

OFFICIAL



Gareth Clancy
Head of Access &
Licensing
Office of Rail and Road
By email only

Henry Bates
Head of National Passenger
Operators Network Rail
Infrastructure Limited
By email



Grand Union's response is in blue.

18 May 2021

30 April 2021

Dear Gareth,

RE: Application for directions: proposed track access contract between Network Rail Infrastructure Limited and Grand Union Trains Limited

This letter provides the representations of Network Rail, as requested in your letter of 31 March 2021, regarding the application for directions for a proposed track access contract between Network Rail Infrastructure Limited (Network Rail/we) and Grand Union Trains Limited (Grand Union).

We have worked with Grand Union on previous iterations of track access applications between London Paddington and Carmarthen, to identify capacity for potential paths and evaluate their performance impact. The current application, for four return services, is a reduction in the number of train slots requested in the previous submission.

At this time, we do not support the services proposed in this track access application. A key factor in our decision is the existing rights on the Great Western Main Line which, if operational, would mean that the Grand Union services introduce too great a performance risk. We are committed and indeed obliged to maintain the recent levels of improved performance to support the recovery of the railway.

Network Rail is obliged to operate in accordance with The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016, but it is clear it does not commit itself to do so. It is required to ensure optimal and efficient use, provision, and development of the railway infrastructure. The infrastructure manager must also, so far as possible¹, meet all requests for infrastructure capacity

¹ The Grand Union paths have been developed conflict free. The capacity is available as acknowledged by NR.
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and in doing so take account of all constraints on applicants². The infrastructure manager must also ensure that infrastructure capacity is allocated on a fair and non-discriminatory basis.

Amongst other things Network Rail has failed to provide a Framework Capacity Statement to identify the capacity available on its network, and during the applications from Grand Union to introduce services into Wales Grand Union has had to, in effect, undertake Network Rail's work to identify capacity and then develop the timetable.

As Grand Union identified during the timetable process, many non-compliances exist in other operator's services, including errors on SRTs causing 'built in' delays. There are a number of mitigations available to Network Rail to improve the performance of the current timetable, and it is an easy option to instead just reject any (but it seems not everyone's) additional services.

The performance risk was modelled previously for 6 return pairs. The ORR position was clearly noted in the decision for those 6 train pairs:

"The absolute potential performance impact of GUT's proposed service as modelled by Network Rail is less than we [ORR], and Network Rail, have accepted for other recent timetable changes on the route which have included much larger numbers of additional services". The ORR then stated it did not consider it should reject the application on performance grounds.

The ORR also noted, amongst other things, that the December 2019 TT was a wholesale rewrite, whereas the Grand Union services are being added to an existing timetable. The ORR goes on to state that *"many of the performance figures should be treated with care"*.

The ORR also noted that Network Rail had drawn significant attention to potentially reduced performance levels but made little mention of identifying specific causes of poor performance or the actions it could implement to overcome them. It is worth pointing out that the modelled performance impacts of the introduction of Elizabeth Line services is -6.9%, but Network Rail is considering what mitigations it can consider to reduce the modelled impact. This is in stark contrast to the way in which Network Rail is dealing with Grand Union which makes it clear that not all applicants are treated in a fair and non-discriminatory manner.

This application is for 4 train pairs, less than the 6 pairs initially modelled, so any modelled total performance impact would now be less than modelled previously at -0.31%.

² Grand Union has had to, in effect, undertake Network Rail's role in identifying capacity due to the lack of a Framework Capacity Statement.



To assess the previous iteration of this track access application, we submitted a detailed and comprehensive range of studies. The following studies have been completed as part of our responses to the previous track access application between London Paddington and Carmarthen submitted by Grand Union:

- Capacity analysis between London Paddington and Cardiff Central
- Platforming assessment at London Paddington
- Assessment including platforming at Cardiff Central and capacity between Cardiff Central and Carmarthen
- Timetable performance microsimulation on the Great Western Mainline
- Supplementary path variance analysis on the Great Western Mainline to Cardiff Central

This work was only undertaken after significant lobbying from Grand Union, as Network Rail had initially dismissed the application on the grounds that no capacity was available. The result was a much longer process than it should have been as Network Rail was then obliged to carry out the work correctly.

Given my comment above, regarding existing access rights on the network, for this application we have additionally reviewed the likely performance impact of the proposed Grand Union services with the exclusion of the Great Western Railway (GWR) 'limited-stop London-Bristol' services. This is covered in the 'Performance' section of this letter.

These services were included in the timetable modelled for this process. Network Rail would now look to 'double count' possible performance impacts.

The Application

Grand Union have submitted a new Section 17 track access application for services between London Paddington and Carmarthen. The initial services would commence on the Subsidiary Change Date 2022 (May) and would expire on Subsidiary Change Date 2034 (May).

Grand Union had sought a Section 18 agreement with Network Rail based upon the contents of the ORR operational output regarding 6 train pairs. Despite this, Network Rail has ignored that ORR position and refused to support this application for a small number of conflict free train paths. This contrasts with Network Rail supporting the GWR 64th supplemental while at the same time continuing to reject Grand



Union's application. Had Grand Union been approved at that time, this would have seen the introduction of additional and extended GWR services over and above the Grand Union quantum.

The application seeks to secure quantum rights (table 2.1 PART A and PART B of Schedule 5) as described in the draft track access contract (TAC) and which appears to be based on the Passenger (Non-Franchise) Track Access Model Contract.

The application does not conflict with the Welsh Government's Llwybr Newydd or the Burns Commission recommendations for the public transport system in the South East of Wales. For the network from Cardiff to Severn Tunnel Junction, both of those strategies primarily focus on frequent stopping services serving local and regional passengers, but provision continues to be made for longer-distance services to London and elsewhere.

Form P

In Section 3.2 ('Terms not agreed with the facility owner'), Grand Union highlight with regard to the capacity studies undertaken that "despite that detailed work and its positive output, Network Rail does not support this application for 4 fully compliant return paths". However, our position is not alone based on capacity assessment, but additional factors including an evaluation of the performance impact of the proposed services to guarantee safe and reliable operations on our network.

Network Rail cannot argue that 'capacity assessment' was a factor when it had not created the Framework Capacity Statement required of it. Grand Union's work went way beyond capacity assessment, and instead produced a set of conflict free train paths which Network Rail had been unable or unwilling to do.

Meanwhile, Network Rail continues to accept others non-compliant paths in the timetable. It has accepted further new and extended services from GWR³ while at the same time it is rejecting Grand Union's application. Grand Union understands that no performance analysis has been undertaken for any of the additional and extended GWR services. The 'performance' impact of the proposed 4 pairs of Grand Union services is now less than the performance impact of 6 train pairs and is less than the 'benchmark' that was acceptable to Network Rail for the December 2019 timetable. This is clear discriminatory behaviour by Network Rail which has gone out of its way to be difficult and obstructive with the Grand Union application from the very beginning.

³ NR has suggested these services are at a time when performance impact is not an issue. However, Grand Union's services were spread throughout the day and into the evenings, and no attempt was made by NR to consider performance implications in time windows, it was an analysis across the day. The additional GWR and extended services would have increased that impact had they been included in any analysis.



In Section 8.2 ('Resolved issues'), Grand Union note "it remains of concern that Network Rail continues to discriminate by not agreeing to sell capacity while agreeing to sell capacity to others." We believe this remark to be partial. As stated in our previous representations of 30 October 2020, we worked on assessing the Grand Union applications in good faith at all times.

It is a clear fact that Network Rail has agreed to sell additional capacity to others (over and above that in the Dec 2019 timetable on which Grand Union's timetable and performance was based), at the same time as it was rejecting Grand Union's application. I am unclear what is 'partial' about it unless Network Rail is referring to its own conduct as being 'partial'⁴.

Proposed Track Access Contract

Form of Contract

The draft contract is based on the Passenger (Non-Franchise) Track Access Model Contract, with Open Access modifications.

Model Contract

The application is based on the Passenger (Non-Franchise) Model Track Access Contract.

Investment Conditions

We note the TAC proposed by Grand Union does not include any investment conditions, which we might expect to accompany an Open Access application seeking rights for a longer duration than five years. We would be interested in understanding the specific investments being proposed by Grand Union, as there are no references to the investment conditions in the draft TAC. It is important to consider, however, that the Form P submitted by Grand Union references investments.

There is some investment planned at Severn Tunnel Junction to ensure the road access and some facilities are improved. In respect of a longer contract, this is based partly on that investment, but mainly

⁴ Definition: adjective 'partial' is: "*favouring one side in a dispute above the other; biased*"
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on the new train fleet that is required to extend services to Carmarthen. Network Rail has never sought to engage with Grand Union on any aspects of the proposed contract.

It should however be noted that Grand Union will pay the ICC, a fee not paid by franchised operators. This is investment into the infrastructure. Any trains operated by Grand Union that may call at Cardiff will attract the ICC. The position is not the same with any extra GWR services. Network Rail will receive more income from track access charges from Grand Union services than from others but continues to discriminate and reduce its income by agreeing to further services from GWR which do not pay the ICC.

On the ECML East Coast Trains secured a 10 year contract (from fleet delivery) due to new trains, and did not propose any other investment in the infrastructure as far as Grand Union is aware.

The Specified Equipment

Route Clearance processes have not yet concluded for the Specified Equipment and we are aware there is an ongoing process regarding gauge compatibility with the network – we would require Grand Union to engage with us on commissioning works to deliver the required capability and to undertake the Route Clearance processes. We would also need to meet National Grid's requirements at the Point of Common Couplings for our new traction power supply sites.

Class 91 operation is not within the agreed harmonic interference profile of the Great Western Mainline and we would need to analyse compatibility with National Grid. From both this harmonic point of view, plus the fact that a Class 91 is a 1980s locomotive pre-dating interoperability, we cannot assume compatibility on new routes with new electricity supply networks.

Along with Eversholt, D Gauge undertook a structural clearance report which was shared with Network Rail in 2020 along with the Ricardo report on EE & CS EMC compatibility. At each stage of the process Grand Union has been transparent with Network Rail in its pursuit of Network Rail's agreement to use the capacity identified to introduce its service.

We have concerns regarding the lack of a delivery plan to fit Automatic Train Protection (ATP) to the Class 91 locomotive, as our analyses are based on the assumption the proposed rolling stock will operate at maximum speed (125 mph) between Reading West Junction and Didcot East Junction on the Great Western Mainline. Trains not fitted with ATP must not exceed 110 mph at any point, as indicated in the *Western General Instructions* from August 2017.

Grand Union is very aware of the ATP position, and has been in discussions with Eversholt on the issue since the very beginning of the process. It is also noted that on parts of the route where ATP is 'required'



some rolling stock operates at 125mph without ATP fitted. There are a number of options (as we have discussed with Network Rail numerous times). Hardware is available in the number of HST power cars now withdrawn from service and can be fitted into a Class 91 or an exemption could be sought for which Eversholt and its advisers believe they could make a compelling case.

All these issues have been in place from the very beginning of the process, and Network Rail has stated previously that “...it [Network Rail] recognizes that this is an ongoing process and does not insist that the compatibility process conclude before decisions on the sale of access rights conclude⁵”. As an example, on parts of the Wales route some new rolling stock has still to be route cleared.

During the recent issue with the 80x fleet it has been noted that route clearance issues for 387s were concluded in just 2 days to allow them to operate ‘off their patch’. While that shows a commendable response to an immediate issue, it is in stark contrast to how long it has taken Network Rail to handle the applications from Grand Union.

It is worth pointing out that the SRTs produced by Network Rail for the Class 91 are at 110mph and the overall difference in those and the Tracsis output at 125mph (shared with Network Rail) is 9 seconds, end to end. Grand Union would expect the ORR to include some specific conditions on timetabling and journeys if the application is approved.

We are also concerned by the impact this application might have on any planned work in the Severn Tunnel or its corridor, the Bristol Parkway area and the section between Didcot and Swindon, and arrangements made for passengers during such works. Planned work in these areas typically requires eight-12 days per year and their diversionary routes are not electrified.

Grand Union is not clear why this is an issue for Network Rail and also why it is only now being mentioned – nothing has changed. As has been pointed out on numerous occasions, loco haulage of Class 91s has been a regular occurrence on the ECML for many years. There are also many electric only types of traction that operate on parts of the GWML. The issue however is unlikely to have anything like the impact the recent withdrawal of the 80x fleet has had across the entire route.

⁵ Grand Union Trains S17 NR Response 26/06/2020
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Timetable Capacity & Performance

Grand Union proposed to run four trains per day in each direction between London Paddington and Cardiff between May 2022 and May 2034. Grand Union also proposed to extend these services from Cardiff to Carmarthen from May 2024.

Capacity

The capacity analyses completed during the evaluation of the previous track access application demonstrated there is adequate capacity to accommodate six of the seven paths previously sought by Grand Union in each direction per day. Necessarily, we acknowledge there is sufficient capacity to accommodate four paths in each directions per day, as indicated by Grand Union in their current track access application. Moreover, both the Welsh Government and DfT are currently developing schemes to improve the connectivity provided by the railway between Cardiff Central and Severn Tunnel Junction.

Performance

As previously noted, the analysis of Grand Union's previous application included detailed microsimulation of the timetable changes. This application is based on a sub-set of the train paths, so this performance assessment considers the likely performance impact based on the information available from the microsimulation work.

Based on that work, and combined with the assumption that the performance impact was spread evenly amongst the 12 paths included in the modelling, it would be forecast that the impact of the eight paths included in this application would be 8/12ths (2/3) of the previous performance impact. This means that a forecast 0.46% drop in T-10 punctuality for GWR service groups EF01, EF02, EF03 and EF04 would become 0.31%. On a similar basis the forecast T-5 reduction for Heathrow Express would go from 0.83% to 0.55%.

Whilst the forecast performance impact has reduced due to the lower number of paths sought, we remain concerned about the absolute level of performance given that:

- Performance for the three periods of the December 2019 timetable pre-Covid was below target
- There are further limited-stop London-Bristol services which GWR hold rights to operate which had not commenced operation in that timetable



- When these limited-stop GWR services come into operation it is expected that performance will come under greater, downward pressure due to the greater train frequency

Grand Union would remind Network Rail that the Tenolab report also identified some significant issues with the current timetable, notably what appear to be shortcomings in the SRTs for the GWR services. This is most noticeable on the corridor between Swindon and Bristol Parkway. As Trenolab identify, these “*optimistic SRTs*” primarily affect the performance of the South Wales EF02 service group. Other known factors, such as the requirement for running brake tests, the impact of neutral sections and driver and traction variability all seem to have been ignored in the compilation of the GWR timetable, which may explain some of the consistently poor performance of GWR trains highlighted by Network Rail’s ‘Path Variance Analysis’ report.

It appears issues with its current timetable, and any mitigation are not considered worthy of comment by Network Rail, which instead seeks to use selective data to try and justify its unjustifiable position in refusing to sell capacity to Grand Union while selling it to others.

The performance modelling undertaken by Network Rail was based on the full December 2019 timetable, which included the entire number of changes as identified by that major change, including the limited stop GWR services. Why Network Rail is seeking to introduce a further barrier for Grand Union having already accepted that the performance impact of 4 train pairs will be less than that of the 6 previously modelled is not clear.

When placed in this context, it is expected that the performance impact of the train paths sought by Grand Union will move performance further below the targets that the industry is seeking to achieve.

It took Network Rail almost 12 months to undertake performance modelling. Despite using selective figures initially on the 6 train pairs sought, the ORR noted that the modelled impact was less than it and Network Rail had accepted previously. This is for a smaller number of paths for which Network Rail accepts the modelled impact will be less.

The performance modelling for the December 2019 timetable considered the performance improvements brought about by significant investment in rolling stock (replacing older rolling stock with more reliable and faster accelerating newer stock) and then the performance reduction brought about by tighter running times and increased train frequencies. This net figure informed the December 2019 process so has been used as the comparator for the Grand Union performance modelling results.

The December 2019 TT performance modelling stated: “*The simulation modelling suggests that the December 2019 timetable will have an overall negative impact on GWR Main Line services, with a*



forecast overall fall in T-10 for Main Line services of c. 3.1%1 under normal operation, compared to the T-10 performance that is anticipated immediately prior to the timetable change". Despite this Network Rail used -2.5% as its comparison figure for Grand Union. It is unclear why Network Rail would look to use this figure and not the actual figure for one operator to compare it to Grand Union. Grand Union pointed out this distortion to the ORR in replying to the performance modelling of its own services.

On the basis of the -0.028% performance impact per additional GWR service stated in Network Rail's response to the previous application, it is assumed that it would require a reduction of 11 in the quantum of GWR paths to offset the performance impact of the eight Grand Union paths. There are 25 limited-stop London-Bristol paths in the timetable which GWR had not yet brought in to operation at the point Covid-19 caused significant disruption to the rail industry in 2020. If 11 or more of these paths were not to commence operation then this would provide a performance mitigation as described above.

It would appear that as the ORR output is not to Network Rail's liking, it is now seeking to introduce yet another 'algorithm' to try and defend its position. On every occasion Grand Union has positively addressed Network Rail's concerns, Network Rail moves its position to create further objections. This is a long way from the requirements of its license and its obligations as laid out in The Railway (Access, Management and Licensing of Railway Undertakings) Regulations 2016.

It took Network Rail until December 2020 to undertake a performance analysis and as the ORR noted *"Network Rail's performance analysis is more detailed than we have received for similar applications in the past and is based on standard and accepted industry methodology. However, we consider it is a cautious representation of the likely performance impact, and mitigations could reduce the level of negative impact."*

'Impact' on GWR services as identified is not down to the inclusion of any additional Grand Union services, more due to existing GWR services consistently failing to run in their planned paths. Regular delay in entering Wales for some GWR services may be as a direct result of the *"optimistic" SRTs* mentioned by Trenolab in its report. Clearly addressing the reasons for poor performance, which this type of work can help identify, will be of significant value, and it is disappointing that instead of using this tool to look at the current performance issues, Network Rail is instead continuing to use it in an attempt to keep out a new operator with robust plans and diagrams.

Grand Union would point out that a number of non-compliances remain in the current timetable which will have an on-going effect on performance. While a number were addressed by Grand Union in developing its own conflict free paths, it is our understanding that Network Rail has not yet addressed the non-compliances of others that remain. As a result, Grand Union's timetable is held to a far higher **degree of scrutiny by Network Rail than is applied to other operators and this is clearly discriminatory.**



During the Western ESG, the issue of performance has been raised on a number of occasions in respect of the forecast impact of the Elizabeth Line services at -6.7%. It was made clear that to address performance correctly, the root causes of delay need to be addressed to ensure any 'impact' of new services would be mitigated by an improved production timetable. The ORR will note there is no mention by Network Rail of any mitigation measures or benefits that could be considered for Grand Union, although the ORR Operations Team noted it in its comprehensive review of the Network Rail performance output.

Additional Considerations

If progressing this application, we would require further detail relating to non-passenger movements around Cardiff, particularly relating to turnback and layover stabling between services at Cardiff Central and servicing and overnight stabling requirements; any movements West of Cardiff will require non-electric traction which may import performance issues which cannot yet be evaluated.

It is hard to equate the increasing number of issues that are raised by Network Rail as Grand Union has moved forward on each step of its application to seek rights and approval for its services. Cardiff and its environment was evaluated as part of a piece of work for the Wales ESG in relation to services for Grand Union and others, including the capacity required to operate further west. That work was acknowledged by Grand Union in its previous response on these issues to the ORR in December 2020.

In our representations of 11 December 2020, we considered operational mitigations to the performance decrements identified through analysis on the previous application. Possible mitigations included additional dispatch staff at London Paddington, rescue locomotives at key locations and a planned introduction of Class 802 traction. These mitigations are outside our scope but, should they be implemented, we still believe they would be insufficient to resolve the key performance challenge of the services proposed by Grand Union. We might be able to review our response resources in operations and maintenance to accommodate the Grand Union services, but this mitigation would reduce the Grand Union performance impact only in the event of a failure or incident.

An increase in traffic will also have an impact on our level crossing risk assessments and might require further mitigations.

Which would naturally be less than for 6 train pairs. It is inconceivable that Network Rail is suggesting that possible level crossing risk is more for 4 train pairs than for 6.



It is clear from this Network Rail response that it will look to do or say anything to prevent Grand Union accessing the Network. It has had over 12 months to develop a workable timetable with Grand Union, and that only came about because of pressure from Grand Union and the ORR. Network Rail was almost 6 months late in producing an acceptable modelled performance report, and even then it has attempted to sanitise figures for its own benefit.

It is unacceptable for the infrastructure provider to act in this manner, and its discriminatory behaviour is laid bare in this response to the ORR. It is an issue Grand Union will be raising separately.

The ORR Operational Team has been very close to the process and has already addressed the issues raised once again here by Network Rail and the only change in this application is to reduce the number of paths sought. It is therefore disappointing and concerning that Network Rail continues to act in the manner it does in an attempt to deny access to the network for Grand Union.

Ian Yeowart
Managing Director
Grand Union

Please do not hesitate to contact me if there is any further information you require. Yours sincerely,

A handwritten signature in black ink, appearing to read "Henry Bates". The signature is fluid and cursive, with a large initial "H" and "B".

Henry Bates
Head of National Passenger Operators, System Operator