

TTP2591 – Network Rail Sole Reference Document

1 DETAILS OF PARTIES

- 1.1 The names and addresses of the parties to the reference are as follows:
- a) Freightliner Limited (“FL”) whose Registered Office is at The Lewis Building, 35 Bull Street, Birmingham, B4 6EQ (“the Claimant”); and
 - b) Network Rail Infrastructure Limited (“NR”) whose Registered Office is at Waterloo General Office, London, SE1 8SW (“the Defendant”).
- 1.2 Potential ‘Involved Parties’ to this dispute include Arriva Rail London, c2c, CrossCountry Trains, DB Cargo (UK), Direct Rail Services, Greater Anglia, GB Railfreight and Govia Thameslink Railways.

2 CONTENTS OF THIS DOCUMENT

- 2.1 This Response to the Claimant’s Sole Reference Document (SRD) 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;
 - (d) The decisions of principle sought from the Chair in respect of
 - (i) legal entitlement, and
 - (ii) remedies;
 - (e) Appendices and other supporting material.

3 SUBJECT MATTER OF DISPUTE

- 3.1 NR confirms that the matter in dispute concerns its rejection of the following two Train Slots on 14th February 2025, for reasons relating to Timetable Planning Rules (TPR) compliance and level crossing risk (i.e. safety):

4L73HA MO	12:08	DONCASTER EPT (F’LINERS) – LONDON GATEWAY FRGHTLINER	19:01
4L73HA MSX	11:18	TINSLEY INTERMODAL TERM – LONDON GATEWAY FRGHTLINER	19:01

- 3.2 Regarding the TPR compliance issue affecting 4L73HA (MSX), NR confirms that the conflicting Train Slot is:

5Q98EA TFO	16:02	CRICKLEWOOD SDGS – NORTHAMPTON EMD	19:16
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- 3.3 NR disagrees with FL about the appropriate value to be applied at South Tottenham Jn between 4L73HA (MSX) and 5Q98EA (TFO). NR consider the relevant TPR Headway value to be applicable, thus rendering the 4L73HA Train Slot non-compliant, whereas FL consider a Junction Margin to be applicable.
- 3.4 In response to point 21 of the First Directions, the direction of travel of both Train Slots through South Tottenham is the same. From the Seven Sisters direction, 4L73HA passes South Tottenham and continues east to Blackhorse Road and Leyton Midland Road. From the Harringay Park direction, 5Q98EA passes South Tottenham, continuing east before turning south to Tottenham South Jn and Lea Bridge.
- 3.5 Appendix A to NR's SRD provides a visual representation of the train movements in question and the relevant network infrastructure. In response to point 14 of the First Directions, NR confirms that the South Tottenham track diagram included in the second issue of the First Directions is correct.
- 3.6 In response to point 21 of the First Directions, NR had suggested to FL on 27th January 2025 that a compliant solution to the conflict had been identified (Appendix B). This required a third-party flex from GB Railfreight to retime 5Q98EA. The NR planner's comments to FL were:

"Insufficient headway between 4L37HA and 5Q98EA (TFO) at South Tottenham. 6 mins headway required and only 3 mins present. It is not possible to move 4L37 any earlier as 6 mins headway is required with 2J85. I have tried looking to run 4L37HA later to run after 2J87, however have been unable to identify a suitable location to dwell. Cannot dwell at South Tottenham West Jn as it would foul Seven Sisters Junction due to train length. One potential solution would be to request a flex to 5Q98 to run before 2J85, and extend its dwell at Tottenham Sth Jn Sig L1004."

NR firstly notes the typo by the planner here – 4L37HA should read 4L73HA. Secondly, NR notes it did not receive a response to this specific matter and suspects FL either did not pursue or could not agree the flex with GB Railfreight (its competitor for traffic at London Gateway). FL instead focused on the emerging Headway / Junction Margin matter, as demonstrated by Appendix B and which continued.

- 3.7 Regarding the level crossing risk issues affecting 4L73HA (MO and MSX), NR consider that clear contractual provisions do permit the rejection of the Train Slots on safety grounds.
- 3.8 NR considers that both Condition A1.1 and Condition D4.6.1 of the Network Code are very relevant to the matter:

Part A - General Provisions

1.1 General interpretation

The paramount objective in the railway industry is to operate a safe and secure railway on which the elements of risk to safety and security are reduced to a level as low as reasonably practicable. Nothing in this code shall be interpreted or construed as compromising that objective.

Part D – Timetable Change

4.6 The Decision Criteria

4.6.1 Where Network Rail is required to decide any matter in this Part D its objective shall be to share capacity on the Network for the safe carriage of passengers and goods in the most efficient and economical manner in the overall interest of current and prospective users and providers of railway services ("the Objective").

- 3.9 Furthermore, NR considers that the ORR Appeal concerning TTP1174, and TTP2453/54/55/56, provide both binding and persuasive precedent which is relevant to this matter. These previous Determinations support the

rejection of the Train Slots in circumstances where NR harbours significant safety and/or performance concerns, TPR compliance notwithstanding:

ORR Appeal concerning TTP1174 (paragraph 91)

ORR considers that the provisions of the Network Code envisage that there will be circumstances where Network Rail may not achieve the Objective by including all requested Train Slots in the WTT, even where there are no conflicts with other proposals or the Rules (or with the applicable International Freight Capacity Notice or Exercised Firm Rights). This might include where requested Train Slots would, if accepted in the WTT, give rise to a clear and substantial safety or performance concern. In such a situation, Network Rail would in the first instance be required to consider whether to exercise its Flexing Right and should only allocate Train Slots in the prescribed order of priority in Condition D4.2.2(d) (and ultimately reject one or more requested Train Slots) to the extent that it is unable to vary requested Train Slots in a manner which will achieve the Objective (and will lead to a WTT which is consistent with the principles in Conditions D4.2.2(a) and D4.2.2(b)).

TTP2453 (paragraph 48)

...In construing Part D the ORR has quite clearly stated that NR has a degree of discretion and that there may be circumstances where the allocation of rights or Train Slots need not follow the norm where there may be circumstances which give rise to a clear and substantial safety or performance concern. I do, of course, accept that paragraph 91 is concerned with a different issue under Part D but the findings of the ORR on the degree of contractual flexibility vested in NR are apt to apply to the interpretation of Condition D3.1.2.

- 3.10 Regarding both Train Slots in this matter, NR has, TPR compliance notwithstanding, made its decision based on the requirement in Condition D4.6.1 “...to share capacity on the Network for the safe carriage of passengers and goods...” and has deemed the Train Slots cannot be offered safely. No constraint on the mechanism for assessing safety is specified in Part D or the TPRs and this matter relates not to a capacity restriction, but a safety assessment completed on a case-by-case basis.
- 3.11 Relevant safety arguments are outlined by NR in this SRD, preceded first by the reasons underpinning why the relevant TPR Headway value is applicable in this matter. The TPR compliance issue and the level crossing risk issues are treated separately by this submission, with both factors contributing to NR’s overall decision that FL’s bid was non-compliant.

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

4.1 Issues where the Defendant accepts the Claimant’s Case

The TPR compliance issue

- 4.1.1 NR confirms that FL has provided the relevant Junction Margin and Headway values for South Tottenham, and the relevant definition of a Junction Margin, in its Appendix 3, 4 and 5, respectively. NR confirms that FL’s description (in paragraph 5.3 of its SRD) of the direction of travel of 4L73HA (MSX) and the conflicting 5Q98EA (TFO) is correct. The direction of travel of both Train Slots through South Tottenham is the same.

The level crossing issues

- 4.1.2 FL contend – not at the locations directly affected but across the wider NR network – that the non accommodation of the Train Slots would likely have a significant impact of road users looking to access stations (paragraph 5.12) but the exact impact is not qualified besides the onset of 40 HGV road movements in each direction. NR does accept this outcome is undesirable and that some consideration of this matter should have been given under

Condition D4.6.1(i), amongst the various other issues NR did consider under this limb of “the Considerations”. Later paragraphs cover this matter further.

4.2 Issues where the Defendant qualifies or refutes the Claimant’s Case

The TPR compliance issue

- 4.2.1 NR disagrees with FL’s contention that the EA1370 Headway values do not apply to 4L73HA (MSX) where it is conflicting with 5Q98EA (TFO). 4L73HA passes South Tottenham from Seven Sisters at 16:58, only 3 minutes before 5Q98EA passes from Harringay Park. The TPRs require a 6-minute Headway at South Tottenham. FL has suggested that the South Tottenham 3-minute Junction Margin can be used as 4L73HA and 5Q98EA are diverging at South Tottenham East Jn. NR submits that this is not sufficient as a converging margin should be used at South Tottenham.
- 4.2.2 In paragraph 5.3 of its SRD, FL argue that because the Train Slots are diverging “...one train therefore crosses between two completely separate points to the other train.” FL’s argument seeks to regard South Tottenham West Jn, South Tottenham Station and South Tottenham East Jn as one location with a single Junction Margin value. This is not an accurate interpretation of the TPRs as the Train Slots are on a common path from South Tottenham West Jn, through South Tottenham Station to South Tottenham East Jn.
- 4.2.3 For accuracy, NR notes that the distance between South Tottenham West Jn and South Tottenham East Jn is 8 chains, and not 1 chain as noted by the Hearing Chair in point 15 of the First Directions.
- 4.2.4 NR submits that FL’s requested Train Slot movement is not a simple crossing move where a Junction Margin is appropriate, but instead the relevant Headway applies and should be used unless / until a more accurate value is agreed.
- 4.2.5 In response to point 15 of the First Directions, NR’s interpretation that Headway applies in this matter relies on the following authorities in the National TPRs (Appendix C):

Diverging or Converging Movements

In circumstances where trains diverge (pass or depart from one common line to different lines) or converge (arrive or pass from different lines to one common line) then different margins may apply. Any such differences will be shown as junction margins in Section 5.3 of TPRs. If there is no specific converging or diverging margin then headway must be applied.

Technical Headway

The Technical Headway is the minimum permissible time interval between two successive trains at a specific timing point on the same line in the same direction, such that the second train can meet its SRT.

- 4.2.6 It is for this reason that the relevant train movements can be regarded as having been subject to Headway values at the time of processing FL’s bid.
- 4.2.7 FL have been in discussion with NR about what this value should be (Appendix D). NR has proposed that a new South Tottenham Junction Margin derivative of 4 minutes 30 seconds be introduced to the Dec 26 TPRs where the first movement is a ‘Pass from Seven Sisters to Blackhorse Road’ and the second movement is a ‘Pass to Tottenham South Jn’ (Appendix E). However, this proposal still does not assist FL with the relevant non-compliance as its 4L73HA Train Slot passes South Tottenham less than 4 minutes 30 seconds before 5Q98EA.

Notably, multiple Operators (including FL) have objected to this proposed TPR revision, which featured in Version 2 of the Dec 26 TPRs, because of a desire to further consider train length in the overall calculations.

- 4.2.8 In arriving at the new South Tottenham Junction Margin derivative, NR provides its calculations and operating conditions, also in Appendix E, which explain the calculation of 4 minutes 30 seconds.
- 4.2.9 In paragraph 5.4 of its SRD, FL argue that the existing South Tottenham Junction Margin is applicable due to the second movement (5Q98EA) “... *not necessarily needing to see full signal aspect sequences, which is the case when following the preceding train.*” NR does not consider Train Slots planned to restricted signals as reasonable or best practice, irrespective of any argument that FL may make about 5Q98EA being planned to stop at the signal protecting Tottenham South Jn. NR seeks to plan to the least restrictive signal approach which is long-established best practice and is contrary to any invitation to consider restricted aspect signals.
- 4.2.10 In paragraph 5.5 of its SRD, FL notes that the existing South Tottenham Junction Margin of 3 minutes “...*may not be sufficient for this move.*”

The level crossing issues

- 4.2.11 In response to FL’s paragraph 5.7, NR must point out that – Routs level crossing aside – there are no absolute quantum restrictions on the number of Train Slots (services) that can operate over its Anglia Route level crossings. Accordingly, no such limits are published in the TPRs or the Sectional Appendix.
- 4.2.12 NR notes there is no constraint on the mechanism for assessing safety, or obligation to agree its methodology, specified in Part D or the TPRs. However, for information, the impact of Access Proposals on level crossing risk on Anglia Route is assessed on a case-by-case basis – and this was true for 4L73HA (MO and MSX). NR considers that navigating the matter of level crossing risk on a case-by-case basis, as opposed to setting rigid quantum limits on traffic, actually enables the running of more, not less, train services.
- 4.2.13 NR’s decision in the matter of 4L73HA was not predicated on “*Network capability to the published standards*” or “*infrastructure capability*” as described by FL in its paragraph 5.7. Rather, NR’s assessment was predicated on level crossing risk assessment using a mixture of quantitative and qualitative assessment including, but not limited to, user census data, barrier down time, historical safety incidents including misuse and accidents, and capacity to mitigate the same. At Windmill Lane, Wharf Road and Waterbeach level crossings, the most recent risk assessment information did not support the accommodation of the 4L73HA (MO and MSX) Train Slots.
- 4.2.14 In this matter, FL contest that their Track Access Contract (TAC) has been breached by NR inasmuch as NR has “*a duty to provide Network capability to published standards*” (paragraph 5.7 of the FL SRD). NR contends that Network capability does not equate to an obligation to maximise use of network capacity and that FL are conflating capability with capacity.
- 4.2.15 Where it is argued by FL that Network capability is material to this matter, it stands to reason that any alleged “failure” by NR to provide said capability adequately (i.e. safely) still does not, in and of itself, require the acceptance of the Train Slots into the timetable. NR is not obliged to support the acceptance of Train Slots into the timetable where it is believed, and can be evidenced, that they will cause significant additional safety risk, irrespective of any mandated capability.

- 4.2.16 NR disagrees with FL that “...*there should have been no need for the considerations contained within Condition D4.6 to be applied...*” (paragraph 5.9). NR contends that Condition D4.6 applies to any decision made under Part D, including a decision to accept (or not) a bid into the Working Timetable (WTT).
- 4.2.17 FL posits that NR have incorrectly sought to achieve “*the Objective*” singularly through the consideration of safety risk, without consideration to other factors. The wording of “*the Objective*” in Condition D4.6.1 very specifically describes “...*the safe carriage of passengers and goods.*” NR’s position is that, irrespective of the benefits to FL in this matter, 4L73HA cannot be operated safely. As such, the other considerations as listed in the Decision Criteria cannot outweigh this requirement.
- 4.2.18 Part A1.1 of the General Provisions of the Network Code states “*the paramount objective in the railway industry is to operate a safe and secure railway on which the elements of risk to safety and security are reduced to a level as low as reasonably practicable*”. Safety overrules other considerations. NR has made multiple interventions at other level crossings to mitigate additional traffic, including for FL. 4L73HA is not supported because the specific nature of the level crossing safety challenge at Windmill Lane, Wharf Road and Waterbeach offers no opportunity for further, cost effective, mitigation.
- 4.2.19 NR disagrees with FL that passenger connection times are not a relevant consideration (paragraph 5.12). The Decision Criteria under D4.6.2 (d) and (e) clearly list as relevant Considerations:

- (d) that journey times are as short as reasonably possible; and
- (e) maintaining and improving an integrated system of transport for passenger and goods

In this matter, NR have applied a ‘Low’ weighting to item (d) and a ‘High’ weighting to item (e).

- 4.2.20 FL contend – very much in general – that the non accommodation of the Train Slots would likely have a significant impact of road users looking to access stations (paragraph 5.12) but the exact impact is not qualified besides the onset of 40 HGV road movements in each direction.
- 4.2.21 NR considers that non-accommodation of the Train Slots sought would not have an impact on the road network proximate to those level crossings where barrier down time is a significant issue and which are of most concern (i.e Windmill Lane, Wharf Road and Waterbeach). NR notes that these level crossings are not located on highways that would be used by HGVs conveying goods displaced from rail. In any event, NR notes that FL in paragraphs 6.1 and 6.2 of its SRD has arrived at “*an alternative plan to operate this traffic*” – this being the case the additional HGVs on the road network referred to by FL should not materialise or have not materialised.
- 4.2.22 In paragraph 5.13 of its SRD, FL argue that NR has “...*completely discounted any weighting towards Freightliner when considering D4.6.2(f)...*” despite NR’s clear explanation in its timetable decision that “*Running the train is presumably in the commercial interest of the operator, However, NR’s obligation to deliver The Objective and the overarching safety impact outweighs this consideration*” (Appendix 1 of FL’s SRD, limb (f) of NR’s timetable decision).
- 4.2.23 In the same paragraph 5.13, FL seemingly express that safety considerations are “*unrelated matters*” and should not be a NR consideration when making timetable decisions. This position is consistent in FL’s SRD which itself gives no meaningful coverage or validation of those level crossing risk issues reported by NR. In effect, FL has not considered NR’s interests. Whilst FL may choose not to give cognisance or validity to these matters, NR is not able to do so given its General Provisions under Part A1.1 (i.e. “*the paramount objective*”) and “*the Objective*” under Condition D4.6.1.

- 4.2.24 Commercial advantage to the Operator versus the safety of level crossing users is not a comparison NR is obliged to make. NR's lack of support for 4L73HA is predicated on the safety imperatives described in Network Code D4.6.1 and A1.1, the latter of which states *"Nothing in this code shall be interpreted or construed as compromising that objective."*
- 4.2.25 NR considers paragraph 5.14 of FL's SRD (i.e. quantification of environmental damage overall) somewhat of a moot point inasmuch as FL's SRD confirms the running of traffic on other services, and failure to preserve the safety of the railway can reasonably be considered the greatest environmental damage possible. Furthermore, given 4L73HA's planned arrival time of 18:52 at London Gateway, the London Gateway Port Harbour Empowerment Order 2008 (Appendix F, page 51) clearly does not support the acceptance of the Train Slots, stating under Schedule 6 (FOR THE PROTECTION OF THURROCK BOROUGH COUNCIL AND OTHERS):
- (3) In any event, no trains servicing the authorised works may be scheduled to arrive at or depart from the port premises between the hours of 0700 and 1000, or between the hours of 1600 and 1900.*
- 4.2.26 In subsequently receiving the London Gateway Port Harbour Empowerment Order 2008 (HEO) since the onset of this timetable dispute, it is NR's view that the HEO introduces further environmental considerations – as well as operational considerations – to the detriment of FL, specifically concerning noise and local road issues.
- 4.2.27 FL contend in paragraphs 6.1 and 6.2 of its SRD that it has arrived at *"an alternative plan to operate this traffic"*, with the suggestion it has done so at its greater expense but still permitting profitable operation. Given the restrictions outlined by the HEO, NR finds that there cannot have been any additional cost incurred by FL due to the rejection of 4L73HA (MO and MSX) on the basis that the Train Slots could never have operated. An 11th March 2025 meeting between NR and DP World, operator of the London Gateway Port, confirmed the Port intend to abide by the arrival / departure 'no trains' time slots at the current time.
- 4.2.28 Where costs are concerned, overall, NR contends here that, in essence, FL is seeking to insulate themselves against the constraints of a legitimate safety concern from NR.
- 4.2.29 NR notes both FL's contention in paragraph 6.1 that it took NR *"considerable time"* to process FL's TOVR for 4L73HA and point 21 in the First Directions requesting relevant information here. In the first half of December 2025, NR and FL were in discussion and email exchange about the potential level crossing issues facing 4L73HA and subsequent progress was slowed due to a combination of the Christmas holidays and NR's own thorough level crossing risk assessment of the bid, alongside a multitude of other very similar London Gateway TOVRs which were being assessed at that time.
- 4.2.30 Whilst NR did not notify FL of its acceptance, rejection or modification of the relevant TOVR within five days as required by Condition D3.3.8, NR was in direct communication and cooperation with FL concerning its level crossing risk issues. Acting reasonably, NR sought to establish greater detail, discuss more widely, and achieve progress on all relevant safety matters for the benefit of FL, who sought this information and a positive outcome. As such, NR was acting in accordance with Condition D3.3.6(g) on the basis it was acting in agreement and cooperation with FL.
- 4.2.31 NR submits that on 31st January, 7th February and 12th February 2025, FL were party to specific 'London Gateway bids' meetings with NR where the rejection of 4L73HA (MO and MSX) was discussed, and where it was amicably agreed that the rejection would be delayed whilst parties sought to discuss the matter further. In these meetings, FL specifically requested that NR hold off on a final timetable decision, which it did.

- 4.2.32 NR refutes the arguments made by FL in paragraph 6.3 of its original SRD concerning NR's failure to manage and mitigate level crossing risk – these arguments appear in paragraph 6.4 of FL's updated SRD. The high-risk level crossings preventing the acceptance of 4L73HA (Windmill Lane, Wharf Road and Waterbeach) are both fully mitigated in terms of layout, equipment, monitoring, and NR cannot mitigate against usage levels, barrier down time or road user behaviour beyond those actions already completed.
- 4.2.33 Since 20th December 2024, largely, but not entirely as a result of the Gemini Alliance container traffic adjustments that are driving a rapid increase in operator appetite for capacity serving London Gateway in particular, NR has received 37 TOVR bids comprising 71 additional or amended Train Slots. This can be provided to the Panel on request, noting that it may contain information that Operators consider confidential and commercial. All of these TOVRs have been subject to level crossing risk assessment and mitigation assessment, and 30 items have been accepted as of 27th March 2025.
- 4.2.34 In order to achieve these outcomes, NR has introduced additional mitigation at multiple level crossings at additional expense, as well as accommodating multiple Train Slots with disproportionate performance risk and impact on the North London Line in particular. NR contends that this response is evidence of significant effort on its part to accommodate substantial and unforeseen Operator aspirations, including those of FL. 4L73HA (MO and MSX) are the only items to date that NR has declined to support based on unacceptable level crossing risk alone. Level crossing risk associated with the Tilbury Loop, especially at Rainham, Grays and East Tilbury level crossings, is a known industry constraint of which both Operators and the London Gateway Port users are aware and where NR is applying mitigations.
- 4.2.35 NR's specific level crossing risk issues are detailed in section 4.3 of this SRD and Appendix G.

4.3 Issues not addressed by the Claimant that the Defendant considers should be taken into account as material to the determination

- 4.3.1 In this matter, NR considers materially relevant its Route level crossing assessment referred to in its timetable decision on 4L73HA (MO and MSX) and which is requested by point 17 of the First Directions. The assessment, provided as Appendix G, demonstrates that our decision in this matter is reasoned and reasonable, and it is the content of this assessment that informed NR's decision and the Decision Criteria to reject 4L73HA. Specifically, it is NR's position that at the locations (Windmill Lane, Wharf Road and Waterbeach), times of day and for the reasons stated, the passage of 4L73HA breaches NR's level crossing risk appetite.
- 4.3.2 The key reasons for NR's decision on 4L73HA at these level crossings is excessive barrier downtime, a high history of incidents, and the increased risks associated with adding more train services to the network. NR's risk assessment aligns with NR/L/XNG/100 (Provision and Risk Management of Level Crossings) and the timetable change risk assessment framework outlined in NR/L2/OPS/031, and has authority in informing these formal NR compliance standards and their associated processes. Compliance with these standards is wholly pertinent to NR's obligations under both Condition A1.1 and Condition D4.6.1 of the Network Code and, in response to point 18 of the First Directions, NR agrees that relevant information provided to determine compliance with these standards does have the intrinsic power to block requests for additional services.
- 4.3.3 In response to point 19 of the First Directions, NR does not consider that such information should be reflected in the TPRs because to do so would introduce a rigidity and inflexibility in its decision making where it is not necessary, nor beneficial to customers, nor in keeping with "*the Objective*".

- 4.3.4 NR considers more appropriate that level crossing risk is evaluated on a case-by-case basis, which is more favourable to the acceptance of traffic as it provides flexibility in considering several relevant factors. More broadly, those relevant factors which are considered in the risk assessment process would be too difficult, too expansive and/or too time-consuming, to codify, manage and update, which is a further significant reason why level crossing risk is not supported for inclusion into the TPRs. Updating the TPRs is itself a lengthy process and perhaps would not be able to keep pace, specifically, with Anglia Route's high-risk level crossing risk assessments, which are performed every 6 months. In terms of codification in this area, it is perhaps possible to include the case-by-case level crossing risk assessment process in the National TPRs but nothing further.
- 4.3.5 In response to point 7 of the Second Directions, NR submits that there is no overarching "*restriction on further traffic*". Each request for additional traffic in the timetable that is not first submitted via the D-40 PDNS process and thus via the Timetable Change Risk Assessment Group (TCRAG) process, is subject to case-by-case review in respect of affected high risk level crossings. The outcome will depend on the specifics of the request, the risk, current quantum and the time of day that the train is requested to run. NR does not have a list of locations where no further train services can be accommodated and neither does NR have any intentions of developing one. Given that each bid is assessed on its merits and against a background of increasing demands for capacity, it is likely that, sooner or later, one will be assessed that fails safety assessment. NR does not believe it is appropriate to predict this as to do so would require it to review potential requests for additional capacity at every level crossing on the Network.
- 4.3.6 In response to point 8 of the Second Directions, NR submits that Congested Infrastructure is not applicable at this point in this matter, given that it is likely that 4L73HA would not have failed the level crossing risk assessment if bid to operate at a different time of day. Capacity on the Line of Route in question still exists, but not necessarily for all train services and in all hours of operation. NR Anglia Route's lack of support for the proposal is predicated on the safety risk it believes it represents, not whether it can be accommodated Rules-compliantly at the level crossings in question.
- 4.3.7 In response to point 20 of the First Directions, NR merely asserts that if 4L73HA were to experience a level crossing incident, being that it could impact London-serving passenger flows, there is a wide-reaching impact to network performance, which in turn could impact Infrastructure Monitoring services. Notably, NR scored this matter 'Low' in its Decision Criteria evaluation.

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

- 4.4.1 NR has clearly articulated in this SRD – with evidence, reason and sound authority – why it believes Headway to be the appropriate TPR value for use between the movements of 4L73HA (MSX) and 5Q98EA (TFO) at South Tottenham. The decision here is rooted in the definitions and advice provided in the National TPRs, supported by the professional judgement of its practitioners.
- 4.4.2 Arguably more significant to NR's case though, given safety as its "*paramount objective*", NR has clearly demonstrated that it has obligations under Condition A1.1 and Condition D4.6.1 of the Network Code to operate a safe and secure railway for its current and prospective users and railway providers. These clear contractual provisions do permit the rejection of FL's Train Slots on safety grounds and NR contends that its SRD provides both reasonable evidence of risk at relevant level crossings, as well as reasonable evidence of formal process/authority in managing that risk. The ORR Appeal concerning TTP1174 also clearly supports NR's case.

- 4.4.3 In making its timetable decision, NR demonstrated a balanced and reasonable application of the Part D Decision Criteria and showed its evaluation of all relevant considerations. Notably, the safety of the railway was central to its decision-making and appropriately so, given the facts and obvious obligations upon it.
- 4.4.4 Whilst NR has demonstrated a balanced and reasonable application of the Part D Decision Criteria, showed its evaluation of all relevant considerations, and correctly maintained a focus on safety and the mitigation of level crossing risk, NR contends that FL has done little of the same. FL has failed to meaningfully acknowledge or engage on the prevailing safety concerns or show balance, and has it seems been driven only by its own interests and not the interests of all current and prospective users of the railway and providers. Given the subject matter, that does not sit comfortably.

5 DECISION SOUGHT FROM THE CHAIR

- 5.1 NR seeks from the Panel the determination that its timetable decision to reject 4L73HA (MO and MSX) should be upheld, both regarding the TPR compliance issue and the level crossing issues. NR does not believe any exceptional circumstances exist in the dispute which would prevent the Hearing Chair from reaching the conclusion that NR's timetable decision should be upheld.
- 5.2 NR seeks from the Panel the determination that it has acted reasonably in considering level crossing safety risk in its decision making and that level crossing risk, where suitably evidenced, provides acceptable and reasonable grounds for rejection of an Access Proposal under Condition D4.6.1 (i.e. *"the Objective"*).
- 5.3 NR seeks from the Panel the determination that it has acted in accordance with the Network Code and has not breached FL's TAC.
- 5.4 NR does not seek costs in this matter, though does seek from the Panel the determination that FL itself cannot have incurred any additional costs in operating this service in its revised plan given the explicit operating restrictions of the London Gateway Port HEO, of which 4L73HA falls foul. Where costs are found to be due, NR seeks from the Panel the Determination that FL contributed to, and was accepting of, the period of time that it went without an outcome on its bid of 4L73HA. As such, any arising costs were partly of their own making.

6 APPENDICES

- 6.1 NR confirms that it has complied with Access Dispute Resolution Rule H21.

Appendix A	Visual representation of the train movements and the relevant network infrastructure
Appendix B	NR proposed flex to 5Q98EA
Appendix C	National TPRs – Definition of Technical Headway and Diverging or Converging Movements
Appendix D	Discussion between FL and NR regarding a new South Tottenham Junction Margin derivative
Appendix E	New South Tottenham Junction Margin derivative, proposed in Version 2 of the Dec 26 TPRs
Appendix F	London Gateway Harbour Empowerment Order 2008
Appendix G	Route level crossing risk assessment

7 SIGNATURE

For and on behalf of Network Rail Infrastructure Limited

A handwritten signature in black ink, appearing to read 'N. Coles', written in a cursive style.

Nick Coles

Timetable Production Manager – Freight

3rd April 2025