

Northern Rail Ltd  
4<sup>th</sup> Floor  
Northern House  
7-9 Rougier Street  
York

Rob Mills  
Office of Rail Regulation  
*By email only*

Dear Rob,

18 January 2013

### **PR13 - ORR Schedule 4 and 8 Consultation**

Northern Rail welcomes the opportunity to provide a response to ORR's consultation on how the Schedule 4 and 8 possession and performance regimes will operate in the next control period. Northern Rail remains committed in supporting the industry working group in its efforts to improve the current approach to make sure the correct incentives for the industry are out in place in order to minimise delays and disruption to passengers.

Northern Rail is supportive of the general direction set out in the ORR's consultation including the commitment to retain the overarching framework provided by Schedules 4 and 8 as liquidated sums regimes. The existing arrangements are well-understood and drive appropriate behaviours across the industry.

Northern Rail believes that the focus for the remainder of the PR13 period should be on refining the existing established framework rather than overhauling or further reviewing the over-arching principles.

Our response centres on the questions that ORR raised in its consultation document, Northern Rail also fully supports the response submitted by ATOC.

### **Transparency of possession management**

#### **What are your views on whether we should encourage Network Rail to consult with passengers and freight customers in the planning of its possessions?**

Enhanced consultation around possessions planning is a good thing. Whilst Network Rail as an organisation needs to develop its understanding of customer requirements, Northern Rail believes that operators are best placed to represent the needs of the customer and would not wish to see Network Rail enter into direct consultation with passengers.

It is generally too early in the process, when operators and Network Rail are agreeing the access footprint for dialogue to commence with passengers/ passenger groups. For major work we now consult with stakeholders (PTE's and local authorities) whilst

amended plans are being formulated and developed and then provide advanced publicity to ensure that the message gets to passengers

#### **Schedules 4 and 8 General**

**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?**

Northern Rail wishes to see operators compensated for the full impact of service disruption with rates set at 100%. Any reduction in payment rates would see the incentive on Network Rail weakened and the risk to operators increase. If payment rates were reduced Northern Rail would struggle to build Schedule 8 business cases and they would become less viable.

**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?**

Northern Rail believes that payment rates should be set so that they compensate operators for the full impact of the disruption (i.e at 100%). It is our view that altering payment rates will not achieve the desired objective.

We would also like to see Schedule 4 include an enhanced penalty greater than 100% for possessions cancelled or deferred to encourage right first time planning. It appears too easy for Network Rail to tinker with the plan at various stages within the process without having an appreciation as to the impact that this has on an operators business. We also believe there should be some mechanism that allows operators to recover the cost of on the day buses, as this is something we have no control over, yet operators are exposed to the financial risk.

**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?**

Northern Rail agrees with ORR's proposal not to introduce a Joint Restriction of use concept in Schedule 4.

### Schedule 4 passenger possessions regime

**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?**

Northern Rail believes it would be appropriate to determine ACS at a route level.

**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?**

An independent review of Network Rail's approach should enable the validation of the current approach and the opportunity for the relevant experts to propose improvements for the future.

**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?**

Northern Rail believes ORR should update the estimated bus mile payment rate to ensure that the formula more accurately captures actual costs.

**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?**

Northern Rail believes that the current regime is broadly fit for purpose and that this reflects the fact that Schedule 4 is very much an average regime designed to reflect the circumstances surrounding most 'typical' possessions.

**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?**

Northern Rail believes that a change of this nature would improve the incentives on Network Rail to consider the impact on operators of cancelling or changing possessions at short notice. We also advocate an approach under which there is more regulatory scrutiny of Network Rail's performance in regard to late changes /

cancellations. Northern Rail continues to be presented with very short notice possession changes/cancellations, and these are generally possessions which fall into the Type 1 Category, which means we are unable to reclaim any direct costs which we may incur.

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

Northern Rail believes that the £5,000 per possession reflects the fact that the abortive costs associated with Network Rail cancelling an individual possession might not always reach the existing Schedule 4 cost threshold of £10k and therefore changing the scope of paragraph 2.9 to cover Type 1 possessions would not make any difference unless the threshold was lowered.

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

Yes

**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?**

The current contractual wording would benefit from clarification, there are often differing interpretations of the provisions between TOCs and Network Rail which can make claiming more contentious and difficult to process than it ought to be.

#### **Schedule 8 passenger performance regime**

**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?**

Northern Rail would welcome clarification in relation to the scope of SPP claims. We do not believe the contract is clear on what items can be claimed under.

**Do you agree that we should leave 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?**

Northern Rail agrees that there should be no change to the timings of Schedule 8 payments, as there would be little value in changing these timescales.

It may be more appropriate for payments to be made when the period is cleared to encourage adherence to the contract and act as an incentive to prevent incidents dragging and ensure timely close out

**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?**

Northern Rail believes that Paragraph 17 is required to manage mid-control period changes to Appendix 1 such as those that might arise from a major timetable change or the emergence of new information which materially affects the calibration of the scheme.

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

Yes, we think it would be appropriate to remove this element of the regime.

**Do you agree that we should not change the way train operator cancellations to their own trains are treated under Schedule 8? If not, please tell us why?**

Northern agrees that this element should not be changed.

Please feel free to contact me should you require any clarification on any of the issues outlined in Northern Rail's response.

Kind regards

**Helen Cavanagh**  
**Track Access Manager**