

Jonathan Rodgers
Senior Executive, Access & Licensing
Telephone: 0207 282 3775
E-mail: jonathan.rodgers@orr.gov.uk



16 May 2019

Ian Messner
Customer Manager
Network Rail Infrastructure Ltd
Floor 2, St Patrick's House
27 Penarth Road
Cardiff
CF10 5ZA

Chris Dellard
Network Access Strategy Manager
Keolis Amey Operations (TfW Rail Services)
St Mary's House
47 Penarth Road
Cardiff
CF10 5DJ

Dear Ian and Chris

Approval of the 92nd supplemental agreement to the track access contract between Network Rail Infrastructure Limited and Keolis Amey Operations (TfW Rail Services) (TfW)

1. We have today approved the above supplemental agreement submitted to us formally on 16 May 2019 under section 22 of the Railways Act 1993 (the Act). This letter explains our decision.
2. The purpose of this agreement is to provide TfW with the rights needed to introduce a new seven days a week service between Chester and Liverpool Lime Street, via Runcorn, from the Subsidiary Change Date (SCD) 2019 until the Principal Change Date (PCD) 2019 (the expiry date of the current track access contract).
3. As well as amendments to Schedule 5 of the track access contract, the agreement includes amendments to Schedule 3 (Collateral agreements), Schedule 4 (EBM Weights) and Schedule 7 (additional charges for additional signal box opening).
4. This 92nd Supplemental Agreement originally only contained the Sunday part of these new services and was issued for industry consultation between 9 April and 7 May 2019. The weekday and Saturday services were contained in the 88th Supplemental Agreement which had been consulted on in August/September 2018. However, the parties had delayed submitting that application to ORR due initially to the availability of the rolling stock, and then the requirement to calculate monitoring point weightings for Appendix 1 of Schedule 8, to ensure the proposed services would be monitored and incentivised for performance.

5. In the event, submission of the draft agreements was made to us extremely late and it has still not been possible to include monitoring points in Schedule 8. Fortunately, no issues were raised by consultees and our own review identified no operational or performance issues except for the missing amendments to Schedule 8 and deficiencies in the legal drafting which have been corrected.

6. Our policy, which reflects legislative requirements, is that all passenger services should be monitored and included in the performance regime to incentivise good performance and provide compensation when services are delayed. These services will not be covered initially but we require the parties to submit a further supplemental agreement as soon as possible to rectify this. The amendment should include retrospective application to the start of services.

7. Following recent discussions with the parties, it was agreed that the 88th supplemental agreement would be combined with the 92nd supplemental agreement in order to ensure that the full seven day service had access rights from SCD 2019.

8. In considering the agreement and in reaching our decision, we have had to weigh and strike the appropriate balance in discharging our statutory duties under section 4 of the Act. We have concluded that approval of this supplemental agreement is consistent with our section 4 duties, in particular those relating to protecting the interests of users of railway services (section 4(1)(a)), promoting the use of the railway network for the carriage of passengers (section 4(1)(b)) and enabling persons providing railway services to plan their businesses with a reasonable degree of assurance (section 4(1)(g)).

9. Under clause 18.2.4 of the track access contract, Network Rail is required to produce a conformed copy, within 28 days of any amendment being made, and send copies to ORR and the Train Operator. Please send the conformed copy to me at ORR.

10. Electronic copies of this letter, the approval notice and the agreement will be sent to Keith Merritt at Department for Transport and to Peter Craig at Network Rail. Copies of the approval notice and the agreement will be placed on ORR's public register (website) and copies of this letter and the agreement will be placed on the ORR website.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jonathan Rodgers', written in a cursive style.

Jonathan Rodgers