**Network Rail Defendant’s Response to West Coast Trains Limited and First/Keolis Transpennine Limited Sole Reference to a Timetable Plan**

**Dispute References: TTP439 and TTP440**

1. **DETAILS OF PARTIES**
   1. The names and addresses of the parties to the reference are as follows:-
      1. *West Coast Trains Ltd.* (Company number *3007940*) whose Registered Office is at The School House, 50 Brook Green, London W6 7RR *(“WCTL” -* "the Claimant");

*WCTL contact details are Robert Hodgkinson, Commercial operations Manager, email: [redacted]; and*

(b) First/Keolis Transpennine Limited (Company number 4113923) whose Registered Office isat 50 Eastbourne Terrace, Paddington, London W2 6LG – ("the Claimant")

*TPE contact details are George Thomas, Commercial Contracts Manager, email: [redacted]*

(c) Network Rail Infrastructure Limited whose Registered Office is at Kings Place, 90 York Way, London N1 9AG ("Network Rail”") ("the Respondent").

*Network Rail’s contact details are Matt Allen, Engineering Access Manager, [redacted]*

* 1. *Third parties that may be affected by the Panel finding in any of the ways sought and determined under Section 8 are as follows:*
     1. DB Schenker
     2. Freightliner Group
     3. GBRf
     4. Northern Rail
     5. Direct Rail Services
     6. First Scotrail

1. **THE DEFENDANT’S RIGHT TO CONTEST THIS REFERENCE**

2.1 This matter is referred to a Timetabling Panel] ("the Panel") for determination in accordance with Condition D3.5 and D5 of the Network Code*.*

2.2 The contractual provisions which entitle Network Rail to facilitate these Restrictions of Use in weeks 41 and 42 between Oxenholme and Penrith our detailed in Network Code Part D, clause 3.5 and Section 3 of the National Timetable Planning Rules ‘Procedure for Altering the Engineering Access Statement or Timetable Planning Rules other than through the Twice-Yearly Process’.

2.3 Network Code Part D clause D3.5.3 allows for any Timetable Participant that is dissatisfied with Network Rail’s decision to appeal in accordance with D5. Network Rail accepts that both West Coast Trains Ltd and First/Keolis Transpennine Limited are entitled to raise this dispute.

1. **CONTENTS OF REFERENCE**

3.1 This Response to the Claimant’s Sole References includes:-

* + 1. The subject matter of the dispute in Section 4;
    2. A summary of the issues in dispute in Section 5;
    3. A detailed explanation of those issues in dispute prepared by the claimant in Section 6
    4. In Section 7, the decision sought from the Panel
    5. Appendices and other supporting material.

1. **SUBJECT MATTER OF DISPUTE**

4.1 The matter in dispute is Network Rail’s decision to plan a further 2x25hr possessions in weeks 41 and 42 between Oxenholme and Penrith to deliver Switch and Crossing (S&C) track renewal works at Shap. This work was originally planned to be completed in a single 48hr weekend possession in week 9 (Sat/Sun 28/29 May 2011), the May Spring Bank Holiday weekend. The original week 9 possessions (along with other disruptive access on the WCML) were cancelled with only 2 days’ notice. This was to allow the UK rail industry to react to the potential volcanic ash cloud which was forecast to threaten UK air space during the Bank Holiday weekend.

4.2 Previous volcanic ash cloud restrictions impacting the UK air space had seen air passengers switch to rail, in particular for Anglo-Scottish journeys, as well as aircraft diverted to alternative airports in the UK and passengers using rail as an additional leg in the return journey home.

4.3 The decision to cancel these works was not taken lightly, the mobilisations of manpower and specialist plant had already started and considerable abortive costs were associated with stepping down the works at such short notice. Deferring the decision to cancel the work even closer to the start of the access would have risked the industry’s ability to upload and advertise revised timetables to passengers, although in the event the ash cloud blew away.

4.4 The disruptive engineering plan confirmed in the 2012 timetable year is less disruptive than the footprint we forecasted as being required to maintain the infrastructure after the completion of the WCRM project in December 2008. Network Rail is forecasting successful delivery of both the PDI-P and PDI-F for CP4 (the emerging Severn Day Railway Plans), but continues to monitor access plans against our regulated target of improving the availability of the network for passenger trains by 37%.

4.5 It has not been possible for Network Rail to facilitate these works being delivered within counter-proposals for alternative access suggested by both West Coast Trains Ltd and First/Keolis Transpennine Limited without having to defer works which are already planned within the 2012/13 track renewal programme. Network Rail seeks to avoid deferring this work or any other work from the 12/13 programme as this would add to an already existing large volume of essential track renewals between Preston and Carlisle.

4.6 In connection with the replanning of the cancelled works from week 9, informal discussions started in early/mid June. Our track renewals delivery team have looked at the suggested options from West Coast Trains Ltd and First/Keolis Transpennine Limited for delivering within existing access or amended bank holiday access but without a detrimental impact on the existing 12/13 programme this can not be achieved.

Network Rail was hopeful that via a collaborative approach to resolving this problem we could find a mutually acceptable plan with all impacted Operators to recover the lost works from week 9, however as July and August progressed it became apparent that this was not going to the be the case and, so as to avoid completely missing any opportunity to deliver a plan to recover these works and offer an amended train plan at TW-12 the choice was taken to formally propose weeks 41 and 42 at TW-22.

1. **SUMMARY OF DISPUTE**

5.1 The network availability guidelines for the planning of disruptive engineering access on WCML between Preston and Carlisle outline an annual ongoing requirement for:

* 10x27hr weekend disruptive possessions
* 10x7hr Sun/Mon disruptive possessions
* Bespoke 37hr weekend closures on Bank Holiday weekends

Articulated as impact on the timetable the network availability guidelines (, 7-Day Railway Business Plan etc. . .) from December 2008 would impact on 610 working timetable trains (excluding bank holiday disruption). These guidelines for the planning of disruptive engineering access are not contractual tools for making formal decisions on access, and are used by engineering delivery teams to develop their plans, prior to formal consultation with the industry. Excluding the bespoke arrangements for Bank Holiday weekends, the network availability guidelines between Preston and Carlisle permit a total 220hrs of disruptive engineering access.

5.2 The only contractual stipulation surrounding decisions in connection with disruptive engineering access is that Network Rail makes all decisions on the Restrictions of Use to include in the respective Engineering Access Statement based upon applying the Decision Criteria set out in the Network Code, Part D, clause D4.6.

5.3 Our disruptive engineering access plans for the 2012 timetable are:

* 19x14hr 5min weekend disruptive possessions
* 12x6hr weekend disruptive possessions
* Bespoke 27hr or 47hr weekend closures on Bank Holiday weekends

Excluding Bank Holiday weekends, the disruption in the established 2012 Engineering Access Statement between Preston and Carlisle is a total 108hrs. The inclusion of the additional 2x25hr possession increases the total number of hours of disruptive engineering to 134hrs. This footprint of disruptive engineering access planned in the 2012 timetable year (inclusive of the week 41 and 42) impacts upon 268 working timetable trains (excluding bank holiday disruption). This therefore means that in the 2012 timetable year disruptive engineering access is roughly 55% less disruptive to the operation railway than the strategies discussed for the route during 2007 and 2008, when the principles of EEA and 7-Day Railway were developed.

5.4 The disruptive engineering access planned in the 2011 timetable year impacted upon 432 working timetable trains (excluding bank holiday disruption), 8x25hr Restrictions of Use were taken in timetable engineering period D..

5.5 The critical difference between current practice and the network availability guidelines developed for the WCML in 2006, is that unless absolutely unavoidable, we do not disrupt Sunday afternoon and evening trains on a non-bank holiday weekends, understanding that this is one the busiest periods of demand for rail travel on the WCML.

5.6 Failure to revisit Shap in a timely manner will have a knock on effect to the whole WC North S&C renewal programme. Currently from January 2012 we are planning to deliver enhanced infrastructure (maintainable layouts and speed increases) at 14 locations (72 units) extending over 38 weekends (including Bank Holidays). Re-planning Shap into a future weekend or Bank Holiday would cause other larger WCML work items to be deferred (due to the affect on daytime engineering recovery allowance restrictions on the volume of settling speed TSRs between weekend core works and the available critical plant resource. This would in turn increase the duration of programme completion and delay the benefits of the enhancements, and lead to possible deterioration in asset condition.

5.7 The S&C renewal works at Shap have been partially completed; the current temporary track alignment and local operating instructions mean that, if the quality of the plain line track in the area of the S&C were to deteriorate, local maintenance teams are constrained in terms of not being able to take preventative action to avoid deterioration in asset functionality (reduced speeds)

5.8 A brief overview of the Shap works:

* The scheme is a multi-stage construction and commissioning scheme that was curtailed to provide rail capacity during week 9. The revised programme for completing the remaining stages work is weeks 41 and 42, primarily since these dates provide the best fit in terms of resource availability and ‘box time’ allowance.
* Since the works were curtailed between the stages of the plan the track alignments and ‘outdoor’ signalling equipment are in a ‘temporary’ state. There is currently a temporary signalbox instruction in place due to the TPWS associated with signal CE121 not being in its final designed position.
* The TPWS does not function in accordance with its designed parameters, the track alignments are not maintainable by computerised tamping techniques since they do not relate to the ‘Absolute Track Geometry’ position used by the maintenance organisation.
* Track quality cannot be maintained to the temporary geometric arrangements and as such if deterioration occurs then the track could not be reinstated by the maintenance organisation.
* ‘Project Costs’ are £858k

1. **EXPLANATION FROM THE DEFENDANT’S PERSPECTIVE OF EACH ISSUE IN DISPUTE**

6.1Issues where the Defendant Accepts the Claimant’s Case

6.1.1 Network Rail accepts the claim by West Coast Trains Ltd (WCTL sole submission clause 6.8 & 9) that the late notification of the proposal and decision to include these Restrictions of Use in the timetable weeks 41 and 42 has a potential impact on the delivery of uploaded amended Informed Traveller T-12 timetables for these weeks, but felt that with joint working with those operators impacted by the possession an amended timetable could be turned round with the 6 week period between the publication of our decision and requirement to upload amended timetable plans for week 41 at TW-12 (by Friday 14th October 2011).

6.1.2 Network Rail accepts the claim by West Coast Trains Ltd (WCTL sole submission clause 6.7) that the current 2011 period by period run rate for the number late notice possessions post TW-26 is higher that 2010, however we don’t recognise the numbers quoted. Late disruptive possession changes are audited on an annual basis by ORR; we have implemented a number of the recommendations during 10/11 which were identified in the last audit and which tighten up our control on late change.

6.1.3 Network Rail accepts the claim by West Coast Trains Ltd (WCTL sole submission clause 6.11) that we in part chose to date these Restrictions of Use during January when recent experience tells us that weekend leisure travel and passenger numbers tend to less than on other weekends of the year. We have seen no evidence from either West Coast Trains Ltd or First/Keolis Transpennine Limited that disproves this.

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

6.2.1 Network Rail does not accept the claim by West Coast Trains Ltd (WCTL sole submission clause 6.1) that such works and that possession of 25hr between Preston and Carlisle are constrained to Bank Holiday weekends only.

6.2.2 Network Rail does not have the scope within our resource and delivery plan to deliver this work on the 27th & 28th December as suggested by West Coast Trains Ltd (WCTL sole submission clause 6.2 & 3). While Network Rail accepts that the engineering activities planned on the 27th and 28th December are not as demanding as on the 25th and 26th December, the logistical challenge of moving critical manpower, plant and replenishing of ballast trains makes it impossible to relocate immediately on 27th December to a brand new renewal site. Much of our engineering resource deployed on the 25th and 26th December is subsequently redeployed between over the New Year period, the three day gap being used to replenish and relocate materials and plant and as ‘rest days’ for the engineering teams.

6.2.3 Network Rail does not accept the claim by West Coast Trains Ltd (WCTL sole submission clause 6.5) works at Pendleton in weeks 41 and 42 are having to be cancelled due to the inclusion in the plan of the works at Shap. The Pendleton works were originally planned to be carried out in week 45, however a subsequent review of design and delivery methods identified for Pendleton identified a requirement for additional access, weeks 41 and 42 were being considered as a possible solution but depended upon the plan for recovering the Shap works.

6.2.4 Network Rail does not accept the claim by West Coast Trains Ltd (WCTL sole submission clause 6.10) that Network Code Part D clauses 3.4.7 to 3.4.10 are applicable to this case, as formal process to include these Restriction of Use in the timetable plan for weeks 41 and 42 was via clauses outlined in D3.5.

6.2.5 Network Rail does not accept the claim by First/Keolis Transpennine Limited that these works can be absorbed within the existing 2012 disruptive engineering plan. Failure to revisit Shap in a timely manner will have a knock on affect to the whole WCML North S&C and plain line track renewal programme and add to the already high volumes future track renewal activities planned on WC North.

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

6.3.1 From a delivery point of view the track renewal team have not been able to split the work into shorter possession durations than 25hrs (e.g the existing 14hr possessions), whenever these possessions are taken it is impossible to avoid the need for alternative road replacement services or token diverted train services via the Settle to Carlisle route and significantly extended journey times.

6.3.2. The Anglo Scottish passenger train service on the ECML route on the weekends of week 41 and week 42 are not impacted by Network Rail engineering operations.

6.4 Why the arguments raised in 6.1 to 6,3 taken together favour the position of the Defendant

Network Rail has based its application of the Decision Criteria around:

6.4.1 The view that it is not in the interests of the network to defer critical S&C works already planned on Bank Holiday weekends in 2012 to create a gap in the programme for Shap as this adds to the difficulties the industry faces in delivering future track renewal volumes.

6.4.2 It is Network Rail’s view that without a realistic Operator counter-proposal the decision to plan for weeks 41 and 42 and the Saturday lunch time to Sunday lunch time timing of these Restrictions of Use are the best allocation of network capacity, (decision criterion a)) between timetable access and engineering access. The timing of the access reflects the need to have the railway open on Sunday afternoon and evening. The dating of the works in early January is when there is slight dip in passenger demand.

6.4.3 That there has been no breach of any Operator’s contractual rights, (decision criteria c)).

6.4.4 That the temporary track alignment and constraints on scope of the activities maintenance teams can deliver to correct any future track quality faults be rectified as soon as possible (decision criteria e)

It is Network Rail’s view that the decision taken to include at TW-18 these two additional Restrictions of Use into the plan for weeks 41 and 42 is also supported by the revised Decision Criteria sponsored by ORR which is currently subject to Industry consultation.

1. **DECISION SOUGHT FROM THE PANEL**
   1. Network Rail seeks the following outcomes from the Panel’s Determination:
      1. That Network Rail has correctly applied the Decision Criteria in regard to the decisions taken to include the week 41 and 42 Oxenholme and Penrith Restrictions of Use in the respective timetable weeks.
      2. There are no other remedies or issues to be determined.
2. **APPENDICES AND ANNEXES**

Network Rail confirms that it has complied with **Rule H21** of the Access Dispute Resolution Rules, which requires that

1. the relevant extracts of contractual Documents containing the provision(s) under which the referral to the Timetabling Panel arises and/or provisions associated provision(s) associated with the substance of the dispute; and
2. *[the relevant extracts of]* ***any other Documents referred to in the reference”****.* [**Rule H21(b) (I)**]

*Annex “A” Proposal Documentation weeks 41 and 42*

*Annex “B” Decision Documentation weeks 41 and 42*

*Annex “C” Extract from SUSTAINABILTY STRATEGY STEERING GROUP*

*West Coast Route Steady State Maintenance and Renewals (Date: 11 July 2006)*

*Annex “D” 24th August Proposed Changes to the Part D of the Network Code - Annex B extract from PfC60*

1. **SIGNATURES**

|  | The Defendant |
| --- | --- |
|  | For and on behalf of  Network Rail Infrastructure Limited \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signed  -----------------------------------------------------------  Print Name  Matt Allen  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Position  Engineering Access Manager, Network Rail  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**ANNEX “A” Proposal Documentation weeks 41 and 42**

**AMENDMENT TO THE LONDON NORTH WESTERN NORTH CPPP**

**NW4001 PRESTON (RIBBLE JN) TO COVE L.C. (INC GDS LINE UPPERBY)**

EAP Reference: LNW12-LC-02

Due to the strategic decision to withdraw access from the north end of the WCML on the last bank holiday (week 9, 2011) Network Rail is seeking disruptive access to re-plan the lost worksites.  The decision was taken due to the potential threat of air traffic being disrupted by volcanic ash, therefore the rail industry sought to provide an alternative Anglo-Scottish travelling opportunity for passengers. The delivery team has assessed opportunities to re-plan this work.  Outlined below is the proposal to recover S&C renewals at Shap.

Week 41 of the LNW North CPPP will, if agreed, be amended to include:

**Saturday 7th January to Sunday 8th January**

**PPS Ref:** P2012/TBA

**At/Between:** Oxenholme and Penrith

**Lines:** All lines

**Times:** 1305 Sat to 1455 Sun

**Traffic Remarks:** TRAINS TO START / TERMINATE AT OXENHOLME AND PENRITH. RAIL REPLACEMENT ROAD SERVICE TO OPERATE.  FREIGHT TO BE DIVERTED VIA ECML OR SETTLE AND CARLISLE LINE.

NOTE: Special Operating Instructions to be written to allow Up Trains to start from Platform 2 at Oxenholme.

Week 42 of the LNW North CPPP will, if agreed, be amended to include:

**Saturday 14th January to Sunday 15th January**

**PPS Ref:** P2012/TBA

**At/Between:** Oxenholme and Penrith

**Lines:** All lines

**Times:** 1305 Sat to 1455 Sun

**Traffic Remarks:** TRAINS TO START / TERMINATE AT OXENHOLME AND PENRITH. RAIL REPLACEMENT ROAD SERVICE TO OPERATE.  FREIGHT TO BE DIVERTED VIA ECML OR SETTLE AND CARLISLE LINE.

NOTE: Special Operating Instructions to be written to allow Up Trains to start from Platform 2 at Oxenholme.

I look forward to receiving your formal response to the above proposal by Friday 26th August.

*This email is in accordance with Access Condition D3.4.2 and relates to Section 3.1 of the Timetable Planning Rules being the Procedure for Altering the Engineering Access Statement or Timetable Planning other than through the Twice-Yearly Process Having Effect from a Passenger Change Date.*

Kind Regards,

**Daniel Fredriksson**

**Access Planning Specialist**

**ANNEX “B” Decision Documentation weeks 41 and 42**

**AMENDMENT TO THE LONDON NORTH WESTERN NORTH CPPP**

**NW4001 PRESTON (RIBBLE JN) TO COVE L.C. (INC GDS LINE UPPERBY)**

 EAP Reference: LNW12-LC-02

 Further to my email of Friday 12th August, and having given due consideration to responses received in terms of likely appeals from train operators to the decision to take access in weeks 41 and 42 in connection with Shap S&C renewals. This email details Network Rail’s decision on the possessions that are required between Oxenholme and Penrith to deliver the required renewals. I can confirm that Network Rail will be making these late notice possession changes to the London North Western North 2012 EAS and subsequent CPPP.

**Week 41 Saturday 7th January to Sunday 8th January**

**PPS Ref:** P2012/1528978

**At/Between:** Oxenholme and Penrith

**Lines:** All lines

**Times:** 1320 Sat to 1455 Sun

**Traffic Remarks:** TRAINS TO START / TERMINATE AT OXENHOLME AND PENRITH. RAIL REPLACEMENT ROAD SERVICE TO OPERATE.  FREIGHT TO BE DIVERTED VIA ECML OR SETTLE AND CARLISLE LINE.

NOTE: Special Operating Instructions to be written to allow Up Trains to start from Platform 2 at Oxenholme.

**Week 42 Saturday 14th January to Sunday 15th January**

**PPS Ref:** P2012/1528979

**At/Between:** Oxenholme and Penrith

**Lines:** All lines

**Times:** 1320 Sat to 1455 Sun

**Traffic Remarks:** TRAINS TO START / TERMINATE AT OXENHOLME AND PENRITH. RAIL REPLACEMENT ROAD SERVICE TO OPERATE.  FREIGHT TO BE DIVERTED VIA ECML OR SETTLE AND CARLISLE LINE.

 NOTE: Special Operating Instructions to be written to allow Up Trains to start from Platform 2 at Oxenholme.

I will now arrange for this to be reflected in the relevant Weekly Operating Notice.

*This email is in accordance with Access Condition D3.4.2 and relates to Section 3.1 of the Timetable Planning Rules being the Procedure for Altering the Engineering Access Statement or Timetable Planning other than through the Twice-Yearly Process Having Effect from a Passenger Change Date.*

Kind Regards,

**Daniel Fredriksson**

**Access Planning Specialist**

**ANNEX “C” Extract from SUSTAINABILTY STRATEGY STEERING GROUP**

**West Coast Route Steady State Maintenance and Renewals (****Date: 11 July 2006)**

## **5.7 Crewe-Liverpool/Preston-Carlisle-Glasgow**

### **5.7.1 Overview of the available possessions**

Crewe-Weaver-Preston:

Sat/Sun 9 hours, 52 weeks/year; of which ~20 weeks also Sun/Mon 7 hours

Preston-Carlisle:

Sat-Mon 27 hours, ~10 weeks/year

Sat/Sun 9 hours, ~40 weeks/year

Sun/Mon 7 hours ~10 weeks/year

Carlisle-Carstairs:

Sat-Mon 27 hours, ~10 weeks/year

Sat/Sun 9 hours, ~40 weeks/year

Carstairs-Lanark Junction:

Sat/Sun 9 hours, 52 weeks/year

Lanark Junction-Law Junction

Sat/Sun <9 hours, 52 weeks/year

Law Junction-Mossend and Glasgow Central:

Alternative electrified and W10 routes available, possessions possible but times to be confirmed, defined by Strathclyde PTE service requirements.

Emergency midweek night possessions may be facilitated by incorporating in overnight passenger and train service schedules a 'box' time, used as a performance allowance during normal working, and reducing the delay caused if a possession is taken and SLW installed. This will allow NR in some cases to optimise the balance between midweek night emergency possessions and speed restrictions until the following weekend.

This report has not taken account of the Anglo Scottish Coal traffic agreement

**ANNEX “D” 24th August Proposed Changes to the Part D of the Network Code - Annex B extract from PfC60**

**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, providers and funders, of railway services (“the Objective”).

4.6.2 In achieving the Objective, Network Rail shall apply any or all of the considerations in paragraphs (a)-(j) below (“the Considerations”) in accordance with Condition D4.6.3 below:

(a) maintaining, developing and improving the capability of the Network;

(b) that the spread of services reflects demand;

(c) maintaining and improving train service performance;

(d) that journey times are as short as reasonably possible;

(e) maintaining and improving an integrated system of transport for passengers and goods;

(f) the commercial interests of Network Rail (apart from the terms of any maintenance contract entered into or proposed by Network Rail), any Timetable Participant and funder, of which Network Rail is aware;

(g) seeking consistency with any relevant Route Utilisation Strategy;

(h) that, as far as possible, International Paths included in the New Working Timetable at D-48 are not subsequently changed;

(i) mitigating Environmental Damage; and

(j) avoiding changes, as far as possible, to a Strategic Train Slot other than changes which are consistent with the intended purpose of the Strategic Path to which the Strategic Train Slot relates.

4.6.3 When applying the Considerations, Network Rail must consider which of them is or are relevant to the particular circumstances and apply those it has identified as relevant so as to reach a decision which is fair and is not unduly discriminatory as between any individual affected Timetable Participants or as between any individual affected Timetable Participants and Network Rail. Where, in light of the particular circumstances, Network Rail considers that application of two or more of the relevant Considerations will lead to a conflicting result then it must decide which of them is or are the most important in the circumstances and when applying it or them, do so with appropriate weight.

4.6.4 The Objective and the Considerations together form the Decision Criteria.

**Consequential Amendment**

Insert as a Definition in Part D:

“**Environmental Damage** shall have the meaning shown in Part E of this code.”