

Directions issued on 25 March 2025

These directions were re-issued on 25 March to take a more detailed signalling diagram into account.

1. I am grateful to Freightliner ('FL') for the submission of its Sole Reference Document ('SRD'). These Directions affect both FL and Network Rail ('NR').

For Freightliner

2. FL's arguments are clearly set out, my queries are primarily directed at the remedies that it is seeking, which appear in the 'Decision sought from the Panel' section.

3. It seems that FL argues that because of the length of time taken by NR to reach a decision on FL's TOVR, FL has had, '*...no choice but to redeploy assets and put together an alternative plan to operate this traffic....*', as a result of which it is seeking a determination that NR has breached FL's TAA, thus entitling FL to receive an award of damages (which a TTP can make in principle, without determining the sum to be awarded).

4. However, if I have understood FL's case correctly, its first argument is that its bid was compliant, so should have been accepted. If this is a correct interpretation, then FL could (or possibly should) have asked the TTP to determine that the bid was compliant. While I accept FL's view that Exceptional Circumstances do not apply, if the TTP determined that the bid was compliant, it would be open to the TTP to give a 5.3.1(a) determination that NR should re-examine the bid on the grounds that it has been held to be compliant by the TTP.

5. If, and I underline 'if', as clearly no decision can be made on one Party's case alone, the TTP were to decide that the bid was compliant, it could then decide to go no further, as the Dispute had been decided. In most circumstances, however, I think it prudent to determine any outstanding points, in case the first point were to be over-turned on appeal.

6. This would involve the TTP moving on to examine NR's application of the Decision Criteria. It could uphold NR's decision based on the Decision Criteria, even if it did not agree with every point, or it could decide that NR's application of the Decision Criteria was sufficiently flawed that it could not stand. In this event it would, once again, be open to the TTP to give a 5.3.1(a) determination, requiring NR to re-examine its decision, applying the Decision Criteria in the light of the TTP's determination on this point.

7. If the TTP decided in favour of NR on the first point, then the Dispute would be at an end. If the TTP decided that the bid was compliant, then its determination on the application of the Decision Criteria would only come into effect if the determination on the first point were to be over-turned on appeal. If, however, the TTP decided in favour of FL on either point, then the trains should be able to run, so causing no loss to FL in the future.

8. If FL's alternative arrangements at extra cost are already in place, then FL would have an argument that it is entitled to losses already incurred.

9. But unless there is some reason why FL is committed to the alternative arrangements, and cannot now undo them, then it is not clear to me how FL can be entitled to a damages award and nothing else, when I have identified alternative remedies above.

10. **As soon as possible, and in any event no later than 1200 on 27 Mar 25:** FL is to clarify the remedies that it is seeking. I give leave for it to serve an amended Section 6 of its SRD to explain its reasons for arguing that the only appropriate remedy is a damages award, if this is the case, which will require it to explain why the more costly alternative arrangements must be continued.

11. Alternatively, it could seek the remedies set out in paragraphs 4 and 6 above, together with a damages award if additional costs are currently being incurred. For any damages award to be made, FL must provide the relevant extract from its TAA.

12. Does FL rely on any definitions of headways or junction margins beyond its reference to National TPRs in paragraph 5.5 of its SRD?
13. FL is also to explain the alternative arrangements that it has made because of the rejection of the bid for 4L73.
14. A diagram of the signalling arrangements in the South Tottenham area is attached to these Directions. **Both Parties** are to confirm whether they agree that this diagram is correct, or to explain why they do not agree.

For NR

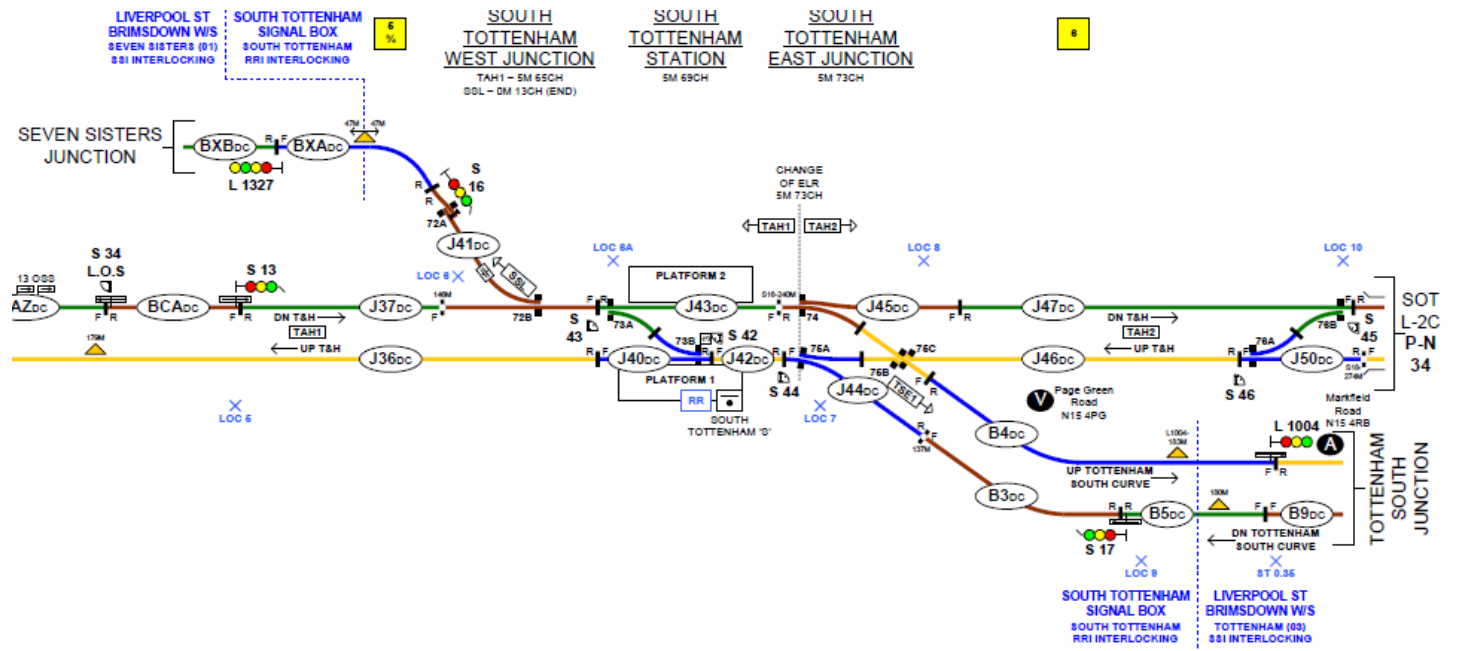
15. In its SRD NR will, no doubt, explain its reasons for regarding the passage of both trains between South Tottenham West Junction and South Tottenham East Junction, which TRACKatlas suggests is a distance of 1 chain, as being governed by Headway rules, rather than Junction Margin rules. It should set out any authorities on which it relies for its interpretation. In this context, I note from the attached diagram that there is no signal which will control the movements of both 4L73 and 5Q98.
16. See paragraph 14 above.
17. NR is to include with its SRD the Route Level Crossing Assessment referred to in its Decision Criteria, and explain what authority it regards the document as holding.
18. Possibly simplistically, it appears to me that this document, taken at face value, can block any bid for any additional services on the Route concerned, whether in response to a TOVR or in the process of constructing a New Working Timetable. Does NR agree with this assessment?
19. If this interpretation is correct, then does NR consider that this information should be reflected in other documents such as the Timetable Planning Rules?
20. NR is to explain the basis on which it asserts that 4L73 would affect the operation of Infrastructure Monitoring services.
21. NR is to explain where 5Q98 starts its journey and where it is heading. What possibilities exist to re-time this ECS move to avoid the conflict with 4L73, assuming that NR's interpretation of the relevant rule is correct?
22. NR is also to explain why it took so long to respond to FL's TOVR. Does it regard D3.3.8 as applying in these circumstances? An outline timeline would be helpful, particularly if it can be agreed with FL prior to submission.

[Signed on the original]

Clive Fletcher-Wood

Hearing Chair
TTP2591

UPDATED Diagram of the signalling arrangements in the South Tottenham area



LOC 5 CASE A

AZ	J37
F	TR
C1	(DC)
13	S 13
	AWG
	T/IJ 24

LOC 5 CASE B

S 13	S 13
TSS	OBS

LOC 5 CASE C

BCA	BCA
TF	TR
(DC)	(DC)
S 34	G34
TSS	

LOC 6

J41	J37
(DC)	TF
(DC)	(DC)
G16	S 16
W72	AWG
	T/IJ 24

LOC 6A

J40	J42
TF	TF
(DC)	(DC)
J41	J40
TF	TR
(DC)	(DC)
J36	J43
TF	TR
(DC)	(DC)

RR RACK B

G42	
G43	
W73	

RR RACK E

MOD	MOD
07010	07011
S-L	S-L
FRINGE	FRINGE

LOC 7

J43	J42
TF	TR
(DC)	(DC)
J45	J44
TR	TF
(DC)	(DC)
G44	
W74	
W75A	

LOC 8

J45	J46
TF	TF
(DC)	(DC)
B4	B3
TR	TR
(DC)	(DC)
J47	J44
TR	TR
(DC)	(DC)
W75	
BAC	

LOC 9

S 17	B3	B5
TSS	TR	TR
	(DC)	(DC)
G17	S 17	
	AWG	
	T/IJ 24	

STO 35

B4	B5
TF	TF
(DC)	(DC)

LOC 10

J47	J52
TF	TF
(DC)	(DC)
J50	J51
TF	TR
(DC)	(DC)
J46	J50
TR	TR
(DC)	(DC)
G45	
G46	
W76	