

Stagecoach South Western Trains Limited  
Friars Bridge Court  
41-45 Blackfriars Road  
London  
SE1 8NZ

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

cc: Alan Price, ORR

22 January 2013

Dear Rob

### **Consultation on Schedules 4 and 8 possessions and performance regimes**

This letter provides the response of SSWT to the above consultation. We have provided an overview of our views on the Schedule 4 and 8 regimes in the context of the alliance between SSWT and Network Rail Wessex and also responded to some of the specific questions raised in the consultation document where the issue raised is of significance to us.

We do not believe that the Schedule 8 regime is fit for purpose within a deep alliance such as that between SSWT and Network Rail Wessex. The alliance is fully focused on delivering sustained performance improvement but we do not believe that Schedule 8 incentivises the right behaviours to achieve this. From a financial perspective the incentive properties of the regime on the parties is neutralised.

Since entering into the alliance, we have been reviewing performance from a number of angles. We have identified that in terms of delay attribution, there is a considerable amount of sub-threshold (under 3 minutes) delay which is not captured under the Schedule 8 regime. On the Wessex route over two thirds of delay minutes relate to sub-threshold incidents. We believe that our resources should be focused on analysing such incidents and associated performance improvement initiatives. The alliance is trialling some software that would enable us to understand all delay – including sub-threshold – which should help us to get a better understanding of root cause and consequently improve performance. The intention is to shift culture and behaviour away from investigating who is contractually responsible for a delay to getting a broader understanding of where we can make a

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difference in performance terms. We believe that such an approach has the potential to benefit all operators on the Wessex route.

We fully support ORR's commitment to consider proposals for bespoke performance and possessions compensation regimes. At the extreme level of the spectrum we would include withdrawal from the Schedule 8 regime as a potential option to be considered. If we did explore this option we would fully expect to include any safeguards necessary to provide assurance to other operators and issues such as the impact on Network Rail's funding and revenue support payments would also need to be addressed.

On the specific questions raised in the consultation document our views are as follows:

### **Schedules 4 and 8 overall**

*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?*

No, but we support ORR's view that it may be more effective for Network Rail and train operators to propose bespoke arrangements to ORR if there are particular localised circumstances where the current contractual wording does not work well. We are currently working with Network Rail to develop the Joint Restrictions of Use concept further.

### **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 are not convinced that ORR's survey is comparing like-for-like data from each TOC and would expect ORR to ensure that the data being provided by each TOC is consistent before reaching any conclusions. For example some TOCs may have netted off TMC compensation from the EBM compensation figures they have provided to ORR. We would also expect ORR to carry out some sectoral analysis to determine whether there are any trends in the data e.g. between long distance, LSE and regional services. Some TOCs operate a mix of these services and so simply analysing the data at a TOC level may not provide an accurate view of the relationship between bus costs and EBM compensation.

*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*

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buses (rather than trying to run train services using diverted route, for example)? If so, please explain why you think this is the case?

No, the level of Schedule 4 compensation is not a factor in SSWT determining its revised service plan in response to a possession. We consider other factors such as the impact on our passengers, the length of the blockade, and the operational viability of providing train shuttle services either side of a blockade.

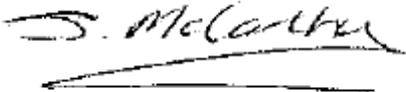
14. Do you agree that we should extend the scope of the protection provided by paragraph 2.9 of Schedule 4 to enable the recovery of direct costs related to amended or cancelled Type 1 possessions? If not, please tell us why?

We support this proposal. As an alternative to providing TOCs with the scope to claim compensation under this provision, we think that extending the liquidated sums regime so that it applies to amended or cancelled Type 1 possessions could provide a more efficient method of compensating TOCs for the costs they incur in relation to such possessions which avoids the administrative costs associated with bespoke claims.

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

Yes, notwithstanding our response to the previous question. We think that the proposed threshold strikes the right balance between deterring small claims being made where the costs of administration might exceed the value of the claim and enabling TOCs to recover their costs where they are material.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. McCarthy', with a horizontal line underneath.

**Samantha McCarthy**  
**Commercial Director**  
**(Network Rail Wessex and Stagecoach South Western Trains Limited)**

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