



James Osborn
Case Officer
Office of Rail and Road
Cc: Martin Jones

26 November 2021

Dear James

Appeals under Part M of the HAL Network Code by Heathrow Airport Limited and Heathrow Express Operating Company Limited in respect of Timetabling Panel Determination HAL/TTP003 (the Appeals)

ORR's letter of 19 November 2021 invites the parties to the Appeals to provide their written representations on the following:

- (i) ORR's legal power to act as an appeal body in this dispute and under which statutory provision(s);
- (ii) Which party/parties have a right to appeal to ORR and under which statutory and/or contractual provisions, including:
 - a. The inter-relationship between a party's right to appeal under the contractual provisions of the HAL Network Code and any statutory right to appeal
 - b. The inter-relationship between Parts D and M of the HAL Network Code with respect to a party's right to appeal.

ORR's legal power to act as an appeal body in its dispute and under which statutory provision(s)

We struggle to see the statutory basis on which the ORR has the power to hear these Appeals. As noted in our letter of 12 November 2021, we do not believe ORR has sufficient vires to hear these Appeals on the basis that the Heathrow Infrastructure is an exempt facility pursuant to section 3 of The Railways (Heathrow Express) (Exemptions) Order 1994, which excludes the HAL network and oversight of access to it from ORR's regulatory function. We also do not believe The Railways Infrastructure (Access and Management) Regulations 2016 afford the ORR statutory power in the current circumstances.

Which party/parties have a right to appeal to ORR and under which statutory and/or contractual provisions, including:

The HAL Appeal

ORR has previously stated in April 2018 that it will 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 beyond the Heathrow Rail Infrastructure. As observed in our letter of 12 November 2021, we believe that the dispute between MTR and HAL is about access to Heathrow Terminal 5 for MTR services with Firm Contractual Rights under its track access agreement with





HAL (the **HAL TAA**). We believe that to deliver the solution contained in the Determination it is only necessary to implement timetable changes on HAL infrastructure. These changes involve alterations to platforming at Heathrow Terminal 5 (for HEOC and MTR) and the diversion of MTR services from Terminal 4 to Terminal 5. We are not aware of any timetable changes being required on Network Rail infrastructure as a result of the Determination.

Consequently we are of the view that, even if ORR does have the legal power to act as an appeal body for the HAL Appeal, ORR's grounds for not hearing the HAL Appeal under Condition M4.1.1 of the HAL Network Code (which forms part of the HAL TAA) are met, as the HAL Appeal is not of sufficient importance to the industry.

The HEOC Appeal

In addition to the statutory reasons given above, our letter of 12 November 2021 sets out in some detail our view as to why HEOC does not meet the definition of a Dispute Party for the purposes of Part M of the HAL Network Code and does not therefore have a right to appeal pursuant to Condition M2.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J. James'.

Jonathan James
Head of Contract Management

