

**Jonathan Rodgers**  
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2 December 2019

Sarah Jason  
Franchise and Access Support Manager  
(Wessex)  
Network Rail Infrastructure Ltd  
Basingstoke Rail Operating Centre  
Gresley Road  
Basingstoke  
RG21 4FS

Neetika Garg  
Track Access Manager  
First MTR South Western Trains Ltd  
South Bank Central  
30 Stamford Street  
London  
SE1 9LQ

Dear Sarah and Neetika

**Approval of the Third supplemental agreement to the track access contract between Network Rail Infrastructure Limited (Network Rail) and First MTR South Western Trains Limited (First MTR SWT)**

1. We have today approved the above supplemental agreement submitted to us formally on 13 November 2019 under section 22 of the Railways Act 1993 (the Act). This follows an earlier informal submission of a draft agreement for our consideration. The purpose of this letter is to set out the reasons for our decision.
2. The purpose of this agreement is to amend the parties' track access contract to move an off peak Waterloo to Eastleigh right to evening peak in Schedule 5 of the contract. This service has been running in the peak since the May 2019 timetable change. The agreement also adds a "Summer Period" definition and Class 707 rolling stock, which were all missing from the relevant parts of the contract.
3. Network Rail undertook the usual industry consultation and no concerns or issues were raised.
4. Our review did not identify any performance, operational or economic issues and we are satisfied that approval is in accordance with our statutory duties under section 4 of the Railways Act 1993.
5. The quality of the informal submission was inadequate. The supplemental agreement had already been prematurely signed and no Form P application form was submitted. The drafting of the agreement itself was also deficient and had to be rewritten.

After we invited formal submission it was not submitted for three months and when it was, the covering letter said, incorrectly, it was being submitted under the general approval. We would remind the parties that it is their responsibility to ensure their contracts are legally robust and the applications are accurate and properly explained. ORR takes no responsibility for agreements which turn out to be unenforceable due to such errors.

6. In considering the agreement and in reaching our decision, we have had to weigh and strike the appropriate balance in discharging our statutory duties under section 4 of the Act. We have concluded that approval of this supplemental agreement is consistent with our section 4 duties, in particular those relating to protecting the interests of users of railway services (section 4(1)(a)), promoting the use of the railway network for the carriage of passengers (section 4(1)(b)) and enabling persons providing railway services to plan their businesses with a reasonable degree of assurance (section 4(1)(g)).

7. Under clause 18.2.4 of the track access contract, Network Rail is required to produce a conformed copy, within 28 days of any amendment being made, and send copies to ORR and the Train Operator. Please send the conformed copy to me at ORR.

8. Electronic copies of this letter, the approval notice and the agreement will be sent to Keith Merritt at Department for Transport and to Peter Craig at Network Rail. Copies of the approval notice and the agreement will be placed on ORR's public register (website) and copies of this letter and the agreement will be placed on the ORR website.

Yours sincerely

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

**Jonathan Rodgers**