

8 March 2012

Paul Stone
Access Executive
Office of Rail Regulation
One Kemble Street
LONDON
WC2B 4AN

Dear Paul

Reform of access contractual arrangements

Introduction

Thank you for the opportunity to comment upon your consultation on the potential for reform of access contractual arrangements. This letter draws together the response of FirstGroup and all of its rail operations: First ScotRail, First TransPennine Express, First Capital Connect, First Great Western and Hull Trains.

First Group welcomes the review of access contractual arrangements. In a fast changing environment with significant changes in policy affecting a number of areas, there needs to be an examination of certain parts of the contractual framework.

In this letter we are confining our reply to questions 2 to 5. Comments on the other questions will follow, as per your two stage process but in a general response to Question 1 we agree that the areas you are covering are the ones to focus on, as the overall policy framework becomes clearer. We feel the emerging themes from these changes in policy, such as changes to franchising or infrastructure control, need to be brought into your review focus.

The areas of service and rolling stock procurement are as vital to TOC operations as the areas of infrastructure investment and collaborative industry mechanisms. The method of ensuring that the TOCs can perform all these tasks is certainty of rights and therefore any review of Schedule 5 is vitally important to how TOCs can function, and at what cost.

The need for clear definition of rights in Schedule 5 depends on the type of service and the requirements of the funder and customers. A funder's specification may need to be quite precisely expressed in a TAA, especially if this is for a supply contract issued by a devolved administration. This type of contract could very specific in terms of required outputs.

In theory, the move towards less prescriptive rights is laudable but, for the majority of publicly procured rail services, the public and political expectations for services face a different way and delivery of those expectations needs to be guaranteed through clear contractual arrangements.

To do otherwise risks increasing the cost of contacting these services through increased risk premiums in bids. As stated at the seminar, this risk also exists in the less specified DfT "new franchise agreement" world as certain contractual protections for the TOC are being removed.

There are, however, some changes to Schedule 5 that could be made to reduce bureaucracy and duplication. Schedule 2 (the routes) could be included in Schedule 5 and individual references to ancillary movements eliminated, being replaced by a general contractual ability to move to any reasonable LMD.

Turnaround times could be included in the Planning Rules, rather than the contract itself, and Specified Equipment could be omitted altogether, replaced by a general contractual clause relating to using equipment cleared for use in the sectional appendix with appropriate performance characteristics capable of operating the specified services.

For ease of use, the data should be consolidated by service group with a move to minimising the use of foot notes. Some tables could be replaced by text, for example the platforming table. We do not feel any need to move such items as the earliest and last trains away from Schedule 5 as this reduces the usefulness of the schedule as a “one stop” location for related information as well as being, for most funders, an important contractual obligation.

The suggestion of a “commercial clause” is a good idea. The overall commercial context of the contract is currently missing from its pages and a simple statement of the commercial aims would be of benefit when, for example, the decision criteria are being invoked. However this statement should be additional to what is included in the contract, not viewed as a substitute for well-defined rights.

First Group believes the current division of responsibilities for conducting the timetable process are satisfactory and that any alteration to TOC/NR responsibilities should be by mutual agreement as part of any aligning of responsibilities through such mechanisms as alliancing. We feel it is important that NR to have overall responsibility to carry out the timetabling process on its network both to protect the interests of secondary operators and to satisfy EU legislation.

In summation, we do not feel that there needs to be radical change to Schedule 5 but that clarity and usefulness could be achieved by the changes listed above and examination of those mentioned at the recent seminar.

Please do not hesitate to contact me if you would wish to discuss any of the points raised in this response in more detail.

Yours sincerely

Hugh Clancy
Commercial Director, Rail