

Robert Mills
Office of Rail Regulation
One Kemble Street
London
WC2B 4AN

28th January 2013

Dear Robert,

PR13 – Consultation on Schedules 4 and 8 possessions and performance regimes

Merseyrail is pleased to be able to respond to ORR's consultation on how the Schedule 4 and 8 possession and performance regimes will operate in the next control period.

Merseyrail is supportive of the general direction set out in the ORR's consultation including the on-going commitment to retain the overarching framework provided by Schedules 4 and 8 as liquidated sums regimes. We do not believe that there is a need for significant change to the existing policy framework, as the existing arrangements are well-understood and we believe generally drive appropriate behaviours across the industry.

In general we support the ATOC response and we have concentrated our response on the questions raised by ORR in the consultation document, although there is another area relating to Type 3 Restriction of Use that requires clarification.

Transparency of possession management

What are your views on whether we should encourage Network Rail to consult with passengers and freight customers in the planning of its possessions?

We agree that enhanced consultation around possessions planning is the right approach for the customer. However, we believe Merseyrail are better placed to represent passenger's interests with respect to possessions planning.

Schedules 4 and 8 in general

Do you agree with the SDG research findings and conclusions on whether to set Schedule 4 and 8 payment rates so they do not compensate train operators in full for the impact of service disruption due to Network Rail and other train operators? If not, please tell us why?

We believe that compensation should be set 100%.

Do you agree that we should continue to set Schedule 4 and 8 payment rates so that they compensate train operators for the full financial impact of service disruption due to Network Rail and other operators, where we do so currently? If not, please tell us why?

As above

Do you agree with our proposal not to introduce the Joint Restrictions of Use concept into Schedule 4 of template track access contracts? If not, please tell us why?

Yes we agree with the proposal not to introduce joint restrictions of use at this time.

Schedule 4 passenger possessions regime

Do you agree that the Access Charge Supplement (ACS) should be calculated using Network Rail's revised route based Schedule 4 costs estimation methodology? If not, please tell us why?

Merseyrail considers that it would be appropriate to determine ACS at a route level.

Do you consider there is further value in Network Rail achieving greater disaggregation in the methodology of the ACS calculation and if so do you have any suggestions how this might be achieved?

An independent review of Network Rail's approach should enable the validation of the current approach and the opportunity for the relevant experts to propose improvements for the future.

Do you agree that we should update the estimated bus mile payment rate based on actual amounts paid during CP4, rather than simply uplift the current rates by cost inflation? If not, please tell us why?

Merseyrail agrees that ORR should update the estimated bus mile payment rate to ensure that the formula more accurately captures actual costs.

Do you agree that we should continue with the current formula for calculating revenue loss compensation for cancelled train services when there are replacement buses? If not, do you have any suggestions for how we could improve this aspect of Schedule 4?

We agree that the current approach is generally fit for purpose.

Do you agree that we should extend the scope of the protection provided by paragraph 2.9 of Schedule 4 to enable the recovery of direct costs related to amended or cancelled Type 1 possessions? If not, please tell us why?

Merseyrail believes that a change of this nature would improve the incentives on Network Rail to consider the impact on operators of cancelling or changing possessions at short notice. We also advocate an approach under which there is more regulatory scrutiny of Network Rail's performance in regard to late changes / cancellations.

If so, do you agree the threshold for triggering a claim should be £5,000 per possession? If not, please tell us why?

We consider that there should be a threshold that reflects the fact that the abortive costs associated with Network Rail cancelling an individual possession might not always reach the existing Schedule 4 cost threshold of £10k and therefore changing the scope of paragraph 2.9 to cover Type 1 possessions would not make any difference unless the threshold was lowered. However we believe a lesser rate should be considered for smaller operators.

Do you agree that we should keep the Sustained Planned Disruption (SPD) revenue loss threshold the same and uprate the cost compensation by inflation (RPI)? If not, please tell us why?

Yes

Are you of the view that the provisions for claiming compensation under the SPD mechanism would benefit from clarification? If yes, please highlight which areas should be clarified?

We agree that clarification of the mechanism would benefit both operators and Network Rail, however our specific experience is with the Schedule 4 Type 3 Restrictions of Use dispute mechanism. The contractual wording for Type 3 Restrictions of Use dispute procedure would benefit from clarification, as formulaic approach is not delivering the required output. We would welcome clarification on what can be claimed, e.g. legal/consultant costs or management time. We would also suggest that where a party issues an ROU Claim Notice, following delivery of ROU Liability, if the party that makes the claim does not accept the above the onus of proof should be on them to justify a difference.

Additionally the contractual wording would benefit from clarification for where the Claim Notice is issued by Network Rail, this should not prevent formulaic compensation being paid by the Network Rail to the Train Operating Company prior to resolution of the dispute.

Schedule 8 passenger performance regime

Do you agree that we should keep the current Schedule 8 contractual wording in relation to what train operators can claim for under the SPP arrangements? If you do not agree, do you have any proposals for alternative wording?

As with the claims procedure discussed above, we believe that further clarification would be useful.

Do you agree that we should leave timings of Schedule 8 payments unchanged, with payments due within 35 days following the end of each four-week accounting period? If not, please tell us why?

Yes we agree that there should be no change to the timings of Schedule 8 payments.

Are you content for us to remove the passenger charter element of the Schedule 8 performance regime? If not, please could you tell us why and whether you would like us to take any alternative course of action?

Yes, we think it would be appropriate to remove this element of the regime.

Do you agree that we should not change the way train operator cancellations to their own trains are treated under Schedule 8? If not, please tell us why?

We agree this should not be changed.

If you require any further clarification on the above, please do not hesitate to contact me.

Regards

David Print
Head of Strategic Development and Concession Management