



Audio transcript:

## The Rail and Road Pod – Episode 3: Access and Capacity

On this episode ORR's Deputy Director for Access and International, Martin Jones and Head of Access and Licensing, Gareth Clancy, discuss how decisions are made about what fits where on Britain's railway; the balancing act between passenger and freight services and what happens when disagreements arise.

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### Kenny Walker, Host

Hello folks, my name is Kenny Walker, and you're listening to the Rail and Road podcast.

Firstly, thanks to everyone who downloaded, listened and commented on our first two episodes where we discuss the subjects of assessable travel and also the important issue of mental health and the rail industry's long-standing partnership with the Samaritans. However, on this our third episode, I'm joined by ORR's very own deputy director for Access and International, Martin Jones, and head of access and licensing Garth Clancy, here to talk about how decisions are made about what fits were on Britain's railway, the balancing act between passenger and freight services and what happens when disagreements arise.

So before I bring in Martin and Garth, here are some facts that will provide context to what we were discussing today. Did you know that on Britain's railway there's fifteen thousand nine hundred and four kilometres of track record? On average, over 20000 trains run a day in Great Britain, carrying almost one point seventy-five billion passengers in the year to March 2020. And during the same period, there were almost 210000 freight train movements. Now we all know the importance of trains arriving on time, on the importance of a good timetable.

And underpinning this are the decisions network rail makes what trains both passenger and freight can run where and when. So let's bring in Gareth. It's a pretty big challenge for 20000 trains onto the network every day. But before we get into more of the issues and details, it's probably a good starting point to ask you if you can break down for us what access and licensing on the railway means in practice and how it works.

## Gareth Clancy, Head of Access and Licensing

Yeah, thanks, Kenny.

I suppose that's a great place to start and I have to apologize to for any oversimplification I make. But hopefully this is the interest of the topic will compensate. So the access in this context is about the capacity of a space on the network and how it's allocated. Passenger freight trains operators. They need to formalise all of this through track access agreements or contracts with the infrastructure managers. Now the biggest infrastructure manager for US network rail and it come as no surprise, I suppose, that operators possibly want to go to the same or similar destinations at times, which are also similar.

So that makes it a really complex problem to resolve in terms of planning the use of the capacity and the track access that each operator should be granted. And then from then on, obviously, network rail produces those timetables. It's my team's job to make sure that this is done in a fair and non-discriminatory way. But just quickly, the licensing part, which is also important to the way the network rail and the whole industry operates, is really important because of it ensures that train operators and infrastructure managers are fit and proper and that is fit and proper to obviously work in the rail industry that covers everything from safety through to finance.

So it's a real cross office piece of work, the licensing conditions, and it protects the public interest, I suppose. And that's the most important thing about licensing by setting things out transparently, making sure that operators and infrastructure managers are clear on what's expected of them and the behaviours that they should demonstrate. Again, you, as you would expect, network rail in the biggest infrastructure manager has quite a lot of conditions within its licence because it's so big and its central role in the industry.

## Kenny Walker, Host

Thanks very much, Gareth. We mentioned at the start of the episode, obviously the scale of passenger services, 20000 a day on average. Most of these are prescribed by government. But what about the rest? How does this get decided, Martin?

## Martin Jones, Deputy Director for Access and International

Well, in very simple terms, Kenny, the vast majority of services, so about sort of 80 percent of the use of the rail network is at the moment is for it's for passenger services that are that are specified and contracted by the department for transport. And so that's contracts with people to run those services. And the infrastructure manager network rail then needs to consider how best to include those services on the network. So what's the other 20 percent?

Well, with a decent chunk of that is more passenger services that are contracted by and by other funders. So, for example, transport is devolved in Scotland. And so Transport Scotland commissions services up there. And there are other parts of the network, Transport for Wales Mersey Rail, where again, a different body funds, specifies the public services, and occasionally those services interact with the services that are specified by DFT outside that, and a smaller percentage still of what operates are a services that aren't funded or backed or specified by government.

So, so entirely sort of private operations and. A lot of these are freight operations operating on entirely commercial basis and also what we call open access operate so that passenger operators who have an entirely commercial operation and operate without government support. But similarly, those private operators have to engage with network rail or all the other infrastructure manager if there is one. And you know, they will need to receive an analysis of capacity and performance to be carried out before it's decided whether those services could be granted the right to access the network and can be included in the timetable.

And it's worth stressing that is the infrastructure manager normally network rail's job to do capacity allocation? I read something recently which said it was our job to do capacity allocation, that that's not our job. What our job is to do in one respect is to and is to deal with disagreements. So most of the time, network rail and the operators agree about, about the access that's needed and they can find an agreement and reach a contract on the on the access rights and on the inclusion in the timetable.

And in those cases it's just our job to check their work. In the case of disagreements ORR are the appeal body for resolving those issues. And that's how we decide how it gets decided who can who can use the network and why.

## **Kenny Walker, Host**

OK, thanks, Martin. So quite a big role as well there for network rail in the process that you mentioned. How do you feel network rail are doing. And why does ORR get involved in the process? Isn't it best left to industry?

## **Martin Jones, Deputy Director for Access and International**

Well, it is. You know, it is a complex job which, you know, network rail generally does. And other infrastructure managers generally generally do. Well, it's part of their sort of bread and butter and a core part of their function as an infrastructure manager. But it is a very complex job. And, you know, to put it into context, there were so over half a billion train kilometers of publicly and publicly contracted operators or franchised operators in 2019-20 and about five million train kilometers of those non franchised operators I talked about, including open access and about 30 million train kilometers of freight.

And by the way, I don't carry those numbers around in my head. You can find them all on our roads. Excellent data portal, if you want to find out more. So the bulk of network rails planning activity necessarily focuses on that, on that majority of the task on ensuring the public, the commissioned operators, can be fit fairly and robustly and not onto the network and not come into conflict with each other. But of course, network rail also needs to ensure it treats the non-franchised operators and freight operators fairly as well.

Now, at the at the back end of last year, we set out where we think and network rail can do better in some areas. And where we think that is is primarily in ensuring it produces the evidence for its capacity allocation decisions in a in a more prompt and a more transparent manner than it has done in some cases recently. And from our point of view, the primary reason an independent regulator needs to be involved in all this is because all the other organizations involved network rail, public operators, private operators, they have their own objectives, incentives and drivers behind their decisions.

And that means that sometimes, unfortunately, decision making processes work against the interests of some of the parties who are who are involved and affect their

ability to plan and deliver their business. And another role is to help resolve those issues and to ensure that access to the network is fair and non-discriminatory. And, you know, it's worth saying that a lot of the time this this can be left to the industry where the parties agree, for example, network rather than a train operator or the legislation requires us to do is to check that their agreement doesn't adversely affect others and to formally approve what the industry has agreed.

Now, it's not just a rubber stamp. You know, we do add value here because often we spot things that have been missed or prevent the mistakes being made. That thing could create timetabling problems later on. However, most critically, when network rather than an operator cannot reach agreement, there does need to be an impartial check and a way of resolving that. The industry have processes for doing this, but ultimately our law is the regulatory body who can be appealed to resolve these problems.

## **Kenny Walker, Host**

OK, so there's acknowledged congestion of the east and west coast main lines, alongside these what are the biggest access and capacity challenges you think there is, ORR think there is. And what's happening to address these?

## **Martin Jones, Deputy Director for Access and International**

So, I mean, you mentioned East and West Coast can be so the congestion on the East Coast main line and the challenges faced by network rail, the passenger operators and freight is a very well known problem within the industry and a focus of quite a lot of industry attention and ORR attention at the moment on the West Coast main line. There are two specific parts of the network that that network rail is officially declared as congested. And they're what's known as the Castlefield Corridor, which is which is in Manchester and also the southern stretch of the of the West Coast main line between lefton Junction and Camden South.

Now, this doesn't mean they're the only areas of the network that are congested. It's just that legally network rail must declare areas where it feels it's not going to be able to accommodate new applications for use of capacity. So these areas, East Coast, West Coast, Main Line, are likely to continue to be hot areas by virtue of the destinations they serve. They are among the busiest parts of the UK network, which is itself one of the one of the busiest in in Europe.

So, you know, we are, you know, monitoring network rail quite closely to ensure they develop plans to address those capacity constraints.

## **Kenny Walker, Host**

Thanks, Martin. And what about any upcoming challenges? Is there anything that you're concerned about in the near future now in terms of big upcoming challenges?

## **Martin Jones, Deputy Director for Access and International**

I don't think we can really get through this discussion without mentioning coronavirus. And unfortunately, it's and it's been well documented and including and including in the media this week that there have been significant changes and there will probably be more changes in the level of rail passenger services, while at the same time and freight services haven't been affected to the freight demand hasn't been affected to the same extent.

And in fact, we should be grateful that freight managed to continue its services because of the need to get goods where they need to be around the country during the during the pandemic. Big changes and shifts like that mean that government, network, rail and private operators need to consider what access they need to use the railway network and to ensure that any amendments or changes are done in a fair way. And that's probably going to place a big emphasis on our on our role.

## **Gareth Clancy, Head of Access and Licensing**

Yeah, I think it's just that I'd probably want to add the fact that obviously those challenges they're faced obviously by the ORR are but also other organisations who need to be able to predict or model the future demand and that that future demand on use of the network obviously makes that job an awful lot more difficult in terms of that introduced the uncertainty. And so it's difficult for funders to know what they should be specified in terms of services. It's difficult for the infrastructure manager to know what level of access, applications and capacity it can allocate now and in the future.

And that's always been a difficult job. But obviously that uncertainty makes it even more complex.

And then obviously, you know, for us now, what do we consider to be fair now and what will be fair in the future? So it's it has added an extra layer of complexity, which is quite, quite interesting.

## **Martin Jones, Deputy Director for Access and International**

Yeah. And I would I would say that the other sort of big issue that's been brought into sharp relief by the impacts of coronavirus on the railway is, is how and when a network rail constructs the timetable, because obviously there are a lot of existing fixed rights to use the network.

But it is understandable, of course, that in these sort of uncertain times, there's a desire to be more flexible and dial the passenger service up and down, you know, to fit government funds, to fit demand. But at the same time, while that flexibility is understandable, you where we have commercial operators and their private investors, they need planning certainty and certainty of access and that they can. They can work the timetable that they've that they've asked for, and again, this is something that we've written to network rail about publicly to to ensure that, you know, that flexibility doesn't come at the expense of, you know, fair, transparent access decisions and use and use of the network in the in the best public interest.

## **Gareth Clancy, Head of Access and Licensing**

Yes. And just to build on that, Martin, I think there's something amongst all of this this change and sort of uncertainty that comes from coronavirus and the desire for flexibility. And so it goes back to that demand point about whether or not operators plan to use all of the access rights that they currently have. And I think it it's a very interesting question at the moment, how best both the industry, the funders and us as a regulator treat that particular topic, because I'm sure the public would have a sort of a view on whether access was being in inverted commas "hoarded" or held on to by some operators, but not used.

But at the same time, if demand does return in the future, when demand sort of pick back up, even just after the current constraints that we're experiencing. And it makes sense to make sure that the space and the capacity on the network is used in the best public interest. So there's a sort of there's sort of conflict in sort of issues going on there that I think it's again, it's as I said earlier, it's something that is challenging probably everyone in the industry on how to approach that particular issue around uncertainty and whether or not people's plans now are going to sort of mean lower levels of service for an extended period of time.

And therefore, they're not using the contractual rights that they currently possess.

## **Kenny Walker, Host**

OK, thanks both. So it's fair to say that there's a lot going on from timetabling changes, the impact of coronavirus, demand for access, so disputes must arise. How often does this happen and why do the disputes come about?

## **Gareth Clancy, Head of Access and Licensing**

Yeah, I mean, I guess I think the thing is, Martin emphasised earlier on is the fact that, you know, there are an awful lot of access applications which are approved between infrastructure managers and operators.

I guess the thing is that when the disputes or the disagreements do occur, they tend to occur because the complexity of the of the issue has got to the point where the two sides don't see eye to eye to eye. But I think, as I said, the scale of those approved or agreed applications is like within the last six months, the access and licensing team have provided the check and the balance and the quality assurance for over 50 of those between network rail and both passenger and freight operators.

But so I guess the message there is, I suppose even with coronavirus that we just talked about, the planning of the railway has continued. But over the same period, there've been some particularly sort of challenging and complex freight applications. They have tended to be in the areas that we've described in terms of the congested areas on the network. So on the East Coast main line and on the Castlefield corridor. And I think those are particularly sort of complex areas for the reasons that we've discussed.

But in addition to those, there are actually access applications, as we call them, which sort of on pause, if you like, waiting for planning to be completed, for example, on the West Coast main line. So there are currently competing applications that want to run services on the West Coast Main Line. And it's not logical for either Network Rail or for ORR to determine or direct contractual arrangements on that until planning work and timetabling work has been done.

So I guess that you could avoid that almost as a as an example of where you are as sort of taking a balanced approach in terms of rather than over allocating or pushing disputed decisions to a conclusion. We've taken a sort of a pragmatic approach to ensure that no further problems are added to the network. But, yeah, I think that I think the point I'm making there is I think the numbers might appear small in terms of a handful of cases over the last six months, but the issues are complex.

So the Castlefield corridor, for example, that was something on the on the freight side where it is a very busy part of the network. But, you know, on looking upon the applications, it was important for us to consider whether or not it's busy throughout the day because unsurprisingly, parts of the network are not busy 24/7. Yeah. And then, as I just said, there's also equally we don't over allocate trains on the busy parts of the network.

And that's certainly something that we need to we've had to consider in our decisions on the East Coast Main Line.

## **Kenny Walker, Host**

Thanks, I thought was very insightful, and unfortunately, folks that's us almost at the end of today's podcast. But before we bring this to a close, do either of you have any final comments?

## **Martin Jones, Deputy Director for Access and International**

Well, from my point of view, just to just to thank you, Kenny, for having us and as well as doing that to go back to what I was just said about some of the really complex disputed cases we've been dealing with recently.

And I think if you look back at those cases and you look back at our decision making on other disputed applications, be that open access fight or anything else over the years, you know, I think what really shines through from that is the is the is the balance impartiality we bring to all this work. You know, and I've only been in this role for four for six or seven months myself. And that even in that time, I've often heard it said that there's a perception out there that that our law favours certain types of operator or, you know, or that we're responsible for over allocating capacity and making and making congestion work.

And I think actually, if you look at the evidence, if you look closely at the decisions we've made, that that balance, that that rigor, that fairness and impartiality really, really shines through. And I think it's really important that we that we talk about that. But that's all I had to add at this point.

## **Kenny Walker, Host**

Thanks very much, Martin, and thank you Gareth as well. Very insightful chat today. Thanks for chatting to us. Hope you've enjoyed listening to this episode.



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