



**Heathrow  
Express**  
The smarter way

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**BY E-MAIL AND COURIER**

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5 November 2021

Dear Sirs / Madams

**NOTICE OF APPEAL TO THE OFFICE OF RAIL & ROAD UNDER PART M OF  
THE HEATHROW AIRPORT LIMITED NETWORK CODE:  
ACCESS DISPUTES COMMITTEE TIMETABLING PANEL DETERMINATION –  
HAL/TTP003 DATED 27 OCTOBER 2021**

**1. INTRODUCTION**

- 1.1. Unless otherwise indicated, the terms used herein adopt those definitions contained within the Heathrow Airport Limited Network Code dated 31 December 2017 (the “**HAL Network Code**”).
- 1.2. References to Conditions within this Notice of Appeal are to the Conditions of the HAL Network Code. References to paragraph numbers in this Notice of Appeal are to those of the Determination, unless otherwise stated.

**2. NOTICE OF APPEAL**

- 2.1. Pursuant to Condition M1.1.1 of the HAL Network Code, Heathrow Express Operating Company Limited (herein referred to as the “**Appellant**”, and as “**HEOC**”) requests that the Office of Rail and Road (the “**ORR**”) treat this letter as HEOC’s notice of appeal issued in accordance with Condition M 3.1 (the “**Notice of Appeal**”).
- 2.2. HEOC, as Appellant, is serving this Notice of Appeal in respect of the determination made by the Timetabling Panel of the Access Disputes Committee (the “**ADC**”) dated 27 October 2021 in respect of HAL/TTP003 (the “**Determination**”), raised by MTR Corporation (Crossrail) Limited (“**MTR**”) against Heathrow Airport Limited (“**HAL**”).

- 2.3. In accordance with Part M of the HAL Network Code, HEOC has the right to appeal as a “Dispute Party” (as defined elsewhere in the HAL Network Code), as it is “an Involved Party which is likely to be materially affected by the outcome of the dispute.”
- 2.4. The following documents are submitted as evidence in support of this Notice of Appeal, and feature at Appendices 1 - 10:
  - 2.4.1. ORR email of 1 November 2021 granting the extension of time (the “**Extension Email**”) - Appendix 1;
  - 2.4.2. ORR decision of 23 April 2018 - Appendix 2;
  - 2.4.3. ADC determination of 13 October 2021 - Appendix 3;
  - 2.4.4. Heathrow Surface Access Insights Synthesis (April 2019) – Appendix 4;
  - 2.4.5. 1st Superbrand research extract – Appendix 5;
  - 2.4.6. 2nd Superbrand research extract – Appendix 6;
  - 2.4.7. Confidential and commercially sensitive – Appendix 7;
  - 2.4.8. Confidential and commercially sensitive – Appendix 8;
  - 2.4.9. Confidential and commercially sensitive – Appendix 9;
  - 2.4.10. NRPS Survey – Appendix 10.
- 2.5. The ORR confirmed by email (10.40am 5/11/21 Emyl Lewicki to Pinsent Masons and HEOC) that the ORR will accept information regarded as confidential and/or commercially sensitive in the format in which the party submitting the information prefers. The ORR also stated “ORR will request the other parties to treat the information as confidential.” Appendices 7, 8 and 9 contain confidential and commercially sensitive information belonging to HEOC which is being provided on the basis described above.

### 3. STANDING OF THE ORR

- 3.1. At the outset of this Notice of Appeal, we refer to the ORR’s email of 1 November 2021 (timed 17:08) [**Appendix 1**], in which the ORR granted HEOC an extension in which to lodge its Notice of Appeal until 5pm on Friday 5 November 2021, further to its discretionary power at Condition M2.1.2 (the “**Extension Email**”).
- 3.2. HEOC notes the direction given by the ORR in that Extension Email in respect of the requirement for HEOC to make detailed representations in respect of the implications the Determination (and any resulting appeal arising out of this Notice of Appeal) would have for the:
  - 3.2.1. Network Rail mainline; and / or
  - 3.2.2. The wider rail industry,

further to the appeal decision taken by the ORR on 23 April 2018 regarding an appeal made by Transport for London (“**TfL**”) on 10 November 2017 under regulations 32 and 34 of The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (SI 2016/645) (the “**Ruling**”), as part of its Notice of Appeal [**Appendix 2**].
- 3.3. HEOC understands that this direction is given in the light of paragraphs 88 – 97 of the Ruling, which indicate that the ORR does not consider itself, as a

matter of course, to have standing to consider and hear appeals concerning Heathrow Rail Infrastructure.

- 3.4. However, under Paragraph 95 of the Ruling, the ORR stated, *“if a matter were in due course to arise in relation to the Heathrow Rail Infrastructure on which it was considered appropriate to seek ORR’s view or decision....we would consider that matter on its merits at the time and in the context it was referred to us.”* Paragraph 96 goes on to state, *“we are likely to be slow to accept a reference or appeal in relation to the Heathrow rail infrastructure where it does not also have implications for the Network Rail mainline and/or wider industry relevance”*. Paragraph 97 says *“In summary, we are open to considering a reference or appeal in relation to the Heathrow Rail Infrastructure where it has implications for the Network Rail mainline and/or wider industry relevance”*.
- 3.5. HEOC’s position is that the issues in question clearly do have material implications for the Network Rail mainline, and also have wider industry relevance for the reasons given below, and HEOC respectfully submits that the ORR has standing to consider and hear this Notice of Appeal and should do so given:
  - 3.5.1. The Network Rail mainline is clearly impacted given the operation of the Heathrow Express service from Paddington station follows the Network Rail mainline to Airport Junction en-route to Heathrow;
  - 3.5.2. The Determination directly influences platforming arrangements and other operational arrangements at Paddington Station;
  - 3.5.3. The Determination affects the wider industry as it has a direct impact on passengers using rail services (operated not just by HEOC but also by MTR) between London and Heathrow Airport;
  - 3.5.4. The Determination will lead to disruption and change to the way people employed within relevant parts of the industry are required to operate and may lead to possible restructuring;
  - 3.5.5. The Determination will create a detrimental rail performance impact caused by disruption on the Heathrow branch impacting on the Network Rail mainline; and
  - 3.5.6. The Determination will set a precedent which could influence future operation of rail access to Heathrow, including via potential future western and southern rail access.
- 3.6. HEOC therefore submits that it is evident that the ORR does have standing and should hear this Notice of Appeal.

#### **4. IMPORTANCE OF APPEAL AND REQUEST FOR EXPEDITION**

- 4.1. HEOC respectfully submits that the ORR should both (a) determine whether it should hear the appeal, and also (b) conduct the appeal itself, both on an expedited basis. Accordingly, HEOC requests that the ORR expedite this appeal pursuant to Condition M6.1.1.
- 4.2. HEOC requests expedition, pursuant to Condition M6.1.1, in circumstances where the Determination imposes timetable changes which will take effect from 3 January 2022 and it would not be in the interest of any industry party or passengers for the changes to be implemented and then have to be

reversed soon afterwards (assuming that the appeal had proceeded pursuant to a non-expedited timetable and had been successful). Further, to do so would cause HEOC significant financial detriment, operational difficulties and irreparable reputational damage as detailed below.

- 4.3. The impact of the consequences outlined at paragraph 4.2 of this Notice of Appeal evidence that it is necessary not only for HEOC, but for all Dispute Parties to the Determination, to obtain urgent clarification (and if the ORR considers appropriate, a binding appeal determination) in respect of the ADC's Determination.
- 4.4. In light of the above, HEOC proposes that the ORR sets an expedited timetable resulting from this Notice of Appeal, as follows:
  - 4.4.1. by Tuesday 9 November 2021, the ORR decides whether the appeal requested by HEOC (and, to the extent applicable, any other Dispute Party to the Determination) may proceed under Condition 4.1.1, and it communicate its decision, in writing to HEOC (and, as applicable, the Dispute Parties);
  - 4.4.2. by Friday 19 November 2021, MTR as Respondent and / or any Interested Parties to the Determination (including all the Dispute Parties) serve any notice and supporting evidence pursuant to Condition 5.1.1; and
  - 4.4.3. by Friday 26 November 2021, HEOC and any Dispute Party (including for the avoidance of doubt, the Interested Parties) be given the opportunity to make submissions, on HEOC and / or Respondents' notices;
  - 4.4.4. by Wednesday 8 December 2021, a hearing will take place at which HEOC and any Dispute Party (including for the avoidance of doubt, the Interested Parties) be given the opportunity to make submissions orally; and
  - 4.4.5. by Friday 17 December 2021, the ORR makes its decision in respect of the requested appeal.
- 4.5. In the alternative, if the ORR is not prepared to agree to a timetable which results in a decision by 17 December 2021, HEOC requests that ORR makes a determination without delay to the effect that the implementation of the timetabling changes arising out of the Determination be delayed beyond 3 January 2022 pending the outcome of the appeal. (To be clear, if the ORR considers that it cannot delay the date of 3 January 2022, HEOC submits that this gives weight to the need to reach a determination following a full process by 17 December 2021.)

## **5. EXECUTIVE SUMMARY**

- 5.1. The aviation industry is beginning to emerge from the pandemic and the steps taken now are critically important to how quickly the Airport and airlines recover to support the economic recovery via the UK's only hub airport. Terminal 5 is consistently voted best airport terminal in the world (for example at the recent Skytrax awards<sup>1</sup>), is our largest Terminal serving in excess of 30 million passengers pre-pandemic and requires a fast and frequent service from Central London that can only be delivered by Heathrow Express.

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<sup>1</sup> <https://www.heathrow.com/company/about-heathrow/performance/awards>

- 5.2. The wider industry impact, effect on the Network Rail mainline, and effect of the injustice on HEOC resulting from the Determination (if upheld) is significant, for the reasons set out in this Notice of Appeal.
- 5.3. HEOC has set out in this Notice of Appeal reasons why the solution required by the ADC in light of its Determination is unjust, including, but not limited to the below:
  - 5.3.1. The solution would result in a substantial reduction in HEOC's services and operations;
  - 5.3.2. The solution would have a highly adverse affect on passengers who rely on the HEOC service for a consistent, time sensitive, frequent (4 trains per hour) service;
  - 5.3.3. The solution, despite reducing HEOC operations and service frequency, adversely affects HEOC financially, as it does not allow cost savings in meeting the costs of delivering services and operational costs.
  - 5.3.4. The ADC fails to take into account the much greater proportionate impact on HEOC, which is distinct from the impact on TFL/MTR, which far smaller in comparison given the relative size of operations and service patterns;
  - 5.3.5. The solution effectively required by the ADC could result in thousands of HEOC passengers missing time sensitive commitments, namely flights, with substantial associated costs for passengers and knock-on negative consequences at Heathrow Airport.
- 5.4. HEOC request the ORR hear this appeal for the reasons above, and in light of the submissions in paragraph 3 ("Standing of the ORR"), and also for the central reason that HEOC was not given the opportunity during any part of the ADC process to make substantive submissions, either written or oral, and therefore to allow the ADC's decision to stand without appeal being heard would be unjust.

## 6. FACTUAL BACKGROUND

- 6.1. The facts and background which led to the ADC Timetable Panel hearing on 13 October 2021 (the "**Panel Hearing**"), at the request of MTR, is set out in Sections B, C and E of the Determination [**Appendix 3**]. HEOC does not, therefore, propose reciting these details and refers the ORR to [**pages 3-8 of Appendix 3**].
- 6.2. The outcomes sought by the Dispute Parties at the Panel Hearing were as follows:
  - 6.2.1. MTR: that the ADC require HAL honour its existing MTR Firm Rights, thereby allowing MTR to operate 2 trains per hour, in each direction to and from Heathrow Terminal 5, on weekdays before 20:00hrs in the December 2021 timetable;
  - 6.2.2. HAL: that the ADC determine that:
    - 6.2.2.1. HAL should not be required to accept MTR's request to exercise its Firm Rights, on the basis there was no capacity for these to be accommodated during the December 2021 timetable;

- 6.2.2.2. HAL followed the appropriate HAL Code processes either under the HAL Code as published, or as amended by the Change Strategy, and in either case, HAL's decision made pursuant to the Decision Criteria within the HAL Code should stand; and
  - 6.2.2.3. HAL acted fairly and in a non-discriminatory manner, having correctly applied the Decision Criteria.
- 6.3. The oral and written submissions given by HAL at the Panel Hearing are set out at paragraphs 52 – 152 of the Determination [**pages 9-25 of Appendix 3**].
  - 6.4. Conversely, despite its position as an Interested Party, the process did not allow for HEOC to provide full submissions (whether in writing or orally) either before or at the Panel Hearing or any other stage prior to the Determination.
  - 6.5. The Determination subsequently decided, wrongly in HEOC's submission, that HAL shall honour the existing Firm Rights of MTR (as detailed at paragraph 6.2.1 of this Notice of Appeal) in the December 2021 timetable as soon as reasonably practicable but in any event from a date not later than 3 January 2022 or alternatively the start of Period B of the December 2021 timetable if that date falls earlier.
  - 6.6. The Determination was made without HEOC having the opportunity to explain its position and/or the impact upon it and the wider industry of any adverse determination.

## 7. IMPACT OF DETERMINATION ON HEOC

- 7.1. HEOC identifies the following specific sections of the Determination, for the purposes of this Notice of Appeal, as follows:
  - 7.1.1. Paragraphs 25 – 27, and 95 ("**Paddington Platform Concession**");
  - 7.1.2. Paragraphs 78 - 122 ("**Operational and Performance Impact**");
  - 7.1.3. Paragraphs 79 – 90 ("**Passenger Impact**");
  - 7.1.4. Paragraphs 133, and 149 ("**Financial Impact**");
  - 7.1.5. Paragraph 138 ("**Brand and Reputational Impact**"); and
  - 7.1.6. Paragraph 92 ("**Colleague Impact**").

(each an "**Issue**", and collectively the "**Issues**").
- 7.2. To implement the Determination, and maintain a 4 trains per hour service HEOC will have to operate using the "PMO solution" suggested by the Timetable PMO Collaboration Group. This would mean operating from one platform at T5 and at Paddington, using 4 units in circuit instead of 5, with one stabled spare. This removes the resilience provided by the 5<sup>th</sup> unit in circuit and will inevitably lead to delays and cancellations should the "spare" unit be required.
- 7.3. The alternative method of implementing the Determination would be to reduce the HEx service to 2 trains per hour which is neither economically viable for HEOC nor in the interest of the overwhelming majority of rail passengers travelling to and from the airport.

- 7.4. It is worth highlighting the importance that airport users place on a frequent and reliable service to the airport. Even a relatively minor delay to their arrival at the airport could mean a missed flight with all of the financial and logistical impacts that this implies.
- 7.5. The impact of each of the Issues (within the Determination) on HEOC (identified at paragraph 7.1 above) is now dealt with, in turn, below.

### **Paddington Platform Concession**

- 7.6. This situation arises from HEOC conceding a platform at Paddington to the benefit of MTR and others (e.g. GWR). HEOC is suffering as a consequence of supporting the wider industry and this was not adequately considered by the ADC in reaching its Determination.
- 7.7. Under its Track Access Agreement, HEOC has hard contractual rights to the sole use of Platforms 6 and 7 at Paddington. This enables a train to be always in one of those platforms removing the requirement for passengers to wait for an incoming train. This minimises conflicting passenger movements at the train door and is a clear passenger benefit.
- 7.8. To enable the introduction of the enhanced Great Western timetable in December 2018 and to accommodate the delays to the Crossrail project, the Department for Transport approached HEOC to temporarily give up their rights to one of the platforms until such time that the Elizabeth Line was expected to operate in the Central Operating Section. This request was included in the Overarching Agreement between HEOC and the DfT entered into as part of Project Hermes.
- 7.9. Following significant analysis as to the impact on both reliability and passengers, in support of the wider rail industry, HEOC agreed to temporarily reduce its passenger proposition and step down to single platform operation at Paddington for a limited period of 12 months commencing in December 2018 (the “**Single Platform Arrangement**”).
- 7.10. The Single Platform Arrangement is recorded in a series of agreements listed below;
  - 7.10.1. Under the terms of the Overarching Agreement (17 April 2018), HEOC agreed to operate from Single platform at Paddington during the Relevant Period (31/12/18 – 31/12/19).
  - 7.10.2. 7th Supplemental agreement to Track Access Agreement (29/06/18) – Single platform at Paddington during Service Change Period (December 2018 – December 2019).
  - 7.10.3. Side letter (07/03/2019) establishing principles of single platform operation agreed between HEOC/DfT, and HEOC/GWR.
  - 7.10.4. First Deed of Amendment to the Overarching Agreement (28/02/20) – Further extension to single platform agreed until 31/03/21,
  - 7.10.5. 8th Supplemental Agreement to the Track Access Agreement (08/01/2020) – Single platform at Paddington amended to December 2020 – 31 March 2021.

- 7.10.6. Further minor extension agreed with DfT until the 16 May 2021 timetable with agreement to discuss a further extension.
  - 7.10.7. Project Hexagon Supplemental Agreement (October 2020) – HEOC agree to continue single platform operation until the earlier of (1) 31 December 2023 and (2) the commencement of full Elizabeth Line services.
  - 7.10.8. 9th Supplemental Agreement to the Track Access Agreement drafted and agreed but not signed by HEOC due to ongoing negotiations with the DfT around operating costs. Draft reflects single platform operation until the earlier of (1) 31 December 2023 and (2) the commencement of full Elizabeth Line services.
- 7.11. HEOC agreed to the Single Platform Arrangement on the basis that:
- 7.11.1. it would be for a limited period only;
  - 7.11.2. a full train service of 4 trains per hour could and would be maintained throughout; and
  - 7.11.3. there was sufficient capacity at Heathrow to “flip” the usual service by working from 2 platforms at T5.
- 7.12. HEOC has agreed to extend the Single Platform Arrangement on a number of occasions (as explained above at paragraph 7.10) due to the continued delays with Crossrail and the subsequent impact to the running of the Elizabeth Line. It is currently agreed that the Single Platform Arrangement will be extended until the earlier of (i) December 2023 or (ii) the full commencement of services on the Elizabeth Line.
- 7.13. It is currently anticipated that HEOC will revert back to operating two platforms at London Paddington once the Crossrail Central Operating Section (“**CCOS**”) is open. This was originally expected in December 2019 and is currently expected in the second half of 2022 at the earliest.
- 7.14. In order to accommodate this enforced change, the layover time was switched from a situation whereby the trains waited at Paddington Station to the current situation where they are required to wait at Heathrow Terminal 5, with the HEOC trains effectively reducing the capacity at the Terminal 5 station and the associated infrastructure.
- 7.15. Transport for London, via MTR, is now disputing access rights at Terminal 5. HEOC, therefore, finds itself in a position where it is being penalised by TFL having supported the same organisation by agreeing to the Single Platform Arrangement. This is manifestly unfair and contrary to the industry wide mitigations that have been put in place to support both TFL and GWR.
- 7.16. A simple solution for the ORR would be to instruct Network Rail to return both platforms at Paddington to HEOC, thereby ending the Single Platform Arrangement.



### Rationale for Single Platform Arrangement

- 7.17. HEOC concluded the Single Platform Arrangement as part of the overall Overarching Agreement. This agreement covered the handover of the Old Oak Common depot to HS2 and the implementation of the Services Agreement with GWR to provide the HEX Service.
- 7.18. HEOC agreed to the Single Platform Arrangement to benefit the broader rail industry by facilitating the delivery of Crossrail, HS2 and the enhanced DEC19 Western Route TT.
- 7.19. HEOC derived no benefit from the Single Platform Arrangement and indeed since March 2021 is paying considerable costs to ensure its safe operation (and, further, HEOC's passengers are receiving a degraded experience at Paddington given the negative impact of gateline segregation; and also given the lack of a "walk-on" service at the platform, as there would have been under normal dual-platform operation).
- 7.20. In contrast, MTR, GWR, Network Rail and TFL have all derived material benefit from the Single Platform Arrangement:
  - 7.20.1. MTR has been able to mitigate the delay to the CCOS which required MTR services to continue operating from high-level platforms at Paddington. Had HEOC not given up the platform, there would not have been capacity at Paddington for MTR to continue to operate at the high-level;
  - 7.20.2. GWR benefitted from service changes in December 2019;
  - 7.20.3. TFL benefitted from being able to continue to operate Crossrail services from the high level at Paddington; and
  - 7.20.4. Network Rail benefitted from reducing performance risk and planning issues at London Paddington.

### Operational impact of reduced platform access for HEOC

- 7.21. The Single Platform Arrangement at Paddington has increased the complexity of platform operations. HEOC and GWR passengers have to be managed as separate flows and directed to different gatelines. For the first time at Paddington, HEOC passengers are required to board and alight simultaneously within a much shorter dwell time.
- 7.22. Between December 2019 and February 2020, some performance impacts relating to the Single Platform were seen with a dip in right time departures and increase in cancellations. However, these were ameliorated by the traditionally quieter start to the year and the start of the pandemic timetable in March 2020.
- 7.23. HEOC operated a half hourly service from March 2020 until February 2021 due to the impact of the pandemic. This allowed a dwell time of 22 minutes at Paddington resulting in nil impact due to single platform operation.
- 7.24. HEOC resumed operating four trains per hour from London Paddington on 1 March 2021.

### Return of 2 platforms at London Paddington to HEOC

7.25. HEOC currently anticipates that it will return to operating 2 platforms at London Paddington, either:

7.25.1. Stage 5C (full operation of MTREL Services with 6 trains per hour to London Heathrow, including 4 to T4 and 2 to T5), that will see MTREL services operating from low-level platforms at Paddington, is seen as an enabler for HEOC to return to a 2-platform operation at London Paddington in order to accommodate 2 trains per hour MTR services to T5, HEOC will need 2 platforms at Paddington.

7.25.2. Stage 5B (September 22) will see MTREL services moving to low-level platforms at London Paddington and running of services between East and West through CCOS, a performance review period (between Stages B and C) has been factored to assess the impact of CCOS on Great Western Main Line. Based on the success of Stage B, Stage C will be implemented which is currently expected in December 22.

7.26. It could be earlier if the industry partners who have benefited from HEOC's flexibility could offer some flexibility in return, especially given that there has been no return to the enhanced TT of 2019 due to reduced passenger numbers as a result of the pandemic.

### Operational and Performance Impact

7.27. The cumulative impact of the Single Platform Arrangement and the Determination will have a material and damaging impact on both HEOC and the service which it is able to provide to its customers.

7.28. The HEX service is designed to meet the needs of airport passengers which are quite distinct from those of domestic rail / commuter passengers. The journey for airport passengers is time critical because in most cases those passengers need to arrive at the airport by a given time in order to meet their flight schedule; as a result service frequency and reliability is crucial to passenger satisfaction.

### Why HEOC requires its current level of platform access at Heathrow Terminal 5;

7.29. With single platform operation at Paddington, HEOC need 2 platforms at T5 to accommodate 5 circuits (meaning 5 trains in operation). The 5th circuit provides resilience by allowing for stepping-up of units during fleet/infrastructure failures.

7.30. If a unit fails at T5 now, the unit on the other platform could be stepped-up in order to maintain service continuity and prevent any negative impact on passenger experience. Under the PMO option, this solution is no longer available, and service recovery takes more time, impacting more passengers. It is again worth highlighting the effect of delays on airport passengers and staff will include missing flights which have a disproportionate impact on their lives.

- 7.31. Removing a platform at T5 will reduce HEOC to operating with 4 circuits, this will result in providing no resilience during fleet/infrastructure failures and will increase the number of passengers who would need to change trains at CTA during disruption.

Why it is not practicable for HEOC to move to the different model ordered by the ADC and to maintain a four train per hour service to T5;

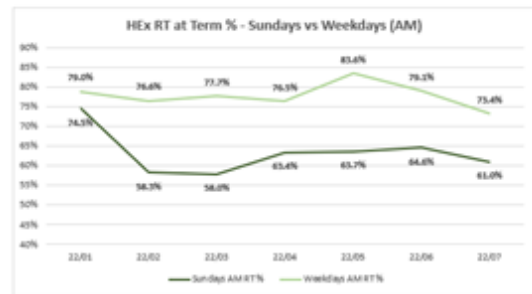
- 7.32. With HEOC's services stepping-up at both ends (London Paddington and T5), the turnaround times will be reduced to 7 and 10 minutes (9 minutes on Sundays) at London Paddington and T5 respectively. These turnaround times are on the assumption that services arrive right on time, any delay due to fleet or infrastructure failure at either end will result in extended journey times reducing or removing any turnaround time resulting in severe delays and cancellations. Also, tight turn-around times create a Platform Train Interface (PTI) risk that is exacerbated as a result of airport customers travelling with luggage, language barriers and with less time available to board trains.
- 7.33. Late running services from T5 to London Paddington will have an impact on the wider timetable due to clashes with the paths of GWR services at Airport Junction resulting in unnecessary delays to the network.

Performance impact of the PMO solution

- 7.34. The proven negative performance impact of running 4 circuits instead of 5 is demonstrated in the below analysis of the Sunday morning service when HEOC only has 4 units available due to infrastructure constraints.
- 7.35. It is worth noting that between 0500 and 0800 on a Sunday morning, only HEOC and MTR trains are running out of London Paddington, and, furthermore, HEOC has the benefit of 2 platforms. Nonetheless, the HEX service is 15 percentage points less reliable than across the same time period on a weekday.
- 7.36. The graphs below demonstrate that any attempt to run a similar pattern for 18 hours per day and with 12 GWR services per hour in the mix would affect the performance of all services in and out of Paddington.

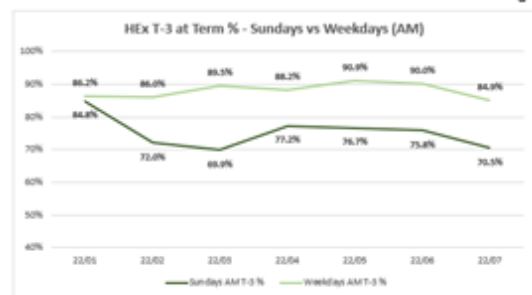
**Right Time at Terminus %**

Period	Sundays AM RT %	Weekdays AM RT %
22/01	74.5%	79.0%
22/02	58.3%	76.6%
22/03	58.0%	77.7%
22/04	63.4%	76.5%
22/05	63.7%	83.6%
22/06	64.6%	79.1%
22/07	61.0%	73.4%
YTD	63.3%	78.0%



**Time within 3 at Terminus %**

Period	Sundays AM T-3 %	Weekdays AM T-3 %
22/01	84.8%	86.2%
22/02	72.0%	86.0%
22/03	69.9%	89.5%
22/04	77.2%	88.2%
22/05	76.7%	90.9%
22/06	75.8%	90.0%
22/07	70.5%	84.9%
YTD	75.3%	87.9%



- 7.37. It will inevitably result in HEOC's customers suffering delays, cancellations, loss of connectivity with T5 requiring Inter Terminal Transfer services for onward journeys resulting in increased further journey times.
- 7.38. This will lead to a drop in customer satisfactions levels, negative impact on brand reputation, and ultimately loss of revenue for HEOC.

**Passenger Impact**

**Frequency of trains and duration can T5 passengers now expect to/from Paddington?**

- 7.39. HEOC intends to continue to run 4 trains per hour to T5 however with the additional 2 MTR services per hour also running into T5, there is a significant performance risk as outlined above.
- 7.40. The Heathrow Surface Access Insights Synthesis (April 2019) identifies Speed, Ease and Trust as the three core needs that are central to how customers approach Surface Access to the airport.
- 7.41. The performance impact as a result of the PMO option operating pattern at T5 will negatively impact the speed and reliability of the HEX service, and eventually the passenger experience.
- 7.42. A reduction in service frequency to 2 trains per hour would decrease choice for airport passengers, the large majority of whom use HEx as the quickest way to and from Central London, and would increase the crowding on such services.
- 7.43. Reducing the HEx service will be to the detriment of the passengers who prize it for the frequency, accessible, fast and direct service that it provides. For

many customers it is also the most economic means of travel to Heathrow, with highly competitive advance fares and “kids go free” discounts.

- 7.44. For PRM passengers the on-board facilities (dedicated wheelchair space, WC) plus the availability of assistance staff in stations and on board make HEx the preferred choice for travel to and from the airport. This would also be put at risk by reducing the service or making it less reliable.

Percentage of passengers/passenger journeys impacted

- 7.45. Performance on a Sunday morning when HEOC currently runs with 4 circuits for operational reasons, right time performance is on average 15% worse than the rest of the week (see clauses 7.34 to 7.36 above). Right Time Moving Annual Average as at the end of rail period 7 stands at 75.7% so could drop to c. 60% therefore impacting 15% of HEOC customers. This scaled up using October numbers could therefore affect 35,700 passengers per month. At 2019 passenger levels, i.e prior to the pandemic, it would affect approximately 75,000 passenger journeys per month.
- 7.46. Once again it should be noted that a significant proportion of those passengers delayed will suffer from missed flights, leading to additional personal disruption and considerable costs to both the passenger and the Airport.
- 7.47. As International travel increases following the pandemic, international travellers both business and leisure, who typically use the HEX service, will be particularly impacted by any reduction in the HEX service. As international travel increases following the pandemic, HEX’s own research shows that what their customers value most highly about HEX is that its service is ‘Quick, Efficient and Fast’ [**Appendix 8**].
- 7.48. The slides set out in [**Appendix 9**] highlight the importance to passengers of the impact of the 4 trains per hour frequency of the HEOC service.

Limited passenger benefit of permitting MTR access to Heathrow/T5 on the terms of the ADC Determination

- 7.49. The chart below, by using 2017 data (being the year in which HEOC last ran both services), demonstrates that when HEOC ran the Express and the Connect services into both T4 and T5 the dominant share of passenger numbers went to HEOC, and the Connect market was much lower. Until the Elizabeth Line opens fully, HEOC submits that MTR’s market share is likely to remain proportionately very similar (since the relevant demographics in the region between London and Heathrow remain similar today to how they were in 2017). Therefore, the solution effectively required by the ADC will be likely to result in passengers ceasing to use rail in favour of other modes of transport. It will not increase choice / ridership on this rail route. Further evidence for this assertion is in fact provided by MTR itself, as MTR is not increasing overall services to the airport. In fact, the only change MTR is proposing is to extend the 2 services from CTA to T5 and there is no evidence whatsoever as to why this would increase ridership.

<b>Journeys</b>	<b>2017</b>	
HEOC	6,374,029	
HE Connect	382,785	6 % compared to the HEOC number above

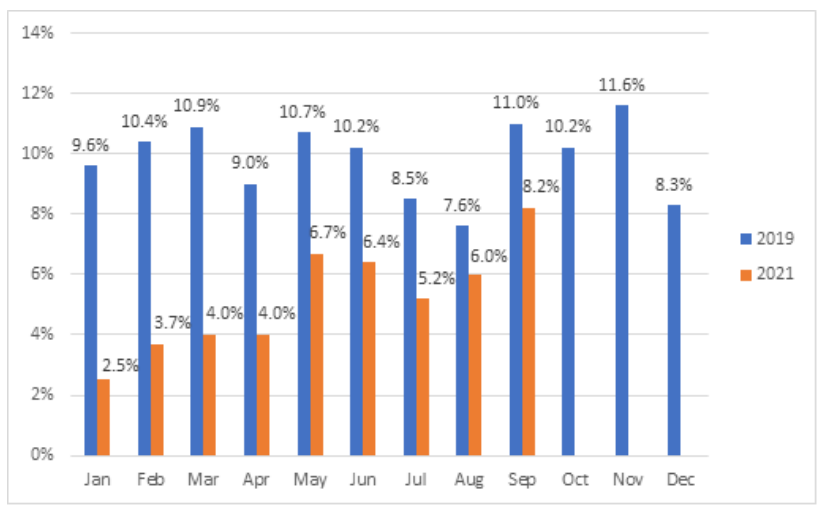
Safety impact/risk (e.g. of PTI incidents) from the ADC Determination?

- 7.50. If HEOC were to run 2 trains per hour this would create a safety risk due to passengers running for trains given the reduced frequency and greater risk of missing flights etc. If, for whatever reason, a train is cancelled, the passengers would need to wait an hour for the next service.
- 7.51. The PMO solution also increases the requirement for passengers to have to change at CTA (due to poor service performance) which will increase customer confusion and so Platform Train Interface risk increases.

**Financial Impact**

- 7.52. The Determination and the proposed timetable change will have a substantial financial impact on HEOC in terms of cost, revenue and profit.
- 7.53. HEOC is already in a disadvantageous position compared to other parties. HEOC has incurred heavy losses as an open access operator during the pandemic. Network Rail and GWR refused to negotiate alleviation on track access and train leasing agreements when this had previously been discussed as part of the previous Track Access dispute.
- 7.54. At the earliest opportunity on 01/03/21 when passengers began to return to the airport, the service was stepped up to 4 trains per hour. Upon the HEX service returning to 4 trains per hour there was a clear mode shift away from road transport in terms of accessing the airport, as can be seen in the mode share chart below.

**HEOC Mode share graph for 2019 and 2021**



- 7.55. HEOC's losses in 2020 were £33.1m [REDACTED].
- 7.56. This is in direct contrast to both TFL and GWR whose costs have been underwritten by the Government throughout the pandemic and will continue to be for the foreseeable future.
- 7.57. The fixed charges of £46.5m under the Services Agreement and Track Access Agreement make HEOC liable for the total charges regardless of the service frequency. HEOC will receive no rebate should the service reduce 2 trains per hour.
- 7.58. The PMO solution would limit HEOC's ability to impose penalties on the GWR for fleet failures under the terms of the Services Agreement. Total Financial Impact - £40K per rail period.
- 7.59. Similarly, the TOC performance impact due to HEX services stepping-up at both ends will result in HEOC importing delays to the network, and HEOC being liable to make performance payments to Network Rail under Schedule 5 of the Track Access Agreement. Total financial impact - £43K per rail period.

### **Brand and Reputational Impact**

- 7.60. HEOC has consistently either been top or second in the Network Rail Passenger Survey and well above industry levels as shown below:

2018 Spring		2018 Autumn		2019 Spring		2019 Autumn	
Industry	HEOC	Industry	HEOC	Industry	HEOC	Industry	HEOC
81%	95%	79%	96%	83%	95%	82%	96%

- 7.61. The Heathrow Surface Access Survey results for 2018 to 2019 show that our customers consistently rate us highly in:

7.61.1. Overall satisfaction - 4.4/5 average score in 2019 (we don't have any 2018 data)

7.61.2. Punctuality of service – 4.5/5 average score from Jan 18 to Dec 19

7.61.3. Frequency of service – 4.4/5 average score from Jan 18 to Dec 19

- 7.62. HEOC has a powerful brand;

7.62.1. HEOC was one of the first “airport express” services operating in the world and commenced operation in 1998. In the intervening 23 years, HEOC has built a global reputation as the best airport rail service in the world, as shown, for example, through recognition and research by the Global AirRail Alliance, including winning global awards.

7.62.2. HEOC's unique passenger proposition is a 15-minute journey every 15 minutes operating with clockface departures from dedicated platforms between Central London and Heathrow, the UK's only hub airport and gateway to the world.

- 7.62.3. HEOC's unique proposition recognises the inherent differences between a domestic rail service and that serving an international hub airport. Regular research has shown that airport passengers value speed, ease and trust Heathrow Surface Access Insights Synthesis (April 2019)
- 7.62.4. In 2001, just three years after commencement of operations, HEOC featured as a Superbrand **[Appendix 5]**. A Superbrands® gives an overview of the UK brand environment, ranking the top 500 most trusted brands across many sectors and industries. There's a thorough process to determine which companies are a Superbrand. Not only is the advice from an independent council of brand experts taken into account, but a brand survey is also completed by thousands of consumers. Brands need to have established the finest reputation in their field and offer customers significant emotional and/or tangible advantages over their competitors. Brands are also judged on their quality, reliability and distinction. Since then, HEOC has featured no less than 7 times and most recently in 2017 **[Appendix 6]**.
- 7.63. The Determination represents a threat to the HEOC brand as a result of up to 2 years of less reliable or less frequent services. This reputational damage would be inflicted at a time when the business is in recovery from the pandemic and any negative impacts are likely to be magnified.

### **Colleague Impact**

- 7.64. Currently approximately 65,000 employees work at Heathrow across 300 separate companies. These employees are collectively known as "Team Heathrow".
- 7.65. HEOC offers significant discounts to Team Heathrow to encourage them to travel to and from the airport via public transport.
- 7.66. HAL employees (c5,600) are currently entitled to free travel on HEOC. From 1 January 2022, this will revert to the pre-pandemic discounts of 75% with free travel after 6pm and at weekends. All other Team Heathrow colleagues are entitled to 75% discounts and this discount will continue into 2022 and beyond. These measures all contribute towards the airport meeting its sustainability and carbon goals.
- 7.67. TFL offered similar 75% discounts up until December 2020 which was fully funded by HAL. This funding was withdrawn due to the financial impacts of the pandemic and no such discount exists on TFL rail. TFL have no proposals to introduce any such discounts in the foreseeable future.
- 7.68. Should the Determination be enacted from 3 January and HEOC be forced to drop to 2 trains per hour, Team Heathrow colleagues will see the frequency of discounted travel drop to a 30-minute service. If HEOC were to run the PMO solution, all Heathrow colleagues will be adversely affected by a reduction in reliability of all train services to Heathrow (whether Hex services or otherwise). With the importance of airport and airline shift patterns particularly for pilots and cabin crew, this drop in frequency will push more colleagues onto private transport modes such as car, taxi and private hire.



## **Impact on Network Capacity**

- 7.69. If the ORR decides that the ADC Determination should be upheld, resulting in the required changes from 3 January 2022, HEOC may need to consider all alternative options to maintain 4 trains per hour to T5 including reverting to the network arrangements prior to the introduction of single platform at Paddington.
- 7.70. Whilst that arrangement is, in some ways, outside of the remit of the ORR's consideration, there is a relevant angle for ORR. Although HEOC remains committed to supporting the industry in terms of the most efficient use of network capacity (as is also referred to in ORR's letter of 1 November 2021, "Future Service Levels and Unused Access Rights"), the operational and financial consequences to HEOC of the implementation of the ADC Determination would be so severe that HEOC would have no alternative but to seek to mitigate its position. Any such action would of course result in a significant impact on MTR and FGW services operating from Paddington.

## **8. DECISION SOUGHT**

- 8.1. HEOC submits that this Notice of Appeal should proceed to appeal as it raises matters of critical importance not only to HEOC, but the Dispute Parties, Network Rail mainline and the wider rail industry.
- 8.2. Pursuant to this Notice of Appeal, HEOC accordingly requests a declaration from the ORR that:
- 8.2.1. HAL should not be required to accept MTR's request to exercise its Firm Rights, on the basis there was no capacity for these to be accommodated during the December 2021 timetable;
  - 8.2.2. HAL followed the appropriate HAL Code processes either under the HAL Code as published, or as amended by the Change Strategy, and in either case, HAL's decision made pursuant to the Decision Criteria within the HAL Code should stand; and
  - 8.2.3. HAL acted fairly and in a non-discriminatory manner, having correctly applied the Decision Criteria.
  - 8.2.4. The ADC incorrectly interpreted Condition D4.6; and
  - 8.2.5. The ADC incorrectly deemed that exceptional circumstances applied such as to warrant it derogating from HAL's decision on the Decision Criteria.

Please acknowledge receipt of this Notice of Appeal.

Yours faithfully



Sophie Chapman  
**Business Lead**  
**Heathrow Express**

( [REDACTED] )

*Encl.:*

*Appendices 1-10*

Copy by email to:

- MTR Corporation (Crossrail) Limited: [REDACTED] /  
[REDACTED]
- Heathrow Airport Limited: [REDACTED] /  
[REDACTED]
- First Great Western: [REDACTED]
- Transport for London: [REDACTED]
- Network Rail: [REDACTED]