

**APPLICATION FOR DIRECTIONS FROM THE OFFICE OF
THE RAIL REGULATOR
PROPOSED STATION ACCESS AGREEMENT FOR LONDON
ST. PANCRAS STATION BETWEEN:**

- (1) LONDON & CONTINENTAL STATIONS & PROPERTY
LIMITED (“LCSP”); AND
(2) MIDLAND MAIN LINE LIMITED (“MML”)**

**MIDLAND MAIN LINE LIMITED’S
RESPONSE TO LCSP’S WRITTEN
REPRESENTATIONS OF 6 NOVEMBER 2002**

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MML’S RESPONSE TO LCSP’S WRITTEN REPRESENTATIONS OF 6 NOVEMBER 2002

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PART A –GLOSSARY AND INTRODUCTION

A1 GLOSSARY OF DEFINED TERMS

In this Response the following terms shall have the following meanings:

“Application”	the Application for directions pursuant to s17 of the Railways Act 1993 made by MML on 15 October 2002;
“CTRL”	the Channel Tunnel Rail Link;
“CTRL Implementation Date”	6 June 2002;
“CTRL Works”	the works ongoing at London St Pancras since the CTRL Implementation Date;
“Existing Agreement”	A Station Access Agreement dated 19 April 1996 between: (1) LCSP; and (2) MML as amended by supplemental agreements on 30 May 1996, 18 May 2000 and 8 August 2000;
“Facilities”	those facilities in respect of which Facility Compensation is payable;
“Facility Compensation”	Compensation payable by LCSP to MML pursuant to the tables contained in Schedule 4 Part V of the Existing Agreement, including Walking Time Compensation and Non-Provision Compensation;
“Final Station”	London St Pancras International Station;
“General Damage Compensation”	Compensation payable by LCSP to MML for general damage as provided for at Schedule 4 Part 1, Paragraph 11.2.1 of the Existing Agreement;
“Interim Station”	The station to which it is proposed that MML’s operations be moved during a period of the CTRL Works;
“LCR”	London & Continental Railways Limited;
“LCSP”	London & Continental Stations & Property Limited;
“LCSP Representations”	the written representations submitted by LCSP to the Regulator between 6 November 2002 and 5 December 2002;
“Minimum Requirements”	the minimum requirements set out in Schedule 5 of the Existing Agreement;
“MML”	Midland Main Line Limited, trading as Midland Mainline;

“MML Response”	this document;
“New Agreement”	the new Station Access Agreement proposed to be entered into between: (1) LCSP; and (2) MML upon expiry of the Existing Agreement and which is the subject of the Application;
“Non-Provision Compensation”	compensation payable by LCSP to MML for the non-provision of Facilities as calculated pursuant to the tables contained in Schedule 4 Part V of the Existing Agreement;
“Part 18”	Part 18 of the Station Access Conditions of the Existing Agreement;
“Regulator”	the Office of the Rail Regulator;
“SFO”	Station Facility Owner;
“Station”	London St Pancras Station;
“Thameslink”	Thameslink Rail Limited;
“Track Access Agreement”	a track access agreement dated 1 April 1995 between (1) Railtrack plc; and (2) MML as amended from time to time;
“Walking Time Compensation”	compensation payable by LCSP to MML for increase in Walking Time to Facilities as calculated pursuant to the tables contained in Schedule 4 Part V of the Existing Agreement.

A2. All other capitalised terms shall, where the context allows, have the meaning ascribed to them in the Application, Representations, Existing Agreement or New Agreement.

A3. BACKGROUND

A3.1 MML, as Beneficiary, and LCSP, as Station Facility Owner, are currently both party to a Station Access Agreement dated 19 April 1996 (the “Existing Agreement”). The Existing Agreement is due to expire on 28 April 2003.

A3.2 MML and LCSP have been and continue to be engaged in negotiations to agree a new Station Access Agreement (the “New Agreement”). The parties have, however, been unable to agree on some of the terms of the New Agreement.

A3.3 On 15 October 2002 MML applied to the Office of the Rail Regulator (the “Regulator”) for directions pursuant to s17 of the Railways Act 1993 (the “Application”).

A3.4 On 16 October 2002 the Regulator wrote to LCSP enclosing the Application and inviting LCSP to provide written representations by 6 November 2002.

A3.5 On 6 November 2002 LCSP provided such representations (the “LCSP Representations”) to the Regulator. A number of items were not included in the submitted Representations – LCSP asked for and were granted an extension of time in respect of such omitted items to 9 December 2002.

A3.6 On 6 November 2002 the Regulator wrote to MML enclosing a copy of the Representations to the extent so far received. In accordance with the Railways Act 1993 MML were invited to provide a response to the LCSP Representations. The closing date for the Response was determined to be 19 December 2002. This document constitutes such response.

A4. SUMMARY OF LCSP’S POSITION

A4.1 LCSP have stated that the structure of the New Agreement should be the same as the Existing Agreement¹.

A4.2 LCSP have further stated, however, that the level of compensation payable should be reduced in respect of two areas, namely:

- (a) General Damage Compensation; and
- (b) Facility Compensation.

A4.3 LCSP contend that their arguments for these reductions are contained in their Representations.

A5. SUMMARY OF MML’S POSITION

A5.1 MML consider that the levels of compensation in the New Agreement should be the same as those in the Existing Agreement for the following reasons:

- (a) the existing levels of compensation were:
 - (i) agreed in 1996 after much time and effort on the basis of detailed studies and information²;
 - (ii) intended to provide certainty to both parties;
 - (iii) intended to provide the appropriate level of incentive to LCSP, to ensure that the Station is operable by MML and that appropriate Facilities are provided for the benefit of the passengers; and
 - (iv) part of a ‘balanced package’ that complemented the curtailment rights awarded to LCSP in the Part 18 regime;

¹ Paragraph 4.3 of the Letter contained in the LCSP representations.

² As referred to in the Application

- (b) as is shown by Part B of this Response, LCSP's Representations fail to show sufficient reason for any reduction in the levels of General Damages Compensation or Facilities Compensation; and
- (c) MML maintain (in Part C of this Response) that the levels of compensation in the Existing Agreement were agreed in 1996 as a genuine pre-estimate of MML's losses. MML consider that to the extent that any changes to the level of General Damages Compensation and Facility Compensation is appropriate, such changes should reflect an upward adjustment on the basis of MML having successfully built up its business since the current levels were set. This is particularly the case in view of LCSP's failure to show any reason for change. MML's approach, however, is to maintain the levels of General Damages Compensation and Facility Compensation at the existing levels on the basis of the certainty.

PART B MML’S COMMENTS ON LCSP’S REPRESENTATIONS

Introduction to Part B

This Part B of MML’s response contains MML’s comments on LCSP’s Representations and is structured as follows:

Part B.1 contains MML’s comments on the letter contained in Part 1 of the Representations (the “LCSP Letter”) together with comments on Appendix B of the LCSP Representations, as incorporated in the LCSP Letter;

Part B.2 contains MML’s comments on LCSP’s proposed amendments to the Existing Agreement (as contained in Part 3 of the LCSP Representations); and

Part B.3 contains MML’s comments on the appendices to the LCSP Representations.

Within these parts B.1 – B.2 headings, numbers and paragraph references correspond to the part of the LCSP Representations being responded to.

B1 THE LCSP LETTER

The principal component of LCSP's Representations constitutes the letter set out in Part 1 of its Representations. Such letter is divided into two parts. Part One – entitled LCSP's Position and Part Two which constitutes responses to MML's Application.

In this Part B1 MML comments on the contents of the letter. The comments are set out opposite the paragraph numbering used by LCSP. Sub-paragraphs, although not numbered by LCSP, have been designated numbers for ease of identification.

Reference to LCSP paragraph number in the LCSP Representations	MML Response to LCSP Comment
Part One LCSP's Position	
Paragraph 1 of Part One	<p>LCSP state that at today's values General Damage Compensation amounts to £ X and project liaison compensation £ X. MML assume these figures are approximations. The actual figures as at the date of this Response are as follows: General Damage Compensation amounts to £ X; and project liaison compensation £ X.</p> <p>LCSP further state that Facility Compensation '<i>currently runs at £ X per annum</i>'. Again, MML assume that this is an approximation. Payment of Facility Compensation commenced in August 2001 and in the year to 31 July 2002 amounted to £ X.</p> <p>MML cannot comment on LCSP's assertion that Facility Compensation is expected to reach £ X per annum. The purpose of Facility Compensation is to ensure that the appropriate level of incentive is provided to LCSP to minimise disruption to passengers and to ensure that MML is fairly compensated for disruption to its business. This compensation is only payable in the event that LCSP choose, in accordance with Part 18 and the Facility Compensation regime in Schedule 4 of the Station Access Agreement, (i) to provide a lower standard of Alternate Facility (ii) not provide the Facility in question, or (iii) move away a particular Facility. The actual amount of Facility Compensation that may become payable is entirely under the control and management of LCSP. MML does not have any control over the programme and implementation of the CTRL Works. Projected total figures for Facility Compensation do not assist LCSP's submission.</p> <p>The compensation figures are required to provide the appropriate level of incentive to LCSP to minimise disruption and passenger disbenefit. The subsequent annual amount of</p>

	<p>Facility Compensation is then entirely a matter for LCSP. MML's experience to date suggests that without this appropriate level of incentive, LCSP will not pay sufficient regard to the needs of passengers using London St Pancras.</p>
Paragraph 2 of Part One	<p>MML note that LCSP recognise '<i>MML's right to be compensated where there is real loss or disruption to their business</i>'.</p> <p>MML agree that the current compensation levels are a genuine pre-estimate of loss and further consider that the levels should be retained³. MML consider that continuation of the current compensation levels:</p> <ul style="list-style-type: none"> (a) will not be a "windfall" to MML, the compensation levels reflect MML's minimum actual loss; (b) would be related to the intentions of the parties, as shown by the agreement of the levels in 1996; and (c) will not add unnecessarily to the cost of a strategic rail project as such costs should, in any event, have been accounted for, furthermore the costs are necessary to incentivise LCSP to prevent excessive passenger disbenefit and fairly compensate MML. <p>Further to (c) above, MML consider that the requirement of LCSP to renegotiate the agreed compensation levels that are set out in the Existing Agreement whilst providing no new evidence to justify such requirements in MML's view, adds unnecessarily to the cost of a strategic rail project and MML's franchise.</p> <p>MML consider that LCSP have failed to show in their Representations that the agreed pre-estimate should be altered particularly in view of the inadequacy of the documentary evidence that they have provided. Furthermore, MML maintain in Part C of this Response that the pre-estimate constitutes MML's minimum actual losses.</p>
Paragraph 3 of Part One	<p>MML consider LCSP to have misunderstood the intention of the Regulator's economic appraisal. In MML's interpretation, the appraisal will be of the cost/benefit to MML of the CTRL works whilst they are taking place, as this should be the basis for the compensation payable⁴.</p>

³ See A.5.

⁴ Paragraph 6 of the Terms of Reference.

Part Two of the Letter: Responses to MML's Application

Reference to LCSP paragraph number in the LCSP Representations	MML Response to LCSP Comment
2 Background to Existing Agreement	
2.1	MML disagree with LCSP's statement that they were not involved in negotiating the Existing Agreement. As stated in MML's Application, Union Railways were given the task of championing the cause of the successful bidder for the Channel Tunnel Rail Link concession. Following the appointment of LCR, LCR were involved directly in negotiating the Existing Agreement and the Supplemental Agreement dated 30 May 1996 and the novation of the Existing Agreement to LCSP. Accordingly, at the time of signature of the Development Agreement, LCR & LCSP were fully aware of the Existing Agreement's contents and either accepted them or adjusted the terms of the Development Agreement accordingly.
2.2	MML disagree with the statement that ' <i>the current compensation regime was negotiated.... whilst the nature of the CTRL works to be undertaken was unknown</i> '. At the time of negotiation Union Railways and LCR had a well developed knowledge as to the nature of the works. For example, the Thameslink closure (as shown by point 3.2 of LCSP's Representations) and the general "movements" of MML in St Pancras (as shown by minutes of a meeting on 18/05/1995 – see Annex 2 to Part B of this Response) were known.
2.3	No further comment necessary.
2.4	MML note that LCSP does not wish to withdraw the safeguards and that LCSP recognises MML's need to protect their position.
2.4(a)	MML point out that this consultation is required under the Existing Agreement. Furthermore, MML only have the right to be consulted, their views may be disregarded and therefore compensation needs to be set at an appropriate level. MML agree with this being the case as they recognise the importance of CTRL to the national rail network and passengers.
2.4(b)	MML note that LCSP has declared that it has no intention of reducing the minimum level of Station Facilities and MML would expect to see this enforced through the New Agreement.

Sub-Paragraph 1 of 2.4(c)	<p>Again, LCSP's 'consultation' is only as provided for in the Existing Agreement and MML have little decision making influence. It is LCSP's decision as to whether or not they take curtailment action resulting in the generation of compensation.</p> <p>MML consider that Appendix A Part 2 of the LCSP Representations is not a '<i>detailed reportindicating the construction works and steps to be taken to mitigate as far as possible any disruption or discomfort</i>' as LCSP state (see further MML comment in Part B3.3 of this Response). LCSP's contention that they intend to '<i>continue with these arrangements</i>' in MML's opinion is unsustainable given that there is no detail of any arrangements as described (for example Appendix A Part 2 of the LCSP Representations does not show steps taken to mitigate any disruption or discomfort). LCSP's intentions as to LCSP's work programme does not assist their position, as MML has no control over how LCSP implement the CTRL Works.</p>
Sub-Paragraph 2 of 2.4(c)	<p>MML do not agree that the provision of the Interim Station was '<i>a fact not envisaged in the Existing Agreement</i>'⁵. All possible methods of CTRL implementation were considered in arriving at the amounts and methods of compensation in the Existing Agreement. The method of compensation was chosen in order to cover all eventualities as, again, MML have no control over CTRL.</p> <p>The statement that the Interim Station will 'insulate' MML against the CTRL Works is not agreed. There will still be disruption to MML passengers from:</p> <ul style="list-style-type: none"> (a) the two Station "moves" (i.e. from the current station to the Interim Station and from the Interim Station to the New Station); (b) MML moving platforms throughout the time in the Interim Station; (c) the effect of the Thameslink blockade⁶; (d) the construction of the Western Deck extension; (e) the prevalence of portakabins and hoardings; and (f) the passengers being required to walk adjacent to a building site, through restrictive hoarded "corridors", in order to change modes of transport.

⁵ See minutes contained in Annex 2, in particular those regarding "Prohibited Zones".

⁶ It is currently thought that the number of passengers using the Interim Station during the Thameslink blockade will exceed the Station's capacity, potentially resulting in overcrowding and an under-provision of Facilities.

	As MML will not be using the Interim Station for the full duration of the CTRL Works, MML will not be “insulated” from final construction works at the New Station. Furthermore, MML cannot be sure of the time of movements as they have no control over the CTRL Works.
Sub-Paragraph 3 of 2.4(c)	Any consultation has been as a result of the Existing Agreement. Again, MML have no control over decisions made. Despite LCSP’s statement, agreement has yet to be reached, for example, as to the provision of Facilities 26 (Catering Stores) and 27 (Catering Stores Office). These facilities are essential to MML’s on board services to passengers.
Sub-Paragraph 1 of 2.4(d)	MML agree that compensation should be based on ‘ <i>loss genuinely suffered by MML as a result of CTRL St Pancras Works at St Pancras Station only</i> ’. This has always been MML’s position. MML have never envisaged or suggested claiming for cancellations or track possessions under the Station Access Agreement as they are covered by the Track Access Agreement.
Sub-Paragraph 2 of 2.4(d)	<p>MML and LCSP agreed in 1996 that the compensation levels were a genuine pre-estimate of MML’s loss. MML believe that this pre-estimate is a true reflection of the loss MML will at least suffer. MML consider, in the light of LCSP’s failure to justify change and in the interests of certainty for both parties, that the levels should remain the same. To the extent that a review of the levels is appropriate, MML consider that they should be increased on the basis that MML’s passenger numbers have increased⁷.</p> <p>MML contend that LCSP’s Representations have produced no documentary evidence, or otherwise, demonstrating why the pre-estimate is incorrect (see further this Part B). With regards to General Damage Compensation, LCSP have suggested a figure for which no rationale is offered. On the contrary MML has produced further evidence that the pre-estimate is the appropriate basis for compensation (see Part C of this Response).</p>

⁷ Such increase being beyond that anticipated when the Existing Agreement was agreed.

Sub-Paragraph 3 of 2.4(d)	<p>The first part of the first sentence of this paragraph is expressly denied. LCSP have not correctly quoted any paragraph of the Application and have provided no evidence by way of support for this statement. MML note, however, that LCSP acknowledge that the Station, has suffered (and will continue to suffer⁸) from heavy demolition and construction activity.</p> <p>MML do not agree with LCSP’s simplistic remark that passenger growth of X % despite 90% of journeys being made through London St Pancras shows that MML have not been affected by the CTRL Works. A summary of the reasons for this passenger growth, achieved in spite of the CTRL Works, is attached as Annex 1. MML contend that this growth would have been higher had not the CTRL Works impacted on MML’s business (see Part C).</p> <p>MML should not, in effect, be penalised for their good passenger growth (despite CTRL) by a reduction in compensation. This should be contrasted with LCSP’s lack of investment, up to the CTRL Implementation Date, in London St Pancras Station⁹.</p> <p>MML reiterate their points with regard to current and projected compensation figures as made at ‘Part One: LCSP’s position’ above.</p>
Sub-Paragraph 4 of 2.4(d)	<p>LCSP state that their justification for a reduction in General Damages Compensation is set out in Appendix B of the LCSP Representations. This statement is not accepted. MML’s analysis of Appendix B reveals that LCSP fails to make any such justification.</p>
Appendix B of the LCSP Representations¹⁰	
Paragraph 1 of Appendix B	<p>With regard to the reports on dust and noise, as shown in Part B3, MML consider that:</p> <ul style="list-style-type: none"> (a) the report on noise shows nothing with regards to the effects of CTRL Works on noise levels as no prior study is provided as a comparison and as such adds nothing to LCSP’s arguments; and (b) MML do not understand why an increasing level of dust¹¹ should justify a decrease in compensation. <p>MML disagree with LCSP’s assertion that Appendix A, Part 1 of the LCSP Representations “demonstrates” that noise and dust</p>

⁸ See LCSP’s Representations, Appendix 1, Part 1, Paragraph 2; “the scope and nature of the remaining works..... will be similar in nature to the [works to date]”;

⁹ See 3.2 Sub-Paragraph 2 below.

¹⁰ This is reviewed at this stage as it is dealt with in this Paragraph 2.4(d).

¹¹ see C.3 paragraph 5.5 evidencing an approximate 100% increase.

	<p>pollution will not vary from current levels. Appendix A, Part 1 only states a “genuine belief” that these levels will not vary. MML would point to:</p> <ul style="list-style-type: none"> (a) a continuous increase in dust pollution¹²; (b) a continuation of “heavy demolition and construction activity”¹³; and (c) the fact that heavier demolition and construction work than is occurring at present is due to be undertaken. <p>Furthermore, the items mentioned in Schedule 4 Paragraph 11.2.1 are not an exhaustive list of the reasons for General Damage Compensation but are examples. Other reasons include visual degradation of the Station.</p> <p>MML consider that the existence of issues such as Hatfield and CTRL Track Works has no bearing on the issue of Station compensation.</p>
Paragraph 2 of Appendix B	<p>MML do not consider that the importance of the station environment to the travelling public was grossly overestimated when the Existing Agreement was negotiated.</p> <p>Whilst MML are mindful that factors such as punctuality and safety are paramount for passengers, MML are also aware that the station environment itself is a key factor in determining the choice of transport.</p> <p>MML would point out that the consideration given to the importance of the station environment in 1996 was as above and would have been no different in the light of the SRA National Passenger Survey data provided.</p> <p>MML further consider that the levels of compensation are at the appropriate level despite the station environment not being the most important factor for passengers, as:</p> <ul style="list-style-type: none"> (a) 90% of MML passenger journeys are made through London St Pancras; and (b) CTRL Works have had a severe impact on MML’s passenger satisfaction in respect of the London St Pancras Station environment (see Part C2.1 of this Response and Annex 5). <p>MML would further point out that the SRA National Passenger Survey data does not include levels of satisfaction for those passengers who have elected to travel by other forms of transport</p>

¹² Ibid.

¹³ see 2.4(d) paragraph 3 above and footnote 8.

	or to/from other stations as a consequence of the CTRL Works.
Sub-Paragraph 5 of 2.4(d)	MML note that LCSP agree with all these forms of compensation.
3 Commencement of the CTRL Works	
Sub-Paragraph 2 of 3.2	<p>LCSP state that the Interim Station will be finished to the standard of the Kent domestic service station. MML would comment that there may be disbenefit to passengers as:</p> <ul style="list-style-type: none"> (a) it is only LCSP's '<i>intention</i>' that the Interim Station be finished as stated, MML have no way of ensuring this standard is provided, intentions are not the same as guarantees; (b) the Interim Station will, in any event, not be up to 'inter-city standard' as MML inter-city customers would expect; (c) the Interim Station will not be up to the Kent domestic standard (as stated) as it will be unfinished; (d) there will be continued construction works and significant use of Portakabins and hoardings in the Interim Station, resulting in visual degradation and other building site effects; (e) the platforms allocated for MML's use during its occupation of the Interim Station will change from time to time; and (f) there may be severe overcrowding during the Thameslink blockade resulting in a under-provision of Facilities. <p>MML note LCSP's statement that the Interim Station will '<i>from the passengers' perspective,be a vast improvement on the current Station</i>'. Whilst MML are not certain that this will be the case (see (a) to (f) above, in particular (a)), MML note LCSP's admission that the current Station is below standard. This highlights the lack of investment in the Station by LCSP.</p>
3.3	<p>LCSP state that all that will remain to be done to the New Station at the time of MML's move from the Interim Station to the New Station is '<i>architectural fit outs</i>'. Again, MML have no control over this and there is no certainty of this occurring. Further, MML would point out that, upon their being moved from the Interim Station, some Facilities are very likely to be unavailable as they will form part of the unopened International Station.</p>

	MML would also point out that the compensation payable after the CTRL works being certified as practically complete will be scaled down accordingly.
4 Rationale of the New Agreement	
4.2	The move to the Interim Station may lessen the impact of demolition work, however, this is uncertain as this is not within MML's control. Furthermore, there will still be disruption to MML from those factors mentioned in 2.4(c) and 3.2 above.
4.3	<p>Again, MML consider the amounts of compensation payable to be correct. MML also consider continuation of existing levels to be in the interests of the parties as:</p> <ul style="list-style-type: none"> (a) it provides the correct incentive to minimise passenger disbenefit; (b) it provides certainty to both parties; and (c) minimises costs to both parties, as a result of not having to review the levels.
4.4	No further comments necessary.
4.5	MML consider the amounts to be fair on the basis that they are agreed, genuine, pre-estimates of MML's loss. MML further consider that to the extent any adjustment should be considered then any adjustments should be upwards given MML's increase in passenger numbers (see Part C3). MML remind LCSP that the original basis of the General Damage Compensation was X % of the annual revenue of MML attributable to London St Pancras. This was altered by agreement of the parties with the D.O.T to a fixed indexed amount of £ X. The rationale of the alterations was certainty for the parties ¹⁴ .
4.6	See Part B2 for MML's comments on the proposed amendments to the Existing Agreement.
5 London and Continental Stations & Property's Position	
5.2	<p>MML note that LCSP do not wish to dispense with General Compensation. Again, MML consider that this compensation should not be reduced as:</p> <ul style="list-style-type: none"> (a) the levels arrived at in 1996 were a genuine pre-estimate of loss; (b) LCSP have shown no reasons for a reduction (see this Part B); and

¹⁴ See Annex 3.

	<p>(c) There are further justifications for levels staying the same, if not increasing (see Part C of this Response).</p>
5.3	<p>MML note that LCSP have reviewed their position with regards to some of the ‘zero’ values since the Application. MML would, however, point out that some “zero” values remain. This is not acceptable as, in respect of these Facilities, it removes the appropriate incentive to LCSP and prevents MML from being fairly compensated.</p> <p>MML note that the values in the table are purported to be based upon the Regulator’s publication “Review of the Station Access Regime – Provisional Conclusions on the Policy Framework” published in August 2002. MML do not consider this to be a appropriate basis (see also Part C.3.3 of this Response) as:</p> <ul style="list-style-type: none"> (a) the publication only concerns abatements and as such provides no justification for reductions in Walking Time Compensation; (b) the abatement regime in the publication is designed to incentivise SFO’s to maintain facilities to prevent failure, in London St Pancras’ case the Facilities regime is designed to incentivise the SFO to provide Facilities for the benefit of passengers where, under Part 18, they have the right to curtail such Facilities; and (c) the regime in the publication, used to calculate the proposed levels of payment, is based on Railtrack station classifications, London St Pancras has never been so classified and therefore MML cannot understand how LCSP have applied this regime to arrive at the proposed reductions. <p>MML would further point out that in 1996 detailed studies were used, <i>for each specific facility</i>, in order to arrive at the levels in 1996. As such, the levels of compensation in the Existing Agreement are a better basis for the appropriate incentive for LCSP to retain current Facility levels for the benefit of passengers. Furthermore, MML would point out that the increase in MML passengers means that, if anything, these levels are now too low (see B3).</p>
6 Midland Mainline’s Comment to LCSP’s Position	
6.1	<p>As stated earlier, MML consider that:</p> <ul style="list-style-type: none"> (a) the technical reports as provided by LCSP are of no value to and do not support LCSP’s arguments with regards to potential damage to MML’s

	<p>business (see further C.3); and</p> <p>(b) the data from the SRA does not show the 1996 pre-estimate to be incorrect (see comments on “Appendix B of the LCSP Representations” above).</p> <p>Again, the growth in MML’s business does not undermine MML’s view that loss has been suffered. MML should not be penalised, in deciding the terms of the New Agreement, for their success in running their franchise (see 2.4(d) Paragraph 3).</p>
6.2	MML note that the Facilities have been provided and expect that provision will continue to be enforced through the New Agreement.
Sub-Paragraph 1 of 6.3	MML again note that LCSP have reviewed their position with regards to ‘zero’ values since the Application. However, a number of Facilities are still given “zero” values for Facility Compensation and no justification for this has been provided.
Sub-Paragraph 2 of 6.3	<p>With regard to Facility 5, MML would point out that this Facility did exist in 1996. MML are, however, agreeable to the deletion of this Facility but would point out that:</p> <p>(a) MML have not claimed any compensation in respect of this Facility; and</p> <p>(b) MML have encouraged LCSP, on a number of occasions, to delete this Facility by using the Change Procedure contained in the Station Access Conditions.</p> <p>MML do not agree to the deletion of Facility 48. This Facility existed until the closure of the Eastern Archway. MML still require to be compensated for loss arising from the cost of alternative arrangements, should such arrangements be required.</p>
Sub-Paragraph 3 of 6.3	<p>The disbenefits to MML and its passengers will not, by moving to the Interim Station, be limited to increased walking times. Disbenefits will include:</p> <p>(a) the disruption of two Station ‘moves’;</p> <p>(b) the effects of walking adjacent to a building site in order to change mode of transport (this being above and beyond the effects of an increase in walking time);</p> <p>(c) the Interim Station being not fully fitted out nor fitted out to an inter-city standard;</p> <p>(d) the construction of the Western concourse; and</p>

	<p>(e) the prevalent use of Portakabins and hoardings.</p> <p>Furthermore, construction work is not anticipated to be completed at the New Station upon MML's move there. Disbenefits will, therefore, include the effects of building works at the New Station on passengers, upon MML's move there.</p>
Sub-Paragraph 5 of 6.3	<p>Any long term benefits of CTRL should not be considered when calculating compensation as the condition of the New Station will be taken into account and dealt with, when determining the new Access Charges for London St Pancras International Station.</p> <p>MML would point out that:</p> <ul style="list-style-type: none"> (a) compensation is payable up until practical completion of the CTRL Works; (b) reduced compensation is payable following practical completion until termination of the New Agreement; and (c) upon termination, compensation will no longer be payable. <p>Compensation is payable as above because this is the period in which LCSP will have their Part 18 rights. As such the appropriate incentives for LCSP to maintain Facilities for the benefit of passengers need to be retained. Further, MML will require adequate compensation for those times where its position has worsened from MML's original situation. Upon termination of the New Agreement, LCSP will no longer have their Part 18 rights so the incentives need not remain. Further, MML's position will have become 'set' and, from this 'set' position, the Access Charges will be determined and accordingly there need for compensation to be payable will have ceased. LCSP's concerns, as stated, are therefore erroneous.</p>
6.4	<p>MML would point out that this suggestion has not been proposed to them during their negotiations with LCSP.</p> <p>Notwithstanding the above, MML consider that the Facility Compensation regime has been operating satisfactorily since CTRL Implementation Date and MML see no reason to make changes to the methodology. LCSP have, during negotiations, complained of the complexity of the Facility Compensation regime and the difficulties in the calculation of compensation due to MML. LCSP's radical proposal complicates this even further.</p>

	<p>MML have never requested that Facilities should be relocated at less than the Existing Distance. MML are only concerned to ensure that Facilities are provided at distances that do not cause excessive difficulty for passengers and staff at London St. Pancras and that London St. Pancras Station continues to be an operable Station.</p> <p>MML consider that LCSP's proposal is purely aimed at reducing the aggregate compensation payable by them as SFO, MML contend that LCSP should be considering the best position for each Facility within the Station, in terms of passenger and operational benefit. The LCSP suggested regime will potentially result in 'cheap' (in terms of compensation) Facilities, being moved as far away, as LCSP can 'afford' to pay small amounts of compensation for these Facilities when such charges are offset against the 'gains' to be made by crowding more 'expensive' Facilities together.</p> <p>MML consider that the location of the Facilities at London St Pancras before the CTRL Implementation Date was a satisfactory base. MML consider that any reduction in original Distance will not produce a great amount of passenger benefit. Furthermore, there will be a point at which reducing Distance actually produces passenger disbenefits due to the potential crowding of Facilities.</p> <p>MML consider that this proposal is contrary to the statement made by LCSP in their response at paragraph 2.3 of the LCSP Letter: <i>"It is not the intention of LCSP to withdraw the specific safeguards contained within the Existing Agreement and we recognise MML's need to protect their position"</i>.</p> <p>In paragraph 2.4(c) of the LCSP Letter, LCSP have emphasised the significance of the consultation that has taken place with regard to <i>"the design and layout of Alternate Facilities that are being provided"</i>. MML envisage that, to the extent that we have some certainty over the future position of Alternate Facilities in, for example, the Interim Station, this would be thrown into disarray as a result of this proposal. MML are concerned that LCSP will 'adjust' the position of Alternate Facilities in order to mitigate their aggregate compensation. Inevitably this will result in further uncertainty, additional work and cost.</p>
6.5	<p>LCSP have not shown that there was insufficient information in 1996. The only 'new' information that has been provided is the SRA data in Appendix B of LCSP's Representations the dust and noise surveys and the station plans. MML have commented on the inadequacy of this information in this Part B.</p>

6.6	MML will not be ‘insulated’ to a greater extent than originally envisaged, (see comments made in respect of Sub-Paragraph 2 of Paragraph 2.4(c), Sub-Paragraph 2 of paragraph 3.2, and Sub-Paragraph 3 of Paragraph 6.3).
7 LCSP’s Conclusion	
7	LCSP have not provided any evidence to show that the 1996 pre-estimate was incorrect. MML consider that this estimate constituted an appropriate level of compensation and therefore the terms of the Existing Agreement should be contained in the New Agreement. Overall, MML has, in the Part 18 Regime, allowed for LCSP to carry out the CTRL Works. Those works are carried out on the basis of the compensation regime, which is in turn, based on appropriate incentives to control LCSP’s actions. MML consider that the Existing Agreement is an overall “package”, with the rights for LCSP contained in Part 18 being balanced with the compensation regime. MML consider this “package” to be fair and beneficial to all parties, providing certainty to both parties and accordingly do not consider that it should be altered.

B2 LCSP'S PROPOSED AMENDMENTS

1. In the Application MML followed the principle of seeking to make as few changes as possible to the Existing Agreement. Changes were effectively limited to those required to reflect changes in commencement and termination of the New Agreement. MML did this as:
 - a) the Existing Agreement has worked satisfactorily and it was therefore not proposed to expend further time, effort and costs in amending it; and
 - b) by making as few changes as possible it was easier to see the effect of the changes and that those changes did only affect the commencement and termination of the New Agreement.
2. In their Representations, LCSP have proposed substantive changes to the compensation regime and many further amendments. MML do not consider that these further amendments are necessary. MML would comment on all the proposed amendments as in the following table:

Schedule of Amendments
seek to be made by LCSP to the Mark-Up of the Existing Agreement
which accompanied MML's Application

Item No	Amendment	LCSP's Comments	MML's Comments
1.	Clause 1.1 definition of "Certificate of Commencement". Replace with reference to the actual date.	This date has now passed and should therefore be cited. Reference to an agreement not annexed to the station access agreement is unhelpful in this regard.	Agreed. Such date is 28 April 1996.
2.	Clause 1.1 definition of "Commencement Date: Delete "(a)".	There is no need for this distinction to be made.	Not agreed. The distinction is required. Changing the definition of "Commencement Date" affects the Station Access Conditions. MML do not wish to change the Access Conditions.
3.	Clause 1.1 definition of "Franchising Director": Change to "means the Strategic Rail Authority".	This change of circumstances should be reflected.	Not agreed. Under s25 of the Transport Act 2000, the term Franchising Director is deemed to mean the SRA.
4.	Clause 1.1 definition of "Franchise Year": Delete	This term is not used.	Agreed.
5.	Clause 1.1 definition of "New Commencement Date": Delete.	LCSP do not consider that this term is required.	See MML's Response in Item 2 above.
6.	Clause 1.1 definition of "Reporting Period": Delete.	This term is not used.	Agreed.
7.	Clause 2.1(A): Add at the end "or is not required to be so authorised under the CTRL Act".	This amendment is required to reflect the exemption granted by the CTRL Act.	Not agreed. No amendment is necessary.
8.	Clause 2.3(B): Delete "New".	This term is not required.	See MML's Response in Item 2 above.

9.	Clause 2.4(A) Delete “New”	This term is not required.	See MML’s Response in Item 2 above.
10.	Clause 7.1: Delete.	This date has now passed.	Notwithstanding date has passed. MML do not consider this change to be necessary.
11.	Clauses 7.2 to 7.4: Renumber to reflect the deletion of Clause 7.1.	Consequential amendments.	Refer to MML’s Response in Item 10 above.
12.	Clause 7.4.1: Change reference to “Clause 7.4.2” to Clause 7.3.2”.	Consequential amendments.	Refer to MML’s Response in Item 10 above.
13.	Schedule 1, paragraph 3: Delete “(a)” and Delete “(b)” and the wording following “(b)”.	The new defined term is not required.	Refer to MML’s Response in Item 10 above.
14.	Schedule 1, paragraph 4: After the first word “The” add “earlier of (i)”. At the end of the paragraph add “or (ii) expiry or earlier termination of the Franchise Agreement or (iii) 28 April 2008.”	This is to ensure that the Agreement terminates on expiry of the Franchise Agreement in the event the CTRL Works have not completed by then.	MML does not agree with this proposed amendment. The effect of Franchise termination is dealt with in Clause 5.2 (A) 7.
15.	Paragraph 8: Delete and replace with “31 March 2004 £1,956,186.06”.	This represents the updated charge payable.	The updated figure is irrelevant. The paragraph 8 figure was intended to set out the proportion payable for the Access Charge for the period from April 19 1996 to 31 March 1997, on the basis that there was not going to be a full financial year. Pursuant to the minimalist approach taken by MML no change was made.
16.	Schedule 3: Add “London & Continental Stations & Property Limited, 183 Eversholt Street, London NW1 1AY”. The fax no is “020 7391 4400”	These details were omitted.	MML had not received updated notice address pursuant to Clause 9.1 of Existing Agreement. Details now provided are accepted.
17.	Schedule 4: Part 1	Consequential amendments – see item 24	Agreed, however, MML require LCSP to ensure

	Paragraph 1: Definition of “Altered”: Change “Existing Time” to “Original Time”.		that all references to this definition are changed and that such changes do not impact upon the Station Access Conditions.
18.	Schedule 4: Part 1 Paragraph 1: Definition of “Base Index Figure”: Change to “176.4 being the index figure for August 2002”.	Updating the outdated figures.	Not agreed. No change is necessary. The figures used in paragraph 11.1.1 and 11.1.2 of Schedule 4 should be kept at 1996 levels.
19.	Schedule 4: Part 1 Paragraph 1 definition of “Concourse”: Delete “Existing Concourse” in both places and replace with “Original Concourse”.	Consequential amendment – see item 21.	Refer to MML’s Response in Item 17 above.
20.	Schedule 4: Part 1 Paragraph 1 definition of “Distance”: Change to “expressed to two decimal places” to “expressed to one decimal place”.	To ensure accuracy to two decimal places measurements in millimetres need to be taken, which is not practical for these distances.	Not agreed. Accuracy to two decimal places requires measurements in centimetres only. I.e., 1.67 metres = 1 metre 67 centimetres.
21.	Schedule 4: Part 1 Paragraph 1 definition of “Existing Concourse”: Change term to “Original Concourse”. From line 2, delete “Commencement Date”, the full stop and the whole of the sentence that follows it and replace with “CTRL Implementation Date as shown on the plan annexed as Figure 3”.	We consider use of the word “Existing” causes confusion when Facilities are replaced. These plans now exist and should form part of the agreement. ‘Figure 3’ is attached to this Paper and marked “Figure 3”.	Refer to MML’s Response in Item 17 above. Agreed.
22.	Schedule 4: Part 1 Paragraph 1 definition of “Facility Time”:	This term is not used.	Agreed.

	Delete		
23.	Schedule 4: Part 1 Paragraph 1 definition of “Existing Route”: Delete	The term is only used in paragraph 3 which is no longer relevant.	Agreed.
24.	Schedule 4: Part 1 Paragraph 1 definition of “Existing Time”: Change term to “Original Time”. Delete the whole term and replace with “means in respect of any Existing Facility the time set out in the column headed “Total Time” for that Facility in the table headed “Midland Mainline St Pancras Station Facilities Original Walking Distances and Times” attached as the Annex to Part II of this Schedule 4”.	We consider the use of the word “Existing” causes confusion when walking times change. A schedule reflecting agreed walking times appears in Appendix 1 of this Paper.	Refer to MML’s Response in Item 17 above. Agreed.
25.	Schedule 4: Part 1 Paragraph 1 definition of “Relevant Point”: Delete paragraph (5).	This is an erroneous inclusion. A “Route” is not a “Facility” and therefore “Overall Performance Requirement” does not apply.	MML assume this proposed amendment is actually referring to the definition of ‘Route’. Not agreed – the Route to be measured must be one that allows for the Facility to be suitable for its purpose and therefore “Overall Performance Requirement” does apply.
26.	Schedule 4: Part 1 Paragraph 2.2.2: Change “Existing Concourse” to “Original Concourse”.	Consequential amendments – see item 21.	Refer to MML’s Response in Item 17 above.
27.	Schedule 4: Part 1 Paragraph 3: Delete. Replace with “Not used”.	The CTRL Implementation Date has passed and these tasks have been completed.	Agreed.

28.	Schedule 4: Part 1 Paragraph 5.3: Delete and replace with “Where a period under this Paragraph 5 involves only part of a day, compensation payable shall be calculated on the basis of the proportion that the time during which the Facility is not available bears to the total time during which Station should be open”.	The current paragraph contains a perverse incentive. The Station Facility Owner should be incentivised to keep the non-availability of a Facility to a minimum. Under the current wording, the Station Facility Owner might just as well close the Facility for a whole day to undertake required works rather than, say, the five minutes he actually needs, as the penalty is the same.	Not agreed. MML consider that the compensation regime is complex enough and have no desire to complicate it further.
29.	Schedule 4: Part 1 Paragraph 5A3: Delete and replace with “Where a period under this paragraph 5A involves only part of a day, compensation payable shall be calculated on the basis of the proportion that the time during which the Facility is not available bears to the total time during which Station should be open”.	See comments to item 28.	Not agreed. Refer to MML’s Response in Item 28 above.
30.	Schedule 4: Part 1 Paragraph 6.1: Change “Existing Time” to “Original Time”.	Consequential amendment – see item 25.	Agreed.
31.	Schedule 4: Part 1 Paragraph 6: Change Title to “Compensation to be Payable for Increase in Distance”.	The title does not accord with our revised proposal for compensation based on walking distances.	MML are not clear on the amendment LCSP require. MML require the title to remain.
32.	Schedule 4: Part 1 Paragraph 6.2: Line 4, change “Existing Time” to “Original Time”.	Consequential amendment – see item 25.	Agreed.

	<p>Line 5, delete “for each additional minutes walking time”.</p> <p>Line 6, delete “multiplied by the amount of that excess”.</p>	<p>The title of the column is misleading and we have proposed a revised title.</p> <p>The table is self-standing and no further multiplications are required.</p>	<p>Agreed.</p> <p>Agreed.</p>
33.	<p>Schedule 4: Part 1</p> <p>Paragraph 6.3: Second sentence, final line, delete “compensation and “ and replace with “the”.</p>	<p>The current wording is hard to follow.</p>	<p>Agreed.</p>
34.	<p>Schedule 4: Part 1</p> <p>Paragraph 6.4: Add as a new paragraph:</p> <p>“Upon each and every occasion that Time agreed or determined pursuant to paragraph 4 for a Facility is less than the Original Time for that Facility then the compensation payable by the Station Facility Owner to the Beneficiary pursuant to paragraph 6.1 for each day of the period from and including the date of the relevant Event until the earlier of:</p> <p>(1) the termination of the term of this Agreement; and</p> <p>(2) the day immediately before the date upon which as a consequence of any Part 18 Works or any further restriction suspension or alteration pursuant to Condition 103 any</p>	<p>This reflects LCSP’s contention that to act as a true incentive, the compensation payable for increased walking distances should be reduced by a sum equal to the compensation payable for a Facility sited within the Permissible Range where the walking time to the Alternate Facility is less than the walking time applicable to the Original Facility.</p>	<p>Not agreed.</p> <p>Please refer to MML’s response in Part B1 to paragraph 6.4 of the LCSP Letter.</p>

	<p>further Event occurs (other than the Event referred to in paragraph 2.2.5) in relation to the relevant Facility.</p> <p>shall be reduced by a sum equal to the amount shown for that Facility in the applicable Compensation Facility Table in the column headed “Facility within permissible range”, save that the compensation payable by the Station Facility Owner to the Beneficiary pursuant to paragraph 6.1 shall not as a result of this paragraph 6.4 be a sum less than zero”.</p> <p>Add as a new paragraph 6.5:</p> <p>“Any reduction from the relevant Original Time in the first minutes which is less than one minute will be treated as one minute for the purposes of calculation of any compensation reduction pursuant to paragraph 6.4 and the applicable amount of compensation payable pursuant to paragraph 6.1.”</p>		
35.	Schedule 4: Part 1 Paragraph 8.1.3: Delete “multiplied by the amount of that excess”.	The table is self-standing and no further multiplications are required.	Agreed.
36.	Schedule 4: Part 1 Paragraph 8.2.2: Change “Existing Concourse” to “Original Concourse”.	Consequential amendment – see item 21.	Agreed.

37.	<p>Schedule 4: Part 1 Paragraph 8.2.3: Line 4, change “Existing Time” to “Original Time”.</p> <p>Line 5, delete “for each additional minutes walking time”.</p> <p>Line 6, delete “multiplied by the amount of that excess”.</p>	<p>Consequential amendment – see item 25.</p> <p>The title of the column is misleading and we have proposed a revised title.</p> <p>The table is self-standing and no further multiplications are required.</p>	<p>Agreed.</p> <p>Agreed.</p> <p>Agreed.</p>
38.	<p>Schedule 4: Part 1 Paragraph 11.1.1: Delete “and including the date which is six months prior to the CTRL Implementation Date” and replace with “the Commencement Date”.</p> <p>Replace £ X” with “[£]”.</p>	<p>The CTRL Implementation Date has now passed.</p> <p>The figures have been updated.</p>	<p>Not agreed. There is no need for change.</p> <p>Not agreed – there is no disadvantage in using X if Index is kept at March 1996 – there is therefore no need to change. Change will require indexing the figures up to March 2003 which cannot yet be known.</p>
39.	<p>Schedule 4: Part 1 Paragraph 11.1.2: Line 2, delete “save that on the CTRL Implementation Date” to the end of the paragraph.</p>	<p>The CTRL Implementation Date has now passed.</p>	<p>Not agreed. There is no need for change.</p>
40.	<p>Schedule 4: Part 1 Paragraph 11.2.1: Delete “the CTRL Implementation Date up to and including the date of termination of this Agreement”</p>	<p>The CTRL Implementation Date has now passed. Compensation will cease on the earlier of completion of the Part 18 Works and termination of this Agreement.</p>	<p>Not agreed. There is no need for change and, in any event, as the amendment relies on the deletion of “Commencement Date”, as proposed by LCSP, it is not accepted.</p>

	and replace with “the Commencement Date and terminating on the earlier of expiry or earlier termination of this Agreement or”. Delete “£X”.	LCSP disagree that this represents a fair estimate of MML’s losses resulting from the implementation of the CTRL works at St Pancras. A proposed revised figure will follow shortly.	Not agreed – see further comments re: indexing to item 38. MML would further point out that as things stand at the date of this Response there is no proposed revised figures.
41.	Schedule 4: Part 1 Paragraph 11.2.2: Delete “the first such instalment” to the end of the paragraph.	The CTRL Implementation Date has now passed and compensation is already being paid.	MML do not consider any change to be necessary.
42.	Schedule 4: Part 1 Paragraph 12.2: Delete	LCSP are proposing fixed sums for non-provision of each Facility. LCSP could see no link between non-provision of the Facilities to which this sum relates and MML’s revenue. This sum is therefore superfluous. For non-provision of the same Facility on 19 June 2000, MML would have received £ X per day, whereas on 20 June this sum would have increased to £ X. LCSP fail to see how such an increase can be justified.	FDR is used only in relation to non-provision of those Facilities that impact on the ability of the Station to remain open. Therefore FDR is a suitable sum for compensation to be based on. In providing this example, LCSP have misapplied the terms of the Existing Agreement.
43.	Schedule 4: Part II Paragraphs 3 and 4: Delete	These routes have now all been agreed and measured.	MML see no reason to delete. These paragraphs can provide useful guidance for measuring changes in routes.
44.	Schedule 4: Part II Table: “Facility Walk Times Applicable to	Revised walking times have been agreed.	Agreed.

	St Pancras Station as at June 1995”: Delete and replace with the table attached to this paper as Appendix 1.	The existing table includes the following Facilities which did not exist in 1996: 5: Mail Room 48: Trainside Road/Coach Interchange Facility	Agreed as: Facility 5 did not exist; and Facility 48 does not require Walking Time Compensation.
45.	Schedule 4: Part III Delete the following items: 5: Mail Room 44: Security officer’s accommodation 48: Trainside Road/Coach Interchange Facility Item 13: Delete “OBS” and replace with “On train catering staff”. Item 50: Add “All” at the beginning.	These items either did not exist in 1996 or by MML’s own admission are no longer required. “OBS” is no longer a recognised term. Relocation of a single poster site is not to trigger a £ X fee.	Facilities 5 and 44 – agreed. Facility 48 – not agreed. This facility did exist in 1996 and may be required. Agreed. Not agreed. Agree to inserting “half or more” at the beginning.
46.	Schedule 4: Part III Delete the following items: 5. Mail Room 44. Security Officer Accommodation	These items either did not exist in 1996 or by MML’s own admission are no longer required.	Agreed.
47.	Schedule 4: Part III Table. “Compensation Facility Table” Delete and replace with the table attached to this paper as Appendix 2 to this Paper.	The revised figures reflect a more realistic assessment of the impact on MML’s business of relocation of the various Facilities. In calculating revised figure LCSP have had regard to the Regulator’s look-up table for abatements for the	Changes in figures are not accepted. Please refer to MML’s response in Part B1 to paragraph 5.3 of the LCSP Letter.

	<p>The following changes should be noted:</p> <p>(1). The Permissible Ranges have been added for ease of calculation.</p> <p>(2). the following items have been deleted:</p> <p>5: Mail Room 48: Trainside Road/Coach Interchange Facility</p> <p>(3). We have changed the heading “Compensation payable per day for each additional minutes walking time” to “Compensation payable per day”.</p>	<p>non-provision of station facilities set out in the document entitled “Review of the Station Access Regime – Provisional Conclusions on the Policy Framework”, published by the Office of the Rail Regulator in August 2002.</p> <p>These items did not exist in 1996.</p> <p>The column heading has been changed as this gave the misleading impression that the figures were to be multiplied by the number of minutes, whereas the table has stepped increased for bands of time.</p>	<p>(1) Agreed.</p> <p>(2) Agree to deletion of Facility 5. Do not agree to Facility 48 (see 45).</p> <p>(3) Agreed.</p>
48.	<p>Schedule 4: Part IV Table: “List of facilities for which MML are prepared to accept compensation in lieu of requisite notice for movement”: Delete the following items:</p> <p>5. Mail Room 44. Security Officer Accommodation</p>	<p>These items either did not exist in 1996 or by MML’s own admission are no longer required.</p>	<p>Agreed.</p>

B3 THE LCSP APPENDICES

1. INTRODUCTION

The following contains MML's comments on LCSP's Appendices to the Representations.

2. APPENDIX 1

MML agree with the proposed 'schedule of agreed walking times'.

3. APPENDIX 2

MML do not agree with the proposed Revised Facility Table. The tables used in the Existing Agreement are based on detailed studies of the loss MML will suffer. As such they provide the appropriate incentive for LCSP, to ensure that:

- (a) disruption to passengers is minimised; and
- (b) MML are fairly compensated.

As such the existing tables should not be changed¹⁵.

The proposed tables are stated to be based on the ORR publication 'Review of the Station Access Regime – Provisional Conclusions on the Policy Framework' (the "Publication").

Firstly, MML note that the Publication proposes a regime for abatements. As such it provides no justification for the reduction in the values for Walking Time Compensation. MML further note that no justification for these decreases is provided by LCSP.

MML therefore fail to understand on what basis LCSP believe that Walking Time Compensation should be altered. MML consider that insisting on this change whilst providing no justification for it has led to unnecessary time and costs being expended on the part of both parties.

Secondly, MML would point out that the abatement regime provided in the Publication is for use 'when certain designated station asset [sic] have failed and not been repaired within a specified time'¹⁶. This does not apply to London St Pancras where the non-provision of Facilities is:

- a) a specific choice of the SFO;
- b) a right of the SFO, under Part 18, in order to allow the CTRL Works to progress; and

¹⁵ Save as to the minor changes suggested and agreed by MML and LCSP, see B.2.

¹⁶ Paragraph 4.1, footnote 1 of the Publication.

- c) potentially occurring over a long term period.

Furthermore, the abatement regime in the Publication calculates the reduction in Long Term Charge on the basis of Railtrack Station classifications. London St Pancras has never been so classified. As well as the regime being inappropriate, MML therefore fail to understand how LCSP have applied the regime in the Publication, to London St Pancras.

As such the detailed studies used in 1996 provide a much better basis for Facility Compensation than the Publication.

4. APPENDIX 3

MML agree with this plan being used in the New Agreement to define 'Original Concourse'.

5. APPENDIX A

5.1 PART 1

- 1 MML agree with the statement regarding the Works that have taken place to date.

2 Paragraph 1

MML cannot comment on the statement that the future Works will be of similar intensity as MML have no control over the Works.

Paragraph 2

MML note that mitigation measures are merely "currently being investigated". MML further note the lack of evidence regarding these investigations. MML, therefore, fails to understand how this justifies a reduction in compensation.

Paragraph 3

MML would point out that no Press Release is provided with the Representations and, in any event, by LCSP's own admission 'there is no direct correlation to the situation at St Pancras'. This provides no support for a reduction in compensation. MML fail to understand why LCSP are putting the parties to the time and cost of considering evidence that, by LCSP's own admission, has no bearing on St Pancras.

Paragraph 4

LCSP state that it is their ‘genuine belief’ that dust and noise levels will not vary from current levels. MML would point out that no evidence is provided to support this view. MML would further point to:

- (a) the existence of heavy demolition and construction activity at St Pancras¹⁷;
- (b) the approximate 100% increase in dust levels caused by this activity¹⁸; and
- (c) the continuation of the type of works in (a) above¹⁹.

From this MML can only conclude that the levels will continue to increase.

Paragraph 5

This remains to be seen.

Paragraph 6

MML do not consider that Part 4 supports LCSP’s statement.

5.2 PARTS 2 AND 3

MML note the continued use of construction hoarding, portakabins, temporary staircases, temporary seating etc.. MML further note the continuation of demolition and other construction works throughout the CTRL Works into 2006. MML fail to understand how this continuation of works affecting passengers justifies a decrease in compensation.

5.3 PARTS 4(a) AND (b)

MML note the continued impact of the LUL Kings Cross Works Programme on MML passengers into 2005. Again, MML fail to understand how this justifies a decrease in compensation.

5.4 PART 5

MML note the mitigating steps required to be taken by LCSP in the CTRL Works. MML note, from Part 1 of Appendix A, that these steps are under investigation. Furthermore, MML would point out that these requirements have been known since before the Existing Agreement

¹⁷ See Part C.1, 2.4(d), Paragraph 3 of the Response.

¹⁸ See Part C.3, 5.5 of the Response.

¹⁹ See the Representations, Appendix 1, Part 1, Paragraph 2.

was executed and therefore they offer no rationale for altering the Existing Agreement.

5.5 PART 6

MML would point out that the respective average levels of dust concentration for each survey is as follows:

	Survey (a) (07.06.01)	Survey (b) (10.12.01)	Survey (c) (28.10.02 – 05.11.02)	Percentage increase from Surveys (a) to (c)
Taking All Points	86.67	88.33	188.89	118%
Taking only those points common to all surveys	85	70	171.67	102%

MML's level of train operation has not altered over the period that the surveys took place (i.e. between 7 June 2001 and 5 November 2001). MML can therefore only assume that the marked increase in dust levels is as a result of the CTRL Works. Again, MML fail to understand how an increase in dust levels justifies a decrease in compensation.

5.6 PART 7

The noise survey provides no comparative data, without which it is not possible to draw any conclusions. This data offers no justification for a decrease in compensation.

6. APPENDIX B

This has already been commented on as part of the Letter.

PART C MML'S RESTATEMENT OF CASE

C1 Rationale for Compensation Levels

C1.1 The compensation levels put forward in the Existing Agreement were the subject of lengthy debate, negotiation and review. The levels of compensation were required to be set to permit a degree of certainty to both the incoming franchisee for the Midland Mainline franchise and the grant of the concession for the development of the Channel Tunnel Rail Link.

C1.2 The certainty for the MML franchisee was that there is a regime that:

- (a) sets out in detail the process under which LCSP as Station Facility Owner would be permitted to curtail the rights of MML at the Station;
- (b) obliges LCSP to provide certain facilities for the benefit of passengers;
- (c) obliges LCSP to develop the Station in a way that would satisfy the Minimum Requirements;
- (d) means LCSP know that if it chooses to take certain courses of action, compensation will be payable; and
- (e) ensures LCSP would compensate MML for the effect of the re-development of the Station on the revenues of MML.

C1.3 The certainty for LCSP as Station Facility Owner was that:

- (a) they knew that they could have the right to carry out their development under the regime set out in Part 18 without having to use the Change Procedure under the Station Access Conditions (which they would otherwise have had to have done);
- (b) they knew that they were obliged to provide certain facilities for the benefit of passengers;
- (c) they knew that, depending on how they exercised their rights under Part 18, a set amount of compensation would be payable, avoiding the need to go to the time and cost of calculating, on each occasion, MML's actual loss; and
- (d) they would pay an annual compensation amount.

C1.4 The above certainties allowed the parties to go ahead with their plans. In relation to LCSP it meant that when they signed their Development Agreement they could have, if they so wished, made the necessary calculations as to the impact of the compensation regime on their works.

C1.5 That the development of London St Pancras has gone beyond the expiry date of the original agreement is a factor outside the control of MML. MML

considered that it would be beneficial for both parties to continue with the Existing Agreement (notwithstanding that the passenger journeys of MML have, owing to MML's good management, increased over the years). MML considered carrying the Existing Agreement forward to be beneficial as it:

- (a) makes use of the certainty that the Existing Agreement provided; and
- (b) avoids the parties having to incur additional costs in reviewing all that was done in 1994-96.

C1.6 MML still adheres to this view. It considers that the approach taken by LCSP is, given MML's stated position of minimum change, an opportunistic and convenient attempt by LCSP to reduce the planned costs of development and, if successful, gain a windfall.

C.2. **Evidence For General Damage Compensation Level**

C.2.1 **THE ORIGINAL AGREEMENT**

The General Damage Compensation level was an agreed, genuine, pre-estimate of MML's loss. MML would point out that the original basis for the level was **X** % of the annual revenue of MML attributable to London St Pancras. This was altered by agreement of the parties with the D.o.T. to a fixed indexed amount of £ **X**. The rationale of this alteration was to provide certainty for the parties²⁰.

C.2.1 **STATION 'BLIGHT' AND BUILDING SITE EFFECT**

London St Pancras Station has suffered, due to the CTRL Works, from 'blight' and a 'building site effect'.

'BLIGHT'

Because of the anticipation of CTRL, neither MML or LCSP have been able to invest (as they would have been expected to) in London St Pancras Station. Such investment by LCSP would have been expected taking into account the payment of a substantial sum for the Long Term Charge (£**X** p.a. at 1996 prices) As a result of this, the Station has suffered from:

- (a) a lack of capital investment; and
- (b) a lack of maintenance.

This has resulted in a Station that is, by LCSP's own admission²¹, below standard.

²⁰ See Part E - Annex 3 of this Response.

²¹ See Part B.1 3.2 of this Response.

BUILDING SITE EFFECT

Since CTRL implementation, St Pancras has become a building site. MML would point to LCSP's admission that heavy demolition and construction works have occurred and will continue to occur at the Station²². MML would further point to:

- a) the visual degradation of the Station (see before and after pictures in Annex 4); and
- b) other overall effects of construction (see, for example, LCSP's dust surveys).

THE EFFECTS ON PASSENGERS

The effects of this 'blight' and building site effect on passengers can be evidenced through SRA National Passenger Survey data (see Annex 5).

MML would point to the drop in customer satisfaction with the environment to catch a train and facilities and services at London St Pancras since CTRL Implementation.

The satisfaction with London St Pancras is shown in Annex 5:

- i) against other MML stations, showing London St Pancras as against stations with no construction (Nottingham and Leicester) and an example of a station that has undergone construction works (Sheffield); and
- ii) against the major North London terminals.

These graphs show the satisfaction with London St Pancras to:

- a) have dropped due to CTRL Works; this trend may reasonably be expected, following the example of Sheffield, to continue; and
- b) be at a low level compared to other North London terminals because of the degradation suffered due to the anticipation of CTRL Works;

THE EFFECTS ON MML

MML would point to the following as evidence for the effects of this station 'blight' and building site effect upon MML's business:

- a) the post-CTRL Implementation survey used to allocate revenue between Thameslink and MML for Bedford, Luton and Luton

²² See Part B.1, 2.4(d) Paragraph 3.

Parkway to London St Pancras has resulted in a net drop of £200,000 p.a. for MML²³; and

- b) the large positive effect on revenue that station improvements would have (see B.2.3 and Annex 6), it therefore following that station ‘blight’ and building site effects will have a large negative effect on revenue.

MITIGATION OF EFFECTS BY MML

In order to attempt to mitigate the effects of CTRL, MML have taken a number of measures to improve customer satisfaction. These include:

FIXED COSTS INCURRED TO MITIGATE ‘BLIGHT’

Customer information screens	£200,000
1 st Premier Lounge	£108,000
Standard Waiting Room	£100,000
Customer Information Desk	£ 30,000
Staff Accommodation	£ 20,000
Travel Centre improvements	£ 20,000
Left Luggage Facility	£ 20,000
Self Service Ticket Machines	£ 20,000
 Total	 £535,000

Expecting CTRL to last 5.5 years £97,272p.a.

ANNUAL COSTS INCURRED TO MITIGATE ‘BUILDING SITE EFFECT’

Provision of extra staff (cleaning/customer information)	£120,000
Publication of St Pancras News	£ 15,000
Internal Communications	£ 10,000
 Total	 £145,000

TOTAL ANNUAL COST OF MITIGATION £242,272

As can be seen MML are expending £242, 272 p.a. in order to mitigate the effects of CTRL. This does not fully mitigate the effects, however, as can be seen by the further effects evidenced above. This mitigation is only part of the costs to MML of the CTRL Works.

C 2.2 LOSS OF OPPORTUNITY TO DEVELOP

²³ MML would point out that this loss is only the loss experienced on one part of its route and only that to another TOC – it does not include any loss to other transport alternatives

MML have invested substantially at stations where they are SFO and have also invested at stations where they are beneficiary. MML consider the station environment and facilities to be factors important to passengers. Additionally, the Passenger Demand Forecasting Handbook and experience demonstrates that such investment is worthwhile because of the return in revenue.

Had London St Pancras not been suffering from CTRL blight, MML or LCSP would have been expected to have invested in the station.

A £ **X** investment in 1997 would have resulted (and would be resulting) in an increase in revenue for MML of between £ **X** and £ **X** p.a. (see Annex 6). This opportunity to develop has been denied as a direct result of CTRL.

C 2.3 STAFF MORALE

Whilst not measurable, CTRL works have undoubtedly had a negative effect on MML staff morale through the disruption caused.

C 2.4 THE INTERIM STATION

LCSP have asserted that the Interim Station will ‘insulate’ MML from the effects of the CTRL Works. MML would point to the following as reasons why the above factors (C2.1 – 2.4) will still apply despite the Interim Station:

- (a) there will be extensive use of hoarding and portakabins and there will continue to be construction work in and around the Interim Station, so the building site effect in C2.1 will continue;
- (b) MML will have to continue to take mitigating action (see C2.1);
- (c) MML will still have lost the opportunity to develop (see C2.3); and
- (d) the damage to staff morale will continue (see C2.4).

MML would add that there will also be further disruption caused by the two Station “moves”, the movement from platform to platform and potential overcrowding during the Thameslink blockade.

C3 Evidence For Facility Compensation

MML would point to the detailed studies used in 1996 in arriving at Facility Compensation.

Further to this, MML would point to the example of an increase in Walk Time to London Underground²⁴. The MOIRA run attached at Annex 7 shows that a 1 minutes increase in Walk Time to the Underground would result in a loss to MML of £ X p.a.. This is contrasted with the compensation of £ X p.a. (at current values) for a 1 minute increase in Walk Time.

MML would point to this as further justification for the Walking Time values not being decreased. MML would also point to this as evidence that MML's increase in passenger numbers justifies an increase in the levels of compensation.

C4 Overall

MML consider that there is justification for increasing the levels of compensation. Notwithstanding this, in the interests of certainty for both parties, the compensation levels currently set out in the Existing Agreement should continue to apply.

²⁴ Used because of its importance to MML passengers.

PART D CONCLUSION

1. MML recognise the importance of the CTRL Works to the national rail network and passengers. As such MML have accepted the limitation of their rights, through the Part 18 mechanism, in order to allow the CTRL Works to occur.
2. As part of the Part 18 package, the compensation regime within the Existing Agreement was arrived at. This was done though the great level of time, effort and detail in negotiation to arrive at a genuine pre-estimate of MML's loss from CTRL. The purpose of the regime was to:
 - (a) provide the appropriate level of incentive to LCSP to minimise disruption to passengers;
 - (b) compensate MML for loss incurred;
 - (c) permit LCSP to carry out CTRL Works under the Part 18 regime; and
 - (d) provide certainty for both parties.
3. The compensation regime was negotiated and agreed between the parties at a time when both the MML franchise and CTRL concession were being tendered for. As such the compensation regime represents an agreed allocation of the risk of the CTRL Works. Both the MML franchise and the CTRL concession were bid for on the basis of this agreed allocation.
4. The Existing Agreement was set to terminate in April 2003 on the basis that the CTRL Works would have been completed by then. In seeking to re-negotiate the terms of the New Agreement LCSP are attempting to take advantage of the opportunity that the delay in CTRL has provided. This is being done by attempting to alter the agreed allocation of risk (based on a genuine pre-estimate of MML's loss arrived at after the expenditure of much time and effort) and, in so doing, achieve an opportunistic and convenient windfall benefit.
5. LCSP are, by seeking to change the previously agreed levels, putting the parties to the extra cost of re-negotiation. As such, MML consider that LCSP should provide some justification for the proposed changes.
6. LCSP have attempted to do so by providing the evidence contained within their Representations. MML do not consider that this evidence shows the genuine pre-estimate to be incorrect or provides any justification for change. MML would briefly comment on the evidence as follows:

6.1 GENERAL DAMAGE COMPENSATION

6.1.1 PASSENGER SURVEY AND COMPLAINTS DATA – APPENDIX B

LCSP have suggested that the above data shows that the consideration given to the importance of the Station environment in arriving at the pre-estimate was too high. MML would comment that LCSP have not shown that the level of consideration given in 1996 would have been any different in the light of this evidence.

MML recognise (and did recognise in 1996) that the station environment is not of paramount importance to passengers. MML would point out that station environment is still a key factor for passengers in journey choice. Furthermore, the importance of St Pancras to MML's business and the large effect the CTRL Works have had on passenger satisfaction at St Pancras justifies the compensation regime.

6.1.2 NOISE AND DUST SURVEYS (APPENDIX A)

LCSP have suggested that noise and dust must be the most important factors in arriving at the General Damage Compensation level and that the surveys provided show the effects of noise and dust to be minimised.

MML would comment that noise and dust are not the only or most important factors. The list in the Existing Agreement is not exhaustive but is there to provide examples. Furthermore, the noise survey shows no justification for any reduction in compensation (as there is no pre-CTRL comparison) and the dust survey shows an average doubling of dust levels since CTRL works started.

6.1.3 THE INTERIM STATION (THE LETTER AND APPENDIX A)

LCSP have further attempted to show that the genuine pre-estimate is incorrect by asserting that the existence of the Interim Station was a fact not known at the time the estimate was arrived at. MML would point out that this is incorrect (see Annex 2).

Furthermore, the Interim Station will not 'insulate' MML as LCSP claim. There will still be disruption to passengers from:

- (a) the 2 Station 'moves';
- (b) MML moving platforms whilst at the Interim Station;

- (c) the Interim Station still being a 'building site';
- (d) the overall 'building site effect' around St Pancras; and
- (e) overcrowding at the Interim Station.

6.2 FACILITIES COMPENSATION

LCSP have asserted that these levels of compensation should be changed to be in line with the suggested abatements regime in the ORR's "Review of the Station Access Regime – Provisional Conclusions on the Policy Framework". MML would point out that this proposed regime:

- (a) only covers abatements and therefore provides no justification for decreases in Walking Time Compensation; and
- (b)
 - (i) is for "one off" abatements and not for long term situations such as CTRL; and
 - (ii) can only be applied to Railtrack classified stations.

6.3 LCSP'S EVIDENCE OVERALL

LCSP fail to show that the genuine pre-estimate arrived at in 1996 would have been different in light of their evidence. Any conclusion that can be drawn from any of the evidence LCSP has provided was known and taken into account in 1996.

On the basis of this lack of evidence there is no reason to disturb the agreed allocation of risk.

7 MML'S EVIDENCE

As well as there being no evidence provided to justify changing the agreed allocation, MML would point to the evidence shown in Part C further justifying the agreed allocation.

MML have, in Part C, shown evidence of MML's losses suggesting that:

- (a) the levels of compensation should not be decreased; and
- (b) to the extent that a review is appropriate, the levels should be increased.

8 OVERALL

MML consider the compensation regime to be an agreed allocation of risk between the parties based on a genuine pre-estimate of MML's loss thereby

providing the appropriate incentive to LCSP to minimise disruption to passengers. LCSP have only had the opportunity to review this allocation because of the delay in CTRL. As LCSP wish to change the agreed genuine pre-estimate, LCSP should be expected to evidence their reasons for such a change. LCSP have failed to do so. As a result, the regime should not be changed. Above and beyond this, however, MML have provided further evidence justifying the regime.

PART E ANNEXES

E1 – ANNEX 1

Summary of Reasons for Midland Mainline's Commercial Success

1996

April

National Express Group took over Midland Mainline Franchise.

Most competitive Passenger Charter in the industry introduced.

Free tea & coffee introduced for all passengers.

July

Kettering to Corby bus link introduced.

October

Children's activity pack introduced, given free to all children travelling on MML.

The first small group discount fare, '4-sight', in the UK introduced, providing travel anywhere on MML for groups of up to four people for £34.

First use of television advertising.

1997

February

First refurbished High Speed Train enters service featuring new seating, tables, colour schemes, extra legroom, public address systems, luggage areas and baby changing facilities.

April

Executive Lounge opened at London St. Pancras Station.

£400,000 expenditure on car park improvements at Market Harborough, Kettering and Wellingborough resulting in AA Approved Secure Car Park Awards.

June

APEX First (a discount first class ticket) and a Chatsworth House Day Out ticket introduced.

Launch of new MML website.

1998

January

Premier Service introduced. A first class ticket incorporating at-seat service of complimentary food, drink, newspapers, free car parking and London Underground Zone 1 ticket.

March

Derby and Chesterfield receive Secured Car Park Awards.

May

Alton Towers Day Out ticket introduced.

Free breakdown assistance introduced for MML passengers who park at MML station car parks.

June

Discounted first class ticket 'First Saver' introduced.

Free newsletter for Midland Mainline customers introduced.

August

Real time train running information provided on the MML website.

October

Midland Mainline given 'Business of the Year' Award by Southern Derbyshire Chamber of Commerce.

November

Midland Mainline given 'On Train Innovation' Award for Premier Service, by Rail Professional magazine.

1999

January

First new Turbostar train enters service with Midland Mainline.

May

Additional 16 new Turbostar trains enter service with Midland Mainline, representing an investment of £41 million. Providing an additional 10,000 seats each day.

New improved timetable introduced with the number of train services offered increasing by 97% on weekdays, 157% on Saturdays and 81% on Sundays.

Midland Mainline start providing through train services from London St. Pancras to an additional five destinations.

Launch of '2 for £10' promotion, with return tickets to London priced at £10.

July

Meal Deal promotions introduced on trains.

New Midland Mainline Information Point constructed on London St. Pancras station concourse.

New standard class waiting room provided at London St. Pancras by MML.

August

Integrated bus/rail tickets introduced for Derbyshire and Nottinghamshire destinations.

September

Further timetable improvements introduced including improved evening peak services.

October

Availability of integrated bus/rail ticketing extended to Leicester area.

December

Midland Mainline's restoration of Market Harborough station results in the winning the Railtrack Award in the Ian Allan National Railway Heritage Awards.

2000

January

New ticket products launched, including a combined package for visiting the Millennium Dome and a 'Capital' ticket priced at £19 from any station return to London.

February

School visits pack introduced to encourage school children to visit railway station.

Midland Mainline is named as 'Train Operator of the Year' for 1999 in recognition of its innovation and commitment to customer service.

May

Kettering station car park extended to provide an additional 200 spaces.

Launch of new on-line ticket booking service on the MML website.

New timetable introduced, serving a further eight destinations with through trains to and from London St. Pancras.

Direct debit scheme introduced for annual season ticket holders, enabling them to spread the cost of the ticket.

June

'4-sight' ticket extended to first class passengers.

High Speed Train buffet cars revamped and re-branded with a new range of food and drink.

July

In conjunction with Britt Allcroft, MML introduces 'Thomas Play Packs' for children travelling during the summer holiday.

September

First Class and Premier service offers improved to provide further value for money. MML receives 'Highly Commended' award in Best Customer Experience category at the National Rail Awards.

October

A rewards scheme is launched for frequent first class customers.

November

New footbridge, lifts and station facilities are opened at Kettering station.

2001

January

MML wins 'Best Strategic Use of Media' Award.

New left luggage and lost property offices are opened at Sheffield, Derby and Leicester and St. Pancras office refurbished.

Mobile telephone free coaches are introduced on all High Speed Trains.

February

Opening of new MML telephone call centre in Sheffield.

New footbridge, lifts and 200 space car park opened on the Pride Park side of Derby station.

New service introduced, enabling customers with WAP enabled mobile 'phones to gain access to real-time train running information.

March

The first of ten additional centre carriages for Turbostar trains enters service with extra standard class seats and upgraded first class accommodation.

Rebuilding of Chesterfield station completed with a wide range of modern facilities including provision of a new buffet, lifts, disabled facilities, new travel centre etc.

May

Midland Mainline presented with two Awards of Excellence for communications at the 'Communicators in Business' Awards.

June

Launch of improved internet ticket booking service extending facility to all UK rail services.

Buffet counter facilities introduced in centre cars of Turbostar trains.

August

Midland Mainline carnet ticket is introduced, offering customers ten standard open tickets for the price of nine.

September

Kettering station wins the 'Loveliest Loos' Award.

2002

January

New passenger information system installed at London St. Pancras.

Order placed for 23 new 125 mph trains providing a further additional 10,000 seats per day on Midland Mainline services, with investment of £160 million.

New first class lounge opened at Leicester station.

April

New Midland Mainline Customer Service Academy opened adjacent to Derby station.

Another addition to the Midland Mainline Day out range is added, this time to Kedleston Hall and Royal Crown Derby.

New first class lounge opened at Derby station.

May

Midland Mainline named as runner up in the National Sandwich Awards for En-route Caterer of the Year.

New ticketing facility introduced providing an add-on for the Great Central Railway.

September

New text messaging service introduced, keeping customers informed with real-time MML train running information.

Sheffield multi-storey car park opened providing 684 parking spaces with investment by MML of £6.5million.

E2 – ANNEX 2

MIDLAND MAIN LINE & UNION RAILWAYS²⁵
ST. PANCRAS STATION ACCESS COMPENSATION
MAKENEY HALL HOTEL – 18TH MAY 1995

Present Paul Barwell UR
 Leszek Dobrovolsky UR
 Neil Deacon UR
 Derek Jones BRPB
 Nick Brown MML
 Jonathan Marshall MML
 Jonathan Winskill EG

Prior to discussion of the agenda, the following development were advised:

Long Term Charge & Access Charge: DOT had decreed that the Long Term Charge and Access Charge were to be produced by the BRPB. ND advised that the LCT had been calculated and had been with Roger Tunnicliffe for a while. ND to pursue.

Annex 1: JM advised that a draft Annex 1 would be produced on 19th May, by MML, consideration by Clifford Chance etc.

Minutes of Previous Meeting

1. Clarification sought by UR concerning base date for geographical position of Station Facilities. Agreed that the base date would be 1st April 1995 but that a review would be carried out at the date on which Station Facility Ownership passed to EPS or “a.n. other”. JM advised that MML had no current plans to make any changes.
2. Clarification sought by UR concerning actual compensation to be paid after one minute walking time. Agreed that 0-59 seconds would result in 60 seconds compensation being payable. Over and above a minute, then the actual time concerned would be paid for. PB noted that the drafting of 2.3.ii. in the Heads of Terms document could be ambiguous. JW agreed to amend.
3. UR queries relevance of the plus/minus 5 meters movement either way of the buffer stops. NB explained that this was to allow for provision of “Oleo” type buffers or similar should they be required. After discussion, it was agreed to dispense with the 5 metre allowance.

UR Plans

Agreed that the figures accompanying PB’s letter of 16th May should be amended to refer to “face of buffer stops” where reference made to “buffer stops”. All plans to be adjusted accordingly.

²⁵ Retyped version for the purpose of electronic copy.

Facility Table

MML presented revised Facility Table. Agreed that heading should be amended to “Facility Table During Construction”.

Noted that the revised document had been expanded to include further detail of quantities but had been simplified to remove MML’s post-construction aspirations.

UR suggesting that the Table be amended by adding an additional column and transferring detail of square meterage and numbers. UR agreed to produce.

It was agreed that a full table was still required which would include MML’s comments on synergy areas and post completion facilities. MML to provide.

The “During Construction Facility Table” was then examined further and the following alterations agreed:

- 1) Long Term Car Parking – to be shown as “not required”
- 6b) Fitters Coolant Storage – to specify “articulated” ref. Vehicles.
- 10) Concourse – agreed to specify 750 sq. m.
- 16) Ticket Office – amend to 320 sq. m.
- 17) Travel Centre – add note that a combined facility of 16) and 17) with an area of 400 sq. m. would be appropriate.
- 20) Station Supervisory Offices – situation clarified, i.e. a “lozenge” was not acceptable during construction.
- 22) Signing On Point – currently 450 sq. m., this being the requirement during construction. Noted that only 325 sq. m. were provided post construction.

Prohibited Zones Table

UR noted Prohibited Zone Table issued by MML and expressed concern regarding the lack of flexibility offered. JM responded that MML and EG had found the exercise very difficult, not being aware of the availability of access between the different zones during the different stages of construction. This was understood by UR who gave a brief summary of the staging expected, as follows:

1. Platform 1 re-instated and extended, MML on west side of current station.
2. Construction of extension deck on north east side, MML remain in west side of train shed.
3. New railway extant on east extension, MML on east side of train shed or CTRL “domestic” platforms.

4. Construction on west side, MML on any of the three eastern stop zones.
5. Station complete, MML based in two western zones.

MML thanked LD for his explanation and requested copies of the staging plans, together with a brief commentary. UR agreed to supply. MML would then revisit the Prohibited Zones Table. MML to consider use of two types of prohibition – TP, a Total Prohibition and CP, a Conditional Prohibition where a facility could be sited provided that flat or lift and escalator access could be guaranteed.

Transport Mode Compensation

UR explained tables in letter from PB dated 11th May 1995. It was noted that the figures for some modes corresponded closely with the information from TRMC but that there were discrepancies for other modes. It was noted that the TRMC figures are actuals, whereas the UR statistics are projected.

MML agreed to supply a copy of the % modal splits from TRMC to UR. MML to compare the two sets of figures. MML to verify the total throughput of passengers in the morning peak.

Heads of Terms

It was agreed that the “period of construction” would need to be carefully defined.

Walk Distances

UR’s document of 16th May was discussed. JM asked that 3.8 Taxi Rank be amended to show the distance to the head of the rank rather than to the kerb. This was agreed. JW asked for an explanation of the methodology used for walk distance to KX Thameslink. UR advised that this was to the centre of the platform. Accepted by MML.

DJ advised that work had not yet commenced on calculating the current walk times. LD agreed to provide DJ with a “General Table” for calculation, to allow work to start. It was agreed that the most sensible way forward would be for the measurements to be jointly agreed, on site, by representatives of UR and BRPB. DJ and LD to arrange. It was also agreed that the “General Table” should have a clearly explained methodology so as to be capable of use in the future, should plans change.

Notice Periods

Station Facilities: UR questioned the requirement for what were seen to be generous periods of notice required, before a facility could be moved. MML explained that movement of facilities required extensive consultation with the Trades Unions concerned and that planning for changes and briefing of staff members required considerable time. JM advised that Staff Representatives are entitled to examine accommodation before it is occupied and that he could foresee that problems would result if, although accommodation for a facility had been provided within the requisite notice period, this was found not to be satisfactory and staff refused to move. It could be that a “rectification period” needed to be built in to the notice period. MML agreed to give this issue more thought. UR to comment on information to hand.

Train Stop Zones: MML to check with Alan Wilson and UR with Mike Dyson regarding position with Railtrack.

Consultation during Construction: it was thought that this area would be covered in the Development Agreement. JW would speak with DJ. It was considered that work in this area would have been carried out for the Broadgate/Liverpool Street project. JW advised that dispute resolution would be through recourse to the industry Dispute Scheme.

Staff Facilities

JM advised that MML proposed to use staff walk times multiplied by staff cost per minute. Staff costs would be based upon the British Railways Board General Memorandum of Staff Costs. MML to provide a copy of the current document to UR.

JM suggested that perhaps two, average grades be used for the purposes of this work.

Concourse Facilities

MML advised that they had not yet had opportunity to examine this issue further. MML to speak with TRMC.

General

NB requested that JW draw up a definitive list of "Tables" as an index, to improve clarity of presentation and checking as work on the compensation process.

Next Meeting

No firm data arranged. The following dates were pencilled through awaiting word from UR as to availability.

7th, 8th, 9th, 20th, 21st, 22nd, 23rd June 1995.

E3 – ANNEX 3

MIDLAND MAIN LINE & UNION RAILWAYS²⁶

MINUTES OF MEETING, TUESDAY 4TH JULY 1995

MIDLAND HOUSE, DERBY

Present: Nick Brown – MML
Jon Marshall – MML
Roman Surma – EG
Paul Barwell – UR
Leszek Dobrovolsky – UR
Alex Coultard – UR
Neil Deacon – UR
John Ellard – L&P on behalf of UR/DOT
Derek Jones – BRPB

1. Minutes of Previous Meeting, 20th June 1995

Agreed without amendment.

2. Legal Process

RS advised that Clifford Chance are currently working on the Station Access Agreement, based upon the current ISO template, plus Compensation and Redevelopment clauses. It was intended that the first draft would be produced by Friday, 7th July.

3. Management Sub Contract

Agreed that we would proceed on the assumption that MML would be responsible for the management of the operational part of the station for the length of MML's franchise. JM advised that this was the preferred option for OPRAF. NB wished to have opportunity for MML to opt out after perhaps 4 years. JE had no problem with assumption of MML management but emphasised that this had not been agreed by UR. Thought that DOT would have final say.

4. Heads of Terms

RS to re-issue updated version.

5. Long Term & Access Charges

DJ advised that the Long Term Charge had now been calculated and amounted to approx. half a million pounds per annum, subject to BRB approval. It was agreed that this would be payable until completion of the works and would then be rebased.

Following the meeting, JM undertook to provide ND with budget costs for St Pancras, to enable an Access Charge to be calculated.

²⁶ Retyped version for the purpose of electronic copy.

6. Walk Times

DJ and LD advised that all of the Walk Times had now been calculated and would be passed to MML as soon as possible to enable them to be included in the first draft of the Access Agreement.

UR produced a “Figure 9” showing the designated centre point of the Concourse in the present station.

7. Permissible Zones

Agreed that these would be termed “Permissible Ranges” and that the Table would be reissued by MML.

Agreed subsequent to meeting that the Permissible Range for Short Stay Car Parking would be amended to 5 minutes before compensation kicked in.

Noted by MML that UR had written to JM on 30th June proposing an alternative “step” method of compensation for failure to site facilities within the Permissible Range. This was discussed and a further proposal tabled by MML. UR agreed to examine.

Subsequent to the meeting, UR proposed a further amendment which was accepted by JM. Compensation to be paid in accordance with the following bands:

Within Permissible Range	x1
0 – 2 minutes outside Permissible Range	x2
2 – 8 minutes outside Permissible Range	x4
8 – 10 minutes outside Permissible Range	x10

8. Survey Values

Agreed that the values as amended in JM’s letter of 23rd June were acceptable to UR.

9. Passenger Facilities

MML outlined need to consider Thameslink requirement for ticket sales during the 17 week period of their service in St. Pancras. This has been advised as an additional 3 windows. Noted by UR.

[N.B. Rate of compensation for non-provision of ticket office needs to be discussed further as OPRAF had pointed out that MML would be in breach of their licence conditions if it was not provided. Suggest that this should be related to FDR. Needs discussion at next meeting].

10. Transport Modes

Now agreed.

11. Movement of Facilities

Reference made to JM's letter of 26th June which proposed a reduced "one-off" rate of compensation for the movement of certain less critical facilities of £ X instead of £ X. JM explained why they did not feel able to accept grouping of facilities. Agreed that the £ X level would apply to the following:

- 3. Staff Car Parking
- 6b. Fitters Coolant Store
- 7. First Aid Room
- 27. Catering Stores Office
- 40. Heavy Cleaning Workshop
- 41. Destination Label Store
- 42. Stationery Store
- 43. Security Officer's Accommodation
- 50. Poster Sites
- 51. Meeting Room.

All other facilities charged at the agreed rate of £ X.

12. Notice Period & Consultation

EG still to produced any useful information drawn from Liverpool St. scheme, if required.

13. Concourse Facilities

After discussion of MML's proposals contained in JM's letter of 23rd June, LD agreed to respond with an alternative proposal by noon on 5th July.

14. Building Site Effect

NB reported that he and John Castree had met with Andrew Birchell to discuss this aspect and had agreed that compensation would be payable from the date that work started on the basis of X % of Midland Main Line's revenue dependent upon St. Pancras. This would be calculated on the greater of either revenue for the previous 12 months or the revenue for the year April 94 to April 95. If the former was the case, then the actual year starting on the commencement date of works would be used. If the latter was the case, then this would index linked to RPI.

15. AOB

The difficulties associated with the differences in the accommodation requirements of MML and the Reference Design were highlighted. PB undertook to find a mechanism to resolve this issue.

16. Date of Next Meeting

To be advised.

ST PANCRAS/CTRL WORKS²⁷

STATION ACCES AGREEMENT AND STATION ACCESS CONDITIONS

NOTE OF MEETING HELD ON FRIDAY 28 JULY 1995

(EXTRACT)

3. Compensation

- A methodology for measurement has been agreed between MML/Thameslink and Union Rail. It was agreed that no measurement would be carried out in 'real' time.
- MML/Thameslink and Union Rail to confirm compensation figures relation to "grouping" of concourse facilities, MML/Edwards Geldard to circulate concourse facility table.
- All compensation figures will be indexed by reference to RPI rather than to Revenue.
- The "building site compensation" was converted into a fixed figure of £ **X** pa, to be indexed by reference to RPI.

²⁷ Retyped version for the purpose of electronic copy.

E4 – ANNEX 4

Platforms 1 and 2 before.



Platforms 1 and 2 after.



Platforms 5 and 6 Before



Platforms 5 and 6 after.



New Main Entrance to St Pancras



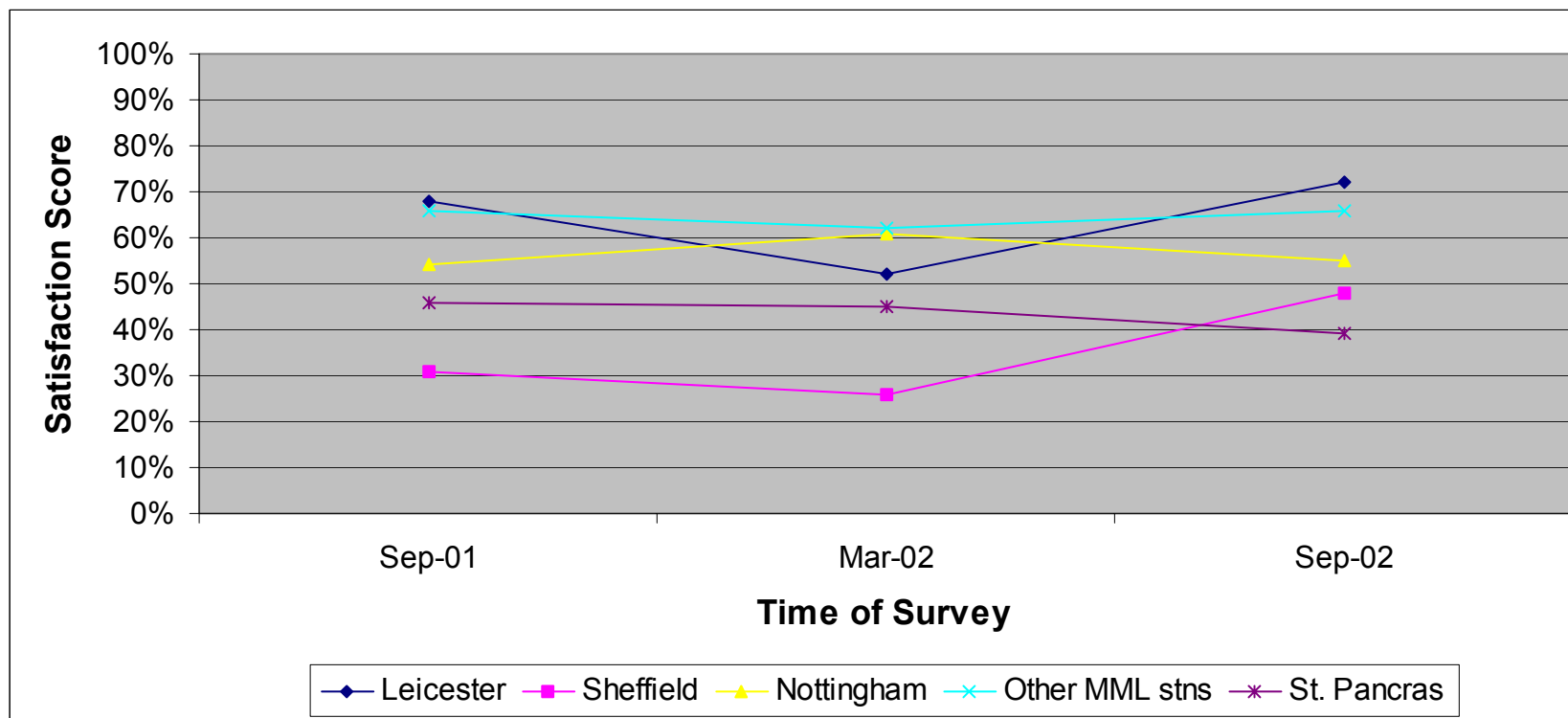
New Route to Underground



E5 - ANNEX 5

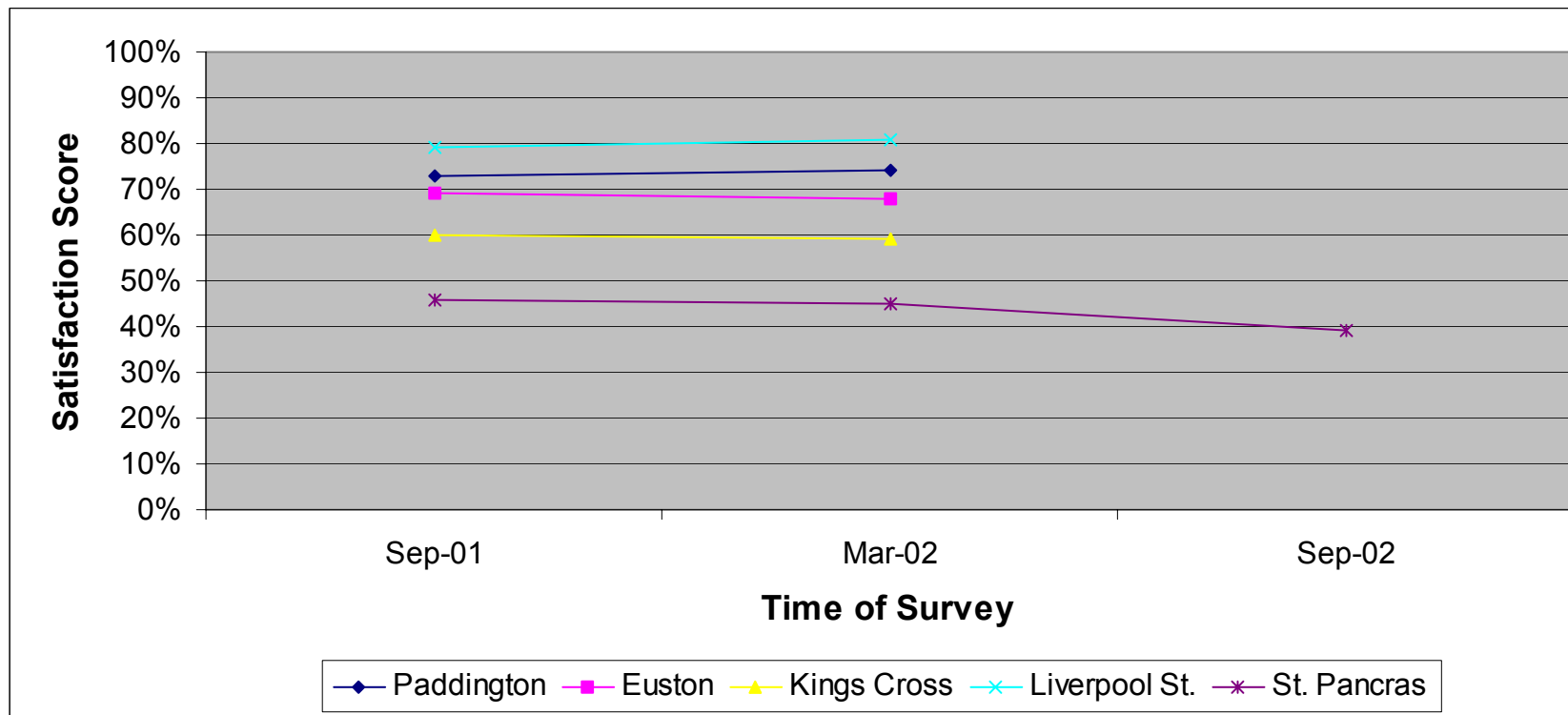
Appropriate Environment to catch a train

	Sep-01	Mar-02	Sep-02
Leicester	68%	52%	72%
Sheffield	31%	26%	48%
Nottingham	54%	61%	55%
Other MML stns	66%	62%	66%
St. Pancras	46%	45%	39%



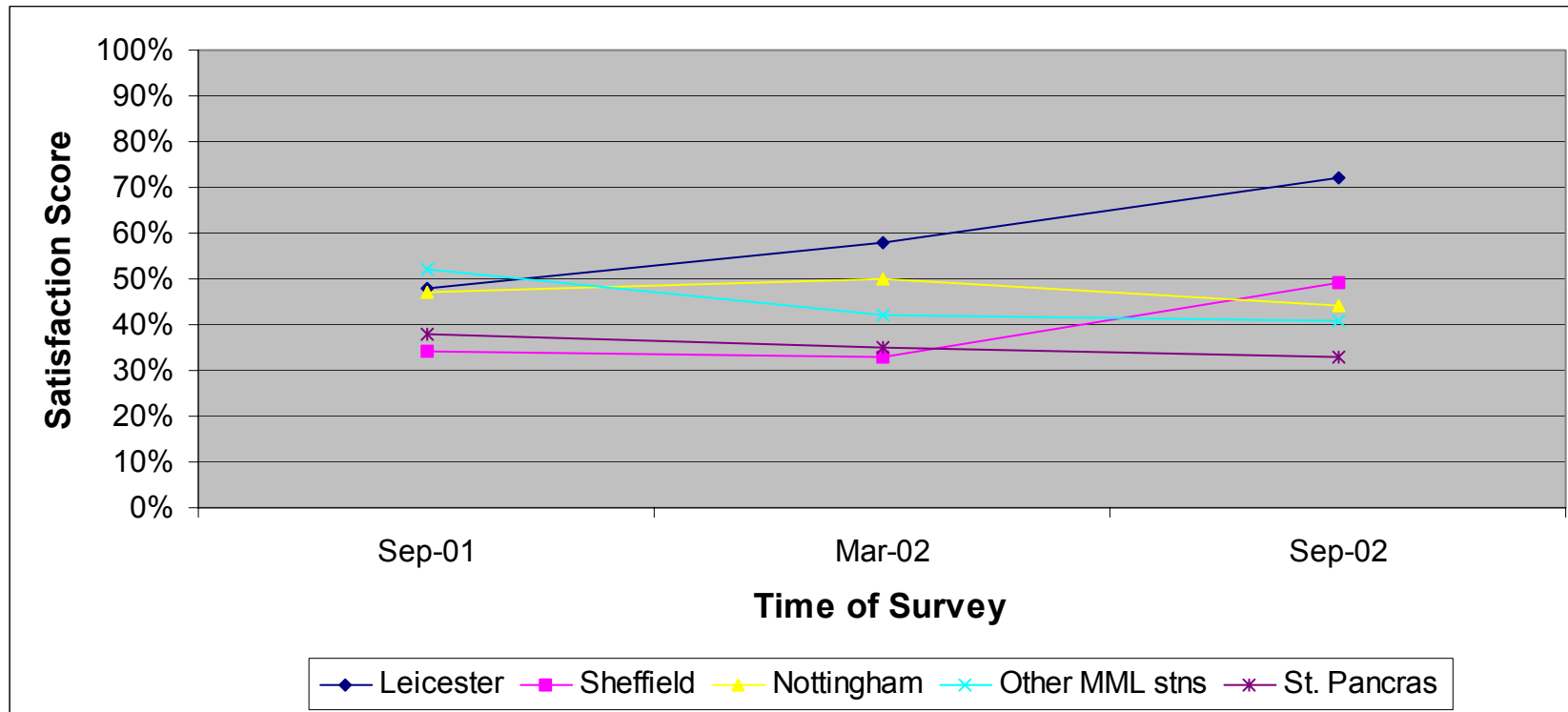
Appropriate Environment to catch a train

	Sep-01	Mar-02	Sep-02
Paddington	73%	74%	
Euston	69%	68%	
Kings Cross	60%	59%	
Liverpool St.	79%	81%	
St. Pancras	46%	45%	39%



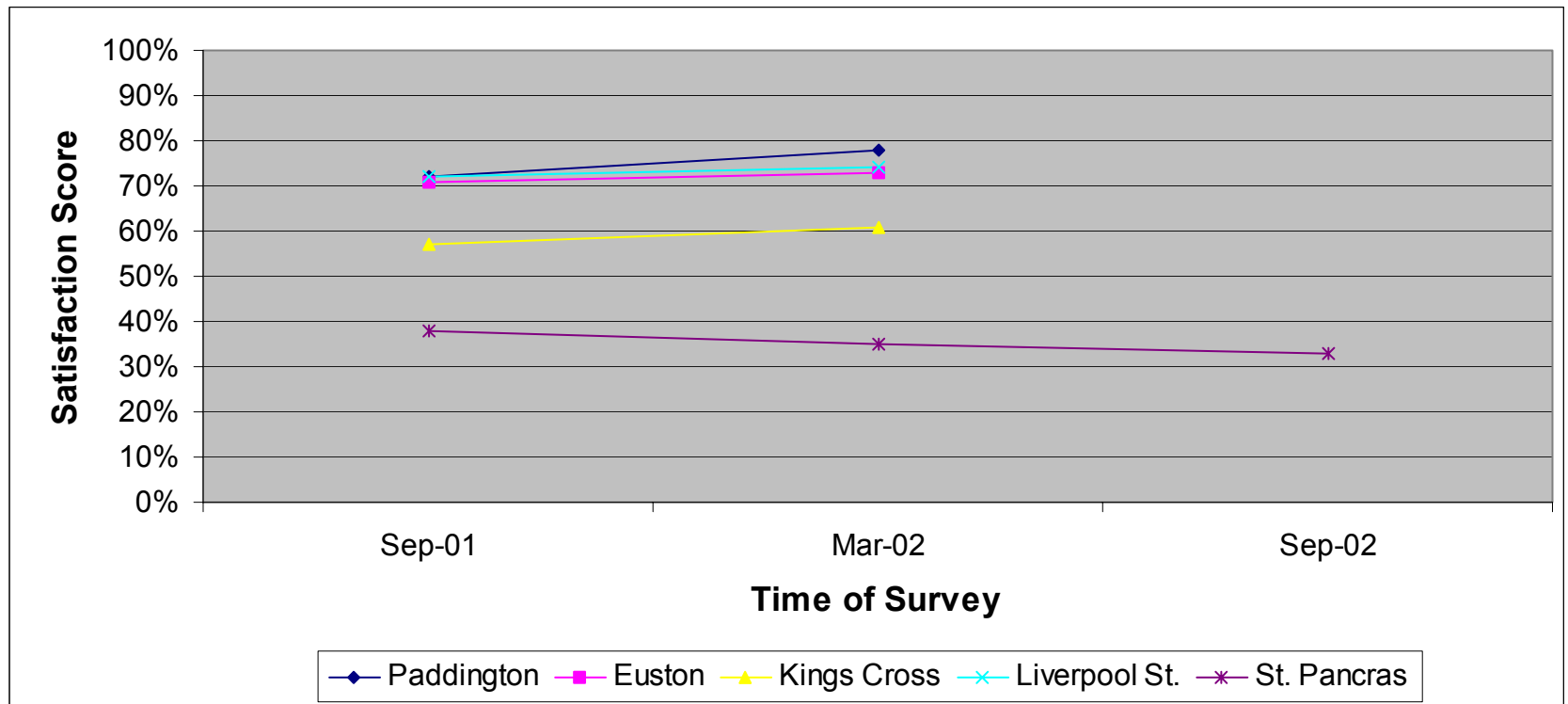
Facilities and Services at the Station

	Sep-01	Mar-02	Sep-02
Leicester	48%	58%	72%
Sheffield	34%	33%	49%
Nottingham	47%	50%	44%
Other MML stns	52%	42%	41%
St. Pancras	38%	35%	33%



Facilities and Services at the Station

	Sep-01	Mar-02	Sep-02
Paddington	72%	78%	
Euston	71%	73%	
Kings Cross	57%	61%	
Liverpool St.	72%	74%	
St. Pancras	38%	35%	33%



E6 – ANNEX 6

Station Investment
Opportunity

Assumptions

Year	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Passenger Income Total @ 1998 (Revenue Base)										
% Originating at St. Pancras										
Psgr Income originating at STP £m										
Actual/Forecast RPI										
X % Return on Investment										
Revenue benefit @ X %										
Depreciation										
Net Revenue Benefit £m										
Average Return per annum £m										

X % Return on Investment

Revenue benefit @ X %
Depreciation

Net Revenue Benefit £m
Average Return per annum £m

% Return on Investment

Revenue benefit @ X %
Depreciation

Net Revenue Benefit £m
Average Return per annum £m

% Return on Investment

Revenue benefit @ X %
Depreciation

Net Revenue Benefit £m
Average Return per annum £m

<u>Invest in</u>	<u>Cost</u>
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1st Premier Lounge	
Toilets	
Signage	
CIS	
Waiting Lounge	
Concourse	

E7 – ANNEX 7

MOIRA Output: The effect of a 1 minute increase in walk time to/from St. Pancras to the Underground.

The MOIRA results show the revenue effects on MML of an increase in journey time to/from London St. Pancras of 2 minutes

London Markets Only	Mon-Fri			Sat			Sun			Total		
	Old Rev	New Rev	Variance	Old Rev	New Rev	Variance	Old Rev	New Rev	Variance	Old Rev	New Rev	Variance
Luton												
Bedford												
Nottingham												
Sheffield												
Luton Airport Pkwy												
Leicester												
Derby												
Wellingborough												
Kettering												
Chesterfield												
Loughborough												
Market Harborough												
Barnsley												
Alfreton												
Beeston												
Long Eaton												
Langley Mill												
Burton on Trent												
Total												

Notes:

Prices @ 2001 Q3 (All numbers are £k) - They have not been updated

2 minutes added to journey times based on recommendation from Passenger Demand Forecasting Handbook (updated in August 2002) , Chapter B3, Journey Time, Frequency and Interchange, i.e. waiting/walk time at stations is valued at double in-vehicle time. Refer to PDFH B5.4.4 Station Facilities.

Results from MOIRA applied only to markets served directly by MML to/from London St. Pancras.

The additional journey times apply to all passengers accessing/egressing St. Pancras via London Underground, which is 65%.

Please note that survey work, and not ORCATS, is used as the basis for determining allocations at Bedford, Luton and Luton Airport Parkway. The MOIRA results above for these markets have been calibrated to account for this. ORCATS is the basis for all other markets, so the MOIRA results are valid.

Means of getting to the Station today?

Total St. Pancras Base	Actual	Percentage
1. By Tube	638	64.77%
2. By Foot	203	20.61%
3. By Car, dropped off	69	7.01%
4. By Train	175	17.77%
5. By Taxi	118	11.98%
6. By Bus	48	4.87%
7. By Car, parked at station	34	3.45%
8. By Bicycle	5	0.51%
9. By motorbike	1	0.10%
10. By Coach	0	0.00%
11. Other	5	0.51%
Total	985	

Source: MML Customer Profile Tracker - Data from Full year to August 2002

Note: This question applies to MML passengers originating and returning from St. Pancras. Passengers can name more than one mode of access as more than one may have been used. e.g. walked on foot to Kings Cross Thameslink