



campaigning  
by the  
Railway Development  
Society Limited

## Policy Group

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25<sup>th</sup> January 2013

Dear Robert,

### **Periodic Review 2013 - Consultation on Schedules 4 and 8 possessions and performance regimes**

#### **Introduction**

Railfuture is grateful for the opportunity to participate in this consultation.

Railfuture is a national voluntary not for profit organisation limited by guarantee, and structured in England as twelve regional branches and two national branches in Scotland and Wales.

#### **Overview**

We are still concerned about the overheads to the rail industry of managing these compensation processes. There does appear to be little consideration of the fact that the disruption is for the benefit of the rail users. In the case of disruption to passengers, it is very rare that the compensation reaches them – although they are the ones most likely to be affected. Passengers buy a ticket for a rail journey and to find buses substituting for part or all of a journey should lead to some compensation.

There is still a concern that perverse incentives exist to encourage a train operator to use bus substitution when a diverted or slightly delayed train might be better. Passengers need to be informed about scheduled changes as soon as possible and be able to understand the reasons for the work, the benefits that are planned and the various options considered to manage the alternatives.

#### **Transparency of possession management**

1. What are your views on whether or not passengers and freight customers adequately consulted on the planning of possessions? What activity currently takes place?

Passengers often do not understand the reason for the possession and the benefits this will bring. Information is available on web sites, posters at stations and occasionally leaflets. There is however good examples where major planned disruption is planned with information available in advance – however this good practice does need to extend to the majority of disruption (Monthly/Weekly Plans?).

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

The planning of Network Rail and discussions with train operators needs to be externalised as soon as practical so that rail passengers are able to consider there arrangements. Short (weekly/monthly), medium

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(1/4ly) and long-term plans (6 months +) should be available and updated as necessary.

3. If we were to encourage Network Rail to consult with passengers and freight customers in the planning of its possessions, do you have any suggestions on how we might go about doing this, for example, how such an obligation would be phrased and monitored?

A central repository of planned disruption should be maintained and accessible to both 3<sup>rd</sup> party application providers and train operators (to disseminate via their communication channels – electronic and paper). Plan items would start as soon as a need is identified and then it would be updated throughout the lifecycle of the works until complete. We would expect the current arrangements for reflecting this in the working timetable to remain, but it would be clear that work is planned to be done with as much notice as possible.

#### **Schedules 4 and 8 overall**

4. 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?

Although we would agree with the principle suggested, we would not agree with this as a ‘one size fits all’ solution. We would suggest that full compensation could be considered when adequate compensation arrangements are in place for the rail passengers. Where sufficient notice is given we would expect these passenger journeys to be important or even critical, otherwise alternatives would have been considered.

5. 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?

In the current rail industry structure this does appear necessary, although we would be supportive of any measures that reduced the cost to the rail industry of managing the process. Perhaps minimums should be set and monitored (increased where possible) for individual disruptions or for a certain level per period.

6. Are you of the view that there are other steps we could take to encourage train operators to have a stronger influence on the behaviours of Network Rail, in addition to those we are doing already?

The alliances between NR routes and operators should continue to be encouraged. Sharing of longer term plans at the earliest opportunity with the full range of stakeholder should also be encouraged.

7. 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?

No comment

8. To what extent (if at all) do you think the current contractual wording of Schedules 4 and 8 is acting as a barrier to Network Rail and train operators minimising disruption to passengers and freight customers during extreme disruption, e.g. during severe weather? If you are of the view that it does act as a barrier, we welcome any specific proposals on how it can be improved.

Putting the passenger first (and freight user) should override this wording where appropriate and agreed between the relevant parties.

#### **Schedule 4 passenger possessions regime**

9. 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?

Yes, on the basis that it is the best information available. There should be the opportunity to feedback actual costs and adjust the supplement easily and in a more dynamic way.

10. 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?

There should be feedback, where possible to enable this to be reviewed in a simple and agreed manner.

11. 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?

Yes, this principle should be adopted wherever possible where the cost of doing so does not exceed or increase overall costs significantly.

12. 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?

This appears to be the best method currently.

13. Do you consider the way in which the revenue loss formula compensates franchised passenger operators when using replacement buses encourages passenger train operators to run too many buses (rather than trying to run train services using diverted route, for example)? If so, please explain why you think this is the case?

The perception remains that rail users feel that this is the case. However this should not be the case, and further exposure of the discussion of alternative considered, including costs, would help disprove or discourage this if it was they case.

14. 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?

We do have concern about the increased overheads to the rail industry this could generate. The principle should be of industry partners working together.

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

Agreed, and it should be reviewed on a regular basis to see if it can be raised,

16. Do you agree that we should update the new working timetable notification factor to reflect changes to delay multiplier values in the Passenger Demand Forecasting Handbook (PDFH)? If not, please tell us why?

No comment – overheads do need to be limited.

17. Do you have any further proposals for changes to notification discount thresholds and factors? If so, please explain your reasoning?

No comment

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

No comment

19. 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?

No comment

#### **Schedule 4 freight possessions regime**

20. Do you consider the current regime appropriately compensates freight operators for losses resulting from severe disruption caused by possessions? If not, what do you consider the level of compensation should be based on?

No comment

21. Do you consider that the current regime appropriately incentivises Network Rail to reduce the amount of disruption faced by freight operators due to possessions? If not, how do you think incentive effects can be strengthened?

No comment

22. If Schedule 4 compensation payment rates for freight operators were increased, should this be funded by government? If so, please explain why you think this should be the case? If not, please tell us why?

No comment

#### **Schedule 8 passenger performance regime**

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

Retain current arrangements; evidence appears to suggest it is working. A concern however is the time (cost and resources) involved. The consultation document refers to claims still outstanding from CP3 (2005-2009), claims are also low. These arrangements should be kept under review to see if they can be incorporated into standard compensation arrangements rather than this add-on.

24. Should we continue with the SPP threshold set at 10% or increase it? If not, please tell us why?

The threshold should be increased to 15% to 20% as a way to start the process of reducing claims further.

25. If we increase the SPP threshold, what are your views on the level we should set it at?

The threshold should be increased to 20%.

26. 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?

Agreed – standard payment terms practice.

27. Do you agree that we should keep the circumstances in which Network Rail and train operators can propose amendments to Schedule 8, appendix 1 via paragraph 17 the same? If not, please tell us why?

The process of amendments to schedules can be unwieldy, drawn out and subject to undue influence by individual parties, but we accept that this could be justified. There is sympathy with Network Rail's position that this should be limited but circumstances do change.

28. Are there any specific areas of paragraph 17 where you are of the view the drafting needs to be made clearer? If not, please tell us why?

Clarification of wording and process is supported where necessary.

29. 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?

The alternative solution would be to increase the minimum (annual rolling) levels of service that franchised operators must supply before compensation is paid to season ticket holders. However we note that a number of operators have now moved to a delay repay process that compensates for considerable delay to a journey (users of this method are then opted out of the season ticket discount. We understand the difficulties of changing this, as it is a franchise commitment so, on that basis support the suggestion.

30. 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?

As this remains an incentive on the operator not to cancel a train, we would support this.

### **Schedule 8 freight performance regime**

31. Do you agree that we should keep the Network Rail payment rate the same, but uplifted for inflation? If not, please tell us why?

Agreed, Freight costs should not increase due to these payments losing real value. However it is still for Network Rail to manage their costs and reduce the need for these payments in any case.

32. Do you think that the current Network Rail payment rate accurately reflects the financial impacts incurred by freight operators as a result of Network Rail caused delays to freight trains? If not, please tell us why?

Freight costs are liable to differ from journey to journey, however there is a need to keep it simple and understandable.

33. Do you agree that we should re-examine the evidence base for the Network Rail payment rate with the freight industry and Network Rail in CP5, and if necessary adjust the rate to reflect cost and revenue impacts on freight operators due to Network Rail caused delays? If not, please tell us why?

Agreed, but high level principles should be retained and the temptation to get too detailed should be avoided.

34. Do you agree that we should keep the Network Rail cancellation payments the same but uplift them for inflation? If not, please tell us why?

Agreed

35. Do you agree that we should update the congestion factor used in the calculation of adjustments to the freight operator benchmark, in order to take into account of evidence being collected as part of the update of the capacity charge? If not, please tell us why?

Agreed

36. Do you agree that the Network Rail £ per delay minute payment rates used in the calculation of the freight operator payment rate should be weighted by third party freight operator delay affecting each service group? If not, please tell us why?

Where the approach to payment rates is simple and there is minimal overhead – so at a high level this would better reflect the costs of disruption.

37. Do you agree with our proposal to continue to set the bonus payment rates at 50% of the level of the compensation payment rate? If not, please tell us why?

Agreed (but review on a control period basis)

38. Do you agree with our proposal not to require Network Rail to offer incident caps in return for an access charge supplement? If not, please tell us why?

Yes, this helps simplify the process – as long as there is scope for Network Rail to offer incident caps in specific circumstances (Charter Trains, specific freight movements (e.g. heritage stock moves)).

39. Do you agree that incident caps are something that could be provided by the private insurance market if Network Rail were not to offer incident caps at a reasonable price? If not, please tell us why?

We have a concern that the level of premium payments will be very high. Premium payments would fall unfairly on certain parts of the rail industry and increase their costs to a level that was unsustainable.

40. Do you agree that we should continue to allow operator specific annual liability caps? If not, please tell us why?

Agreed – this provides some balance.

41. Should we continue to set reciprocal annual liability caps for smaller and new freight operators? If not, please tell us why?

Agreed, the rail industry should continue to encourage new business to the rail.

42. Should we continue to set reciprocal annual liability caps in instances where Network Rail and freight operators cannot agree on the level the cap should be set at? Or are caps on annual liability something the private insurance market could provide if no agreement is reached?

There is a concern about the insurance costs of the private insurance market – the scope for liability being triggered and level of costs that could accrue means high premium costs.

#### **Compensation for charter operators**

43. Do you agree that a separate charter operator payment rate should be calculated using the same methodology used to calculate the freight operator payment rate, but based on delays caused by charter operators to other train operators? If not, please tell us why?

Although not a core part of the service provision, the charter services provide a great deal of positive feedback and coverage for the industry. The number of journeys is minimal and planned in detail to avoid problems. The charter operators also have a considerable overhead in maintaining their stock to mainline quality and demonstrating this – reducing the risk of problems at the source.

44. Do you agree with our proposal not to require Network Rail to provide incident caps to charter operators on the basis this currently results in a subsidy to charter operators? If not, please tell us why?

Disagree. As mentioned previously they do carry out a great deal of work to maintain and prove main line capabilities. Emphasis should continue at the potential root causes of problems rather than increasing potential costs and hitting the sustainability and cost of providing these popular services.

45. Do you agree that incident caps are something that could be provided to charter operators by the private insurance market? If not, please tell us why?

There is a real concern that insurance costs would be very high, especially where a reliable equivalent of a claims history may be difficult to prepare. Cost is better placed in trying to reduce the likelihood of problems and maintaining mainline standards.

46. Are you content for us to set the Network Rail payment rate in the charter operator performance regime so it is the same as the Network Rail payment rate in the freight performance regime? If not, do you have any proposals on how we should update it including on the evidence we could use?

There are intangible benefits to the rail industry of providing this service and the cost of providing this service should not be raised to a level that prevents it from running. Detailed planning of journeys will mean that the disruption of core services is prevented wherever possible, so the number of journeys remains minimal.

We can understand the rationale of bringing the costs into line with freight operators (and this should allow them to be charged in a more efficient way by Network Rail's Track Access Billing) but rates need to be sympathetic to the special nature of this traffic – as mentioned previously, the priority of maintaining stock to main line standards is a more effective use of limited resources by the operator. These standards are regularly reviewed and should reflect any quantifiable problems (e.g. undue wear and damage to track) that this stock could generate.

47. Are you of the view that there are any other areas of the charter Schedule 8 performance regime that should be amended?

No

We trust that you will find our contribution to this consultation of use.

Yours sincerely,

*CFribbins*

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