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Copy to:
EMT Directors
Simon Taylor, EMT

Ref: ORR\PR13\Schedules 4 & 8

28th January 2013

Dear Rob,

PR13 Consultation – Schedules 4 and 8 Possessions and Performance Regimes

Many thanks for the opportunity to respond to the recent consultation document on Schedules 4 and 8 Possessions and Performance Regimes.

The comments below are based on the consultation document and the recent ORR workshop that East Midlands Trains (EMT) attended on 16th January 2013. This response does not seek to address all the individual questions raised in the document but tries to cover a number of key issues from an EMT's perspective.

Please note that ATOC have responded on this consultation and EMT supports the views expressed within ATOC's response.

Schedules 4 and 8 Overall

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

See comments for Question 5.

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 impact of service disruption due to Network Rail and other operators, where we do so currently? If not, please tell us why?

One of the key objectives of both the possessions and performance regimes is to help align financial incentives between Network Rail and train operators so that train operators receive an appropriate level of compensation for planned and unplanned service disruption attributable to Network Rail's restriction of use of their routes. Also, they help Network Rail understand the impact of service disruption on TOCs' costs and revenues to help drive its decision making such as its possession planning at a local level. Hence, setting the payment rates below 100% would lead to unintended consequences i.e. increasing the risk premium factored into franchise bids, and not deliver the policy objectives that ORR is seeking. These have been identified in the SDG findings that it would lead to loss to franchise value to the detriment of taxpayers.

It was suggested that below 100% payment rates could in principle encourage train operators to work more closely with Network Rail to minimise service disruption to passengers. However, despite any change to the regimes, it is to train operators' interest at all times to minimise service disruption to passengers by working closely with Network Rail with regard to engineering possessions. We believe that a reduction in payment rates would cause an adverse incentive on Network Rail to reduce disruption to services because it diminishes Network Rail's exposure to the financial impact of service disruption on train operators' revenue loss. When Network Rail and TOCs perform at an expected level, Schedules 4 and 8 should be financially neutral. Therefore, the payment rates should be calculated and set correctly to provide a realistic reflection of the impact of performance on revenue and the relative performance.

There were a number of occasions when additional disruptive possessions were requested because of Network Rail's inability to manage and carry out the originally proposed work efficiently. ORR should perhaps consider other ways of incentivising Network Rail to reduce the disruption to operators, e.g. increasing the transparency of reporting of how much work is undertaken in each blockade.

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?

The wording in the template contracts does not necessarily capture specific localised circumstances. Therefore, we are supportive of the proposed solution to have bespoke arrangements between Network Rail and train operators in their contracts, so that both parties can agree bespoke possessions and performance compensation arrangements where the current contractual wording does not work well in local circumstances.

Schedule 4 passenger possessions regime

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

We agree that ORR should update the payment rates under the Cost Compensation formula in Schedule 4. There is no mention of the train mile cost (TMC) payment rate in the consultation document and it is important to point out that the review should cover both the estimated bus mile (EBM) payment rate and the TMC payment rate as they are not mutually exclusive in the bus cost formula.

The net payment is the sum / balance between EMB (+) compensation and TMC (+/-) compensation. With particular service groups and on a number of occasions, EMT had to pay Network Rail according to the cost compensation formula whilst our services were disrupted and rail replacement buses were provided during the possession. The formula (EBM + TMC) is devised to broadly reflect the circumstances surrounding most standard possessions regardless of the scale of the possession and other factors that may cause TOCs to cancel more train services than they would want to.

There is a debate of ‘simplicity’ of the standardised formula of cost compensation against the ‘complexity’ of possessions. We believe that a major reform is not necessary, but it will be beneficial if ORR can review the practicality of TMC so that it will provide a more realistic outcome for a variety of circumstances.

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?

Schedule 4 compensation is not a factor in EMT’s decision making for amended train plans or cancellation of services in response to a possession. Our first priority is to always minimise the disruption to our customers. We would assess other predominant factors such as the impact on passengers travelling by rail, the length of the possession and alternative routes being available for diversion. Schedule 4 is a pre-determined liquidated sums compensation regime which is derived to broadly cover circumstances surrounding most ‘typical’ possessions and it remains appropriate so we should continue with the current formula subject to an update of other elements in the formula.

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 diverted route, for example)? If so, please explain why you think this is the case?

As commented on Question 12, Schedule 4 compensation is not a predominant factor in our determination of the revised train plans. Rail replacement buses would be the last resort if we have no other alternatives to convey passengers by rail. EMT would not consider using buses rather than trains. On some occasions, we have to cancel trains simply because there is no alternative route for diversion and very limited access being available to run the full level of service. Hence, we would run buses in substitution of trains. Maintaining and improving customer satisfaction is a top priority for EMT and we are driven in improving services to customers overall by delivering consistent rail services.

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?

Yes. The current contractual wording is subject to differing interpretations of the provisions between train operators and Network Rail which make it difficult to process than it ought to be. We agree that the current wording would benefit from clarification so that it will become less contentious when claims are made to Network Rail.

There were occasions when EMT considered triggering the SPD clause. Having interpreted the wording in the contract, it is not practical to set off the mechanism because the wording has made it unachievable when we apply the methodology to the calculation. The general confusion is derived from the definition of ‘SPD’ which links to Paragraph 8 and there are conflicts between the two

clauses. It will be useful to review the paragraphs that interlink with the definition of 'SPD' to ensure no ambiguity.

There are a couple of issues that are not in the consultation document and we would like to raise them with you in this response.

Rail replacement bus costs when TOC runs buses to cover on the day disruption (NR cause)

Currently, the provision of formulaic bus compensation is in the Schedule 4 possession regime only, not Schedule 8 performance regime. When we have to cancel trains at short notice due to engineering overruns or emergency possessions, we provide buses to minimise inconvenience to passengers. However, compensation received under Schedule 8 is to cover the marginal revenue loss and is not sufficient to cover the costs of providing replacement buses.

On some occasions, we have been left out of pocket particularly when our replacement bus costs have not been covered by what we have been paid through Schedule 8. An example of this is the recent incident of the derailed freight train north of Barrow Upon Soar, when our Local service was unable to call at the station. Our services continued running via the Fast Lines instead of the Slow Lines and there was no delay incurred. As Barrow Upon Soar station is not a monitoring point under Schedule 8 we were not eligible for compensation. However, we provided a replacement bus service between Barrow and Loughborough for passengers to connect with train services, and the business had to accept the cost incurred which is not recoverable through Schedule 8 and Network Rail is not exposed to the financial impact of on the day disruption on TOC's costs. ORR should consider including bus cost compensation in the Schedule 8 Performance Regime.

Indexation of payment rates

Historically, the Schedule 4 and Schedule 8 payment rates have only been indexed for inflation. We now have a strong record in the industry of passenger revenue growth each year in excess of the rate of inflation (nationally revenue grew by 10.3% in 2010/11, 9.1% in 2011/12 and 7.5% in 2012-13 to period 9). If Schedule 4 and Schedule 8 are to be effective mechanisms to compensate TOCs for passenger revenue effects, we believe there needs to be a mechanism to index the payment rates by an additional factor to reflect the real growth in industry revenue. For simplicity, this could be set now for each year in CP5 based on the historical trend in real revenue over the past 5-10 years.

I hope this input is useful. If you would like to discuss this in further detail, please feel free to contact me.

Regards,

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Track Access & Network Change Manager
East Midlands Trains