



Gordon Herbert,
Track Access,
Office of Rail Regulation,
One Kemble Street,
London,
WC2B 4AN.

Transport for London
Rail and Underground

Palestra
London
SE1 8NJ

alansmart@tfl.gov.uk

31st January 2014

Dear Gordon,

A consultation on the model connection contract and general approval

This letter sets out TfL's responses to the questions posed in the ORR's consultation on the model connection contract and general approval. TfL is content for its responses to be published and shared with third parties.

Question 1: Is the default interest rate set at an appropriate level? If not, what should it be and why?

TfL considers that the default interest rate (2% above the Barclays base lending rate) is set at the correct level.

Question 2: Does the definition of initial condition statement need to be improved? If so, how and why?

TfL considers that the definition of initial condition statement is satisfactory as it stands.

Question 3: Do you agree with Network Rail's proposed standard formula for use in schedule 3?

TfL considers that the proposed standard formula is satisfactory.

Question 4: Do you have any comments on the proposed new clauses and schedules?

The use of email to serve notices gives cause for concern as messages can sometimes fail to be delivered without triggering a message concerning non delivery. This could leave the receiver unaware that a notice has been served, potentially damaging their commercial interests. If email is to be used

then the sender should be required to get written confirmation (submitted by email) from the receiver that they have received the documents concerned. Such confirmation should not be unreasonably withheld by the receiver.

Question 5: Is the range for which the liability cap can be generally approved - between £500,000 and £1,000,000 - still appropriate? If not, please comment on what changes should be made and why.

The range of values used should be adjusted to reflect inflation (as measured by the RPI index) since the values were set in 2005. This will ensure that they remain fit for purpose.

Question 6: Is the general approval ceiling of £20,000 still appropriate? If not, what should it be and why?

The range of values used should be adjusted to reflect inflation (as measured by the RPI index) since the values were set in 2005. This will ensure that they remain fit for purpose.

Question 7: Do you have any comments on the proposed new connection contract application form (*Form C*)?

TfL has no comments to make on the proposed Form C.

Question 8: Are there any other issues you would like to comment on?

TfL understands that the consultation is intended to cover the model contract and general approval rather than any of the specific agreements TfL currently has covering the links between its rail network and Network Rail's infrastructure. TfL considers that it would be inappropriate for the model contract to be enforced for these links, because of the termination clause in the model contract that would permit Network Rail or the ORR to terminate the contract at three months notice, requiring its replacement by a new agreement. This could adversely affect TfL's ability to provide train services that are of critical importance to London's transport network and economy, generating significant disbenefits to customers using TfL's train services as well as undermining TfL's commercial position and investment in the network. TfL considers that changes to the agreements governing the connections between its networks and those of Network Rail should only proceed if both parties agree to the change, to ensure security of access on reasonable terms.

Question 9: Impact assessment – how will these proposals affect you?

Refer to the response to question 8. TfL would be seriously concerned if agreements covering connections between the TfL Rail network and Network

Rail infrastructure were to be subject to termination with 3 months notice, as this could adversely affect the provision of train services as well as TfL's commercial position. This comment applies both to existing connection contracts and new contracts that will be required in future, for example for Crossrail.

Yours sincerely,

**Alan Smart,
Principal Planner – Forecasting,
Rail Planning team.**