

By email:
PR18.Schedules4and8@orr.gsi.gov.uk

Office of Rail & Road
One Kemble Street
London
WC2B 4AN

29 January 2016

Dear Sir / Madam,

Consultation Response: PR18 Reviews of Schedule 4 and 8 of Track Access Contracts

Thank you for the opportunity to comment on the Reviews of Schedule 4 and 8 of the Track Access Contracts as part of the ORR's PR18 process. This response by FirstGroup's Rail Division also encompasses the views of Hull Trains and Transpennine Express. Great Western Railway (GWR) is making a separate submission, due to the specific nature of a number of the matters raised in relation to Schedule 4, which FirstGroup supports. Where this response captures matters that are not contained within the GWR response, it should be taken that these are also the view of GWR.

We are aware that the ORR has also published a Consultation into the Structure of Charges for PR18 and whilst that consultation is separate from this review into Schedule 4 and 8, we would point out that there are significant relationships between the structure of charges and these two regimes. In particular there is a significant and important relationship between Schedule 8 and the current Capacity Charge, and in terms of Schedule 4 this is also the case as regards the management of the infrastructure in terms of maintenance and renewal. We would therefore request that the ORR takes cognisance of the views expressed in respect of Schedules 4 and 8 in its review of the structure of charges, and vice versa.

As a member of the Rail Delivery Group, FirstGroup notes that a separate response on behalf of RDG that builds on the Review of Charges work undertaken by RDG over the last two years has been made to ORR in respect of this review. FirstGroup played a significant role in the Review of Charges work, not just in terms of participating in the workshops and associated meetings but also in supplying a member of the Executive that oversaw the work on behalf of the Contractual & Regulatory Reform Working Group and the main RDG Board. FirstGroup is supportive of the comments made by RDG in its response to ORR on the structure of Schedule 4 and 8 but would like to take this opportunity to build on those themes with additional complimentary feedback.

Our detailed comments on Schedules 4 and 8 are as follows:

1. Overview

Overall FirstGroup is supportive of the structure of Schedule 4 and 8 and their primary role as liquidated damages regimes for train and freight operators. Both regimes do provide incentives, but the key to ensuring that the incentives are properly aligned relies on the detail within the regime rather than their structure.

The regimes need to be retained as liquidated sums compensation regimes, not just from a legal perspective (i.e. ensuring that operators are adequately compensated for the actions of a third party that would otherwise result in financial loss) but because on the whole they do drive appropriate behaviours, providing that the NR benchmarks (as in the case of Schedule 8) are set appropriately. This is particularly important as the role of the regimes within the overall structure of charges should ensure that behaviours deliver appropriate outcomes for funders and most importantly end users (i.e. paying customers) of the railway.

2. Schedule 8

As documented above, Schedule 8 should be the sole remedy for the impact of unplanned disruption to on-time punctuality and reliability of train services. It is important to remember that operators are incentivised to deliver good performance as without it, revenue receipts will drop, as customers look for alternative modes of transport. The regime itself does provide an appropriate incentive for Network Rail to deliver good performance and minimise the impact of its actions on passengers. However, central to ensuring that this happens are appropriate and accurate benchmarks and payment rates.

Benchmarks need to be aligned to desired performance levels. In terms of payment rates, we support the current structure whereby TOC rates reflect accurately the TOC-on-TOC impacts such that the Star Model concept remains intact. Network Rail payment rates should be set to reflect, as accurately as possible, the revenue associated with service groups.

We would also request that a full review of the inputs to the regime is undertaken as part of the PR18 process. This should include a review of the payment rates using available LENNON data, on a confidential basis and also the relative value and location of the Monitoring Points.

Clarity of purpose of the regime is important and there are two areas where this is often not the case.

Firstly, as the regime uses responsibility for delays and cancellations to determine lateness at Monitoring Points, the attribution of the causes of these incidences is often a cause for friction. The structure of the regime is often cited as the reason for these difficulties however, this is not the case. Schedule 8 is clear as to how responsibility for delays and cancellations is determined, however the application of these principles is governed through the Delay Attribution Board and its associated process under the Network Code. This area is one where the industry

needs to work collaboratively to ensure that the root cause of delay is correctly identified and recorded such that actions can be put in place to ensure repeat events do not take place.

Secondly, there is no mechanism within Schedule 8 to provide compensation for the actions of Network Rail to the end user. Operators have their own distinct passenger compensation regimes and as such have to bear the full cost of these regimes regardless of cause. Network Rail is currently insulated from this and therefore is immune to the impact that it has on passengers journeys. Whilst the core of the regime should not be altered in this regard, a separate element should be introduced to ensure that Network Rail bears its share of compensation payments to customers. A mechanism relating to Passengers Charter payments was in place during Control Period 2 but due to the fact that operators had to pay an Access Charge Supplement to access this element of the regime and that it was overly complex in nature, it was not effective. A simple and effective addendum to the current regime could be added that ensured Network Rail paid for the consequences of delays that it causes could be included which would provide a further incentive to deliver appropriate levels of infrastructure reliability.

Finally Schedule 8 is a valuable element in determining the trade-off that exists within the industry between track capacity, passenger demand, journey time and performance. The regime should therefore be supportive in assisting decisions about the use and expansion of the network.

3. Schedule 4

As with Schedule 8, FirstGroup is supportive of the principle of a possessions regime that incentivises Network Rail to behave efficiently and to manage the maintenance, renewal and enhancement of the railway in a manner that minimises the impact to end-users. The use of Schedule 8 payment rates must remain, as this provides a clear link to the impact of Network Rail's actions on an operators business. However, the current regime has a number of elements within it that do not necessarily combine to deliver the appropriate outcomes, and it is these that our response focuses on.

Firstly, the current mechanism of discounting payments depending on the notice given for possessions is not effective and in fact provides a perverse incentive. Network Rail is currently incentivised to ensure that all possessions are booked as far in advance as possible, effectively at the point that the annual possession plan is put in place. In some cases this means that possessions are booked up to 18 months out. However, at this stage it is clear that the specific work that Network Rail wishes to undertake to the infrastructure is not known or defined to a sufficiently granular level to ensure an effective and efficient delivery of works.

Furthermore the regime incentivises Network Rail to not cancel possessions where work is not taking place, adding unnecessary journey time and inconvenience to passengers. There are potential solutions to these issues including revising the timescales associated with discounts, and the levels of discounts. However, it should be recognised that cancelling possessions once

amended timetables have been published (i.e. at T-12 weeks) any amendment is likely to cause increased business disruption and should therefore be discouraged.

We would suggest that this is a key area that ORR should focus its work on, and should engage collaboratively with the industry to find solutions that improve efficiency. We are available to assist with any such workstream.

Secondly, the Access Charge Supplement needs to be effective and add to the clarity or purpose of the regime. We support the current principal that NR is funded through the ACS for an efficient level of engineering access to provide a benchmark which it can seek to outperform. We consider the cancellation of possessions to be largely avoidable.

Thirdly, the regime should incentivise Network Rail and operators to find solutions to possessions that enable passengers to remain on trains rather than having to use rail replacement. Research undertaken by Transport Focus has demonstrated that passengers prefer to remain on a train rather than changing on to a bus. With the correct mechanisms in place Network Rail would be incentivised to use alternative methods of operation to enable trains to run alongside worksites or on diversionary routes.

Thirdly, the actual losses element of the regime does not accurately reflect costs that operators incur as a result of possessions. Most possessions result in costs beyond just rail replacement, which the regime does not recognise for the most common (i.e. Type 1) possessions. In addition, the formulaic mechanism for bus compensation does not recognise that intercity and long distance inter-urban or regional services often require more than one bus to be used due to the volume of passengers.

Lastly, for major possessions (Type 3) there is no guidance on how actual revenue loss and the associated lag that major blockades can have on an operators business should be calculated. This can lead to long and protracted discussions between Network Rail and operators and do not assist in providing knowledge to effectively plan and manage significant possessions, which are often require to deliver enhancement projects.

If you would like to discuss any elements of our response in more detail, we are available to meet with you as required.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Russell Evans', with a long horizontal flourish extending to the right.

Russell Evans
Policy & Planning Director, FirstGroup Rail Division