

10th January 2013

FAO Mr Rob Mills
Office of Rail Regulation
One Kemble Street
London
WC2B 4AN

Dear Rob

Schedule 4 & 8 Consultation

Please find attached the response from Arriva. This response includes the input from the following train operators:

Cross Country
Arriva Trains Wales
Chiltern
LOROL
DB Regio Tyne & Wear
Grand Central.

Yours sincerely



Richard McClean
Managing Director

Metro Depot
Cheswick Drive
Gosforth
Newcastle upon Tyne
NE3 5DG

T: 0191 203 3600
W: nexus.org.uk/metro



Registered Office:
Great Central House, Marylebone Station,
Melcombe Place, London NW1 6JJ.
Company Registration Number: 06733214.

Transparency of possession management

1. What are your views on whether or not passengers and freight customers are adequately consulted on the planning of possessions? What activity currently takes place?

Passengers and freight customers are consulted on the planning of possessions by the train operators who provide them with rail services. These consultations are undertaken through the processes that the train operators have in place for engagement with their customers. However, other than for the most significant project related schemes, these consultations are more likely to take the form of information provision with some engagement around the nature of the arrangements to mitigate the disruption caused by the possessions. This situation arises because the possession planning process does not allow time for a more structured preference related consultation to be undertaken and relates to the degree of optioneering consultation Network Rail undertake with the train operators.

The experience of Arriva passenger operators is that a degree of consultation with train operators is undertaken by Network Rail. However, this is not systematically undertaken in terms of:

- The specific operators involved for each possession – it would appear that Network Rail often undertake consultations primarily with a subset of operators affected by a specific possession rather than all affected parties
- The timing of the consultations undertaken: often the consultations undertaken occur relatively late in the possession and work planning process after the time has passed when the “shape” of the possession can be influenced.

As a result, the effectiveness of the consultation process is reduced and the resulting possessions are sub-optimised leading to greater disruption to train services than could have been achieved.

2. What are your views on whether we should encourage Network Rail to consult with passengers and freight customers?

Consultation with passengers and freight customers should be undertaken by the train operators that provide them with rail services. However, Network Rail should structure their possession planning and operator consultation processes to enable meaningful consultations with passengers and freight customers to be undertaken and the outputs of this to be integrated into the possession planning process itself.

3. If we were to encourage Network Rail to consult with passengers and freight customers in the planning of its possessions, do you have any suggestions on how we might go about doing this, for example, how such an obligation would be phrased and monitored?

As stated above, consultations with passengers and freight customers should be undertaken by the train operators that provide them with rail services and not by Network Rail. However, the requirement for Network Rail to structure its planning and train operator consultation process to allow train operators to consult effectively with passengers and freight customers and for the outputs of these consultations together with other inputs from train operators to be given meaningful consideration needs to be reinforced in practice.

Schedule 4 & 8 overall

4. Do you agree with the SDG research findings and conclusions on whether to set Schedule 4 & 8 payment rates so that they do not compensate train operators in full for the impact of service disruption due to Network Rail and other operators? If not, please tell us why.

A reduction in the Schedule 4 & 8 payment rates will increase the risk of all train operator businesses leading to a reduction in the value of those businesses. This will lead to reduced franchise payments and reduced profitability. Given the significant reputational and other incentives for both train operators and Network Rail to improve performance, it is unlikely that any reduction in the Schedule 4 & 8 payment rates would drive any significant changes in behaviour.

5. Do you agree that we should continue to set Schedule 4 and 8 payment rates so that they compensate train operators for the full financial effect of service disruption due to Network Rail and other operators, where we do so currently? If not, please tell us why.

It is essential that the Schedule 4 & 8 payments rates are set so that they compensate train operators for the full financial effect of service disruption due to Network Rail and other operators. However, it should be noted that this is not fully the case today. The dominant feature of Schedule 8 payments rates is the linkage to the marginal revenue effect of poor and improved performance – this is not fully reflective of the full financial effect of service disruption due to Network Rail and other operators in that:

- The negative revenue impact of disruption is very quick to be reflected in operator income levels – indeed, such impacts are evident when such poor performance is predicted such as in situations of forecast bad weather, Network Rail industrial action or associated with big external events such as the Olympics even if these events do not, in fact, affect performance delivery.
- The benefit of improved performance is very slow to be reflected in operator income levels – passengers need to be convinced of the improving trend before changing their behaviour.
- When performance is already high for a specific train operator, the benefits of incremental improvements in performance are small compared to the situation of a train operator with relatively poor performance levels.
- Service delays drive not only impact on train operator income levels, they also drive increasing costs associated with:
 - Disrupted staff rosters
 - Higher costs from 3rd party suppliers such as train maintainers for disruption to their processes
 - Compensation payments to passengers and freight customers
- Under funding of the costs associated with the provision of rail replacement bus costs.

6. Are you of the view that there are other steps we could take to encourage train operators to have a stronger influence on the behaviours of Network Rail, in addition to those we are doing already?

Train operators are already strongly motivated to influence Network Rail in this area. No further encouragement is needed. However, further requirements on Network Rail to constructively address the inputs provided to them by train operators in this area would be beneficial.

7. Do you agree with our proposal not to introduce the Joint Restrictions of Use concept into Schedule 4 of template track access contracts? If not, please tell us why.

There does not seem to be any clear benefits to introducing the Joint Restrictions of Use concept into Schedule 4 of template track access contracts.

8. To what extent (if at all) do you think the current contractual wording of Schedules 4 and 8 is acting as a barrier to Network Rail and train operators minimising disruption to passengers and freight customers during extreme disruption e.g. during severe weather? If you are of the view that it does act as a barrier, we would welcome any specific proposals on how it can be improved.

The barriers to Network Rail and train operators minimising disruption to passengers and freight customers during extreme disruption e.g. during severe weather do not relate to the current contractual wording of Schedules 4 and 8.

Schedule 4 passenger possessions regime

9. Do you agree that the Access Charge Supplement (ACS) should be calculated using Network Rail's revised route based Schedule 4 costs estimation methodology? If not, please tell us why.

It makes sense to disaggregate these costs so as to be fully reflective of the actual costs incurred. However, it is not clear how this disaggregation will be delivered for train operators or services which operate across more than one route.

10. Do you consider there is further value in Network Rail achieving greater disaggregation in the methodology of the ACS calculation and if so do you have any suggestions how this might be achieved?

The currently proposed level of disaggregation appears to be challenging in itself – it would appear sensible to test the effectiveness of this before seeking to refine the process further.

11. Do you agree that we should update the estimated bus mileage payment rate based on actual amounts paid during CP4, rather than simply uplift the current rates by inflations? If not, please tell us why.

It is essential that the bus mile payment rate should be as close a reflection of the actual costs to be incurred by train operators as it is cost effective to achieve. It would appear sensible to do this by using the actual costs incurred in CP4 uplifted by projected cost base increases including those associated with foreseeable changes in BSOG and other factors.

12. Do you agree that we should continue with the current formula for calculating revenue loss compensation for cancelled train services when there are replacement buses? If not, do you have any suggestions for how we could improve this aspect of Schedule 4?

Cancellations during service disruption impact more significantly on passengers than even severe delays. This is increasingly the case with higher train load factors – it is often not possible to accommodate the displaced passengers onto other services due to overcrowding. In addition, where the cancellations affect last trains or displace passengers so that they are unable to travel until the next day, the disruption to passengers is even more severe. On this basis, the current 1.5 service interval multiplier is insufficient to reflect the actual revenue loss and cost increases incurred by train operators – further evaluation should be undertaken to assess the actual impact so as to set a revised multiplier for trains cancelled during the operating day and for last trains.

13. Do you consider the way in which the revenue loss formula compensates franchised passenger operators when using replacement buses encourages passenger train operators to run too many buses (rather than trying to run train services using a diverted route, for example)? If so, please explain why you think this is the case.

Given that the current Schedule 4 regime under-compensates train operators for the loss of revenue and additional costs incurred for the operation of rail replacement buses, it seems unlikely that this is the case. Further, train operators are highly motivated to operate trains rather than buses as this minimises the disruption to passengers.

14. Do you agree that we should extend the scope of the protection provided by paragraph 2.9 of Schedule 4 to enable the recovery of direct costs related to amended or cancelled Type 1 possessions? If not, please tell us why?

As the costs incurred by train operators in the event of amended or cancelled Type 1 possessions can be material and the train operator has no involvement in the process, then train operators should be able to recover direct costs in these circumstances. Depending on the circumstances, there may also be identifiable revenue losses in these situations – train operators should be compensated for these.

15. If so, do you agree the threshold for triggering a claim should be £5,000 per possession? If not, please tell us why.

£5,000 per possessions seems to be a reasonable threshold of materiality.

16. Do you agree that we should update the new working timetable notification factor to reflect changes to delay multiplier values in the Passenger Demand Forecasting Handbook (PDFH)? If not, please tell us why.

The concept that advanced notification of a disruptive possession will either reduce a train operator's costs or revenue losses associated with that possession does not reflect experience or align with passenger behaviour. The notification factors should therefore be withdrawn and other incentives put in place to encourage effective and timely planning and communication by Network Rail.

If the notification factors are to be retained, they should be based on the best available reflection of passenger behaviour.

17. Do you have any further proposals for changes to notification discount thresholds or factors? If so, please explain your reasoning.

No further comments.

18. Do you agree that we should keep the Sustained Planned Disruption (SPD) revenue loss threshold the same and uprate the cost compensation by inflation by (RPI)? If not, please tell us why.

Yes.

19. Are you of the view that the provisions for claiming compensation under the SPD mechanism would benefit from clarification? If yes, please highlight which areas should be clarified.

Rather than rework the wording of the SPD provisions, an industry workshop to bring the provisions to the attention of industry and to review application scenarios would be beneficial.

Schedule 4 freight possession regime

20. Do you consider the current regime appropriately compensates freight operators for losses resulting from severe disruption caused by possessions? If not, what do you consider the level of compensation should be based on?

No comment.

21. Do you consider that the current regime appropriately incentivises Network Rail to reduce the amount of disruption faced by freight operators due to possessions? If not, how do you think incentive effects can be strengthened?

No comment.

22. If Schedule 4 compensation payment rates for freight operators were increased, should this be funded by government? If so, please explain why you think this should be the case? If not, please tell us why.

Given the current extreme pressure on public funds, it does not seem appropriate for government to fund such an increase directly.

Schedule 8 passenger performance regime

23. Do you agree that we should keep the current Schedule 8 contractual wording in relation to what train operators can claim for under the SPP arrangements? If you do not agree, do you have any proposals for alternative wording?

Yes.

24. Should we continue with the SPP threshold set at 10% or increase it? If not, please tell us why.

The current threshold should be left at 10%. The fact that this threshold is potentially easy to breach is not, in itself and issue as it would appear that current liquidated sums regime is generally adequate to address the financial impact on train operators. However, a PPM drop of 0.5% is a significant deviation and there should be a mechanism for addressing the potential impact of such a change if, in the specific circumstances, the liquidated sums regimes is not adequate.

25. If we increase the SPP threshold, what are your views on the level we should set it at?

There does not seem to be a compelling reason to change the current threshold.

26. Do you agree that we should leave the timings of Schedule 8 payments unchanged, with payments due within 35 days following the end of each four-week accounting period? If not, please tell us why.

Yes. As noted above against question 5, there are material lead and lag effects evident in revenue changes associated with worsening or improving performance. However, it seems excessively complex to attempt to mimic these in a payment structure.

27. Do you agree that we should keep the circumstances in which Network Rail and train operators can propose amendments to Schedule 8, appendix 1 via paragraph 17 the same? If not, please tell us why.

Yes. There are several foreseeable situations other than major timetable changes which may lead to a justifiable requirement to amend the Schedule 8 parameters. Network Rail's suggested reasons for train operators proposing such changes in the past seem to be without evident substantiation.

28. Are there any specific areas of paragraph 17 where you are of the view the drafting needs to be made clearer?

No.

29. Are you content for us to remove the passenger charter element of the Schedule 8 performance regime? If not, please tell us why and whether you would like us to take any alternative course of action?

In the past, the Passenger's Charter compensation triggers were the main mechanism for directly compensating passengers for the impact of poor performance. While, general improvements in performance have led to a reduction in the importance of the regimes, they may become relevant in the future. Therefore, as the current passenger charter element of Schedule 8 is voluntary, it should be retained for those train operators who wish to "buy" such an "insurance policy". Indeed, the current arrangements should be expanded to allow train operators who wish to do so to extend their option in "buy" further "insurance policies" against the emerging passenger compensation regimes such as Delay/Repay.

30. Do you agree that we should not change the way train operators cancellations to their won trains are treated under Schedule 8? If not, please tell us why.

The rational for changing the way train operators cancellations to their won trains are treated under Schedule 8 laid out in the consultation is sound and should be acted upon. The rational for not doing so because amending Network Rail's PEARS system would be difficult does not seem to an appropriate reason for not acting to developing Schedule 8 to better deliver the required incentives.

Schedule 8 freight performance regime

31. Do you agree that we should keep the Network Rail payment rate the same, but uplifted for inflation? If not, please tell us why.

In line with the underlying principles of Schedule 8, the Network Rail payment rate should be reflective of actual impact on costs and revenues of different levels of performance.

32. Do you think that the current Network Rail payment rate accurately reflects the financial impacts incurred by freight operators as a result of Network Rail caused delays to freight trains? If not, please tell us why.

No comment.

33. Do you agree that we should re-examine the evidence base for the Network Rail payment rate with the freight industry and Network Rail in CP5, and if necessary adjust the rate to reflect cost

and revenue impacts of freight operators due to Network Rail caused delays? If not, please tell us why.

In line with the underlying principles of Schedule 8, the Network Rail payment rate should be reflective of actual impact on costs and revenues of different levels of performance. This calibration should be done as part of the Schedule 8 recalibration and not delayed into CP5.

34. Do you agree that we should keep the Network Rail cancellations payments the same but uplift them for inflation? If not, please tell us why.

In line with the underlying principles of Schedule 8, the Network Rail payment rate should be reflective of actual impact on costs and revenues of different levels of performance.

35. Do you agree that we should update the congestion factor used in the calculation of adjustments to the freight operator benchmark, in order to take into account evidence being collected as part of the update of the capacity charge? If not, please tell us why.

Yes.

36. Do you agree that the Network Rail £ per delay minute payment rates used in the calculation of the freight operator payment rate should be weighted by third party freight operator delay affecting each service group? If not, please tell us why.

Yes, this approach will best achieve the purpose of the freight operator payment rate in reflecting the average impact of a minute of delay caused by a freight operator to another train operator.

37. Do you agree with our proposal to continue to set the bonus payment rates at 50% of the level of the compensation rate? If not, please tell us why.

The principle of the Schedule 8 regime is that the financial flows should reflect the financial impact of the performance level delivered on the train operator affected. An arbitrary 50% bonus rate is not evidentially aligned with this principle. Further assessment should be undertaken to determine a suitable bonus rate.

38. Do you agree with our proposal not to require Network Rail to offer incentive caps in return for an access charge supplement? If not, please tell us why.

No, it is important that the Schedule 8 regime directly incentivises all train operators, including freight operators, to manage their operations so as to minimise the impact of delay they cause on other train operators. Allowing incident caps to be purchased as an "insurance policy" against the consequences of these impacts effectively neuters these incentives and should not be continued with.

39. Do you agree that incident caps are something that could be provided by the private insurance market if Network Rail were not to offer incident caps at a reasonable price? If not, please tell us why.

No comment, the provision of insurance services is a complex matter and we have no specific knowledge of the likelihood of such a bespoke being available. However, the concerns about such arrangements being available from Network Rail apply equally in the situation where they were provided by a 3rd party.

40. Do you agree that we should continue to allow operator specific annual liability caps? If not, please tell us why.

No, it is important that the Schedule 8 regime directly incentivises all train operators, including freight operators, to manage their operations so as to minimise the impact of delay they cause on other train operators. Allowing operator specific annual liability caps as an “insurance policy” against the consequences of these impacts effectively neuters these incentives and should not be continued with.

41. Should we continue to set reciprocal annual liability caps for smaller or new freight companies? If not, please tell us why.

No, it is important that the Schedule 8 regime directly incentivises all train operators, including freight operators, to manage their operations so as to minimise the impact of delay they cause on other train operators. Allowing operator specific annual liability caps as an “insurance policy” against the consequences of these impacts effectively neuters these incentives and should not be continued with. This is true for smaller or new freight operators just as much as for larger or established freight operators.

42. Should we continue to set reciprocal annual liability caps in instances where Network Rail and freight operators cannot agree on the level the cap should be set at? Or are caps on annual liability something the private insurance market could provide if no agreement is reached.

No, it is important that the Schedule 8 regime directly incentivises all train operators, including freight operators, to manage their operations so as to minimise the impact of delay they cause on other train operators. Allowing operator specific annual liability caps as an “insurance policy” against the consequences of these impacts effectively neuters these incentives and should not be continued with.

The provision of insurance services is a complex matter and we have no specific knowledge of the likelihood of such a bespoke being available. However, the concerns about such arrangements being available from Network Rail apply equally in the situation where they were provided by a 3rd party.

Compensation for charter operators

43. Do you agree that a separate charter operator payment rate should be calculated using the same methodology used to calculate the freight operator payment rate, but based on delays caused by charter operators to other train operators? If not, please tell us why.

Yes, this approach will best achieve the purpose of the charter operator payment rate in reflecting the average impact of a minute of delay caused by a freight operator to another train operator. It is important that all operators are properly incentivised to manage their operations so as to minimise the impact of delay they cause on other train operators.

44. Do you agree with our proposal not to require Network Rail to provide incident caps to charter operators on the basis this currently results in a subsidy to charter operators? If not, please tell us why.

No, it is important that the Schedule 8 regime directly incentivises all train operators, including charter operators, to manage their operations so as to minimise the impact of delay they cause on

other train operators. Allowing operator incident caps as an “insurance policy” against the consequences of these impacts effectively neuters these incentives and should not be continued with either with or without an access charge supplement.

45. Do you agree that incident caps are something that could be provided to charter operators by the private insurance market? If not, please tell us why.

The provision of insurance services is a complex matter and we have no specific knowledge of the likelihood of such a bespoke being available. However, the concerns about such arrangements being available from Network Rail apply equally in the situation where they were provided by a 3rd party.

46. Are you content for us to set the Network Rail payment rate in the charter operator performance regime so it is the same as the Network Rail payment rate in the freight performance regime? If not, do you have any proposals on how we should update it including the evidence we could use?

Ideally, the Network Rail payment rate in the charter operator performance regime should be properly reflective of the financial impacts on charter operators of delays due to Network Rail. We have no comment on how these financial impacts should be assessed other than through the collation of data provided by charter operators. However, given the ad hoc nature of charter operators, it seems unlikely that the long term financial impacts will be significant.

47. Are you of the view that there are any other areas of the charter Schedule 8 performance regime that should be amended?

No.