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Dear Robert,

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

This letter sets out the views of TfL (including London Underground) and London Overground Rail Operations Ltd (LOROL) on the questions raised in the ORR's consultation on Schedules 4 and 8, as well as making some general comments. TfL and LOROL are content for the contents of this response to be published and shared with third parties.

TfL considers that the Schedule 4 and 8 regimes should encourage the rail industry to work together to reduce overall delays and unplanned disruption to customers. Schedules 4 and 8 should reflect the costs genuinely faced by the industry as a result of planned and unplanned disruption to ensure that all parties have an appropriate incentive to improve the service experienced by customers.

### **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?**

TfL does not consider that passengers should be consulted directly over the planning of possessions. Rather the industry (particularly Network Rail) should ensure it understands passenger requirements during planned disruption and incorporate these into its planning processes. Currently Network Rail often fails to take account of the needs of passengers, for

example when scheduling possessions during the weekends ahead of Christmas when high levels of demand are often experienced due to the numbers of passengers going shopping.

Passengers want the number of possessions taken and their impact to be minimised. There is currently little evidence that Network Rail tries to achieve this through the coordination of possession requirements between projects, with enhancement and renewal projects just adding Schedule 4 liabilities to their project costs without considering how these could be reduced to the advantage of the passenger.

London Underground (LU) would value better engagement with Network Rail. The reasoning Network Rail provides for closures to LU is often lacking in transparency, whilst the need for repeat work due to poor planning and coordination is a source of considerable frustration. The Schedule 4 regime does not currently create an adequate incentive for Network Rail to plan in a manner that minimises the requirement for possessions.

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

TfL does not consider that passengers should be consulted directly over the planning of possessions, as any such process is likely to prove costly and cumbersome. It is more appropriate to ensure that the industry draws on its existing knowledge of passenger requirements in this area (provided by Passenger Focus and others) to ensure the possession planning process delivers the best possible result for the passenger. This knowledge should be kept up to date through regular analysis of customer complaints and comments as well as ad hoc research where appropriate.

The best way to minimise the disruption caused to passengers is for Network Rail to work effectively with operators to this end. Timely and thorough consultation is key to this to ensure that the best service possible is offered to customers and that they can plan their journeys with confidence. The consultation process should aim to deliver customer requirements as far as is practicable, by using the combined knowledge of Network Rail and the operator(s) to deliver the best possible service that is practicable.

LU consider that the consultation process between Network Rail and the operator is essential to ensure that London has a co-ordinated approach to possession planning across its transport network. This ensures that customer journey time is minimised and that major events (such as football matches in the capital) are catered for in an appropriate manner.

## **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 TfL does not consider that passengers should be consulted directly on matters relating to possession planning. A new licence condition could be introduced requiring Network Rail to consult with operators over the planning of possessions, to facilitate the processes described in the responses to questions 1 and 2 above. This could then be monitored with failure to comply being subject to appropriate regulatory sanctions.

**Schedules 4 and 8 overall**

**4. Do you agree with the Steer Davies Gleave 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?**

TfL and LOROL concur with this research and the associated conclusions. Our preference is for payment rates to continue at 100%.

**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?**

TfL and LOROL agree that Schedule 4 and 8 payment rates should continue to compensate train operators for the full impact of service disruption when it occurs. Reduced rates appear unlikely to drive improved performance, based on the findings of the SDG study.

It is important that the payment rates take full account of recent increases in passenger numbers on the rail network generally. This is particularly pertinent on the Overground network where passenger numbers have more than doubled since TfL took control in 2007.

Payment rates should also reflect local economic circumstances and the higher value of time for passengers travelling in the London area (compared to the rest of the country). This will ensure that they are representative of the true economic costs generated by delays in the areas they affect.

**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?**

It is important that train operators and Network Rail are incentivised to work

together to reduce the overall volume of possessions and unplanned disruption. Schedules 4 and 8 provide some incentive to do this but more could be done, for example by giving Network Rail and operators the opportunity to share any financial savings achieved by adopting innovative approaches in this area, perhaps making use of the Alliancing arrangements that are being adopted by the rail industry.

Given the high level of TOC or FOC on TOC delay that LOROL incurs, owing to the nature of its operating geography and wide interaction with other operators, TfL and LOROL consider it essential that Network Rail is incentivised through Schedule 8 to manage the network in a manner that achieves the best outcome for all operators.

Where Schedule 8 is concerned bespoke arrangements are only likely to be appropriate where other operators are not impacted by failures, to avoid the risk that perverse incentives are introduced into the system. In all cases the savings made must not be at the expense of operators not directly involved in any bespoke arrangements.

**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?**

TfL and LOROL concur with this view, as there appears to be no consensus within the industry that introducing Joint Restrictions of Use would add value to the current process for managing extreme weather conditions.

TfL and LOROL consider that Network Rail's liability for Schedule 4 payments during periods of extreme weather should remain, to provide Network Rail with an appropriate incentive to keep the rail network operational under such circumstances. Network Rail's weather strategy section is an important yet under-estimated and under-resourced role, so an incentivisation that sees this section optimally resourced is important to operators.

**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 welcome any specific proposals on how it can be improved.**

LOROL considers that the wording of Schedules 4 and 8 does not negatively impact on LOROL working together with Network Rail to minimise disruption.

LU has negotiated an exponential system for the rate paid per delay minute with Network Rail under their Track Access Agreement and considers that there would be merit in extending this approach across the remainder of the

rail network. This could help the rail industry to achieve a greater focus on delay reduction and better represent the actual impact of delays on customers.

LU also comment that the “External Causes” caveat tends to be utilized far too often within the attribution process. This can cause issues that need to be addressed to be held in abeyance in the absence of any direct accountability for them.

#### **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?**

This is a sensible approach, provided that the route based data is tailored to reflect the operations of the specific TOCs using the route. The geographical spread of some TOCs does not match Network Rail’s route geography well; the requirements of these operators need to be considered as part of the overall process.

**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?**

Yes. Please refer to the answer given to Question 9 above. The priority should be ensuring a good correlation between the ACS calculation and the TOCs it is intended to serve.

**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?**

TfL agrees with the suggested approach as it is the most likely to deliver a result that reflects the true cost of replacement bus operations. The historic CP4 data will still require some adjustment for inflation to ensure that it reflects the impact of inflation between the time at which the costs were incurred in CP4 and the time at which costs are incurred during CP5.

LOROL’s experience during CP4 is that its bus costs have been largely covered by formulaic Schedule 4 payments, and that this development (introduced for CP4) has been hugely beneficial. The rates are generally accurate, but need reviewing and refining for CP5.

**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?**

TfL concurs with the use of the current formula. Care should be taken to ensure that the formula is as representative as possible of the actual revenue loss using historic revenue data.

LOROL would also advocate a 'CP5.5' review of revenue loss compensation, midway through CP5. This need not be as comprehensive as the full Periodic Review, but could reflect the fluidity of travel demand and patterns. This issue is particularly pertinent to LOROL given the growth that the TOC continues to experience. This approach would keep the compensation rates more in line with the actual revenue loss that occurs during Restrictions of Use.

**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?**

Operators should be incentivised to consider alternatives to replacement bus provision wherever possible, for example by sharing associated cost savings with Network Rail as proposed in TfL's response to question 6.

**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?**

TfL and LOROL agree with the proposed approach. This ensures that Network Rail is penalised for the short notice cancellation of possessions and the disruptive effect this has on the industry.

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

LOROL considers that all avoidable costs should be payable by Network Rail in the event of possession cancellation. Quantifying and paying such costs need not be a complicated matter, while the absence of a threshold should further incentivise Network Rail to plan Restrictions of Use in an optimal fashion.

**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?**

TfL and LOROL agree that the latest delay multiplier values for PDFH should

be used, as these represent the best current knowledge of the customer valuation of delay.

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

TfL and LOROL have no comment to make in relation to this question.

**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 (RPI)? If not, please tell us why?**

TfL and LOROL agree with what is proposed. A 'CP5.5' update of the compensation offered (as mentioned in the response to question 12) would serve to optimise the accuracy of any compensation paid.

**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?**

LOROL's experience of SPD during CP4 suggests that a review of the clause and its wording is essential to ensure that the process is clearly understood by all parties. The present drafting is too cumbersome and opaque. This is demonstrated by the apparent lack of understanding of SPD amongst Network Rail's own staff which made progressing the SPD claim for the North London Railway Improvement Project (NLRIP) a slow and difficult process. The meaning of the clause should not be altered if the drafting is changed.

**Schedule 4 freight possessions 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?**

TfL and LOROL have no comment to make in response to this question.

**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?**

TfL and LOROL have no comment to make in response to this question.

**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?**

TfL's view is that the government should not fund increased Schedule 4 compensation rates for freight operators. The relatively low rates they currently receive are a result of Freight Operating Companies (FOCs) paying no Access Charge Supplement; if they want higher rates they should be prepared to fund this by paying an Access Charge Supplement directly to Network Rail rather than relying on increased subsidy to fund the change.

LOROL has no comment to make in response to this question.

### **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?**

TfL and LOROL agree that the current wording should be retained. The focus of efforts during a Sustained Period of Poor Performance (SPP) should be on improving the punctuality and reducing cancellations rather than discussing compensation levels.

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

TfL and LOROL consider that the SPP threshold should remain at 10% to ensure that Network Rail is properly incentivised to focus on managing sustained poor performance.

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

TfL and LOROL consider that the threshold should not change.

**26. 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?**

TfL and LOROL concur with leaving the timing of Schedule 8 payments unchanged. This will help to maintain Network Rail's focus on the reduction of delays in the short term.

**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?**

TfL considers that the current circumstances should be retained, provided

that they allow Network Rail and the operators to arrange to share the financial benefits arising from delay reduction programmes. Permitting such approaches maximises the opportunities available to deliver overall reductions in delay that will benefit passengers, particularly under circumstances where there are no reductions to the Schedule 8 operator benchmarks during a Control Period (under the terms of a Franchise Agreement, for example).

LOROL believes that the 90% cost threshold entitlement of Network Rail in paragraph 17.4 should be reduced to 50%.

The current very high level acts as a perverse incentive; operators may be dissuaded from requesting changes to Appendix 1 because of the very high level of costs that Network Rail can recoup, and Network Rail has little incentive to minimise those costs given that most of the costs will be recouped.

Setting the level at 50% incentivises Network Rail to work efficiently in calibrating Schedule 8 Appendix 1, and incentivises the Industry in general to deal with obvious anomalies in a timely manner. This approach would improve the likelihood that the regime is calibrated in an optimal fashion.

**28. Are there any specific areas of paragraph 17 where you are of the view the drafting needs to be made clearer? If not, please tell us why?**

TfL and LOROL have no comment to make in response to this question.

**29. 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?**

London Overground does not subscribe to the Passenger's Charter element of Schedule 8, so TfL and LOROL offer no comment in relation to this question.

**30. 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?**

TfL agrees with the proposed approach which is to recommend no change.

#### **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?**

TfL and LOROL have no comment to make in response to this question.

**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?**

TfL and LOROL have no comment to make in response to this question.

**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 on freight operators due to Network Rail caused delays? If not, please tell us why?**

TfL and LOROL have no comment to make in response to this question.

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

TfL and LOROL have no comment to make in response to this question.

**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 account of evidence being collected as part of the update of the capacity charge? If not, please tell us why?**

TfL and LOROL consider that the congestion factor should be updated so it fully reflects the impact of operating freight trains on congested infrastructure. The delays caused by freight to other operators should be fully accounted for within the Schedule 8 framework.

**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?**

TfL and LOROL consider that this weighting should be undertaken, to ensure that freight operator payment rates reflect the impact of freight operator delays on other operators, particularly on congested routes.

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

TfL and LOROL have no comment to make in response to this question.

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

TfL and LOROL have no comment to make in response to this question.

**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?**

TfL and LOROL have no comment to make in response to this question.

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

In general terms, TfL and LOROL would advocate rates and caps that fit within the overall value of the Schedule 8 regime at the network level. Rates and caps should remain credible in relation to the Star Model, without anomalies or outliers.

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

Refer to the response given to question 40 above.

**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?**

TfL and LOROL have no comment to make in response to this question.

### **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?**

TfL and LOROL agree that this approach is appropriate, as it will ensure that the impact of charter delays on third parties is properly accounted for through the Schedule 8 framework.

**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?**

TfL and LOROL concur with this approach, as it will ensure the accountability of charter operators for any delays that their services cause. Consideration could be given to applying caps at certain times only (such as weekends) to minimise any adverse impact on other groups of passengers, whilst providing charters with improved opportunities to run at times that are of the greatest commercial value to them.

**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?**

Incident caps provided by the private insurance market are likely to prove prohibitively expensive for charter operators. It is important that any changes to Schedules 4 and 8 do not price charter operators out of the market as they provide a useful service, particularly with transporting customers to major events when they provide valuable additional capacity.

**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 concerning the evidence we could use?**

The rate used should take full account of the impact of Charter Operators on other train services, to ensure that Network Rail is properly incentivised to minimise the risk of delay to services provided by Charter Operators.

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

TfL and LOROL have no comment to make in response to this question.

Yours sincerely,

**Alan Smart,**  
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