR 2025 V1
- Appendix Q – FL's W&W TPR 2025 V1 response re Westbury overlaps
- Appendix R – FL's W&W TPR 2025 V2 response re Westbury overlaps
- Appendix S – FL notice of dispute
- Appendix T- Email from TPRS information operators of plan for V4.1 and reasons
- Appendix U – GWR W&W 2025 V4 response item
- Appendix V – TTPM and TPRS assessment of options
- Appendix W – Decision Considerations (Internal)
- Appendix X – GWR Position Email

7 SIGNATURE

For and on behalf of

Network Rail Infrastructure Limited

Signed



Print Name

Lee Eastwood

Position

Timetable Production Manager
