

<u>Chronology event</u>	<u>Document</u>	<u>Page in Bundle</u>
31 December 2023	<ul style="list-style-type: none"> • Extract from Companies House Virgin filed Accounts. 	1 – 2
24 April 2023	<ul style="list-style-type: none"> • Network Rail’s 24 April 2023 letter to the industry. 	3 – 5
15 May 2023	<ul style="list-style-type: none"> • Avanti wrote to Network Rail stating amongst other things that it was continuing to work collaboratively with Network Rail. 	6 - 7
11 October 2023	<ul style="list-style-type: none"> • Discussions with Avanti relevant to the December 2024 and May 2025 timetable began in October 2023. 	8 – 9
18 October 2023,	<ul style="list-style-type: none"> • Notes from a call about at an Unused Access Rights to discuss the Avanti resource plan underpinning their step-up aspirations to using the full rights. 	10 – 12
1 December 2023	<ul style="list-style-type: none"> • Minutes from a Rights Review Meeting. 	13
7 December 2023	<ul style="list-style-type: none"> • Follow up emails from meeting. 	14 – 15
12 January 2024	<ul style="list-style-type: none"> • Email from Avanti to NR informing them they were willing to temporarily relinquish a number of unused Access Rights. 	16
17 May 2024	<ul style="list-style-type: none"> • VML’s application to ORR for Open Access Rights. 	17 - 32
20 June 2024	<p>CONFIDENTIAL – Please do not disclose.</p> <ul style="list-style-type: none"> • Avanti’s Managing Director wrote to NR setting out its updated plan for usage. 	33 – 36
21 June 2024	<ul style="list-style-type: none"> • Avanti writes to NR giving notice of Avanti’s intention to relinquish unused held access rights. 	37 – 39
1 July 2024	<ul style="list-style-type: none"> • Avanti gave notice to NR of its intention to temporarily relinquish unused held contingent access rights. 	40 – 46
16 July 2024	<ul style="list-style-type: none"> • NR raise concerns in emails. 	47 – 49
25 July 2024	<ul style="list-style-type: none"> • Avanti sent a further letter, dated 22 July 2024, which corrected errors in their 1 July 2024 letter. The 22 July 2024 letter related to London Euston to Liverpool rights. 	50 – 57

5 August 2024	<ul style="list-style-type: none"> Email confirmation (6 August) and NR / Avanti's joint letters to the ORR to confirm the 2 sets of relinquishments. 	58 – 65
<u>Other Chronology documents</u>		
30 May 2024	<ul style="list-style-type: none"> ORR writes to NR requesting them to submit a letter of representations. 	66
28 June 2024	<ul style="list-style-type: none"> NR submit a letter of representation. 	67 – 82
2 August 2024	<ul style="list-style-type: none"> VML responded to letter of representations. 	83 – 85
16 October 2024	<ul style="list-style-type: none"> VML asked NR for further information on Part J process applied by NR to the Avanti access rights. 	86
04 November 2024	<ul style="list-style-type: none"> VML asked NR for further information on the Part J process applied by NR to the Avanti access rights. 	87
22 November 2024	<ul style="list-style-type: none"> NR responded to VML's first tranche of Part J queries which had been submitted to NR. 	88 – 89
12 December 2024	<ul style="list-style-type: none"> VML responds to the 22 November correspondence. 	90 – 91
20 December 2024	<ul style="list-style-type: none"> NR responded to the 12 December correspondence setting out its substantive provision. 	92 – 93
24 January 2025	<ul style="list-style-type: none"> Virgin sent a further response to NR disagreeing with NR position. 	94 – 95
10 February 2025	<ul style="list-style-type: none"> VML requested a meeting to discuss Part J. 	96
12 February 2025	<ul style="list-style-type: none"> NR responded again to Virgin reiterating its position. 	97 – 98
13 February 2025	<ul style="list-style-type: none"> VML confirm they were preparing a Regulation 32 appeal and reiterated their request for a meeting to discuss how to move forward. 	99 – 100
26 January 2025	<ul style="list-style-type: none"> VML notified NR that they had issued a Regulation 32 appeal. 	101 – 109

Other documents	
Network Code Part J – Changes to Access Rights	110
Access Rights Changes (Network Code Part J)	111 – 147

Registration number: 01568894

Virgin Management Limited

Annual Report and Financial Statements
for the Year Ended 31 December 2023



Virgin Management Limited

Strategic Report for the Year Ended 31 December 2023

Virgin Management Limited ("the Company") is principally engaged in providing management services to its subsidiaries and other affiliated companies.

Business review

Summary financial performance and key performance indicators

For the year ended 31 December 2023, the Company recorded a profit before tax of £85.9 million (2022: £155.2 million), driven by dividend income from its subsidiary of £55.4 million (2022: £35.0 million) and an impairment reversal of £34.4 million (2022: £123.3 million).

For the year ended 31 December 2023, turnover was £24.0 million (2022: £19.8 million). Turnover is derived from the provision of services to affiliated companies.

At 31 December 2023, the Company had net assets of £1,247.4 million (2022: £1,218.7 million).

Principal risks and uncertainties

The Company provides management services to its subsidiaries and other affiliated entities in the Virgin Group in line with contracts agreed between the relevant parties. There is a risk that the scope and nature of these contracts is changed as and when they are renewed, or that the level of service required is adversely impacted by a reduction in these entities' business operations as a result of poor trading or economic downturn. In order to minimise these risks, there is a focus across all activities of the Company on cost control and efficient operation.


Going concern

As set out in note 1.2 to the financial statements, the Directors are confident that the Company will have sufficient funds to continue to meet its liabilities as they fall due for at least 12 months from the date of approval of the financial statements. They, thus, continue to adopt the going concern basis of accounting in preparing the annual financial statements.

Development and performance of the business

No significant changes to the business are currently expected for the foreseeable future.

Approved by the board on 27 June 2024 and signed on its behalf by:

DocuSigned by:

C01E6E634E30454...
A P L Shah
Director



All current and aspiring operators

By email only

Jake Kelly
 Group Director, System Operator
 Network Rail
 Waterloo General Office
 London
 SE1 8SW

24 April 2023

To: all current and aspiring train operators

Unused access rights – Network Rail’s approach post-pandemic recovery

I previously wrote to you on this subject on 5 May 2022, as did Paul McMahon before me on 25 May 2021. I append those letters for ease of reference.

Throughout the post-pandemic period, our approach to managing unused rights sought to reflect the exceptional nature of events and accommodate the uncertainty facing the industry in recovering from the impact of COVID. This was possible, thanks, in part, to Part J 4.3.1 that allows a period of non-use to be disregarded for the purpose of determining whether a Failure to Use had occurred, “...if, and to the extent that, such non-use is: (a) attributable to non-economic reasons beyond the Part J Access Beneficiary’s control; and (b) is temporary in nature.”

Last May I also indicated that while we intended to continue during the recovery period to exercise the discretion afforded by J4, there was also a clear expectation regarding the surrendering of rights where some quanta went unused for the whole of financial year 2022/23.

We no longer believe that an interpretation of J4.3.1 to permit temporary exceptions related to COVID is likely to be appropriate.

I now wanted to take this opportunity to update you on our approach going forward.

Updating our approach

Overall service levels are approaching, and for several operators now exceed, pre-pandemic volumes. As services return to previous volumes, they have sometimes done so in a way quite different from the last ‘full’ timetable in December 2019.

Parts of the network face increasing difficulty in accommodating requests for either new services or amended access rights to accommodate large changes in service patterns.

We need to be able to respond rapidly to the changing needs of passengers and freight users, adjusting train service levels and patterns with speed.

Doing so is more straightforward when considering new or amended rights when contracted rights more accurately reflect those in the timetable. It is easier for existing operators, new operators & applicants, and Network Rail alike to have a clear view of the network and make decisions on services when the contracts and timetable are more appropriately aligned.

A shared responsibility

All Part J Access Beneficiaries have an obligation under J2.1 to surrender, in good faith, those Access Rights (or parts thereof) when they have no current or foreseeable reasonable on-going commercial need (save for those rights held on behalf of a Freight Customer Access Option Holder).

We look to apply of Part J in line with our obligations as set out in the Code and equally, we expect to see a cross-industry commitment to releasing capacity in line with the expectations and rules of the Code.

As Routes & Regions manage their areas of the network and deal with changes in use and growth in services, it should be expected that local (and FNPO) customer teams will continue to seek to discharge Network Rail's J9 obligations by holding Rights Review Meetings... "as frequently as necessary in order for it to ensure that capacity on the network is shared in the most efficient and economical manner in the overall interest of users, providers, potential providers and funders of railway services." Where these are not taking place, provisions exist in the Code which may allow ORR to direct such meetings.

This work will continue to be supplemented through reviews by the Industry Timetable Programme Management Office (PMO) in its role of assuring forthcoming changes and asking if rights are in place to support each timetable.

Surrendering rights (J2) and the use of J4.3.1

As ever, our clear preference is for continuous review of access rights and voluntary adjustments or surrender. In this context our guidance is the same as that issued last year and we would ask that operators look at that quantum that they may hold with no plans to use in 2023/24 when working with route customer teams to update their contracts for both new and unused rights.

In engaging with our customer teams, operators should look to both surrender of any remaining capacity that will not be required, temporarily or permanently. This may not result in an immediate removal of access rights as a surrender can be on a temporary basis for up to 2 years, or be permanent. A temporary Relevant Surrender or Specified Relevant Adjustment under J2 can cover a period of two years from the date when it is to take effect.

Both current operators and potential applicants are, as always, urged to work with our teams to convey an understanding of any future aspirations and needs beyond the forthcoming timetable period, and consider where and how these could be provided for as soon as reasonable possible in access agreements and access options.

Where future capacity requirements are understood, options (such as dated Schedule 5 tables) do exist for either new or supplemental agreements to set these out with appropriate descriptions in regulated contracts. Discussions with funders and contracting authorities should assist many customers in identifying foreseeable need.

Our teams will work through the implications of the service changes with you, recognising that if services are recast and plans for changes in volumes and patterns then the access rights implications can be complex.

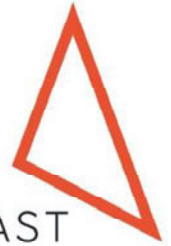
We will, of course, continue to treat each case on its merits in accordance with the Network Code.

My colleagues will continue rights review meetings with each of you and, as decisions are taken about service levels through 2023, rights will be adjusted; I hope by voluntary surrender.

Yours sincerely



Jake Kelly
Group Director, System Operator



Paul Harris
Franchise & Access Manager
1st Floor, Baskerville House
Centenary Square
Birmingham
B1 2ND

15 May 2023

Dear Paul,

Unused access rights – Network Rail’s approach post-pandemic recovery

We write on behalf of First Trenitalia West Coast Rail Limited (FTWCRL) in response to Network Rail’s letter to all current and aspiring train operators regarding its approach on unused access rights, dated 24 April 2023.

Primarily, we acknowledge the ongoing engagement between Avanti West Coast (AWC) and you and your team at Network Rail. Together we continue to review the rights position within Schedule 5 of our Track Access Contract (TAC) as we have amended and recovered our timetable position following the pandemic. At the same time, our teams work closely to ensure other provisions within our TAC remain up to date, alongside ORR.

Understanding the preference stated in the letter for continuous review of access rights and voluntary adjustments or surrender remaining capacity that will not be required, we have undertaken a further review our rights position reflecting our most recent December 2023 timetable bid.

The review of our rights, in the form of marked up Tables 2.1 within Schedule 5, is attached to this letter. It compares the rights to be exercised from December 2023 and the rights included in the TAC. The December 2023 timetable will be substantially similar to the May 2023 service level, as instructed by DfT. The current TAC was produced jointly with Network Rail to reflect the significant December 2022 timetable re-cast, in alignment with our contractual Train Service Requirement (TSR).

Recognising FTWCRL is not using some of its access rights during this period, we do not deem a Failure to Use to be relevant under Part J 4.3.1 as the current Industrial Relations

climate and consequent reduction in Rest Day Working volunteers satisfies both J 4.3.1 (a) and (b) in being attributable to non-economic reasons beyond our control and temporary in nature.

Our contractual TSR3 still stands, with DfT instructing us on our successive long term timetable changes on a case-by-case period in line with business planning activity, with TSR derogations instigated accordingly. DfT is supportive of this position, to provide for instruction to step up the service level when feasible to fully exercise the rights within our TAC to deliver committed connectivity and customer benefit.

Thank you for your constructive approach through this process – as we continue to work together, please get in touch if you require any further information.



Georgia Ehrmann
Head of Network Development & Planning
Avanti West Coast

From: Paul Harris (Customer Manager) [REDACTED]
Sent: Wednesday, October 11, 2023 5:45 PM
To: Sue Rhymes [REDACTED]
Cc: Georgia Ehrmann [REDACTED]; Michelle Woolmore
[REDACTED]
Subject: RE: AWC Access Rights

CAUTION: This email is from an external source. [REDACTED] Please beware of links and attachments.

OFFICIAL

Hi Sue,

Many thanks for sharing these documents with me. I can confirm that I won't be circulating these documents but I would like to request that I am able to share these documents with David Golding, James Carter and Michelle Woolmore?

There has been a lot of NR internal conversation with regards to Avanti's implementation plan post June '24. It appears that there is very little detail at this stage with regards to the Dec '24 timetable?

NR will need to consider its next steps and whether a Part J notice for the unused rights is appropriate.

It appears from this response that Avanti is not willing to relinquish rights even if on a temporary basis? We are currently reviewing Avanti's 10th supplemental with additional rights and will need to consider trains that may not be implemented until October '26 (as you have stated below.)

I cannot at this stage confirm if NR will support Avanti's 10th supplemental and in the process of conducting our internal consultation. You have kindly promptly answered the initial questions that have come from this. I will obviously keep you updated.

Thanks for your help,

Paul

From: Sue Rhymes [REDACTED]
Sent: 11 October 2023 16:43
To: Paul Harris (Customer Manager) [REDACTED]
Cc: EXTL: Ehrmann Georgia [REDACTED]
Subject: AWC Access Rights

Hi Paul

Further to our discussions on Access Rights along with DfT, as mentioned, please see the attached information which provides a forward look at our timetable step up trajectory.

The table in the first attachment outlines the approach Avanti West Coast (AWC) propose to take to return to a 9 trains per hour (tph) plan and then further enhance the timetable to 10tph. This was most recently submitted to DfT on 14th June 2023, and has been developed since then to inform our June 2024 timetable bid plans. In line with discussions with DfT, you can see we focused on 9tph and 10tph scenarios, and the required timescales. As discussed with DfT, the 9tph train plan is based on the original plans for the December 2022 timetable change which was subject to a revised reduced bid submitted in September 2022 (down to 7tph). The timetable step up trajectory, building on our May 2023 and December 2023 plans, was developed to deliver customer and stakeholder benefits most efficiently. Based on a review of our Driver and Train Manager workforce plans, and scope for changes to Terms and Conditions to optimise productivity, we recommend implementation timescales which will enable us to deliver these reliably.

Availability challenges, along with Drivers not working their rest days and the existing terms and conditions, means that we are not in a position to reinstate a full 9tph train plan in all hours until October 2025 (noting our Dec 23 timetable sees us at c.8tph). We plan to incrementally introduce the additional Liverpool services from June 2024, as set out in our bid. We do not consider a second hourly Liverpool service to be fully deliverable in all hours until October 2026. We are however looking to do this sooner, and changes to Driver terms and conditions and agreements and commercial agreements would provide opportunity to do this. The June 2024 timetable plans were designed around the 'Reduced 9tph' plan set out in the table, as an initial step in this trajectory; they have hence slightly evolved since the original paper was submitted. The updated June 2024 plans shared with DfT are also attached (note commercially sensitive data on revenue, demand and costs have been redacted). Note also that the numbers included including on Driver establishments are subject to change.

Due to the sensitive nature of these documents, please can you confirm these papers will not be circulated.

As we see continued pressure from NR to relinquish unused Rights, we maintain that we do not deem a Failure to Use to be relevant under Part J 4.3.1 as the current Industrial Relations climate and consequent reduction in Rest Day Working volunteers satisfies both J 4.3.1 (a) and (b) in being attributable to non-economic reasons beyond our control and temporary in nature (see 1st attachment). We do however want to work with them to support our Contracts team in reiterating the case for AWC retaining the Rights to provide flexibility to step up to deliver the TSR. We'd also re-state here the DfT's aligned position on this set out on 4th September, that 'the rights included in Avanti West Coast's Access Agreement comply with the contracted Train Service Requirement and its wider obligations under the Franchise Agreement. In turn those rights support the rationale behind recent and significant investment in rolling stock and infrastructure on the West Coast. The Department considers AWC's non-use of rights to be temporary in nature and the result of factors beyond the reasonable control of AWC. We intend to instruct AWC to return service levels to the full level of access rights in the Track Access Contract at the earliest opportunity.'

The step up trajectory we have shared aligns with this but we will look for opportunities to introduce services sooner than this where we can. It is designed to realise the benefits of the scalable timetable structure to incrementally build connectivity for our customers. We will shortly be starting work on further developing this for the December 2024 timetable change.

If you have any questions, please get in touch.

Thanks

18/10/23 Unused Access Rights Call – Avanti & Network Rail

Michelle Woolmore	MW
Paul Harris	PH
Georgia Ehrmann	GE
Sue Rhymes	SR

PH Network Rail NR are struggling to progress Avanti West Coast's AWC 10th Supplemental Application SA (which includes additional access rights) whilst unused access rights are still in existence.

PH Why is AWC still applying for additional access rights in their 3rd SA when we haven't included the additional/extended services in our December 2023 or June 2024 timetable bids?

GE The 3rd SA is linked to DfT's plans for step-up and AWC needs to continue with it as it is.

PH All TOCs are being encouraged to relinquish unused access rights, as per Jake Kelly's letter. The majority of AWC's unused access rights are on the Birmingham New Street – London Euston route.

PH NR suggests that AWC temporarily relinquish all unused access rights from June 2024 to December 2024. If AWC won't agree to that, NR will invoke Part J on Monday 23rd October 2023.

MW Part J doesn't allow for temporary relinquishment of access rights. Only an Operator can offer that.

GE Part J gives us time to respond. Could we respond with an offer to temporarily relinquish our unused access rights in response to a Part J notice?

PH Expectation would be no. The Part J notice could possibly be withdrawn based on AWC's response to it. MW agreed.

GE AWC needs something in writing from NR to guarantee if we temporarily relinquish our unused access rights, that we will get them back from December 2024.

- MW It would be documented through the SA process and dated footnotes in TAC would protect firm rights going forward. This is how it has been dealt with for other Operators.
- GE Can NR formally contact us and say this is the option so we can respond to it.
- PH How long would the period of temporary relinquishment be for? We know AWC have indicated some service won't be reintroduced until October 2026.
- GE Could we commit to a review point nearer the time of each timetable change to keep the dated footnotes in the TAC flexible?
- PH NR would have to consider this. How do we ensure we benefit the passengers by avoiding a situation where we are having to turn down access rights applications for trains that could run, because there are unused rights for trains that can't.
- SR Could AWC have some time to work out what we will be able to run from when?
- GE If the Part J is invoked in 3 business days, it doesn't give us enough time to obtain opinion from AWC Exec and DfT. Does NR have no option but to issue the Part J notice on Monday 23rd October?
- MW NR can delay issuing the Part J notice until the end of next week at the very latest.
- GE Can NR provide an overview of AWC's options in writing as a starting point to this process? This would enable us to engage with AWC Exec and DfT and respond formally to NR.
- PH Temporary relinquishment of access rights until Dec 24 would at least be a start and would demonstrate collaboration from AWC.
- GE Reiterated the importance of receiving the options in writing, and that this needs to include the reassurance that NR won't invoke Part J if we agree to temporarily relinquish the unused access rights.

MW Even if AWC agrees to temporarily relinquish until December 2024, it doesn't remove uncertainty around other additional rights we're applying for, from June 2024.

PH It probably would smooth the process for the 10th SA though. Consultation ongoing within NR.

GE Matt Allen(NR) has suggested using strategic planning to protect additional Liverpool services as they are in the ESG.

GE On the back of this call, can NR send us the options in writing so we can take them to Barry Milsom and Andy Mellors (both AWC) Need to get this right as it has the potential to set a precedent for the industry.

MW Agreed they could do this.

MW Other operators have temporarily relinquished their unused rights.

GE AWC appreciates NR's willingness to work with us on this.

Friday 1 December 2023 – Access Rights Review Meeting

Network Rail

James Dean
James Carter
Michelle Woolmore
Paul Harris
Christopher Deal

Avanti West Coast

Georgia Ehrmann
Katherine Burnett
Chris Patman
Sue Rhymes

Key points:

- Paul H set out the purpose of call – NR is looking for a resourced plan from Avanti underpinning their step-up aspirations to using the full rights. We set out the detail of this had been shared at the PMO session earlier this week.
- Kat stepped through our June 24 plans, looking through to our step up in Dec 24/May 25.
- James Dean Asked if AWC could share the detail AWC took to PMO this week. This is being reviewed by James Burt.
- Kat Explained current resourcing issues and plans as to how we resolve them.
- James reiterated the need to understand the detail from PMO. NR need to get really comfortable on the detail before they move forward and confirm their position on our rights as it is a big step up from June 24 to Dec 24.
- Kat noted the training release for new fleet will be finished by Dec 24 so will have more available drivers. The training requirement is why we haven't brought in lots of additional services in June 24.
- Paul noted the early indications from AWC are that there will still be unused rights from Dec 24 which NR would need to look to challenge. Further to agreeing previously temporarily relinquishment between June – Dec 24 would be sufficient, NR are considering whether they would want to ask for permanent relinquishment/issue of Part J Notice.
- Kat talked through services vs access rights graph, highlighting how the relinquishment of rights between June and Dec 24 will close this gap, and how the difference becomes increasingly small as we step up to May 25. AWC will as part of our Dec 24 development review anything we're not running in Dec 24 to see if we can definitely run them in May 25.
- Georgia asked NR to set out their position in writing, as we have not had this previously and it will help with clarity internally/with DfT.

Actions:

- AWC to share the information on Driver strategy that went to PMO.
- NR to assess detailed plan and come back with their proposal. Detailed plan to have an impartial person's viewpoint (James Burt – PMO Independent Chair and acceptable to all).
- NR to put their current position in writing.

From: Georgia Ehrmann [REDACTED]
Sent: 07 December 2023 11:02
To: James Dean [REDACTED] >; James Carter [REDACTED]; Michelle Woolmore [REDACTED] >; Christopher Deal [REDACTED] >; Paul Harris (Customer Manager) [REDACTED]
Cc: Barry Milsom [REDACTED]; Sue Rhymes [REDACTED]; Chris Patman [REDACTED] >; Katherine Burnett [REDACTED]
Subject: RE: NR/AWC Rights Review Meeting Notes - 01/12/23

Good Morning All,

Further to the notes issued by Sue and discussion at Alliance Board, please see attached the slides presented to Network Rail PMO last week. These include an overview of our current Fleet Transition Plan as well as updates on our Driver training and future plans. As mentioned, we are still reviewing the specific Class 80x EIS plan so it will be subject to change in the coming weeks which we will share with you in more detail.

Please can you keep this information confidential, and not share it wider internally.

The other actions from the 01/12 meeting were:

- *NR to assess detailed plan and come back with their proposal. Detailed plan to have an impartial person's viewpoint (James Burt – PMO Independent Chair and acceptable to all).*

- NR to put their current position in writing.

Please can you update on when you will be able to come back on these?

Thanks,
Georgia



First Trenitalia West Coast Rail Limited
a FirstGroup and Trenitalia FS Group Company

Georgia Ehrmann | FCIRO
Head of Network Development & Planning | Avanti West Coast
Victoria Square House, Birmingham B2 4DN



From: Barry Milsom [REDACTED]
Sent: Friday, January 12, 2024 9:50 AM
To: Paul Harris (Customer Manager) [REDACTED]
Cc: Katherine Burnett [REDACTED]; Chris Patman [REDACTED]; Sue Rhymes [REDACTED]; Andy Mellors [REDACTED]
Subject: Temporary Relinquishment of Access Right - AWC

You don't often get email from [REDACTED] [Learn why this is important](#)

Paul,

Following detailed Access Rights Reviews with NR, AWC can confirm it is willing to temporarily relinquish the following Unused Access Rights, from now until the beginning of the December 2024 / May 2025 timetables. These changes will be reflected in our Track Access Contract as dated footnotes.

Regards

Barry Milsom
Executive Director Operations & Safety

Avanti West Coast
338 Euston Rd, London, NW1 3BT
[REDACTED]

Business Manager: [REDACTED]
[REDACTED]

First Trenitalia West Coast Rail Limited (company number 10349442). Registered Office: 8th Floor, The Point, 37 North Wharf Road, London W2 1AF. This email (and any attachment) is intended solely for the addressee and may contain confidential information. If you have received this email in error, please notify us immediately and delete it. Reading, disclosing, copying or disseminating any portion of this transmission without authorization is prohibited. For more information, please visit <http://www.avantiwestcoast.co.uk> and <https://www.westcoastpartnershipdevelopment.co.uk>

APPLICATION TO THE OFFICE OF RAIL AND ROAD FOR A PASSENGER TRACK ACCESS CONTRACT, OR AN AMENDMENT TO AN EXISTING CONTRACT

ORR ensures that train operating companies have fair access to the rail network and that best use is made of capacity. If a train operator wants to access the national railway network, it will need a track access agreement with Network Rail which requires ORR's approval under the Railways Act 1993. When determining access to the network, we must have regard to our [statutory duties](#), most of which are set out in section 4 of the Act. We must exercise our functions (which include the approval of access contracts) in a way that we consider best achieves those duties.

Use this form to apply to the Office of Rail and Road (ORR) for a passenger track access contract, or an amendment to an existing contract by a supplemental agreement, under sections 17-22A or the Railways Act 1993.

It sets out ORR's standard information requirements for considering applications. Our [track access guidance](#) (and our [making an application](#) guidance in particular) explains the process, timescales and the issues we will consider. Please read the guidance before completing the contract and this form.

If the facility owner and beneficiary have agreed terms, the facility owner should fill in the form. If not, the beneficiary should fill in the form.

A pre-application industry consultation is usually required before submitting an application. Please see the industry [code of practice for track access application consultations](#) for more information.

This form should be completed up to section 10 and sent to consultees along with a copy of the proposed contract or supplemental agreement. Sections 10 and 11 should be filled in after the consultation and before applying to ORR.

We are happy to talk to you informally before you apply. Please contact us [here](#). You can download a copy of this form, and of our model track access contract, from our [website](#). Please ensure that you are using the latest version of this form as published on our website. We may ask for applications which have not used the latest version to be resubmitted.

You may also use and adapt this form if necessary to apply to use railway facilities other than those of Network Rail. Do not use this form for HS1, for which a separate form is available on our [website](#).

1. Application Summary

1.1 Beneficiary company name:

Virgin Management Limited (or such other Virgin Group entity as shall be confirmed in due course)

1.2 Facility owner details:

Network Rail:	<input type="checkbox"/>				
Region:	Southern <input type="checkbox"/>	Eastern <input type="checkbox"/>	North West & Central <input checked="" type="checkbox"/>	Wales & Western <input type="checkbox"/>	Scotland's Railway <input checked="" type="checkbox"/>
Other Facility Owner:	<input type="checkbox"/>	Please state:			

1.3 Application under the Railways Act 1993 section:

17	<input checked="" type="checkbox"/>	18	<input type="checkbox"/>	22	<input type="checkbox"/>	22A	<input type="checkbox"/>
				Supplemental Number:			
				Current contract date:			
				Current contract expiry date:			

1.4 Applicant status:

Public Service Operator <input type="checkbox"/>	Public service contract start date:	
	Public service contract end date:	
	Name of funder (e.g. DfT, Local Authority):	
	Does the funder support this application?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Open Access <input checked="" type="checkbox"/>		
Charter Operator <input type="checkbox"/>		

1.5 Executive summary of the proposed contract or amendment:

This application is for the operation of four new Open Access Service Groups that will provide new high quality passenger train services between London Euston and:

- Preston/Rochdale via Manchester (14 daily services Monday - Sunday);
- Liverpool Lime Street (30 daily services Monday to Sunday);
- Birmingham New Street (16 daily services Monday to Sunday); and,
- Glasgow Central (8 daily services Monday to Sunday).

These train services are in direct response to strong stakeholder and passenger aspirations for quality and dependable train services on the West Coast Mainline (WCML); providing customers with choice, improved service frequencies and new direct connectivity.

This proposal seeks to support the Governments 'Levelling Up' initiative through providing new rail connectivity opportunities from several key locations in the North-West to London. These new locations include linking Bolton, Rochdale and the TfGM operated Park and Ride Station at Horwich directly to London. In our proposal we shall also work closely with Network Rail and TfGM as we seek to link the proposed new TfGM station at Golborne with our highspeed services between Glasgow and London. Our proposal will also create new employment opportunities in the North-West.

Proposed commencement date:	December 2025
End date:	December 2035
Date approval or directions wanted by:	Earliest Opportunity

1.6 Industry consultation:

Who carried out the consultation?		Network Rail	
Consultation start date:	In parallel to this application	Consultation end date:	In parallel to this application

Not carried out

1.7 Applicant details

Facility Owner Company: Network Rail Contact name: Gianmaria Cutrupi Job title: Aspirant Open Access Operators Manager Address: Waterloo General Office, London, SE1 8SW Phone: [REDACTED] E-mail: [REDACTED]	Company: Virgin Management Limited Contact name: Philip Whittingham Job title: Consultant Address: 66 Porchester Road London W2 6ET E-mail: [REDACTED]
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1.7 Date of application to ORR:

17th May 2024

1.8 Checklist of documents attached to the application form:

- Proposed new contract (S17 or S18) or supplemental agreement (S22 or S22A)
- Marked up Schedule 5 (where applicable)
- Marked up comparison to model contract (where applicable)
- All consultation correspondence
- Supporting documentation required for competing services (see section 6.2)
- Other supporting documents, side letters or collateral agreements (please list):

2. Licence and railway safety certificate

2.1 Please state whether:

- you intend to operate the services yourself; or
- have them operated on your behalf.
 - if so, please name the proposed operating company: [REDACTED]

2.2 Does the proposed operator of the services:

- (a) hold a valid train operating licence under section 8 of the Railways Act 1993 or an exemption under section 7, **and**
- (b) hold a valid safety certificate under the Railways and Other Guided Transport Systems (Safety) Regulations 2006.

If the answer to (a) **or** (b) is no, please state the point reached in obtaining a licence, exemption and/or safety certificate.

Virgin is working towards obtaining a Passenger Operating Licence and a valid safety certificate in parallel with the open access application process. The Virgin leadership team has experience and capability of successfully achieving rail operator safety certification.

3. The proposed contract or amendment

3.1 Application overview: Please detail the proposed contract or amendment. This should cover the services, the commercial terms, and the reasons for making the application in the terms proposed. This information should be laid out clearly and concisely, and fully highlight the changes from the previous version of the contract (in the case of an amendment).

Services

Virgin is applying for a new Track Access Contract to operate services between London Euston and the Midlands, North-West and Scotland. The passenger services shall be allocated into four separate Service Groups:

- Preston/Rochdale via Manchester.
- Liverpool Lime Street.
- Birmingham New Street.
- Glasgow Central.

The proposal uses the 'Model Clause' Track Access Contract and does not currently seek to alter the terms.

The quantum of services is proposed as follows:

Service Group VT1 - London Euston and Preston/Rochdale (Via Manchester).

High quality passenger train services shall operate Monday – Sunday at a frequency of 5 daily services each way between London and Preston and 2 daily services each way between London and Rochdale. All services will call at the following stations: Nuneaton, Stoke-on-Trent, Stockport and Manchester Piccadilly. Preston bound services will then call at Bolton, Horwich Parkway, Chorley and Preston; Rochdale services will call at Manchester Victoria and Rochdale.

The proposed indicative timetable is shown in the table below for Up and Down directions respectively.

Preston	05:40		09:40	12:40	14:40		17:40
Bolton	06:15		10:15	13:15	15:15		18:15
Rochdale		08:09				16:09	
Manchester Victoria		08:24				16:24	
Manchester Piccadilly	06:39	08:39	10:39	13:39	15:39	16:39	18:39
Stockport	06:48	08:48	10:48	13:48	15:48	16:48	18:48
Stoke On Trent	07:15	09:15	11:15	14:15	16:15	17:15	19:15
Nuneaton	07:49	09:49	11:49	14:49	16:49	17:49	19:49
London Euston	08:57	10:57	12:57	15:57	17:57	18:57	20:57
London Euston	06:37	08:37	09:37	12:37	15:37	18:37	20:37
Nuneaton	07:34	09:34	10:34	13:34	16:34	19:34	21:34
Stoke On Trent	08:08	10:08	11:08	14:08	17:08	20:08	22:08
Stockport	08:44	10:44	11:44	14:44	17:44	20:44	22:44
Manchester Piccadilly	08:59	10:59	11:59	14:59	17:59	20:59	22:59
Manchester Victoria		11:14					23:14
Rochdale		11:29					23:29
Bolton	09:17		12:17	15:17	18:17	21:17	
Preston	09:45		12:45	15:45	18:45	21:45	

Service Group VT2 - London Euston and Liverpool Lime Street.

High quality passenger train services shall operate at a frequency of 15 daily services each way Monday - Sunday, serving stations at: Tamworth, Lichfield Trent Valley, Runcorn, Liverpool South Parkway and Liverpool Lime Street.

The proposed indicative timetable is shown in the table below for Up and Down directions respectively.

Liverpool Lime Street	06:13	07:13	08:13	09:13	10:13	11:13	12:13	13:13	14:13	15:13	16:13	17:13	18:13	19:13	20:13
Liverpool South Parkway	06:24	07:24	08:24	09:24	10:24	11:24	12:24	13:24	14:24	15:24	16:24	17:24	18:24	19:24	20:24
Runcorn	06:30	07:30	08:30	09:30	10:30	11:30	12:30	13:30	14:30	15:30	16:30	17:30	18:30	19:30	20:30
Lichfield Trent Valley	07:15	08:15	09:15	10:15	11:15	12:15	13:15	14:15	15:15	16:15	17:15	18:15	19:15	20:15	21:15
Tamworth	07:22	08:22	09:22	10:22	11:22	12:22	13:22	14:22	15:22	16:22	17:22	18:22	19:22	20:22	21:22
London Euston	08:30	09:30	10:30	11:30	12:30	13:30	14:30	15:30	16:30	17:30	18:30	19:30	20:30	21:30	22:30
London Euston	06:07	07:07	08:07	09:07	10:07	11:07	12:07	13:07	14:07	15:07	16:07	17:07	18:07	19:07	20:07
Tamworth	07:14	08:14	09:14	10:14	11:14	12:14	13:14	14:14	15:14	16:14	17:14	18:14	19:14	20:14	21:14
Lichfield Trent Valley	07:22	08:22	09:22	10:22	11:22	12:22	13:22	14:22	15:22	16:22	17:22	18:22	19:22	20:22	21:22
Runcorn	08:04	09:04	10:04	11:04	12:04	13:04	14:04	15:04	16:04	17:04	18:04	19:04	20:04	21:04	22:04
Liverpool South Parkway	08:11	09:11	10:11	11:11	12:11	13:11	14:11	15:11	16:11	17:11	18:11	19:11	20:11	21:11	22:11
Liverpool Lime Street	08:22	09:22	10:22	11:22	12:22	13:22	14:22	15:22	16:22	17:22	18:22	19:22	20:22	21:22	22:22

Service Group VT3 – London Euston and Birmingham New Street.

High quality passenger train services shall operate at a frequency of 16 daily services Monday - Sunday, serving stations at: Coventry and Birmingham International.

The proposed indicative timetable is shown in the table below for Up and Down directions respectively.

Birmingham New Street	07:17	09:17	11:17	13:17	15:17	16:17	18:17	19:17	21:17
Birmingham International	07:28	09:28	11:28	13:28	15:28	16:28	18:28	19:28	21:28
Coventry	07:40	09:40	11:40	13:40	15:40	16:40	18:40	19:40	21:40
London Euston	08:42	10:42	12:42	14:42	16:42	17:42	19:42	20:42	22:42
London Euston	10:10	12:10	14:10	15:10	20:10	21:10	22:10		
Coventry	11:06	13:06	15:06	16:06	21:06	22:06	23:06		
Birmingham International	11:17	13:17	15:17	16:17	21:17	22:17	23:17		
Birmingham New Street	11:27	13:27	15:27	16:27	21:27	22:27	23:27		

Service Group VT4 – London Euston and Glasgow Central.

High quality passenger train services shall operate at a frequency of 4 daily services each way Monday - Sunday, serving stations at: Golborne, Preston, Carlisle, Motherwell, Lockerbie and Glasgow Central.

Due to the mandated industry deadline of 20th May 2024, the timetable to support these services is still under development and we have agreed with the team at Network Rail that this will follow in June 2024.

The timetables to support the four service groups above have/are being developed and validated based on the June 2023 timetable using industry recognised timetable development and validation tool ATTune to demonstrate their credibility.

Consideration has also been given to our understanding that following paths are not currently being fully utilised by the respective operator:

- Avanti West Coast: Euston to Liverpool.
- Avanti West Coast: Euston to Birmingham New Street.
- Northern: via the Castlefield Corridor.
- TransPennine Express: via the Castlefield Corridor.

This application is made under Section 17 of the Railways Act 1993. Virgin has commenced active and constructive discussions with Network Rail but agreement enabling the use of Section 18 has not yet been reached. Virgin is keen to progress this application expeditiously, whilst Network Rail continues its own internal assessment of our proposals.

3.2 Safety risks: Please explain any important safety risks that have been identified arising from the proposal and how these will be controlled (by reference to the facility owner's safety authorisation and the train operator's safety certificate).

Virgin has not identified any safety risks outside those associated with the normal operation of railway services.

Importantly, Virgin has an excellent track record in operating high performing and reliable train services safely. Moreover, the train service operations shall be managed by a leadership team which has vast experience in mobilising and operating passenger train services under its associated Safety Management System and Competency Management Systems.

3.3 Contract duration: For new agreements or extensions to existing agreements, please provide justification for the proposed duration and, if more than 5 years, with reference to the [Railways \(Access, Management and Licensing\) Regulations 2016](#).

Virgin seeks an initial 10-year Track Access agreement from 2025 to 2035.

Virgin intends to secure extensions beyond the initial 10-year period (to a potential total of 20 years) through working with local partner bodies and communities along the route to develop proposals to invest in the rail infrastructure (network capability) and introduce new build 125mph capable rolling stock.

Due to the ORR requirement to submit this Form P by 20th May, not all of our plans are finalised. However, we intend to put forward detailed investment plans to support this longer contract term. Virgin is looking to invest in the development of various proposals that if proven to be deliverable will improve:

1. The customer proposition – increasing choice and competition and delivering an outstanding service for customers
2. The retailing, reservations and ticketing experience – by building on Virgin’s heritage in rail including what it is currently doing with Virgin Trains Ticketing – as it calls for change to unlock an improved rail retail model that better serves customers.
3. Train performance – by securing rolling stock which is fit for purpose and identifying and contributing to schemes that improve performance.
4. Environmental impacts – procuring auto stop/start technology and bio-diesel options
5. Engagement with local stakeholders – working closely with consumer groups and local government to deliver what travellers really want.
6. Capacity on the network – by working in close collaboration with Network Rail and meeting demand by providing a service on underused paths.

In addition to these improvements, in the long term and subject to Network Rail’s support, Virgin will work with our preferred ROSCO and business partners to introduce new-build high-quality electric rolling stock to replace the 22x fleet on electrified routes once power upgrades have been delivered on the route.

3.4 Terms not agreed with the facility owner (for applications under sections 17 or 22A only): Please explain any areas of the application which have ***not*** been agreed, the reasons for the failure to agree and the reasons for seeking these provisions.

Virgin’s application is made pursuant to ORR’s recently announced 20 May 2024 deadline for applications for new/amended track access rights in the December 2025 timetable. ORR and Network Rail have acknowledged that this deadline (and limited advance notification thereof) may result in some Track Access applications being submitted in parallel with industry consultations and being less developed than under normal circumstances.

Accordingly, at the date of this application, Virgin’s engagement with the facility owner, Network Rail, remains at an early stage.

Our proposal seeks to utilise a mixture of available capacity; both 'new' paths and 'spare' paths that are not currently being utilised by the relevant access beneficiary. Using an industry recognised timetable development tool ATTUNE, a 'first draft' standard hour of the timetable, against the June 2023 timetable, has been developed as a base. This standard hour is undergoing further refinement for all remaining hours of the day and shall be completed in the coming weeks. We will continue to work closely with Network Rail to evolve and validate our train service aspirations and passenger timetable. Once completed, the proposed paths identified shall be taken forward for internal Network Rail Capacity Assessment and used to undertake necessary Performance Modelling activities.

3.5 Bespoke provisions (departures from ORR's model access contracts)

Does the proposed contract include any departures from ORR's model access contract:

Yes No

If yes, please set out and explain any:

- areas where the drafting of the application changes ORR's published template access contracts (as appropriate, cross-referencing to the answers below). Please also explain why these departures have been made.

Noting the approach to the 20th May deadline and parallel industry consultations, Virgin's comments, proposed departures (if any) from ORR's model access contract and confirmation of which Virgin Group entity will enter into that contract will follow in due course.

- instances where the proposal departs from the charging and/or performance regimes established by ORR's latest periodic review (or subsequent interim reviews) as reflected in ORR's model access contracts, including the financial implications (e.g. establishment of an access charge supplement or rebate).

As above.

- new processes (e.g. a self-modification provision) which have been added. Please also demonstrate fully how this new process is robust and complete.

As above.

3.6 Consolidated contract

For amendments to existing contracts, is the version of the consolidated contract on our [website](#) fully up to date? If not, please explain why not.

As above.

4. The impacts of the proposal

4.1 Benefits: please set out what specific benefits the proposal will achieve. Please describe the benefits to passengers and any impact on other operators, including freight operators.

As operator of the InterCity West Coast franchise for more than 20 years, Virgin Trains set the bar for UK rail operators with unrivalled customer satisfaction, industry-leading innovation and a highly engaged workforce.

Since Virgin Trains ceased operations in 2019, service standards and performance on the line have been in decline and several rail users and stakeholders have called for the return of Virgin to the West Coast Mainline and the wider UK rail network. This application responds to those calls with the proposed reintroduction of Virgin operated services between London Euston and key destinations in the Midlands, North-West and Scotland.

Key benefits of our proposals include:

- Providing customers with choice and a compelling alternative to the franchise operator:
 - *For more than 50 years, Virgin has been innovating and disrupting the status quo in industries which are ripe for change – Virgin can meet passenger demand and give them a service which they deserve and can be proud of.*
 - *Open Access increases consumer choice and competition both of which Virgin has always supported.*
 - *As an open access operator, Virgin would have the flexibility to shape the future of fares and ticketing, setting the business as the consumer champion – for instance, in just 12 months, Virgin Trains Ticketing (Virgin's ticketing app) has saved passengers £700,000 by offering them the option to pay for all or part of their ticket using Virgin Points and by providing split ticket options.*
- Re-establishing a much needed 'high bar' in customer service:
 - *Best in class customer experience and digitalisation of the operation (incl on board, ticketing, loyalty and 1st/last mile), particularly during disruption.*
 - *Focussed, motivated, caring and dedicated workforce putting customers first.*
- Accelerating the ongoing recovery in passenger confidence/volumes in rail on the West Coast:
 - *Driving recovery of latent (pre-pandemic and strike action) demand*
 - *Accelerating long-term growth.*
- Reducing costs for the U.K taxpayer by:
 - *Helping to return the wider routes served to profitability.*
 - *Creating potential cost savings for the franchise operator by releasing paths (and associated resources) it is unable to operate.*
- Introducing new ways of working with Network Rail:
 - *Exploring a new operational model in conjunction with Network Rail – outsourcing controls and services to avoid duplication wherever possible and to ensure efficient operations and timely information.*
 - *Using the new model with Network Rail to offer customers better information during disruption with more certainty on options available including enhanced compensation levels for significant delays.*
- Supporting local communities:
 - *Virgin will work hard to understand what passengers and local communities want.*
 - *We will continue to consult with local Mayors and other stakeholders over the operational specifications and engagement with and support of local communities.*
- Creating more than 150 new and permanent full-time jobs
 - *With further associated benefits to local supply chains, including maintenance, servicing and provision of catering supplies and support.*
- Providing new North-West rail connectivity:
 - *Virgin services will directly link Horwich Parkway and Bolton with London, reducing journey times by an estimated 20 minutes.*

4.2 Capacity: How have you satisfied yourself that there is enough network capacity for the services in the proposal? Please include details on all relevant capacity considerations, including but not limited to track, platform availability, and power supply traction.

Virgin has developed a 'draft' standard timetable hour to support its application using the industry recognised ATTUne validation tools. However, it is recognised that a more detailed timetable is required. Whilst not ready for inclusion by the 20th May deadline, this is currently being developed by industry timetabling and performance specialists using recognised industry planning tools. This planning process will include examination of platform capacity at all locations and the required performance modelling. Once completed, Virgin's proposed timetable will be made available for industry review and feedback.

Virgin initially intends to operate the paths with diesel powered rolling stock, given Network Rail's known concerns about electric traction supply constraints on the southern end of the West Coast Main Line. The rolling stock Virgin shall seek to deploy will offer equivalent, or greater, performance characteristics than a Class 22x DMU.

Virgin is satisfied that capacity exists at proposed maintenance facilities on route to refuel and maintain its fleet as required, following discussions with potential providers.

Longer term, when the infrastructure allows, Virgin will seek to develop and introduce a new electric fleet. Virgin is already in discussions with its preferred ROSCO and train builder regarding such 'new' fleet procurement.

4.3 Performance: What is the impact on network performance? Please outline your assurance process that shows that any performance risk is tolerable in comparison to the benefits of the application. Please explain any risk mitigations. Please attach any associated evidence to support your case.

Virgin will undertake detailed performance modelling to validate the assumptions made in 4.2 above and this information will be available to support the application in due course.

4.4 Maintenance and renewals: Are there any implications for the facility owner's maintenance and renewal activities?

The additional route tonnage created by these proposed services is minor in relation to that already operating on the routes in question. The rolling stock deployed shall be no greater than RA5 in axle weight.

Virgin is confident that its operating times will not impinge on the facility owner's time for maintenance and renewal activity. Should this position change, Virgin will prepare plans for the use of alternative routes when maintenance and renewal activity is scheduled along our proposed route.

5. The expression of access rights

5.1 Changes to rights: please provide full descriptions of any new rights required, as compared to the previous contract (in the case of an amendment). Please attach a fully marked-up version or document comparison of any tables in Schedule 5 which are being modified as a result of this application.

Virgin is seeking new rights to operate Open Access passenger services between London Euston and:

- **Service Group VT1 – Preston/Rochdale** (via Manchester).
Calling at: Nuneaton, Stoke-on-Trent, Stockport and Manchester Piccadilly, and then Bolton, Horwich Parkway, Chorley and Preston (in both Directions) for trains to Preston and Manchester Victoria and Rochdale (in both directions) for trains to Rochdale.
- **Service Group VT2 - Liverpool Lime Street.**
Calling at: Tamworth, Lichfield Trent Valley, Runcorn, Liverpool South Parkway and Liverpool Lime Street (in both Directions).
- **Service Group VT3 - Birmingham New Street.**
Calling at: Coventry and Birmingham International (in both Directions).
- **Service Group VT4 - Glasgow Central.**
Calling at: Golborne, Preston, Carlisle, Motherwell, and Lockerbie (in both Directions)

5.2 Flexing rights: Please explain any limitations on the facility owner's flexing rights in the proposal and the rationale for such limitations.

Virgin will provide direct, high-speed and high-quality intercity passenger services to several destinations between the Midlands, North-West, Scotland and London Euston. Consequently, competitive journey times are anticipated to be an important factor for consumers when making journey choices between transport modes and between alternative train operators' services.

Whilst Virgin is not seeking to protect its journey time in this application, it is an important factor that needs to be taken into consideration.

5.3 Specified equipment: Please explain any changes to specified equipment (rolling stock). Has the vehicle and route acceptance procedure in the Network Code (Part F) has been completed? Please explain whether you have, or will have, the rolling stock necessary to exercise the rights.

Virgin is proposing to utilise Class 22x rolling stock, with no less capability or performance characteristics than the Class 222 and capable of operating at the MU speeds being implemented on the West Coast.

The Specified Equipment finally selected shall be fully route cleared along the main routes operated, which shall include selected diversionary routes.

Virgin's fleet is expected to be serviced and maintained at depots strategically located along the route. No 'out-based' stabling is currently envisaged.

5.4 Contractual obligations: Are the proposed services necessary to fulfil obligations under a public service contract? For publicly contracted operators seeking additional access rights, we will expect to see evidence of funder support for the specific rights and of operators' intent and ability to operate the new services.

n/a

5.5 Public funding: Other than the DfT, Welsh Government or Transport Scotland, are the proposed services subject to financial support from central or local government including PTEs. If so, please give details.

n/a

5.6 Long Term Planning Process: Is the Long Term Planning Process (or similar devolved authority or regional service delivery project) relevant to this application? If so, please explain how the proposed rights are consistent or inconsistent with this.

Virgin's proposed train services align with a range of long-term industry and combined/local authority and Sub-National Transport body aspirations, and can deliver some of these from 2025, earlier than hoped for by their proponents, including:

- **Network Rail - West Coast South Strategic Advice Report** (issued August 2023) emphasises the importance of supporting economic growth and improving direct connectivity with the North West. The report highlights the strategic objective to continually improve rail services that promote modal shift.
- **Midlands Connect – Midlands Rail Hub** – aspirations to improve line speeds between stations in the Midlands offering the potential to reduce end-to-end journey times.
- **West Midlands Rail Executive (WMRE) – Rail Investment Strategy 2022-2050.**
- **Warwickshire County Council** – Warwickshire's Transport Plan states that 'supporting economic growth' is the highest priority for transport.
- **North Warwickshire Borough Council** - Local Plan advocating for increasing car parking provision at Nuneaton station due to continued growth in patronage.

6. Competing passenger services:

We would expect to apply the 'not primarily abstractive' test to:

- (i) a new open access service which would compete with franchised services and so impact on the public sector funder's budget;
- (ii) a new franchised service which would compete with an existing franchised service, where we would expect to focus the test on areas where the competing franchised services are operated on behalf of different funders or where for some other reason there are particular concerns over the impact on a funder's budget; and
- (iii) a new service, which might be open access or franchised, which would compete with an existing open access service and which, if it caused the existing open access operator to withdraw from the market, could reduce overall competition on the network.

6.1 Please state if your application is for a competing passenger service, and if so please describe the nature of the competition:

Some of Virgin's proposed services would compete with franchised services currently owned but not fully utilised by Avanti West Coast, and we therefore anticipate that the NPA test will be applied.

In applying the NPA test, it is imperative that the ORR takes account of the extent of post-pandemic recovery on the proposed routes. Whilst other markets with similar characteristics have achieved full recovery, the proposed routes continue to significantly lag 2019 passenger levels, indicating considerable headroom for growth/recovery not captured by traditional industry modelling approaches.

Therefore, in addition to its normal assessments, we consider it essential that the ORR evaluation process considers and reflects:

- The high potential for growth on these routes.
- The unique capabilities of Virgin to unlock said growth, given (inter-alia): its established and trusted brand, with a 20+ year track record of industry-leading growth and customer satisfaction as the operator of the Intercity West Coast franchise; the existing base of loyal Virgin customers already buying rail tickets with Virgin Trains Ticketing (who have already saved £700,000 on their rail fares) and earning & redeeming Virgin Points on their journeys. On top of this, with its Virgin Red loyalty programme, Virgin can reach millions of people who may not otherwise consider travelling by rail by incentivising them to use the railway.
- The best interests of the travelling public, who deserve the choice of a quality service and the reintroduction of services / frequencies no longer operated by the franchise operator.
- The potential cost savings to the U.K Taxpayer of the franchise operator releasing paths (and associated resources) it is unable to operate.
- The aspirations and priorities of regional authorities and transport bodies.

The Virgin team welcomes further discussions on the above during the evaluation of this application.

Whilst not ready for inclusion by the 20th May deadline, Virgin is preparing the supporting documentation listed under section 6.2 (below) and this will follow in due course.

6.2 For competing services, please also confirm that you have attached as part of your submission to ORR the following:

- Business plan, including details of:
 - forecasts of passenger traffic and revenues, including forecast methodology;
 - pricing strategies;
 - ticketing arrangements;
 - rolling stock specifications (e.g. load factor, number of seats, wagon configuration);
 - marketing strategy;
 - estimated elasticities of the services (e.g. price elasticity, elasticity with respect to quality characteristics of the services).
- Demand forecasting (including associated spreadsheet models) demonstrating modelled generation : abstraction ratio.
- Indicative timetables, including associated .spg files

7. Incentives

7.1 Train operator performance: please describe any planned performance improvement initiatives and/or enhancement projects associated with the operation of the proposed services aimed at improving operator performance.

The Virgin operation shall have an extremely experienced rail senior leadership team based at a location on the route (yet to be decided). A satellite management structure will provide daily face-to-face management and support to all Virgin traincrew and other onboard staff. A dedicated engineering function will provide 24hr support to ensure the fleet is turned out fault free and any in-service failures shall be promptly resolved. Virgin shall use the new fleet performance metric Miles per 701D code (Mp701D) to monitor fleet performance; this shall sit alongside a comprehensive and detailed Train Service Agreement.

General operations shall be managed by a Railway Control team overseeing on-the-day traincrew diagrams, managing general operations and coordinating operations in times of disruption. Virgin shall employ sufficient traincrew to act as 'Golden' spares that shall be dedicated to returning the train service back to near normal as quickly and efficiently as possible post an incident. Virgin will also have a clear and deliverable overall Customer Experience strategy and a satisfaction measurement

metric (e.g. NAS) that will closely monitor CX performance onboard trains, online ticket purchasing, call centres and staff at stations served.

As well benefitting from its own experienced senior leadership team, Virgin will also have the advantage of calling upon the support of Alstom as the OEM and current maintainer of the proposed Specified Equipment.

As part of the preparation of the Specified Equipment for the proposed operation, Virgin will work closely with Alstom engineering and maintenance colleagues implement any required performance improvements.

7.2 Facility owner performance: please describe any planned performance improvement initiatives and/or enhancement projects associated with the operation of the proposed services aimed at improving the facility owner's performance.

All traincrew will be trained on the core routes alongside appropriate diversionary routes to enable the facility owner to divert trains without concern about route knowledge in the event of disruption.

7.3 Monitoring of services: Will all proposed services be monitored for performance throughout their journey? If not, please explain.

Yes

7.4 Performance regime changes (for applications under sections 17 or 22A only): where applicable, please provide justification for any changes to Schedule 8 of the track access contract in the proposal. If necessary, please provide any relevant information in support of the changes proposed.

None proposed.

8. Enhancement

8.1 Enhancement details: where the proposal provides for the delivery of any network enhancements, or the services in the proposal are subject to any planned network enhancements, please give full details of the relevant enhancement schemes, including a summary of outputs from the scheme, timescales and the extent to which the network change procedure in the Network Code (Part G) has been completed (where appropriate, by reference to submissions made under ORR's enhancement reporting framework).

Network Rail's Measurement Train activities.

Virgin shall work with Network Rail Engineering teams to evaluate the installation of remote monitoring and recording equipment to Virgin's train fleet; technical equipment installed shall support Network Rail's Infrastructure Measurement Train Activities.

8.2 Enhancement charges: please confirm that the arrangements for the funding of any network enhancements are consistent with the [investment framework](#), and summarise the level and duration of payments, and the assumed rate of return.

Pending understanding of extent of required enhancements and the associated costs.

9. Other

9.1 Associated applications to ORR: please state whether this application is being made in parallel with, or relates to, any other current or forthcoming application to ORR (e.g. in respect of track, station or light maintenance depot access contracts). Where the application is being made in parallel with any other application from the same operator, please ensure the applications are consistent with one another. Where the application relies on another operator relinquishing access rights, please provide evidence that this process has been completed.

None

9.2 Side letters and collateral agreements: please confirm here that the whole of the proposal between the parties has been submitted with this application and that there are no side letters or other documents which affect it.

Virgin expects to comply with this requirement post submission as contemplated by the ORR/NR letter requiring submission by 20th May.

9.3 Confidential redactions: please list any information that you have redacted from any documentation sent to consultees. If there has been no pre-application consultation, please list any information you want us to exclude from publication. Please provide full reasons for any redactions.

Virgin expects to comply with this requirement post submission as contemplated by the ORR/NR letter requiring submission by 20th May.

10. Pre-application consultation

10.1 The consultation:

If consultation has not been carried out, explain why not. If it has, please list the consultees.

This application has been prepared before any consultation has taken place. The application process has been expedited in accordance with the ORR letter of the 24th April 2024 -Competing and/or complex track access applications for December 2024, May 2025 and December 2025 timetable changes.

Who conducted the consultation?

Network Rail shall be conducting the consultation in parallel with this application.

List all consultees who responded and include their responses and any associated documentation or correspondence between the parties.

Virgin expects to comply with this requirement in due course

10.2 Resolved issues: please explain any issues raised by consultees which have been resolved.

Virgin expects to comply with this requirement in due course

10.3 Unresolved issues: Please explain any issues raised by consultees which have **not** been satisfactorily resolved and why you think these issues should not stop ORR approving the application.

Virgin expects to comply with this requirement in due course

10.4 Subsequent Changes: Have any changes been made to the proposal following consultation?

Virgin expects to comply with this requirement in due course

11. Certification

Warning: Under section 146 of the Railways Act 1993, any person who, in giving any information or making any application under or for the purposes of any provision of the Railways Act 1993, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, is guilty of an offence and so liable to criminal prosecution.

For agreed applications under section 18 or 22, Network Rail should complete the information below. For disputed applications under section 17 or 22A, the beneficiary should complete it.

I certify that the information provided in this form is true and complete to the best of my knowledge

Signed  Date 17 May 2024

Name (in caps) IAN WOODS Job title Director

For (company) Virgin Management Limited

12. Submission

12.1 What to send: please supply the application form, the proposed contract or amendment and, where possible, any other supporting information, in electronic form by e-mail, **in plain Microsoft Word or Open Document Text format** (i.e. excluding any macros, auto-para or page numbering, or other auto-formatting).

12.2 Where to send it:

Email: [REDACTED]

Rob McIntosh
Managing Director
North West & Central Region
Network Rail

20 June 2024

Dear Rob,

Avanti West Coast (AWC) Timetable Development Trajectory

I write further to our conversation on 11 June about future AWC timetable development, specifically intentions in respect of the proposed Liverpool service uplift.

The electric-only Class 807 fleet has been procured with intention to support an uplift of the London / Liverpool service to two trains per hour. We anticipate that sufficient competent traincrew resource will be in place to fully achieve this no later than December 2025 and that deliveries of all ten units in the 7-car Class 807 fleet will have been completed in advance of that date.

Ultimately the intention is to operate most of the services on the Liverpool route with Class 807 units which will provide a number of customer benefits:

- Increased overall capacity: whilst a Class 807 unit has a total capacity of 451 (49 first class and 402 standard class) compared to a Class 390 9-car unit of 469 (99 + 370), the operation of additional services will provide an increase in overall capacity of over 90% in each hour where the two services operate.
- Increased connectivity:
 - as Class 807 units have Automatic Selective Door Operation (ASDO), their introduction will allow some services to call at Liverpool South Parkway, thus providing increased connectivity; and
 - one train in each hour will have calls at Lichfield and Tamworth which will increase connectivity between the Midlands and the North West (as has already been demonstrated with the incorporation of Nuneaton calls into Manchester services since December 2022).

The factors above are expected to contribute to increased passenger journeys and industry revenue as well as support wider stakeholder aspirations.

The current trajectory for service uplifts is summarised on the attached appendix which can be summarised as:

- The first additional service in each direction on the Liverpool route to be introduced during the currency of the June 2024 timetable (as per Network Rail's (NR's) offer dated 01/12/23) with a second round-trip being introduced in December 2024 (as per NR's offer dated 14/06/24). AWC hold a mixture of firm and contingent rights for these services.

- The Advance Notice of Timetable Change (ANTC) submitted to Network Rail (NR) on 26/04/24 includes a further five additional services in each direction (with one northbound service operating via the West Midlands) from May 2025. These services will be bid at 09/08/24 [D40]. AWC hold contingent rights for all these services (see below).
- It is the intention to include the remaining services in the ANTC for December 2025 which is due to be submitted on 22/11/24. AWC hold contingent rights for all these services (see below).

Note that the above quantities are based on the SX timetable with the number of additional services varying as per the attached appendix.

The prioritisation of hours of operation of the additional services has been derived through commercial analysis and stakeholder input but, nonetheless, remain flexible to emerging demand and timetabling constraints subject to efficient resource utilisation.

AWC colleagues gave further context on our timetable trajectory during an engagement session held on 3 June 2024, which included the NR's Route Director for West Coast South, NW&C's Passenger Director and Customer Account Manager as well as the Office of Rail and Road (ORR) Senior Access Executive responsible for AWC. Outputs from this session were duly shared with NR colleagues.

As you will be aware, ORR wrote to AWC and Network Rail on 9 October 2023 directing us to enter into the 2nd Supplemental Agreement to our Track Access Contract which was duly completed.

During the application review process, ORR asked WSP to carry out an assessment of competing applications for West Coast Main Line capacity and WSP came to the conclusion that there was enough platform and electrical capacity to grant AWC the additional Liverpool rights.

ORR asserted that the recommendations in the WSP report were still applicable and appropriate, and if AWC was granted the rights on a contingent basis, we could build up a performance analysis over the timetable period to give us the ability to apply for firm rights on whatever of the services we had consistently been able to run. ORR concluded that, in the overall public interest, they should approve the application with the rights being granted on a contingent basis.

Whilst the originally envisaged June 2024 and December 2024 timescales have clearly slipped in the last 8 months due to late delivery of the Class 80X units (as a result of testing, manufacturing and material delays) and the associated challenges with Class 80X driver training, we believe that the attached trajectory remains consistent with the approach outlined by ORR.

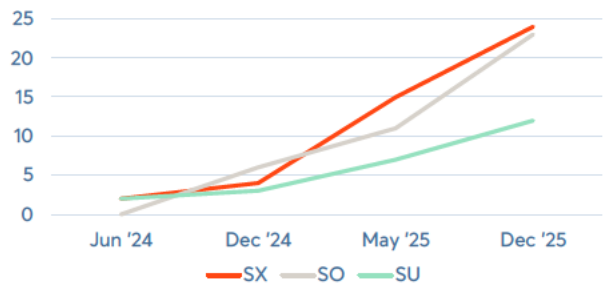
Yours sincerely,



Andy Mellors
Managing Director

Enc

Liverpool Route Timetable Development Trajectory



June 2024

December 2024

May 2025

December 2025 and beyond

TT*

+2 services SX
+0 services SO
+2 services SU

+2 services SX
+6 services SO
+1 services SU

+9 services SX
+6 services SO
+4 services SU

+11 services SX
+12 services SO
+5 services SU

Fleet

Additional services contingent on utilising 807s, once these are delivered and sufficient Drivers trained, these services will be introduced.

Mixed fleet likely across the Liverpool route. The team are reviewing how many 807s can be deployed based on the cascade plan and Driver training.

Sufficient trains running to swap the current Liverpool service to 807s and run the 2nd tph as 390s without reducing capacity. This change will be made pending further unit delivery and driver training.

xx43 Liverpool services all operated by 807s on the "stopping" services. The 2nd path all operated by 390s on the semi fast services.

*Total services in both directions added in each timetable



Liverpool Route Timetable Development Details

Additional Services on the Liverpool Route				
Days	June '24	Dec '24	May '25	Dec '25
SX	10.01 Liverpool – Euston 16.02 Euston – Liverpool	09.13 Liverpool – Euston 13.07 Euston – Liverpool	08.13 Liverpool – Euston 13.13 Liverpool – Euston 14.13 Liverpool – Euston 16.13 Liverpool – Euston 18.13 Liverpool – Euston 06.40 Euston – Liverpool (via Bham)* 10.07 Euston – Liverpool 11.07 Euston – Liverpool 15.07 Euston – Liverpool 17.07 Euston – Liverpool	All paths running, total of 24 additional services per day compared to Dec '23.
SO	N/A	07.13 Liverpool – Euston 09.04 Liverpool – Euston 10.07 Euston – Liverpool 13.13 Liverpool – Euston 14.02 Euston – Liverpool 19.07 Euston – Liverpool	08.13 Liverpool – Euston 14.13 Liverpool – Euston 17.13 Liverpool – Euston 11.07 Euston – Liverpool 16.07 Euston – Liverpool 17.07 Euston – Liverpool	All paths running, total of 23 additional services per day compared to Dec '23.
SU	16.04 Liverpool – Euston 12.04 Euston – Liverpool	14.06 Euston – Liverpool	14.13 Liverpool – Euston 17.13 Liverpool – Euston 17.04 Euston – Liverpool 19.04 Euston – Liverpool	All paths running, total of 12 additional services per day compared to Dec '23.

*Not an additional service but rather an extension of a current Wolverhampton service.



First Trenitalia West Coast Rail Limited
8th Floor, The Point, 37 North Wharf Road
London, United Kingdom, W2 1AF

Paul Harris
Network Rail Infrastructure Limited
Waterloo General Office
London
SE1 8SW

Date: 21/06/24

URGENT: ATTENTION the Company Secretary (Network Rail)

Dear Paul,

Network Code Condition J2: Notification of Relevant Surrender or Relevant Adjustment

Context:

I am writing to confirm FTWCRL's intention to relinquish unused held access rights, as listed below. These represent a mixture of permanent and temporary relinquishments where trains are currently not operating, or where we will no longer be operating in the future.

Several aspects have been considered, including provision for future demand and connectivity, in addition to our internal assessment of operability based on resourcing factors.

Please accept this letter as **notice under Network Code Condition J2.1.2** of a Relevant Surrender of Access Rights or part and/or parts of Access Rights for which we have no current or foreseeable reasonable on-going commercial need pursuant to our obligation in Condition J2.1.1.

A tabled appendices is included for reference.

Rights Subject to Surrender as Permanent Relinquishments:

FTWCRL permanently relinquishes all passenger access rights held between Birmingham New Street / Wolverhampton and Shrewsbury, with operations having now ceased on this route from the start of the June 2024 timetable as AWC is no longer operating this service. This totals 6 firm rights as detailed on the appended table.

Rights Subject to Surrender as Temporary Relinquishments – Until May 2025:

FTWCRL temporarily relinquishes rights to operate the following trains until the start of the May 2025 timetable:

Weekdays (SX)

12:10 London Euston – Birmingham New Street

04:48 Holyhead – Crewe (This is a partial relinquishment of a Holyhead – London Euston right, the remainder of which is in use by a different service)

22:15 Manchester Piccadilly – London Euston

Saturdays (SO)

14:02 London Euston – Chester

Sundays (Su)

16:45 Crewe to Chester (This is a partial relinquishment of a London Euston – Chester right, the remainder of which is in use by a different service).

Rights Subject to Surrender as Temporary Relinquishments – Until May 2026:

FTWCRL temporarily relinquishes rights to operate the following trains until the start of the May 2026 timetable:

Weekdays (SX)

07:02 London Euston – Chester

19:17 Birmingham New Steet – London Euston

20:17 Birmingham New Street – London Euston

XX:XX London Euston – Birmingham New Steet (late evening, departure TBC)

Contingent Rights – Liverpool Services:

FTWCRL has been open with Network Rail regarding its timetable trajectory in respect of these services and that it is AWC's intent to incrementally step-up operations between the June 2024 timetable and December 2025 timetable. Further consideration is ongoing in respect of our approach to any form of relinquishment of these rights.

We will write to you again on the 1st July 2024, no later than 1030am to provide you with our final position in respect of contingent rights.



Concluding Remarks

We remain committed to working collaboratively with Network Rail in resolving access challenges on the network. We remain focused on our timetable trajectory to reach the 10 trains per hour service as set out at our meeting on the 3rd June 2024, and within our submission to the ORR's access response request on the 20th May 2024.

As part of this approach, we will continue to act reasonably in accordance with the Network Code. Please do feel free to contact us in the meantime with any further information you require.

Yours Sincerely,



Head of Operational Readiness
Avanti West Coast



First Trenitalia West Coast Rail Limited
8th Floor, The Point, 37 North Wharf Road
London, United Kingdom, W2 1AF

Paul Harris
Network Rail Infrastructure Limited
Waterloo General Office
London
SE1 8SW

Date: 01/07/24

URGENT: ATTENTION the Company Secretary (Network Rail)

Dear Paul,

RE: Network Code Condition J2: Notification of Relevant Surrender or Relevant Adjustment

Context:

Further to our correspondence on the 21st June 2024, I am writing to confirm FTWCRL's intention to temporarily relinquish unused held contingent access rights, as listed below.

Please accept this letter as **notice under Network Code Condition J2.1.2** of a Relevant Surrender of Access Rights. Whilst we note that this normally occurs due to not having a current or foreseeable reasonable on-going commercial need, we highlight within our response that there are factors outside of AWC's direct control that are preventing operation of these new services, with it being our intention to operate them as soon as resources allow.

Several aspects have been considered in this action, with the primary purpose of this approach being to act reasonably and in good faith in accordance with the Network Code. We are therefore submitting this letter pursuant to our obligation in Condition J2.1.2.

A tabled appendices is included for reference.

AWC's Timetable Trajectory

On the 20th June 2024, Andy Mellors, Managing Director for Avanti West Coast, wrote to Rob McIntosh, Network Rail's North West & Central Regional Director regarding AWC's Timetable Trajectory. This was following an engagement session held on the 3rd June 2024, attended by Gary Walsh, Route Director West Coast South, James Dean, Passenger Director NW&C alongside the Customer Management team from Network Rail and the Senior Access Executive for the ORR.

We wish to be clear that it is our intention to fully operate the second hourly service on the Liverpool route aligned with our engagement within these sessions, alongside our submission to the ORR on the 20th May 2024 on our Track Access Aspirations for May 2025 and December 2025.

We currently anticipate that sufficient competent traincrew resources will be in place to achieve the uplifted service no later than December 2025, and that all deliveries of all ten units within the all-electric Class 807 fleet will have been completed well in advance of that date.

Contingent Rights – Liverpool Services:

FTWCRL is acting reasonably and in good faith by temporarily surrendering these rights. We wish to be clear that FTWCRL is currently not operating these services due to factors outside of its direct control which are non-economic in nature. This includes:

- **Industrial Action** - FTWCRL's AWC operation is still recovering from a period of heightened challenging industrial relations between 2022 and 2024. Whilst local relations are improving, we note that the national dispute between ASLEF & Train Operators remains live, with no clear outcome.
- **Driver Training** – It has taken AWC 3 years to recover from a pause in Driver training during the pandemic.
- To deliver the new additional services on the Liverpool Route, further training is required. This includes both conventional new driver training as well as additional new traction training on Class 80x units, the agreement for which was also delayed.
- **Class 807 Delivery** – Deliveries of new units intended to operate the second AWC service between London Euston and Liverpool Lime Street have been subject to materials, manufacturing and testing delays. As a result, AWC does not currently have sufficient trains to increase service provision on this route without causing a detriment to other service groups.

Had these factors not been present, FTWCRL believes that there would be commercial viability in operating these new additional services during the current timetable period; it is our intention to introduce them as soon as conditions allow.

The ORR wrote to FTWCRL and Network Rail on 9 October 2023 directing us to enter into the 2nd Supplemental Agreement to our Track Access Contract which was duly completed.

ORR asked WSP to carry out an assessment of competing applications for West Coast Main Line capacity and WSP concluded that there was enough platform and electrical capacity to grant FTWCRL the additional Liverpool rights.

ORR asserted that the recommendations in the WSP report were still applicable and appropriate, and if FTWCRL was granted the rights on a contingent basis, we could build up a performance analysis over the timetable period to give us the ability to apply for firm rights on whatever of the services we had consistently been able to run.

ORR concluded that, in the overall public interest, they should approve the application with the rights being granted on a contingent basis. Whilst the originally envisaged June 2024 and December 2024 timescales have clearly slipped in the last 8 months due to the factors outlined above, we believe that the phased Liverpool service uplift trajectory remains consistent with the approach outlined by ORR.

We wish to reiterate that it is our full intention to operate these services at the earliest possible opportunity.

Rights Subject to Surrender as Temporary Relinquishments – Until December 2024:

Aligned with the approach outlined above, FTWCRL temporarily relinquishes rights to operate the following quantum of rights **until the start of the December 2024 timetable**. We still intend to operate an additional round trip within the currency of the June 2024 timetable. These services will be planned under STP arrangements.

Weekdays (SX)

London Euston – Liverpool Lime Street – 1 Contingent Right.

Liverpool Lime Street – London Euston – 1 Contingent Right.

Saturdays (SO)

London Euston – Liverpool Lime Street – 2 Contingent Rights, 1 Firm Right.

Liverpool Lime Street – London Euston – 3 Contingent Rights.

Sundays (Su)

London Euston – Liverpool Lime Street – 1 Contingent Right.

Continued Overleaf.

Rights Subject to Surrender as Temporary Relinquishments – Until May 2025:

Aligned with the approach outlined above, FTWCRL temporarily relinquishes rights to operate the following trains **until the start of the May 2025 timetable**.

Weekdays (SX)

London Euston – Liverpool Lime Street - 4 contingent rights

Liverpool Lime Street – London Euston - 4 contingent rights

Partial Relinquishment: Liverpool Lime Street – London Euston – 1 contingent right.

Saturdays (SO)

London Euston – Liverpool Lime Street - 3 contingent rights

Liverpool Lime Street – London Euston - 3 contingent rights

Sundays (Su)

London Euston – Liverpool Lime Street - 2 contingent rights

Liverpool Lime Street – London Euston - 1 contingent right

Rights Subject to Surrender as Temporary Relinquishments – Until December 2025:

Aligned with the approach outlined above, FTWCRL temporarily relinquishes rights to operate the following trains **until the start of the December 2025 timetable**.

Weekdays (SX)

London Euston – Liverpool Lime Street - 6 contingent rights

Liverpool Lime Street – London Euston - 5 contingent rights

Saturdays (SO)

London Euston – Liverpool Lime Street – 6 contingent rights

Liverpool Lime Street – London Euston – 5 contingent rights

Sundays (Su)

London Euston – Liverpool Lime Street – 1 contingent right

Liverpool Lime Street – London Euston – 2 contingent rights

Concluding Remarks

We remain committed to working collaboratively with Network Rail in resolving access challenges on the Network. We remain focused on our timetable trajectory to reach the 10 trains per hour service as set out at our meeting on the 3rd June 2024, and within our submission to the ORR's access response request on the 20th May 2024.

It is our intention to be fully operating the new second hourly Liverpool service in our timetable from December 2025, and as a result, these temporary relinquishments match our timetable trajectory.

As part of this approach, we will continue to act reasonably in accordance with the Network Code. Please do feel free to contact us in the meantime with any further information you require.

Yours Sincerely,

[Redacted Signature]

**Head of Operational Readiness
Avanti West Coast**

Appendix 1 – Rights for Relinquishment

Service Group Code	Origin	Destination	Timing load	Dayset	If in part, detail of the part to be relinquished	Number of Rights to be Relinquished TEMPORARILY	Comments
HF04.2	London Euston	Liverpool Lime Street	390	Weekday		1 Contingent, June 2024 – Dec 2024 4 Contingent, June 2024 – May 2025 6 Contingent, June 2024 – Dec 2025	
HF04.2	London Euston	Liverpool Lime Street	390	Saturday		1 Firm, June 2024 – Dec 2024 2 Contingent, June 2024 – Dec 2024 3 Contingent, June 2024 – May 2025 6 Contingent, June 2024 – Dec 2025	
HF04.2	London Euston	Liverpool Lime Street	390	Sunday		1 Contingent, June 2024 – Dec 2024 2 Contingent, June 2024 – May 2025 1 Contingent, June 2024 – Dec 2025	
HF04.5	Liverpool Lime Street	London Euston	390	Weekday		1 Contingent, June 2024 – Dec 2024 4 Contingent, June 2024 – May 2025 5 Contingent, June 2024 – Dec 2025	
HF04.5	Liverpool Lime Street	London Euston	390	Weekday	Liverpool Lime Street to Crewe	1 Contingent, June 2024 – May 2025	Partial Relinquishment
HF04.5	Liverpool Lime Street	London Euston	390	Saturday		3 Contingent, June 2024 – Dec 2024 3 Contingent, June 2024 – May 2025 5 Contingent, June 2024 – Dec 2025	
HF04.5	Liverpool Lime Street	London Euston	390	Sunday		1 Contingent, June 2024 – May 2025 2 Contingent, June 2024 – Dec 2025	

Appendix 1 – Rights for Relinquishment

Avanti West Coast Schedule 5 Access Rights Being Relinquished									
Service Group Code	Origin	Destination	Via	Timing load	Dayset	If in part, detail of the part to be relinquished	Number of Rights to be Relinquished TEMPORARILY	Number of Rights to be Relinquished PERMANENTLY	Comments
HF01.2	London Euston	Birmingham New Street		80x	Weekday off peak		1 Firm, June 2024 until May 2025, 1 Firm, June 2024 until May 2026		12.10 Euston to Birmingham returning May 2025, a further late evening service returning May 2026.
HF01.5	Birmingham New Street	London Euston		80x	Weekday off peak		2 Firm, June 2024 until May 2026		19.17 and 20.47 Birmingham New Street to Euston returning May 2026
HF01.8	London Euston	Shrewsbury		80x	Weekday evening peak	Wolverhampton to Shrewsbury		1 Firm	Shrewsbury leg of this service removed as AWC is no longer operating this service.
HF01.8	London Euston	Shrewsbury		80x	SO	Birmingham New Street to Shrewsbury		1 Firm	Shrewsbury leg of this service removed as AWC is no longer operating this service.
HF01.8	London Euston	Shrewsbury		80x	Su	Wolverhampton to Shrewsbury		1 Firm	Shrewsbury leg of this service removed as AWC is no longer operating this service.
HF01.9	Shrewsbury	London Euston		80x	Weekday morning peak	Shrewsbury to Birmingham New Street		1 Firm	Shrewsbury leg of this service removed as AWC is no longer operating this service.
HF01.9	Shrewsbury	London Euston		80x	SO	Shrewsbury to Birmingham New Street		1 Firm	Shrewsbury leg of this service removed as AWC is no longer operating this service.
HF01.9	Shrewsbury	London Euston		80x	Su	Shrewsbury to Birmingham New Street		1 Firm	Shrewsbury leg of this service removed as AWC is no longer operating this service.
HF02.1	London Euston	Chester		80x	Weekday		1 Firm, June 2024 until May 2026		07.02 Euston - Chester
HF02.1	London Euston	Chester		80x	SO		1 Firm, June 2024 until May 2025		14.02 Euston - Chester
HF02.1	London Euston	Chester		80s	Su	Crewe to Chester only	1 Firm, Jun 2024 until May 2025		15.01 Euston - Chester, Euston - Crewe portion in use by 1P94 15.01 Euston-Blackpool which becomes a portion of the Chester from May 25
HF02.4	Holyhead	London Euston		80x	Weekday	Holyhead to Crewe	1 Firm, Jun 2024 until May 2025		04.48 Holyhead-Crewe will be reinstated from May 2025. The Crewe-Euston portion of this right is in use by 05.35 Blackpool-Euston, which the Holyhead working will attach to at Crewe when it is reinstated.
HF03.6	Manchester Piccadilly	London Euston	Stoke and Macclesfield	390	Weekday off peak		1 Firm, Jun 2024 until May 2025		22.15 Manchester Piccadilly to London Euston will be reinstated from May 2025

From: Paul Harris (Customer Manager)

Sent: Tuesday, July 16, 2024 1:49 PM

To: Andy Doyle [REDACTED]; Ben Kelly [REDACTED]

Cc: Sue Rhymes [REDACTED]; EXTL: Johnson David (Avanti West Coast) [REDACTED]; Mathew Turner [REDACTED]

Subject: RE: FTWCRL Temporary Relinquishments Confirmation

FTWCRL Letter to NR - Access R x | 240620 AWC Timetable Develop x | 240620 AWC Timetable Develop x | FTWCRL Letter to NR - Liverpool x

Draw | Ask Copilot | 6 of 6

Appendix 1 – Rights for Relinquishment

Service Group Code	Origin	Destination	Timing load	Dayset	If in part, detail of the part to be relinquished	Number of Rights to be Relinquished TEMPORARILY	Comments
HF04.2	London Euston	Liverpool Lime Street	390	Weekday		1 Contingent, June 2024 – Dec 2024 4 Contingent, June 2024 - May 2025 6 Contingent, June 2024 - Dec 2025	
HF04.2	London Euston	Liverpool Lime Street	390	Saturday		1 Firm, June 2024 – Dec 2024 2 Contingent, June 2024 – Dec 2024 3 Contingent, June 2024 – May 2025 6 Contingent, June 2024 – Dec 2025	
HF04.2	London Euston	Liverpool Lime Street	390	Sunday		1 Contingent, June 2024 – Dec 2024 2 Contingent, June 2024 – May 2025 1 Contingent, June 2024 – Dec 2025	
HF04.5	Liverpool Lime Street	London Euston	390	Weekday		1 Contingent, June 2024 – Dec 2024 4 Contingent, June 2024 – May 2025 5 Contingent, June 2024 – Dec 2025	
HF04.5	Liverpool Lime Street	London Euston	390	Weekday	Liverpool Lime Street to Crewe	1 Contingent, June 2024 – May 2025	Partial Relinquishment
HF04.5	Liverpool Lime Street	London Euston	390	Saturday		3 Contingent, June 2024 – Dec 2024 3 Contingent, June 2024 – May 2025 5 Contingent, June 2024 – Dec 2025	
HF04.5	Liverpool Lime Street	London Euston	390	Sunday		1 Contingent, June 2024 – May 2025 2 Contingent, June 2024 – Dec 2025	

GBP/AUD +0.36% | 13:42 16/07/2024

I don't think these 2 documents tally with regards to relinquishments and even if I take these as rights used then they still don't, e.g. it looks as if you are using 2 London – Eustons from Dec '24 and not 4?
 There are a total of 12 rights for this section and it doesn't work if we take this column as used or relinquished?
 If the attached table is correct then we could follow this in terms of relinquishments and the letter would need to be corrected please?

Thanks,

Paul

From: Andy Doyle [REDACTED]
 Sent: Monday, July 1, 2024 10:18 AM
 To: Paul Harris (Customer Manager) [REDACTED]

Cc: Sue Rhymes [redacted]; EXTL: Johnson David (Avanti West Coast) [redacted]; Andy Mellors <[redacted]>; craig.forster <[redacted]>
Subject: Re: FTWCRL Temporary Relinquishments Confirmation

Good Morning Paul,

As promised, please find attached FTWCRL's letter confirming temporary relinquishment of access rights pertaining to the following timetable changes, in respect of our new services on the Liverpool Route:

- December 2024
- May 2025
- December 2025

As ever, we remain available to discuss any issues that may arise over the coming weeks in relation to this.

All the Best,
Andy



First Trenitalia West Coast Rail Limited
a FirstGroup and Trenitalia FS Group Company

Andy Doyle
Head of Operational Readiness
Avanti West Coast
el [redacted]
ml [redacted]
a| Victoria Square House, Birmingham, B2 4DN



From: Andy Doyle [redacted]
Sent: 01 July 2024 7:55 AM
To: Paul Harris (Customer Manager) [redacted]
Cc: Sue Rhymes [redacted]; David Johnson [redacted]
Subject: FTWCRL Temporary Relinquishments Confirmation

Good Morning Paul,

I hope you had a good break.

As per our letter to you on the 21st June 2024, we will be writing to you later today to confirm temporary relinquishments on the Liverpool Route aligned with services that hold contingent rights and our timetable step-up trajectory as shared on the 3rd June 2024.

I am in the process of getting the final ok of the letter from DfT. It has been reviewed and signed off internally. It is my intention to have this to you by 1030, but if it goes past this time, please be aware that the letter will be arriving imminently.

Thank you again for your patience with us on this matter.

All the Best,
Andy



First Trenitalia West Coast Rail Limited
a FirstGroup and Trenitalia FS Group Company

Andy Doyle
Head of Operational Readiness
Avanti West Coast
el [redacted]
ml [redacted]
a| Victoria Square House, Birmingham, B2 4DN



From: Paul Harris (Customer Manager)
Sent: Thursday, July 25, 2024 10:55 AM
To: [REDACTED]; Beilby, Louise [REDACTED]
Subject: FW: Updated Liverpool replenishment Letter

Hi Louise,

Avanti has sent a letter to replace their previous Liverpool letter.

Cheers,

Paul

From: Mathew Turner [REDACTED]
Sent: Monday, July 22, 2024 4:13 PM
To: Paul Harris (Customer Manager) [REDACTED]
Cc: Andy Doyle [REDACTED]; Sue Rhymes [REDACTED]; EXTL:
Johnson David (Avanti West Coast) [REDACTED]; Ben Kelly [REDACTED]
[REDACTED]
Subject: FW: Updated Liverpool replenishment Letter

Dear Paul.

Please find FTWCRL updated Liverpool access relinquishment letter dated 22/07/2024.

Please let me know if you have any questions.

Many thanks

First Trenitalia West Coast Rail Limited
8th Floor,
The Point, 37
North Wharf Road London,
United Kingdom,
W2 1AF

Paul Harris
Network Rail Infrastructure Limited
Waterloo General Office
London
SE1 8SW

Date: 22nd July 2024

URGENT: ATTENTION the Company Secretary (Network Rail)

Dear Paul,

UPDATED RE: Network Code Condition J2: Notification of Relevant Surrender or Relevant Adjustment

Context:

Further to our correspondence on the 21st June 2024, I am writing to confirm FTWCRL's intention to temporarily relinquish unused held contingent access rights, as listed below.

Please accept this letter as **notice under Network Code Condition J2.1.2** of a Relevant Surrender of Access Rights. Whilst we note that this normally occurs due to not having a current or foreseeable reasonable on-going commercial need, we highlight within our response that there are factors outside of FTWCRL's direct control that are preventing operation of these new services, with it being our intention to operate them as soon as resources allow.

Several aspects have been considered in this action, with the primary purpose of this approach being to act reasonably and in good faith in accordance with the Network Code. We are therefore submitting this letter pursuant to our obligation in Condition J2.1.2.

AWC's Timetable Trajectory

On the 20th June 2024, Andy Mellors, Managing Director for Avanti West Coast (AWC), wrote to Rob McIntosh, Network Rail's North West & Central Regional Director regarding AWC's Timetable Trajectory. This was following an engagement session held on the 3rd June 2024, attended by Gary Walsh, Route Director West Coast South, James Dean, Passenger Director NW&C alongside the Customer Management team from Network Rail and the Senior Access Executive for the ORR.

FTWCRL wish to be clear that it is our intention to fully operate the second hourly service on the Liverpool route aligned with our engagement within these sessions, alongside our submission to the ORR on the 20th May 2024 on our Track Access Aspirations for May 2025 and December 2025.

FTWCRL currently anticipate that sufficient competent traincrew resources will be in place to achieve the uplifted service no later than December 2025, and that all deliveries of all ten units within the all-electric Class 807 fleet will have been completed well in advance of that date.

Contingent Rights – Liverpool Services:

FTWCRL is acting reasonably and in good faith by temporarily surrendering these rights. We wish to be clear that FTWCRL is currently not operating these services due to factors outside of its direct control which are non-economic in nature. This includes:

- **Industrial Action** - FTWCRL's AWC operation is still recovering from a period of heightened challenging industrial relations between 2022 and 2024. Whilst local relations are improving, we note that the national dispute between ASLEF & Train Operators remains live, with no clear outcome.
- **Driver Training** – It has taken AWC 3 years to recover from a pause in Driver training during the pandemic.
- To deliver the new additional services on the Liverpool Route, further training is required. This includes both conventional new driver training as well as additional new traction training on Class 80x units, the agreement for which was also delayed.
- **Class 807 Delivery** – Deliveries of new units intended to operate the second AWC service between London Euston and Liverpool Lime Street have been subject to materials, manufacturing and testing delays. As a result, AWC does not currently have sufficient trains to increase service provision on this route without causing a detriment to other service groups.

Had these factors not been present, FTWCRL believes that there would be commercial viability in operating these new additional services during the current timetable period; it is our intention to introduce them as soon as conditions allow.

The ORR wrote to FTWCRL and Network Rail on 9 October 2023 directing us to enter into the 2nd Supplemental Agreement to our Track Access Contract which was duly completed.

ORR asked WSP to carry out an assessment of competing applications for West Coast Main Line capacity and WSP concluded that there was enough platform and electrical capacity to grant FTWCRL the additional Liverpool rights.

ORR asserted that the recommendations in the WSP report were still applicable and appropriate, and if FTWCRL was granted the rights on a contingent basis, FTWCRL could build up performance analysis over the timetable period to give the ability to apply for firm rights on whatever of the services FTWCRL had consistently been able to run.

ORR concluded that, in the overall public interest, they should approve the application with the rights being granted on a contingent basis. Whilst the originally envisaged June 2024 and December 2024 timescales have clearly slipped in the last 8 months due to the factors outlined above, FTWCRL believe that the phased Liverpool service uplift trajectory remains consistent with the approach outlined by ORR.

FTWCRL wish to reiterate that it is our full intention to operate these services at the earliest possible opportunity.

Rights Subject to Surrender as Temporary Relinquishments – Until December 2024:

Aligned with the approach outlined above, FTWCRL temporarily relinquishes rights to operate the following quantum of rights **until the start of the December 2024 timetable**. We still intend to operate an additional round trip within the currency of the June 2024 timetable. These services will be planned under STP arrangements.

Table Provided Overleaf

Table 1. Use of Contingent Liverpool Access Rights – June 2024 until December 2024				
HF04.2	London Euston to Liverpool Lime Street	SX	Total Contingent Rights In Use	1
			Total Relinquished Contingent Rights	11
			Total Firm Rights in use	2
			Total Relinquished Firm Rights	0
		SO	Total Contingent Rights In Use	0
			Total Relinquished Contingent Rights	12
			Total Firm Rights in use	1
			Total Relinquished Firm Rights	1
		Su	Total Contingent Rights In Use	1
			Total Relinquished Contingent Rights	4
			Total Firm Rights in use	1
			Total Relinquished Firm Rights	0
HF04.5	Liverpool Lime Street to London Euston	SX	Total Contingent Rights In Use	0
			Total Relinquished Contingent Rights	11
			Total Firm Rights in use	3
			Total Relinquished Firm Rights	0
		SO	Total Contingent Rights In Use	0
			Total Relinquished Contingent Rights	11
			Total Firm Rights in use	2
			Total Relinquished Firm Rights	0
		Su	Total Contingent Rights In Use	1
			Total Relinquished Contingent Rights	3
			Total Firm Rights in use	1
			Total Relinquished Firm Rights	0

Rights Subject to Surrender as Temporary Relinquishments – Until May 2025:

Aligned with the approach outlined above, FTWCRL temporarily relinquishes rights to operate the following trains **until the start of the May 2025 timetable**.

HF04.2	London Euston to Liverpool Lime Street	SX	Total Contingent Rights in Use	3
			Total Relinquished Contingent Rights	9
			Total Firm Rights in use	2
			Total Relinquished Firm Rights	0
		SO	Total Contingent Rights in Use	2
			Total Relinquished Contingent Rights	10
			Total Firm Rights in use	2
			Total Relinquished Firm Rights	0
		Su	Total Contingent Rights in Use	2
			Total Relinquished Contingent Rights	3
			Total Firm Rights in use	1
			Total Relinquished Firm Rights	0
HF04.5	Liverpool Lime Street to London Euston	SX	Total Contingent Rights in Use	2 (1 CRE – EUS)
			Partially Relinquished Contingent Rights	1 (LIV – CRE)
			Total Fully Relinquished Contingent Rights	9
			Total Firm Rights in use	3
			Total Relinquished Firm Rights	0
		SO	Total Contingent Rights in Use	3
			Total Relinquished Contingent Rights	8
			Total Firm Rights in use	2
			Total Relinquished Firm Rights	0
		Su	Total Contingent Rights in Use	0
			Total Relinquished Contingent Rights	4
			Total Firm Rights in use	1
			Total Relinquished Firm Rights	0

Rights Subject to Surrender as Temporary Relinquishments – Until December 2025:

Aligned with the approach outlined above, FTWCRL temporarily relinquishes rights to operate the following trains **until the start of the December 2025 timetable**.

HF04.2	London Euston to Liverpool Lime Street	SX	Total Contingent Rights In Use	6
			Total Relinquished Contingent Rights	6
			Total Firm Rights in use	2
			Total Relinquished Firm Rights	0
		SO	Total Contingent Rights In Use	5
			Total Relinquished Contingent Rights	7
			Total Firm Rights in use	2
			Total Relinquished Firm Rights	0
		Su	Total Contingent Rights In Use	4
			Total Relinquished Contingent Rights	1
			Total Firm Rights in use	1
			Total Relinquished Firm Rights	0
HF04.5	Liverpool Lime Street to London Euston	SX	Total Contingent Rights In Use	6
			Total Relinquished Contingent Rights	5
			Total Firm Rights in use	3
			Total Relinquished Firm Rights	0
		SO	Total Contingent Rights In Use	6
			Total Relinquished Contingent Rights	5
			Total Firm Rights in use	2
			Total Relinquished Firm Rights	0
		Su	Total Contingent Rights In Use	2
			Total Relinquished Contingent Rights	2
			Total Firm Rights in use	1
			Total Relinquished Firm Rights	0

Concluding Remarks

We remain committed to working collaboratively with Network Rail in resolving access challenges on the Network. We remain focused on our timetable trajectory to reach the 10 trains per hour service as set out at our meeting on the 3rd June 2024, and within our submission to the ORR's access response request on the 20th May 2024.

It is our intention to be fully operating the new second hourly Liverpool service in our timetable from December 2025, and as a result, these temporary relinquishments match our timetable trajectory.

As part of this approach, we will continue to act reasonably in accordance with the Network Code. Please do feel free to contact us in the meantime with any further information you require.

Yours Sincerely,

[Redacted Signature]

**Head of Operational Readiness
Avanti West Coast**

From: Lysette Rowley [redacted]
Sent: Tuesday, August 6, 2024 10:14 AM
To: Track Access Managers [redacted]
Cc: Beilby, Louise [redacted]; Paul Harris (Customer Manager) [redacted]
Sue Rhymes [redacted]; Mathew Turner [redacted];
Christopher Meadows [redacted]; Regulatory Reform New TAC/SA Info
[redacted]
Subject: [EXTERNAL] Part J Notification - Avanti temporary surrender of rights

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

OFFICIAL

Good morning,

Please find attached two Part J notification letters, informing the ORR of Avanti’s temporary surrender of some unused access rights.

Kind regards,
Lysette

Lysette Rowley
Franchise & Access Manager
North West & Central Region
Mobile: [redacted]
Baskerville House | Centenary Square | Broad Street | Birmingham | B1 2ND



Please note I do not work alternating Fridays (next non-working day is 9th August)

The content of this email (and any attachment) is confidential. It may also be legally privileged or otherwise protected from disclosure.



Office of Rail and Road
25 Cabot Square
London
E14 4Q

Network Rail Infrastructure Ltd
2nd Floor, Baskerville House
Centenary Square
Birmingham
B1 2ND

05th August 2024

URGENT: ATTENTION Head of Access & Licensing, Office of Rail and Road

Network Code Condition J2.1.3: Part J Notification to the Office of Rail and Road

In accordance with the relevant Network Code Condition as set out below, Network Rail Infrastructure Limited ("Network Rail") hereby notifies you of the relevant modifications to First Trenitalia West Coast Rail Limited ("FTWCRL")'s Track Access Contract ("TAC") dated 1st December 2022.

This notice is given pursuant to Network Code Condition J2.1.3. The Access Beneficiary gave notice to us agreeing to the temporary Relevant Surrender pursuant to Condition J2.1.2 on 21st June 2024 and the relevant modifications to the Part J Access Beneficiary's Access Agreement are summarised in appendix 1 below.

Date of Surrender

The Rights Subject to Surrender shall be surrendered with effect from the date on which this notice is given to the Office of Rail and Road.

In accordance with Condition J11.2.1, Network Rail shall publish an accurate and up-to-date copy or statement of this notice/notification.

Yours faithfully,

[Redacted signature]

Paul Harris
Franchise & Access Manager NW&C Region

Countersigned on behalf of First Trenitalia West Coast Rail Limited to confirm details above are as per notice submitted by operator.

Signed:

[Redacted signature]

Mathew Turner
Network Planning & Track Access Support Manager
For and on behalf of First Trenitalia West Coast Rail Limited

Date: 05th August 2024

Appendix 1

Avanti West Coast Schedule 5 Access Rights Being Relinquished								
Service Group Code	Origin	Destination	Via	Timing load	Dayset	If in part, detail of the part to be relinquished	Number of Rights to be Relinquished TEMPORARILY	Number of Rights to be Relinquished PERMANENTLY
HF01.2	London Euston	Birmingham New Street		80x	Weekday off peak		1 Firm, June 2024 until May 2025, 1 Firm, June 2024 until May 2026	
HF01.5	Birmingham New Street	London Euston		80x	Weekday off peak		2 Firm, June 2024 until May 2026	
HF01.8	London Euston	Shrewsbury		80x	Weekday evening peak	Wolverhampton to Shrewsbury		1 Firm
HF01.8	London Euston	Shrewsbury		80x	SO	Birmingham New Street to Shrewsbury		1 Firm
HF01.8	London Euston	Shrewsbury		80x	Su	Wolverhampton to Shrewsbury		1 Firm
HF01.9	Shrewsbury	London Euston		80x	Weekday morning peak	Shrewsbury to Birmingham New Street		1 Firm
HF01.9	Shrewsbury	London Euston		80x	SO	Shrewsbury to Birmingham New Street		1 Firm
HF01.9	Shrewsbury	London Euston		80x	Su	Shrewsbury to Birmingham New Street		1 Firm
HF02.1	London Euston	Chester		80x	Weekday		1 Firm, June 2024 until May 2026	
HF02.1	London Euston	Chester		80x	SO		1 Firm, June 2024 until May 2025	
HF02.1	London Euston	Chester		80s	Su	Crewe to Chester only	1 Firm, Jun 2024 until May 2025	
HF02.4	Holyhead	London Euston		80x	Weekday	Holyhead to Crewe	1 Firm, Jun 2024 until May 2025	
HF03.6	Manchester Picadilly	London Euston	Stoke and Macclesfield	300	Weekday off peak		1 Firm, Jun 2024 until May 2025	



Office of Rail and Road
25 Cabot Square
London
E14 4Q

Network Rail Infrastructure Ltd
2nd Floor, Baskerville House
Centenary Square
Birmingham
B1 2ND

05th August 2024

URGENT: ATTENTION Head of Access & Licensing, Office of Rail and Road

Network Code Condition J2.1.3: Part J Notification to the Office of Rail and Road

In accordance with the relevant Network Code Condition as set out below, Network Rail Infrastructure Limited ("Network Rail") hereby notifies you of the relevant modifications to First Trenitalia West Coast Rail Limited ("FTWCRL")'s Track Access Contract ("TAC") dated 1st December 2022.

This notice is given pursuant to Network Code Condition J2.1.3. The Access Beneficiary gave notice to us agreeing to the temporary Relevant Surrender pursuant to Condition J2.1.2 on 22nd July 2024 and the relevant modifications to the Part J Access Beneficiary's Access Agreement are listed in appendix 1 (includes one partial relinquishment).

Date of Surrender

The Rights Subject to Surrender shall be surrendered with effect from the date on which this notice is given to the Office of Rail and Road.

In accordance with Condition J11.2.1, Network Rail shall publish an accurate and up-to-date copy or statement of this notice/notification.

Yours faithfully,

A large black rectangular redaction box covering the signature of Paul Harris.

Paul Harris
Franchise & Access Manager NW&C Region

Countersigned on behalf of First Trenitalia West Coast Rail Limited to confirm details above are as per notice submitted by operator.

Signed:

A black rectangular redaction box covering the signature of Mathew Turner.

Mathew Turner
Network Planning & Track Access Support Manager

For and on behalf of First Trenitalia West Coast Rail Limited

Date: 05th August 2024

Appendix 1

Use of Contingent Liverpool Access Rights

			Jun 2024	Dec 2024	May 2025	Dec 2025
HF04.2 London Euston to Liverpool Lime Street	SX	Total Relinquished Contingent Rights	11	9	6	0
	SO	Total Relinquished Contingent Rights	12	10	7	0
	Su	Total Relinquished Contingent Rights	4	3	1	0
HF04.5 Liverpool Lime Street to London Euston	SX	Total Relinquished Contingent Rights	11	9	5	0
	SX	Partially Relinquished Contingent Rights	0	1 (LIV-CRE)	0	0
	SO	Total Relinquished Contingent Rights	11	8	5	0
	Su	Total Relinquished Contingent Rights	3	4	2	0

Emyl Lewicki
Track Access Manager

Telephone: [REDACTED]

Email: [REDACTED]



30 May 2024

Urgent: Attention The Company Secretary and Solicitor
Network Rail Infrastructure Limited
Waterloo General Office
London
SE1 8SW

Application for directions: track access contract between Network Rail Infrastructure Limited (Network Rail) and Virgin Management Limited

We have received an application for directions under section 17 of the Railways Act 1993 (the Act) from Virgin Management Limited on 17 May 2024. In accordance with paragraph 3 of Schedule 4 to the Act, I am sending a copy of the application to Network Rail and this is being sent to Gianmaria Cutrupi, Aspirant Open Access Operators Manager at Network Rail, along with a copy of the proposed track access contract. I invite you, as facility owner, to make written representations in respect of that application by 28 June 2024.

Your representations will be copied to Virgin Management Limited and will be published on our website. We therefore request that you provide us with an electronic copy, which we would prefer to be in Microsoft Word or open document format.

I hereby also direct you to furnish me with the names and addresses of every interested person, as required by paragraph 1 of Schedule 4 to the Act, by 28 June 2024. You should also state the exact capacity in which Network Rail considers each of them to be an interested person as defined in paragraph 1 of Schedule 4 to the Act.

I am copying this letter to the Philip Whittingham at Virgin Management Limited and the following email accounts: [REDACTED] and

[REDACTED]

[REDACTED]

Emyl Lewicki



Gianmaria Cutrupi
Aspirant Open Access Operators Manager
Network Rail Infrastructure Limited
By email only

Emyl Lewicki
Office of Rail and Road
25 Cabot Square,
London
WC2B 4AN

28 June 2024

Network Rail Representations for the proposed Section 17 application for proposed Track Access Contract between Network Rail Infrastructure Limited and Virgin Management Limited

As directed in your letter dated 30 May 2024, Network Rail is making its representations in respect of a Section 17 for a proposed track access contract between Network Rail Infrastructure Limited (we) and Virgin Management (Virgin).

In line with ORR's letter of April 24 2024 to the industry on 'Competing and/or complex track access applications for December 2024, May 2025 and December 2025 timetable changes', Virgin submitted this application to the ORR on the 17 May as a S.17.

Your letter made clear to industry that "We expect applications received by 20 May 2024 to be of sufficient quality, completeness, and certainty to enable Network Rail, industry and ORR to assess them. A prerequisite for achieving this is that applicants will have discussed their plans with, and sourced information from Network Rail before submission (in line with our guidance)."

It further "...requested that Network Rail produces a high-level plan by 05 June 2024 for ORR and industry. This will set out when it will produce its robust assessment for the applications submitted by 20 May 2024."

Network Rail fulfilled this request on the 05 June 2024 outlining the plan for undertaking capacity and performance assessments to inform both Network Rail and the ORR on the applications received.

That response should be considered alongside this Representation.

In particular, it should be noted as indicated therein that:

- due to the unprecedented scale of 83 unsupported applications received at one point in time, Capacity Planning plan to phase its analysis,
- assessments will initially focus on applications and geography which do not overlap with the ongoing ECML ESG Development work to mitigate the risk of redundant analysis,
- all ECML ESG related applications will be considered following decisions as to the implementation of the ESG Timetable,

As we set out in the High-Level Plan; “Only those rights which potentially interact, contain the required level of information to inform assessments, were discussed with Network Rail and are intended for the next three timetable changes will be considered by Network Rail.” and that “Applications consisting of rights for geography not impacted or for later timetable changes should be considered separately.”

These factors have shaped the anticipated plan for submission of evidence related to this and other applications, the timings of which are commented on later in this representation.

Whilst Network Rail was made aware by Virgin that they would be applying for the proposed access rights as requested in ORR’s letter, Network Rail has not yet had an opportunity to fully consider its position on this application and whether it can eventually support the proposed access rights.

ORR, in its invitation to NR to make written representations, expects that NR will:

- include all of the necessary information for ORR to take an informed decision; or
- to refer to all of the necessary analyses and the confirmed timelines Network Rail requires to reach its decision on the application. This should include the “5 June 2024 capacity analysis” and any other analysis Network Rail needs to complete;
- recognise which other applications within the published list of “20 May 2024 applications” could interact with each application.
- Confirm any interested persons name(s) or confirm there are no interested persons.

Network Rail can confirm that we will not be able to in this representation provide all the necessary information for ORR to make an informed decision at this point in time. However, in this representation we will address each of the points above as well as provide:

- provide an initial view of the application Form P and Track Access Contract;
- where applicable, highlight if Network Rail believes that some of the access rights sought are outside the scope of the ORR’s letter dated 24th April 2024;
- an indication of how Network Rail will be able to provide its final representations and any intermediate representations so that ORR will then have all relevant information from Network Rail to assist ORR in making an informed decision.

Interested Person(s)

Network Rail is not aware of any persons who would fall within the definition of “Interested Person” in paragraph 1 of Schedule 4 of the Railways Act 1993 in relation to the application made by Alliance Rail.

Keeping you informed

As stated in the letter to the ORR on the 05 June 2024 “The plan will need to be flexible and reviewed through the process to consider industry decisions in relation to the ECML ESG along with potentially other changing industry priorities and requirements. For example, recommendations from the East Coast Task Force may impact on industry resources, in particular timetabling resource. This could require changes to the remaining stages of the plan, including impacting when analysis can be completed.”

Please note although this application does not directly interact on the ECML, any decisions relating to the ECML could have consequential impacts on capacity and performance in relation to this application. This is particularly relevant for locations used by services which cross NR Route boundaries.

In the letter we also stated “We propose establishing a change control mechanism to track changes in the plan, when and where required, to retain transparency and clarity. This may also lead to consequential changes to anticipated dates of any resulting representations planned by our customer teams.” Where such changes in timeline occur, we will notify you of any impacts on expected content, volume or timing of forthcoming information.

Summary of Rights Sought

In their application and as a high-level summary Virgin are seeking a Track Access Contract via a S.17 with the following access rights to commence from the December 2025 Timetable to the December 2035 Timetable:

- Four new Open Access Service Groups that will providing the following trains:
 - 5 trains per day in each direction between London Euston and Preston; 2 trains per day in each direction between London Euston and Rochdale;
 - 15 trains per day in each direction between London Euston and Liverpool Lime Street;
 - 7/9 trains per day in each direction between London Euston and Birmingham New Street;
 - 4 trains per day in each direction between London Euston and Glasgow Central (8 daily services Monday to Sunday);
 - With the aspiration of using Class 22x (either Class 221 or Class 222) Rolling Stock to operate the services.

Industry Consultation for this application commenced on 24/05/2024 and concluded on 24/06/2024. Some consultees have asked for additional time which has not been agreed yet.

The High-Level Plan and Dependencies

The High-Level Plan submitted on 05 June 2024, and our additional engagement with Capacity Planning indicates that the following phases may be relevant for this application:

- Phase 4a – ECML confirmation for December 2025
- Phase 4b – ECML confirmation for May 2025
- Phase 5 – December 2025 Production Period

This along with the interacting applications matrix in Annex B, should support Network Rail to in considering application and interacting location dependencies.

We are mindful that the High-Level Plan and its analysis, or other issues indicated, may identify dependencies, risks or changes in risk profiles that could require revision or further review of individual responses. We also note the 05 June plan does not guarantee that analysis will not have to continue beyond the timetable development process. Where this is the case we will communicate with the Operator and ORR.

As stated later in this letter, if interactions occur at different points in time, i.e. different Timetable Change Dates then this could have an impact on when Network Rail will be able to submit its position with regards to the application.

Common route / regional identified considerations / constraints

This request for rights covers a point in the network where it has been identified at a regional level that more than one applications should be considered by ORR at the same time as any one decision would restrict the ability to accommodate other requests due to the items listed in Annex A. The other affected operators' applications are set out in Annex B.

Network Rail's Review of Form P and associated documents

Network Rail has performed an initial assessment of the Form P and associated documents submitted with this application.

Network Rail would like to highlight the following:

Track Access Contract

Key findings from the submitted Track Access Contract which the ORR and the applicant need to take into consideration and are as follows:

- *Contract commencement vs Service Commencement*
 - We assume the applicant may plan to undertake driver training and testing before the services commence. However, there is no indication from the applicant when the Contract will need to commence from as a minimum, in order to allow this testing / training to be undertaken. The ORR may wish to seek assurances from the applicant as to whether the proposed commencement date of the services are realistic considering the rolling stock has not yet been confirmed, driver training / testing will

need to commence by the end of this year and the necessary vehicle and route acceptance to be obtained in time.

- Conditions Precedent to Clause 5 to be added – a date of when the driver training and testing needs to be provided by the applicant.
- The Longstop Date would need to be added.
- *Schedule 3*
 - Network Rail’s Managed Stations need to be specified under clause 1.
- *Schedule 5*
 - ‘Morning Peak’, ‘Evening Peak’ and ‘Off Peak Times’ references should be removed from Table 2.1
 - A footnote should be added to table 2.1 for the Passenger Train slots to commence in the proposed timetable change.
 - Driver training and testing sub paragraphs should be added to paragraph 2.7 to allow for driver training and testing noting that the Firm Rights are dated to commence in the proposed timetable change.
 - In Specified Equipment 5.1, Network Rail would like the applicant to add a specific rolling stock class once they know what rolling stock they will be operating but prior to the Contract commencing.
- *Schedules 4 & 8*
 - SPD Cost Threshold would need to be specified.
 - We would like to propose the inclusion of a Schedule 11 which will be a ‘Relevant Schedule 4 and 8 Modifications’. This is to allow Network Rail and the applicant to capture the required data once the services commence and then undertake a Schedule 8 recalibration. Network Rail invites the applicant to agree a ‘Start Date’ and ‘Backstop Date’ as required in this schedule.

As stated, these are the high-level points made in the review of the Track Access Contract and therefore Network Rail invites ORR and the applicant to review and take into consideration this document as part of Network Rail’s representations.

The Specified Equipment

Virgin stated in their submitted documentation that they would like to use Class 22x rolling stock (diesel traction). The operation of diesel rolling stock does not have any detrimental impact on the current power supply constraints on the WCML, although the introduction of additional diesel traction

into London Euston would impact air quality at the station. Network Rail has concerns around the environmental impact of introducing additional diesel traction stock into London Euston station. The train shed monitors in situ demonstrate a clear correlation between AWC Voyager stock being deployed in Euston and exceedances in nitrogen monoxide and nitrogen dioxide. Introducing additional diesel traction stock into the WTT on a permanent basis, especially at a time where we expected the benefit of the phasing out of Voyager stock to be unlocked, would present air quality issues and Network Rail would like to understand how Virgin can demonstrate how that can be mitigated effectively to remove harm and risk to passengers and public and prevent exceedances in air quality measures.

We would ask Virgin to engage with us on commissioning works to deliver the required capability and to undertake the Route Clearance processes, if necessary. Virgin should commission a full gauging study from a recognized gauging company for the complete route which could take a few months – depending on the availability of external suppliers – and then a complete compatibility analysis.

We request that Virgin include the correct Specified Equipment in the Track Access Contract, i.e. either Class 221 or Class 222 (rather than Class 22x).

Investment Conditions

We note Virgin referenced plans to “develop proposals to invest in the rail infrastructure (network capability) and introduce new build 125mph capable rolling stock, should the proposed track access contract be extended its proposed seven-year length”.¹ We would be interested in understanding the specific investments being proposed, the timescales involved and funding requirements.

Network Rail’s Initial Position on the Access Rights Sought prior to necessary assessments being completed in line with the plan

Network Rail has made every attempt in their initial assessment of the Application received to be able to inform the ORR of any early positions it might have on the access rights sought. Network Rail has a number of assessments and analysis that needs to be undertaken to inform a position whether Network Rail supports or not the Application that has been submitted by Virgin (detailed later in the letter). We do not have an initial view on the access rights sought by Virgin.

Whilst upon review of the application, the access rights sought are in line with ORR’s letter of the 24th April, however not enough information was supplied by the Operator to include in the capacity / performance assessment (as requested by Capacity Plannings letter to the Operators dated 8th May 2024). Network Rail has approached the operator for this information 21 May, 06 June and 11 June but unfortunately the Operator has not submitted full and accurate information. There are quite a few schedules missing from the PIF file shared by Virgin and for the services we do have, the timings differ between what was in the application and what was shared in the PIF. It may be possible to assess this from phase 3, but that will be dependent on any factors which may impact the plan as indicated in the 5th June letter to ORR.

Possible Interactions with Other Applications from 20th May 2024

As requested in ORR’s invitation for NR to make written representations to this application, Annex B

¹ Virgin Management Limited, *Application to the Office of Rail and Road for a Passenger Track Access Contract, or an Amendment to an Existing Contract*, p. 6, 17 May 2023.

to this letter shows where this application could interact with each of the “20 May 2024 Applications” at the previously identified locations.

Please note if the interactions occur at different points in time, i.e. different Timetable Change Dates, then this will have an impact on the dates that Network Rail will be able to submit its position with regards to the application. I.e. if the application submitted for Operator A is to commence December 2024 and there are no concerns or conflicts that does not mean that when Operator B’s aspirations are considered which start in May 2025 that both will be able to be accommodated and therefore Network Rail will have to see the outputs of the capacity assessments for the May 2025 Timetable for Operator B before they can give a final position on Operator A’s application.

Allowing business continuity while preserving freedom of action for ORR in taking its decision

Our letter of 05 June 2024 stated that in this interim period Network Rail will have to balance the need for business continuity, so that current services may continue to operate and timetable changes can be made when there is low risk of negative outcomes for passengers and freight users, with the need to avoid prejudicial decisions that could unduly favour one party where aspirations interact.

We note that some operators have split their applications across different timetable periods, which already provides ORR with the ability to deal specifically with the nearer-term applications now, whereas others have combined different timetable periods in a single application.

Should ORR wish to make a single decision on each application it has received, without breaking that application into parts, then, where a single application has been made relating to multiple timetable periods, there is a risk that rights might not be available in time for an operator to commence services as early as it would like, given the need for all of the information set out in our plans to be available in order for decisions to be made relating to those future timetables.

Where paths associated with some of the quantum rights in this application are included in a New Working Timetable issued under the Network Code Part D process, then Network Rail proposes to work with the applicant on these elements of the application. Our aim, subject to normal governance processes, would be to potentially agree a new s22 application for contingent, time-limited rights for that timetable period with no presumption of continuity – in line with the approach that ORR has supported for applications on the East Coast Main Line in recent years.

This would enable you to reserve your position on future capacity choices, allowing decisions that relate to a later timetable period to be made simultaneously, while making effective use of the railway network in the earlier timetable periods.

Conclusion

Network Rail is aware that this representation letter does not contain all the information needed for this application for the ORR to make a decision.

As explained in our letter of 05 June 2024, these representations letters were mostly expected to reserve our position pending the outcome of the capacity and performance assessments. We are also mindful that the plan and its analysis may identify dependencies, risks or changes in risk profiles that could require revision or further review of this response. However, we hope that the plans we provided give you the reassurance that we will assess this application to inform Network Rail’s position in a later representation in line with the plan and letter. In addition, Network Rail wants to give the ORR the confidence that we have made every effort in this letter to give any initial views where we can.

Network Rail asks that while we carry out our assessments, ORR progresses with its own assessments wherever possible to assist in making early decisions / descoping the scale of applications requiring assessment from Network Rail. Additionally, where we have deemed an application for December 2024 or May 2025 to be unready in the initial representations in this letter, we ask that this be descoped from the analysis requirements as quickly as possible.

Network Rail will continue to keep ORR sighted on the progress of the plan for this application.

Yours sincerely,

A solid black rectangular box used to redact the signature of Gianmaria Cutrupi.

Gianmaria Cutrupi

Aspirant Open Access Operators Manager

Network Rail

Annex A – Plan for Information / Analysis / Assessment

Details of Information / Analysis / Assessment	NOTES	
<i>High Level Phases from 5th June Plan</i>		
Phase 1 Collation & Scoping	Please see the June 5 Letter for details.	
Phase 2 Risk Identification for May 2025	Please see the June 5 Letter for details.	
Phase 3 May 2025 Production Development Period	Please see the June 5 Letter for details.	
Phase 4a - (ECML confirmed for December 2025) – focusing on December 2025	Please see the June 5 Letter for details.	
Phase 4b - (ECML confirmed for May 2025) – focussing on December 2025	Please see the June 5 Letter for details.	
Phase 5 – December 2025 Production Period	Please see the June 5 Letter for details.	
<i>Further Route / Function Analysis / Assessments / Information</i>		
Freight & Customer Considerations		Further details of assessment to be carried out found in Appendix A
North West & Central Region Considerations	Informed by Regional / Route plans	Further details of assessment to be carried out found in Appendix B
Scotland Region Considerations	Informed by Regional / Route plans	Further details of assessment to be carried out found in Appendix C
Capacity Planning Considerations	Informed by Capacity Planning plans	Further details of assessment to be carried out found in Appendix D

Appendices for Annex A*Appendix A: Freight & Customer Considerations*

Assessment	Detail
Review of Aspirational paths	This proposed Track Access Contract contains a number of Access Rights for aspirational capacity. Where this is the case, we are working through the detail to understand the impact on the network from a safety and operational point of view. In line with CP7 freight growth targets, we are committed to securing capacity in the timetable for future use. Where

	capacity and suitable capability can be identified, we will consider applications for the Sale of Access Rights.
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Appendix B: North West & Central Region Considerations

North West and Central (NW&C) Region has several large enhancement projects taking place including TransPennine Route Upgrade, HS2 and Midlands Rail Hub impacting long term capacity utilisation for which we will give consideration to when reviewing this application once all the necessary assessments have been completed and Network Rail is able to collectively assess the risks and impact this application may have.

In addition to the key interacting locations specified in ORR's letter of 24 April 2024, Network Rail is also aware of other locations for which there are potentially interacting aspirations and capacity constraints. This includes but is not limited to Manchester and the surrounding area, Crewe, and the Wolverhampton corridor. During our assessment of the applications we will be paying particular attention to both the locations identified in ORR's letter and those named above.

As ORR is aware Birmingham and surrounding area is one of the key interacting locations highlighted in ORR's letter of 24th April 2024. This application is one of a number of applications seeking additional rights in Birmingham and surrounding areas. It is our intention to develop a strategic plan for passenger services in the West Midlands area in order to optimise capacity in the medium and long term, taking cognisance of the Midlands Rail Hub project in order to realise the investment benefits of this project. We will do this in consultation with all affected operators and stakeholders.

Due to the time required to undertake an industry review and strategic plan and the assessment plan for this application not aligning, whilst considerations and any views will be highlighted when we provided our outputs of the plan, timescales do not allow the opportunity to provide a long-term strategic capacity utilisation assessment.

In preparation of the December 2022 timetable, Network Rail formed industry workstreams to undertake a strategic review of capacity utilisation on both the West Coast Mainline South and Manchester area including the Castlefield corridor and Manchester Victoria. A separate industry working group (managed under the governance of the Grand Rail Collaboration) assessed options for the service structure on the Wolverhampton – Coventry route through Birmingham New Street. The timetable today still reflects this structure, and the outputs produced for December 2022, which were supported by the industry, remains the strategic plan for capacity utilisation and will help us in assessing this and the other applications.

As ORR is aware passenger flow at London Euston is currently a concern, with the region having been issued an improvement notice in October 2023 in relation to passenger surges and overcrowding. Network Rail therefore intends to undertake an assessment based on the quantum of services within the December 2022 Concept Train Plan. There also remains a restricted number of platforms at London Euston, with no funded plans to reintroduce a 17th and 18th platform. Passenger flow is primarily focused on number of passengers at a station at a given time, with arrivals and departures rather than requiring knowledge of origin or destination. It will therefore be possible to achieve a good understanding of the risk profile based on the quantum of services and associated passenger numbers within the Concept Train Plan, forming a basis which will allow for qualitative assessment of any differences to inform ORR in its decision.

A key consideration included in the plan within Annex A is regarding power supply on NW&C. As previously informed, NW&C has several areas of concern with regards to power supply. For any application utilising electric traction, it is our intention to model the outputs of the capacity assessment to understand the power supply risk both during normal working and in N-1 conditions. In carrying out traction power modelling, NW&C region adheres to the requirements stipulated in NR/L1/ELP/27000 "Policy Requirements for Electrical Power Assets". This policy states that the electrical power supply system shall have sufficient redundancy to support the peak timetable with one key piece of equipment out of service (known as N-1). In addition to fulfilling Network Rail policy requirements, maintaining the required N-1 redundancy levels in the traction power network supports adherence to contractual, performance and safety targets.

In order to accurately assess power supply it is key that we understand any Empty Coaching Stock moves. We will be requesting this information separately from operators if it was not previously supplied as part of the 20 May applications.

We will undertake internal consultation of the application following our usual business practices however as a result of ORR letter of 24 April 2024 NW&C has 55 application which it must consider. Therefore our internal consultation will be over a longer period of time, and this has been allowed for in the plan.

Power supply and route performance assessments require additional subject matter support from third party organisations and therefore whilst we have included anticipated timescales within the plan these are currently subject to confirmation.

The current number of new applications received at this point in time is unprecedented, with 83 new applications received. Of these, 55 are seeking capacity on NW&C Region. This volume of simultaneous applications on NW&C Region, with this number of interactions to analyse, involves a level of complexity not previously experienced. As we move through the complexities of assessing the applications the plan may necessarily need to be reviewed and revised.

As stated in our letter of 5 June 2024 to the ORR "Throughout the rights assessment work phases Network Rail intends to communicate with ORR on progress and provide collated information against individual applications as they are assessed through the plan. The intention is to enable decisions during the process, where possible, rather than await a fully completed package of work considering all in-scope applications."

We also recognised in our letter of 5 June 2024 that "this approach will have to balance the need for business continuity, so that current services may continue to operate and timetable changes can be made when there is low risk of negative outcomes for passengers and freight users, with the need to avoid prejudicial decisions that could unduly favour one party where aspirations interact."

TASK	ASSIGNED TO	
Capacity Assessment		
High Level Plan provided 05 June 2024		
Collating & Scoping	System Operator - CP	Please see June 5 letter for details
Phase 2 Timetable Risk Identification May'25	System Operator - CP	Please see June 5 letter for details
Phase 3 May'2025 Production Development Period	System Operator - CP	Please see June 5 letter for details
Phase 4a ECML confirmed Dec'25 Dec'25 assessment against May'25	System Operator - CP	Please see June 5 letter for details
Phase 4b Dec'25 assessment ECML confirmed May;25	System Operator - CP	Please see June 5 letter for details
Phase 5 december 2025 Production period	System Operator- CP	Please see June 5 letter for details
Other Capacity assessment		
2022 Strategic plan capacity assesment	Regional Timetable Team	
Risk Identification		
May'25 TP-Hazid passenger applications	Regional Timetable Team	
TP-Hazid Upto and including May'25 freight applications	Regional Timetable Team	
May'25 TP RAM - all applications	Regional Timetable Team	
Dec'25 TP Hazid - all applications	Regional Timetable Team	
Dec'25 TP -RAM - all applications	Regional Timetable Team	
Internal consultation of applications	F&A Team	
Planned Assessments		
Ped flow assessment of Euston Station	Station Capacity Team	
Level Crossing assessment		
Mapping of number of services to each ELR	Regional Timetable/F&A team	
ALCRM modelling/assessment	LCM	
ALCRM modelling/assessment - May'25	LCM	
ALCRM modelling/assessment - Dec'25	LCM	
Power Supply Modelling		
Phase 1: Build baseline model		
Phase 2: Navitas provide modelling for baseline model	Asset Management	
Phase 3: Assess baseline + Proposed services	Asset Management	
Phase 4: May'25 Production Development Timetable	Asset Management	
Phase 5:N-1 assessment	Asset Management	
Phase 6: Impact assessment + mitigation assessment	Asset Management	
Phase 6: Re-create modelling CIF file based on Dec'24 actuals	Asset Management	
Phase 7: Dec'25 Production Development Timetable	Asset Management	
Phase 8:N-1 assessment	Asset Management	
Phase 9: Impact assessment + mitigation assessment	Asset Management	
Performance Analysis		
Phase 1: Internal review of existing data	Route performance teams	
Phase 2: Performance assessment of May'25 decisions	Route performance teams	
Phase 3: Performance assessment of Dec'25 decisions	Route performance teams	
Governance		
Potential representations for Dec'24		
Draft Letter	F&A team	
Internal Review	F& A Team	
SOAR review and approval	F&A Team	
Submit to ORR	F&A Team	
Final representations:		
Draft letter	F&A team	
Internal Review	F&A team	
Internal Consultation	F&A team	
SOAR review and approval	F&A team	
Submit to ORR	F&A team	

Appendix C: Scotland Region Assessment

No concerns at this time. However, note that future switch to electric traction will have to be carefully managed for Power Draw and included in any modelling. Caveated by ATT High Level Plan outputs and further assessments included in the Regional Plan to follow and associated dependencies from other Regional Plans.

It was highlighted that the rights sought by ScotRail in their Dec '24 47th Supplemental Agreement in and out of Glasgow Central could possibly interact with Virgin in the Dec '25 timetable.

SCOTLAND ACTIVITIES

Route Plan for Further Assessment of Interacting Applications:	Dependencies:	Notes:
May '25:		
Advanced Notice of Timetable Change - all Operators		
Train Plan Assessment (TP-RAM) - all applications	High Level Plan/Advanced Notice of Timetable Change (all Operators)	Activities in subject matter experts' diaries.
SO ATT High Level Plan Phase 2		
Power expert opinion - 22As	High Level Plan	This will include looking at previous modelling exercises to see if specific applications have been included.
Route led Performance Intelligence - 22As	High Level Plan	
Priority Date Notification and Bid - all Operators (D40)		
Timetable Production Start		
Access Rights Compliance Check (ScotRail only)		Normal SoAR process will follow - not shown here.
Train Plan Evaluation (TP-REP)	Priority Date Notification and Bid - all Operators (D40)	Activities in subject matter experts diaries.
Operational Risk Assessment - all applications	Priority Date Notification and Bid - all Operators	e.g. Level Crossing ALCRM, SPAD Risk
Operations Risk - all applications	Priority Date Notification and Bid - all Operators	e.g. Signaller Workload
Infrastructure Risk - all applications	Priority Date Notification and Bid - all Operators	e.g. Maintenance Access, Asset reliability
Route led Performance Intelligence - all applications	Priority Date Notification and Bid - all Operators (D40)	Including Platform Docking at Edinburgh Waverley.
Power Modelling	New Working Timetable - all Operators.	
Regular updates with Regulatory Reform, ORR and Route stakeholders		
Timetable Go Live		
Dec '25:		
Train Plan Risk Identification (TP-HAZID) - all applications	Information from Operators and Capacity Planning (Timetable Production Work package spreadsheet)	Meeting will be held as per governing standard
Advanced Notice of Timetable Change - all Operators		
Train Plan Assessment (TP-RAM) - all applications	High Level Plan/Advanced Notice of Timetable Change (all Operators)	Meeting will be held as per governing standard
SO ATT High Level Plan Phase 3		
Power expert opinion - 22As	High Level Plan	This will include looking at previous modelling exercises to see if specific applications have been included.
Route led Performance Intelligence - 22As	High Level Plan	
Priority Date Notification and Bid - all Operators (D40)		Calendar of Milestone Dates not published.
Timetable Production Start		Calendar of Milestone Dates not published.
Access Rights Compliance Check (ScotRail only)		Normal SoAR process will follow - not shown here.
Train Plan Evaluation (TP-REP)	Priority Date Notification & Bid - all Operators (D40)	Meeting will be held as per governing standard
Operational Risk Assessment - all	Priority Date Notification & Bid - all Operators	e.g. Level Crossing ALCRM, SPAD Risk

applications		
Operations Risk - all applications	Priority Date Notification & Bid - all Operators	e.g. Signaller Workload
Infrastructure Risk - all applications	Priority Date Notification & Bid - all Operators	e.g. Maintenance Access, Asset reliability
Route led Performance Intelligence - all applications	Priority Date Notification & Bid - all Operators (D40)	Including Platform Docking at Edinburgh Waverley.
Power Modelling	New Working Timetable - all Operators.	
Regular updates with Regulatory Reform, ORR and Route stakeholders		
Timetable Go Live		

Appendix D: Capacity Planning Considerations

This application contains services in the Dec 2025 timetable which will form part of the interacting rights assessments.

Annex B – Interacting Applications Matrix

Operator/Application/Type				A - WCML south	B - Birmingham	C - BHM-Derby	D - Derby-Sheffield	E - Sheffield	F - ECML&Leeds	G - Oxford	H - Gloucester	I - Cardiff
	Dec-24	May-25	Dec-25									
DBC 81st SA 22a	X	X	X		X	X	X	X	X	X	X	X
DBC 83rd SA 22a	X	X	X	X								
DBC 87th SA 22a	X	X	X		X	X	X	X	X		X	X
DBC 91st SA 22a	X	X	X	X								
DBC 70th SA 22	X	X	X		X	X	X	X	X	X		
DCR 2nd SA 22a	X	X	X	X	X		X			X		
GBRf 34th SA 22a	X	X	X	X	X	X	X		X	X	X	
GBRf 25th SA 22a	X	X	X	X	X	X	X	X	X	X		
GBRf 28th SA 22	X	X	X	X					X			
Varamis 2nd SA 22a	X	X	X	X	X				X			
WMT 32nd (29th) SA 22A	X	X	X	X	X							
CrossCountry UC, Hydra, Stansted 17	X	X	X		X	X	X	X	X	X	X	X
FLIM 25th SA 22A	X	X	X	X	X	X		X	X	X		
DRS 17th SA 22A	X	X	X	X	X	X	X	X	X		X	X
Avanti 11th SA 22A	X			X	X							
Avanti 14th SA 22A	X	X	X	X	X							
FLHH 24th SA 22A	X	X	X		X					X	X	
FLHH 25th SA 22A	X	X	X	X	X	X	X	X	X	X	X	
FLHH 27th SA 22A	X	X	X		X	X	X	X	X	X	X	X
FLHH 28th SA 22A	X	X	X	X	X	X	X	X	X		X	X
FLIM 21st SA 22A	X	X	X		X	X	X	X		X		
FLIM 23rd SA 22A	X	X	X	X	X							
FLIM 24th SA 22A	X	X	X	X	X	X			X			
FLIM 26th SA 22A	X	X	X	X			X	X	X	X		
WMT 22nd SA 22A	X	X	X		X							
WMT 28th SA 22A	X	X	X		X							
Avanti 3rd SA 22a		X	X	X	X							
Avanti 17th SA 22a		X	X	X	X							
Caledonian Sleeper 9th SA 17		X	X	X	X							
WMT 30th SA 22A		X	X		X							
WMT 31st SA 22A		X	X		X							
WSMR New Contract 17		X	X	X	X							
Alliance Rail Cardiff - Edinburgh 17			X		X	X	X	X	X		X	X
Avanti 18th SA 22a			X	X								

Virgin New Contract 17			x	x	x							
Lumo London-Rochdale 17 2027				x								

From: [REDACTED]
Sent: 02 August 2024 13:32
To: Reed, David
Cc: Gianmaria Cutrupi
Subject: RE: Virgin s17 - Network Rail Representations

OFFICIAL

Dear David,

Virgin Management response to Network Rail’s 28 June 2024 letter ‘Network Rail Representations for the proposed Section 17 application for proposed Track Access Contract between Network Rail Infrastructure Ltd and Virgin Management Group’.

Context

1. Virgin’s Track Access application was made expeditiously in compliance with ORR’s 24 April 2024 letter to rail industry organisations headed “Competing and/or complex track access applications for December 2024, May 2025 and December 2025 timetable changes” (the ‘ORR April 2024 Process’).
2. The ORR April 2024 Process:
 - a) Falls outside the established process which the industry normally follows.
 - b) Differs from that in the ORR published guidance at <https://www.orr.gov.uk/rail-guidance-compliance/network-access/guidance-policies/how-to-apply-track-access/passenger>
 - c) Has itself generated a consequential ‘surge’ of applications submitted before its 20 May 2024 deadline by applicants ensuring their proposals are not excluded from it.

Virgin’s request to ORR

3. Virgin recognises that its proposal could be challenging due to the size of the application. It was thus split into manageable service groups to facilitate a rolling program of service introduction from the December 2025 timetable change date onwards.
4. However the short application period between the ORR’s 24 April 2024 letter and the submission deadline of 20 May 2024 was insufficient to enable Virgin to undertake its desired level of detailed timetabling and capacity analysis and performance modelling.
5. Therefore, we ask that the ORR April 2024 Process is applied in a way that enables Virgin to meaningfully work up and refine the proposal as it would have otherwise done.

Network Rail Communications

6. Virgin has held several detailed sessions with Network Rail Route teams and stakeholders to discuss its proposal, and these have been useful in understanding their requirements, aspirations and the perceived constraints on the network.

Consequently, during further proposal development, some modifications have been made to reflect Network Rail’s and stakeholders’ suggested changes. These have been highlighted in the latest timetable (Pif File)

submitted to Network Rail on 20 May 2024. To reflect these changes a modified Track Access Contract and Form P will follow.

7. Virgin has offered the Network Rail capacity planning team the opportunity to work constructively with our train planners to make any consequential re-timings. To date this offer has not been taken up.

Track Access Contract Start, Backstop Date

8. After further evaluation, Virgin would like the Track Access Contract to commence from 01 February 2026 with a Contract backstop date 12 months later. This will allow sufficient time for Virgin to recruit and train its traincrew in line with industry standards and, importantly, its Safety Management System (SMS) and Competency Management System (CMS).

Specified Equipment

9. Network Rail and ORR will understand the challenges regarding the range of different rolling stock options for Open Access operators, the multiplicity of operational, route and commercial considerations that affect choices, and their availability. The Specified Equipment identified is still currently being negotiated with two Rolling Stock Companies (ROSCO).
10. Virgin has sought to be as transparent as possible in its rolling stock choices, with specification of Class 22x capable of 125mph specifically intended to make best use of WCML capacity. In preparing the indicative timetable Class 221 Sectional Running Times (SRTs) have been used as these are readily understood by Network Rail and the wider industry.
11. We recognise that SRTs may need minor alterations if Class 222s were selected as our preferred and/or available. We also understand the issue of Class 222 clearance on the WCML and if needed we shall complete a full gauging study, with support of the ROSCO, using a recognised gauging company.
12. In the case of both classes, the rolling stock is either cleared for the sections of route specified or, where route clearance is required, this shall be completed in readiness to commence operations by the Contracted Backstop date. This practice is generally considered normal as applicants evaluating the introduction of new rolling stock would not have it cleared at the application stage.
13. When negotiations in respect of its preferred rolling stock are complete, Virgin shall update the Specified Equipment in its Track Access Contract.

London Euston Class 22x Emissions

14. Network Rail has indicated to prospective operators that no more electric traction can be accommodated on WCML South for the foreseeable future due to electrical supply concerns.
15. At the same time Network Rail has expressed concern about the only immediately viable alternative.
16. Network Rail expresses concerns around the environmental impact of introducing additional diesel traction stock into London Euston. The issue of reducing the rail industry's carbon footprint is equally a concern to Virgin. In our Section 17 Form P we set out actions being investigated to help minimise the emissions from diesel vehicles.
17. Under a previous contract operated Virgin Trains prepared a policy for shutting down engines when in stations. This policy will be deployed and included in our driver training programme and be actively and regularly monitored.

Investment Opportunities

18. Virgin welcomes Network Rail's interest in how Virgin proposes to bring fresh external investment into the railway. However, we believe enhancement identification should be undertaken jointly and we suggest a more detailed discussion with Network Rail in which both organisations explore and evaluate suitable investments opportunities that both support the Virgin proposal and generally increase network capacity, improve network performance and provide train mounted equipment to monitor the infrastructure in real time.
19. Virgin has already spoken with several stakeholders to explore infrastructure enhancement opportunities that may need funding support which, if delivered, will benefit the industry whilst underpinning the Virgin proposal, e.g. Manchester Victoria station new bay platforms.

Virgin's Proposal

20. Virgin has made clear in its meetings with Network Rail that the ORR April 2024 Process has required expedited submission of its application for it to be included. The timetable proposal submitted utilises paths on the network that are either vacant, allocated to other operators and not being used or have been withdrawn from other operators' Track Access Contracts whilst remaining in the timetable plan.
21. Virgin will update and refine its timetable proposal to be conflict free against the latest timetable shared by Network Rail. Once this position has been reached, Virgin will undertake detailed industry standard performance and capacity analysis to fully understand the impacts the proposal may have on other operators and vice versa.
22. Virgin recognises the challenges faced by Network Rail to accommodate all operators' aspirations and has offered, additional dedicated planning resource to support Network Rail Capacity Planners in Milton Keynes. This offer is yet to be taken up.
23. Virgin remains committed to ensuring Network Rail is supplied with all relevant and correct data to enable it to work alongside our team to produce and deploy a robustly performing timetable.

Please let me know if you would like to discuss this further.

Regards

Phil

From: Gianmaria Cutrupi
Sent: 16 October 2024 13:35
To: HORLEY Darren; VT - Philip Whittingham
Cc: Robert Neep
Subject: Virgin - F&C AOA Tracker

Hi Phil/Darren,

For info – please see below the Freight & Customer AOA tracker:

AOAO	Section	Access Rights Sought in Each Direction	Proposed TAC Dates	Specified Equipment	Submission Date to NR	Analyses	Internal Consultation End	Industry Consultation End	Submission Date to ORR	SoAR	NR Representations	Updates
Virgin Trains	17	<u>VT1</u> 5 tpd, Euston - Preston 2 tpd, Euston - Rochdale <u>VT2</u> 15 tpd, Euston - Liverpool Lime Street <u>VT3</u> 7 tpd, Euston - B'ham New Street (9tpd return) <u>VT4</u> 4 tpd, Euston - Glasgow Central	PCD 2025 - PCD 2035	Class 22x	17/05/2024	<p><u>Capacity:</u> March 2025</p> <p>NR requested PIF/PEX file for the services on 21 May, 06 June and 11 June (COP 12/06/24). PIF shared by Virgin on 12 June. Virgin informed on 25 June that NR's review found out that there is quite a few schedules missing from the PIF shared, which NR will not be able to assess alongside the initial interacting applications in phase 2. The aim would be to pick these up in phase 3 if NR receives the F3/PIF files showing the timings of the services. For the services that NR has, the timings differ between what was in the application and what was shared in the PIF, so NR will use the timings we can import from the PIF. Reminder to send additional info for Interacting Applications Workstream by 09 August - sent to Virgin (and the industry) on behalf of Capacity Planning on 12 July.</p> <p><u>Performance:</u> March 2025</p>	<p>NW&C: TBC</p> <p>Scotland: 25/06/24</p> <p>Freight: 01/07/24</p>	24/06/2024	17/05/2024	26/06/2024	28/06/2024	<p>16 October - Virgin reviewing feedback to update Form P and draft TAC (calling pattern change and quantum reduction). NR confirmed with the ORR that new internal and industry consultations are needed but no impact to the Capacity Planning work, given the changes were already included in the PIF submitted by Virgin.</p> <p>Virgin asked NR further info on Part J for Avanti's Liverpool services.</p> <p>NR confirmed they will undertake a performance assessment of the Interacting Rights applications, including Virgin's. This will be undertaken according to the timescales published in the high-level plan of 05 June.</p> <p>NR informed Virgin that the Priority Date for PCD 2025 TT is 07 March 2025 according to the published 'Calendar of milestone dates December 2025 – May 2026 timetable' document.</p>

Many thanks,
Gian

Gianmaria Cutrupi
 Aspirant Open Access Operators Manager
 Freight & Customer
 System Operator
 Network Rail

From: Gianmaria Cutrupi
Sent: 04 November 2024 13:41
To: VT - Philip Whittingham; HORLEY Darren
Cc: Robert Neep
Subject: Virgin - F&C AOA Tracker

Hi Phil/Darren,

For info – please see below the Freight & Customer AOA tracker:

AOAO	Section	Access Rights Sought in Each Direction	Proposed TAC Dates	Specified Equipment	Submission Date to NR	Analyses	Internal Consultation End	Industry Consultation End	Submission Date to ORR	SoAR	NR Representations	Updates
Virgin Trains	17	<u>VT1</u> 5 tpd, Euston - Preston 2 tpd, Euston - Rochdale <u>VT2</u> 15 tpd, Euston - Liverpool Lime Street <u>VT3</u> 7 tpd, Euston - B'ham New Street (9tpd return) <u>VT4</u> 4 tpd, Euston - Glasgow Central	PCD 2025 - PCD 2035	Class 22x	17/05/2024	<p><u>Capacity:</u> March 2025</p> <p>The PIF had 25tpd in each direction:</p> <p><u>VT1</u> London Euston-Preston/Rochdale via Manchester, 7tpd in each direction consistent across PIF and Form P.</p> <p><u>VT2</u> London Euston-Liverpool Lime Street - PIF has 8tpd in each direction.</p> <p><u>VT3</u> London Euston-Birmingham - PIF had 4tpd in each direction.</p> <p><u>VT4</u> London Euston to Glasgow - Form P included 4tpd each way/ the PIF contained 6tpd each way.</p> <p><u>Performance:</u> March 2025</p>	<p><u>NW&C:</u> TBC</p> <p><u>Scotland:</u> 25/06/24</p> <p><u>Freight:</u> 01/07/24</p>	24/06/2024	17/05/2024	26/06/2024	28/06/2024	<p>04 November - Virgin discussed Avanti's unused access rights (2nd Liverpool) with the ORR - NW&C submitted documentation to the ORR. Virgin asked NR further Part J questions on Avanti's unused access rights - these are currently being reviewed by NW&C.</p> <p>NR confirmed no additional workload resulting from Virgin's updated application (small changes to quantum and quantum reduction, calling pattern change), as the changes were already included in the PIF submitted by Virgin as part of the Interacting Rights workstream. Virgin to submit updated Form P and draft TAC to NR, who will conduct new internal and industry consultations to reflect Virgin's updates.</p> <p>Virgin clarifying potential foot crossing issues around Manchester.</p>

Many thanks,
Gian

Gianmaria Cutrupi
 Aspirant Open Access Operators Manager
 Freight & Customer
 System Operator
 Network Rail

From: Gianmaria Cutrupi
Sent: 22 November 2024 15:39
To: HORLEY Darren; VT - Philip Whittingham
Subject: Virgin - Part J queries

Hi Darren/Phil,

Following a review of your queries by North West & Central colleagues, please find the below response in blue to the number of questions raised with regards to Avanti's unused rights and the Part J process:

Virgin asked "Should Part J processes have started in 2022 or at least before 2024?"

Network Rail has made some policy statements on its application of this discretionary power – see letters from successive System Operator MDs about unused access rights on our website [Sale of access rights - Network Rail](#). In broad terms we suspended using J4 during Covid but as restrictions were lifted we became more assertive about expecting operators to use J2.1 with the threat of using J4 if they didn't.

Recently, I provided a detailed comprehensive response to ORR to show that I am satisfied that all processes have been adhered to with regards to the Part J process. This response included evidence of review meetings taking place and Part J notifications. The ORR has confirmed that it is happy with the evidence provided (some confidential).

Virgin also asked "Did capacity remain "unused" under the Network Code prior to the issuing of the Part J notices in 2024?"

I believe that Virgin is asking whether a failure to use should have been issued. We are consistent with the Network Code.

Although NR is not obliged to serve a Failure to Use Notice under J4, we continue to monitor the unused rights of operators. If the Failure to Use criteria are met, Network Rail "may" serve a notice (J4.4.1). J5 exists precisely so that another existing operator or another Access Beneficiary can force the issue if Network Rail has not.

Virgin asked if NR should have allowed the rights to be suspended beyond Dec 24? Virgin reading of 2.3.1 (f) of Part J of the Code is that the temporary surrender can only run to the second anniversary of the date when it is to take effect.

There is a distinction between the definitions of Relevant Surrender (i.e. under J2.1) and Specified Relevant Surrender which are helpful – because the 2-year limitation is in J2.3.1 and applies only to the latter. The former has no reference at all to temporary surrender, but the wording in J2.1 is about surrender of "Access Rights or part or parts of such Access Rights".

It is worth noting that Avanti did not gain the Contingent Liverpool rights until after December 2022 and these rights didn't come into force until December '23 (as directed by ORR).

Virgin asked "Are these trains 'bid for' in the D40 process for the timetables Dec 24 and May 25?"

I am sorry but I believe that this would likely involve sharing commercially sensitive information of other operators, and as such Network Rail is not in a position to do so. You will see from the public Dec '24 timetable that the trains offered to Avanti align to the rights that they hold.

Virgin asked a further question *“In short come D40 for Dec 25 (when we [Virgin] wish to start operating) if these trains have not been bid for Avanti loses such rights (specifically the Liverpool services)..?”*

Avanti will not automatically lose their Liverpool services rights if they have not bid by the Priority Date for the December 2025 timetable. The consideration of failure to use begins once the relevant period of time has elapsed in respect of the right not being used in accordance with Part J of the Network Code.

Although NR is not obliged to serve a Failure to Use Notice under J4.4.1, we continue to monitor the unused rights of operators. Through Rights Review Meetings and ongoing contract dialogue, we will continue to encourage any operator to surrender under J2.1 any rights they don't exercise, otherwise Network Rail is at liberty to invoke J4 in which case the loss would be permanent.

Network Rail will continue to hold Part J review meetings as indicated (link has already provided to Network Rail policy).

Hope this helps.

Many thanks,
Gian

Gianmaria Cutrupi

Aspirant Open Access Operators Manager

Freight & Customer

System Operator

Network Rail

From: Philip Whittingham [REDACTED]
Sent: 12 December 2024 13:22
To: Gianmaria Cutrupi; HORLEY Darren
Cc: Clancy, Gareth
Subject: RE: Virgin - Part J queries

OFFICIAL

Gian

Thanks for this response.

Given the time it took to respond to the original email and the message now being relayed, you can imagine I remain somewhat sceptical about whether the process has indeed been properly followed.

My interpretation of the Part J process that I would imagined NR should have followed under Part J post the rights coming into force in December 2023 and without our application for paths on 17th May 2024 is:

1. After 13 weeks (say end of March 2024), NR notify Avanti of a Failure to Use the train slots under J4.1.1.(b)
2. In line with NR letter of 19th February 2024 on sale of access rights, work towards a voluntary surrender of rights at this point - I note the letter also states that “where unused rights are expected to be used between December 2024 and the end of the existing access agreement, options **may** include a temporary surrender or adjustment, a relevant temporary surrender or adjustment, or a supplemental agreement to insert a dated table”
3. The Relevant Surrender under J2.1.2 must have been assessed on the basis that there is no “current or foreseeable reasonable ongoing commercial need”
4. A Relevant Enquiry made under J2.3
5. NR issues a Relevant Response under J2.4 within 30 working days
6. In preparing its Relevant Response, NR consults under J2.6.1 (b) of “...other persons whom it has reason to believe intend to become operators of trains”
7. Under J2.11.2, Access Beneficiary gives notice to NR within 15 working days of receiving the Relevant Response
8. NR notify ORR within 10 working days of receiving notice under J2.11.3

Working backwards from when the Part J notification was made by NR to ORR on 5th August 2024, if NR took the full 10 days to notify ORR that would mean it was notified by Avanti on 22nd July that it wished to accept the Relevant Surrender. This would mean that NR’s Relevant Response was issued 15 days earlier on 1st July 2024 with the incumbent making its Relevant Enquiry 30 working days earlier on 20th May 2024.

On 17th May, I submitted our application to use the train slots and therefore became an aspirant operator to use the train slots subject to the Relevant Surrender. I believe that the criteria under J5.1.1 was met and therefore at that point NR should have, within 10 working days, served a Failure to Use notice on the Incumbent, knowing at that point a Failure to Use had occurred (ie since 31st March 2024). This does not appear to have happened.

Instead, NR seems to have accepted the Incumbents Relevant (temporary) Surrender notice on or around the 1st July in full knowledge that an application for the train slots had been made on 17th May 2024 which could potentially frustrate our attempts to be awarded the train slots. Furthermore, a consultation under J2.6 does

not appear to have been followed by consulting us as someone who intended to operate trains, although I might have missed it in the post 20th May flurry of emails(maybe you could confirm).

It also seems unlikely that a proper assessment was made by Network Rail of whether there was “no current or foreseeable reasonable ongoing commercial need” under J2.1.1 in accepting their position especially given the reintroduction timescales set out in NR’s letter to ORR of 5th August (ie there must have been a foreseeable commercial need). Therefore, I would suggest that voluntary surrender under J2.1 is not appropriate given there was seemingly a foreseeable ongoing commercial need, and instead the right course of action was to follow the Failure to Use clauses in J4 and J5.

It would be helpful if, prior to our meeting on 19th with yourself and Paul, NR could set out the process that it did follow and the assessment it made on assessing the foreseeable commercial need for the train slots.

Thanks

Phil

From: Gianmaria Cutrupi
Sent: 20 December 2024 14:00
To: Philip Whittingham; HORLEY Darren
Cc: Clancy, Gareth; Lewicki, Emyl; Reed, David; Paul Harris (Customer Manager); Peter Northfield; Robert Neep
Subject: RE: Virgin - Part J queries

Hi Phil,

Thank you for your detailed email and for outlining your interpretation of the Part J process.

We have not sought in this response to address the detail of the timeline which you articulated on the basis (described further below) that we do not consider it to be reflective of the separate processes provided for in Parts J2.1 and J2.2-13; we have therefore set out the following headline commentary in respect of the application of the various Part J processes which are of relevance to the matters raised in your email.

Below, we have addressed the key points you raised:

1. **Condition J2 Processes:** It's important to note that Condition J2 contains two distinct processes: the J2.1 surrender process and the J2.2 – J2.13 (and J3) Relevant Enquiry process. Network Rail is unable to initiate either of these processes.
2. **J2.1 Surrender Process:** Under J2.1, any train operator is obliged to surrender a right or part of a right where it has no “current or foreseeable reasonable ongoing commercial need.” The “part or parts of such Access Rights” can refer to either the geography or the duration of the right. There is no specific limit on the length of a temporary surrender, except for the duration of the access contract. Network Rail did not conduct a J2.6 consultation on the basis that the Relevant Surrender was not made pursuant to a ‘Relevant Enquiry’ and so J2.6 did not apply.
3. **J2.2 – J2.13 and J3 Relevant Enquiry Process:** This process relates to train operator enquiries about the potential financial consequences if they were to surrender or adjust their rights. These must be rights for which the operator has a current or foreseeable ongoing commercial need, as any rights without such a need are required to be surrendered under J2.1 without any enquiry.
4. **Failure to Use Provisions in J4:** Network Rail’s policy approach to the application of the Failure to Use provisions in J4, which are applied at Network Rail’s discretion under J4.4, has been communicated in letters published approximately annually since 2021. Initially, during pandemic lockdowns, a Failure to Use could not be enforced due to exclusions in J4.3. As we moved into pandemic recovery, we have encouraged operators to comply with their obligations under J2.1 and have indicated the potential use of J4 if they do not make a surrender where appropriate under J2.1. This approach has been supported by the ORR and applied to all train operators, including Avanti.
5. **Applicability of J5:** J5 is not applicable to Virgin’s application because Virgin cannot yet be regarded as a Part J Access Beneficiary. This definition relies on the Part A definition of Train Operator, which is a party to an Access Agreement. This is distinct from Part D, where Virgin may be a Timetable Participant through being a Potential Access Party according to its Part A definition. Additionally, under Part C, a Potential Access Party is entitled to propose changes to any part of the Network Code. If Virgin is dissatisfied with the current provisions of Part J, it could propose a change for consultation and consideration by the Class Representatives Committee.

We hope this clarifies the process.

Many thanks,
Gian

Gianmaria Cutrupi

Aspirant Open Access Operators Manager

Freight & Customer

System Operator

Network Rail



From: Philip Whittingham [REDACTED]
Sent: 24 January 2025 19:32
To: Gianmaria Cutrupi; HORLEY Darren
Cc: Clancy, Gareth; Lewicki, Emyl; Reed, David; Paul Harris (Customer Manager); Peter Northfield; Robert Neep
Subject: RE: Virgin - Part J queries

OFFICIAL

Gian

Thanks for your note below and apologies for the delay in getting back to you.

I am afraid that your response does not really clarify the process as I indicated to you at the beginning of January when we met virtually.

I disagree with Network Rail's view that there are two separate processes contained within J2 (ie J2.1 and the remainder of J2) and frankly I am at a loss to understand how Network Rail could have come to this conclusion. Some reasons for this in no particular order are:

1. Neither the intro in J1 nor other references in Part J refer to their being two distinct processes in J2
2. A Relevant Enquiry and Relevant Response are defined by reference to the whole of J2 without excluding J2.1
3. A J2.2 Relevant Enquiry relates to the possible surrender of Access Rights which the Access Beneficiary can be obliged to make under J2.1
4. While J2.3.1 (e) and (f) contemplates the possibility of a surrender being temporary but no more than two years, then if J2.1 were an entirely separate process this would mean that a J2.1 surrender could be arguably indefinite – where is the process for NR to discuss/agree given this is totally opposed to the spirit of Part J

For Network Rail's assertions to be correct, it must be the case that Avanti did not ask **any** questions covered by the subject matter of a Relevant Enquiry under J2.2 otherwise there must have been a Relevant Enquiry before the actual J2.1 surrender. If a Relevant Enquiry was made by Avanti raising any questions as envisaged under J2.2, then NR would have been compelled to respond including the need to undertake a consultation under J2.6. If this is what NR are claiming, that Avanti simply surrendered their rights on a temporary basis without any prior discussion as to compensation, timing, financial impact or whether anyone else wanted to use the rights and for NR to have accepted this without discussion, then we can issue an FOIA request to confirm this. If as I suspect though, and consistent with the approach set out by NR in their System Operator MD letters and J9 of the Code, it seems likely to me that a J2.2 Relevant Enquiry was made before the actual J2.1 surrender (noting also that J2.1 is stated to be without prejudice to the rest of Part J) and therefore the incorrect process has been followed.

Regarding the Surrender Process you have set out, I disagree too that "part or parts of such access rights" could ever refer to the duration, and particularly so in the context that the "right has no current or foreseeable ongoing commercial need". If there is no foreseeable need, how can either party agree to this being time limited? There must surely be no reasonable circumstance where a right can be limited in duration under J2.1 if such "right has no current or foreseeable commercial need". Furthermore, if NR's assertions are correct then the Avanti surrender must have occurred in late July/early August at such point in time that there could be no doubt that a re-introduction of some paths in December 24 and May 25 would be commercially foreseeable and therefore supporting the fact that J2.1 was the wrong process to follow – a Relevant Enquiry would in my

view be the only logical way to achieve this. In any case the Better Use requirement/test refers to sharing capacity in the most efficient and economical manner in the overall interest of current and prospective users and providers of railway services - it is hard to see how a long temporary surrender fits with that as the paths/rights would not be used but no one else could plan to use them in case the temporary surrender ends. Your response in Point 3 below would seem to support the fact that as there was a commercial need for the rights and therefore that NR's purported second process would have been the correct one to follow, and not J2.1. It would seem also that your Point 3 response below is in line with my view that a surrender under J2.1 is permanent – otherwise there is a commercial need that is capable of being identified and the second NR process followed which is not the case.

I would also like to understand what considerations NR has made regarding the process in J10 – there is a clear obligation to try and facilitate an Access Right Change where there is a Better Use, which I would argue I could demonstrate.

I have demonstrated that the J2.1 process agreed between NR and Avanti happened after we submitted our application in May. I have further set out why I feel the wrong process has been followed. I would like to find an agreed way forward but should NR continue to maintain the stance that the correct process has been followed I will have no alternative than to launch a Regulation 32 appeal to ORR for them to determine if the correct process has indeed been followed.

Regards

Phil

From: Philip Whittingham [REDACTED]
Sent: 10 February 2025 10:05
To: Gianmaria Cutrupi; HORLEY Darren
Cc: Clancy, Gareth; Lewicki, Emyl; Reed, David; Paul Harris (Customer Manager); Peter Northfield; Robert Neep
Subject: RE: Virgin - Part J queries

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Gian

Morning and I hope that you've had an enjoyable weekend.

It's been a couple of weeks now since I sent my note, but wondered if it is worth having a face to face with the team and maybe ORR to work this through given that time is pressing on?

Given the priority this takes, I can make myself available to suit this week to meet up.

Please let me know if this is something NR would like to take up as I think it would save a lot of back and forth in letters.

Regards

Phil

From: Gianmaria Cutrupi [REDACTED]
Sent: 29 January 2025 13:18
To: Philip Whittingham [REDACTED] HORLEY Darren [REDACTED]
Cc: Clancy, Gareth [REDACTED] Lewicki, Emyl [REDACTED] >; Reed, David [REDACTED]; Paul Harris (Customer Manager) [REDACTED]; Peter Northfield [REDACTED]; Robert Neep [REDACTED]
Subject: RE: Virgin - Part J queries

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Hi Phil,

Thank you for your detailed email, I appreciate the time and effort you've put into outlining your concerns.

We will review the points you've raised and will provide you with a comprehensive response in due course to ensure we address all aspects.

Many thanks,
Gian

 Gianmaria Cutrupi

From: Gianmaria Cutrupi
Sent: 12 February 2025 12:46
To: Philip Whittingham; HORLEY Darren
Cc: Clancy, Gareth; Lewicki, Emyl; Reed, David; Paul Harris (Customer Manager); Peter Northfield (he/him); Robert Neep
Subject: RE: Virgin - Part J queries

Phil,

I am writing further to your e-mail of 24 January 2025.

Having reviewed the reasoning in your e-mail, Network Rail remains satisfied that its interpretation of J2 is correct. While we note the high level points set out in your e-mail, they are not a correct explanation of how J2 operates. We draw the following points to your attention:-

- J2.1 is headed “Obligation ... to surrender Access Rights” and, places a clear requirement on a Part J Access Beneficiary to voluntarily surrender access rights (or parts thereof) where it has no current or foreseeable reasonable on-going commercial need.
- J2.1 does not require the consent of Network Rail or the ORR for the surrender to be effective. The Part J Access Beneficiary is required to give notice of the surrender to Network Rail (per J2.1.2) and Network Rail is required to give notice of the amended access right to ORR (per J2.1.3) and, upon Network Rail giving ORR that notification, the Relevant Surrender becomes effective (per J2.1.2).
- The provisions contained in J2.2 through to 2.13 do not relate to the mandatory surrender of Access Rights, and, instead, cover situations where a Part J Access Beneficiary elects to surrender or adjust Access Rights, either permanently or temporarily. The distinction is clear in the wording of J2. J2.1 refers to an “Obligation” and that the Access Rights “shall” be surrendered where there is no commercial need for them to remain, whereas J2.3.1 applies where a Part J Access Beneficiary “may be willing” to surrender or adjust Access Rights.
- J2.2, 2.3 and 2.4 provide a framework through the exchange of Relevant Enquiry and Relevant Response, for a Part J Access Beneficiary and Network Rail to exchange information to enable the Part J Access Beneficiary to determine whether they wish to surrender or adjust relevant Access Rights.
- J2.11 further confirms that “If, following receipt of a Relevant Response”, the Part J Access Beneficiary “wishes to have” an adjustment effected or “wishes to make” a surrender and, in either case they accept the financial consequences described by Network Rail in its Relevant Response, the Part J Access Beneficiary must then give notice of its request for the adjustment or surrender to be made.

Your e-mail refers interchangeably to the J2.2 provisions and a J2.1 surrender both being applicable to the same factual scenario. For the reasons stated above, that interpretation is incorrect. For the avoidance of doubt, J2.1 is a separate mandatory process to the optional requirements of J2.2-13.

Your e-mail also makes a number of unsupported assumptions about the events and process which are said to have occurred regarding the Avanti rights which are at issue and, sets out your opinion on the operation of J2, at times conflicting with positions set out in your earlier e-mail. In this email we have set out how J2 operates and we do not propose to engage further on the application of J2 to the circumstances of the Avanti surrender. Having considered the application of Part J in light of your most recent correspondence we remain of the view that it has been correctly applied.

Your comments regarding J10 are noted and in particular that you consider Virgin could be able to demonstrate a Better Use. Your e-mail does not substantiate in what way that Virgin has achieved that demonstration, nor does it set out how it could achieve that demonstration. I draw your attention to the following points in respect of J10:-

- the obligation on Network Rail is to “facilitate the development” of a proposed change;
- that no obligation to facilitate arises where the Third Party has not “set out, in as much detail as reasonably possible” the reasons why it believes the matters in J10.1.1(a) are satisfied;
- that in facilitating the development of a proposed change, Network Rail is not required to give notice of a proposed Access Right Change unless the requirements of J10.2.2 are satisfied, which include that Network Rail must reasonably believe the matters in J10.2.2(a) to (c) are satisfied.

Your e-mail references your belief that Virgin could demonstrate Better Use but it does not confirm that it has to date demonstrated it, nor how it satisfies the other requirements of J10.2.2. Accordingly while your comment is noted, we will not provide a further response in that regard.

Your comments regarding a Regulation 32 Appeal are noted. It is of course a matter for Virgin if it wishes to consider pursuing that route however Network Rail will continue to work with you on your aspirations as set out in your Section 17 Application, without the need for any such formal action.

Yours,
Gian



Gianmaria Cutrupi
Aspirant Open Access Operators Manager
Freight & Customer



From: Paul Harris (Customer Manager) [REDACTED]
Sent: 13 February 2025 17:34
To: Catherine Gallagher [REDACTED]; Bell, Andrew [REDACTED]
Cc: Gianmaria Cutrupi [REDACTED]; Robert Neep [REDACTED]; Michelle Woolmore [REDACTED]; Andriana Shiakallis [REDACTED]
Subject: FW: Virgin - Part J queries

This email originated from [REDACTED] and may be impersonating an internal email contact.
Do not click links, or open attachments, unless you are expecting the email and the content is trusted.

OFFICIAL

Fyi – please note Virgin’s response. I will work on building up the relevant information and timeline tomorrow.

From: Philip Whittingham [REDACTED]
Sent: Thursday, February 13, 2025 4:00 PM
To: Gianmaria Cutrupi [REDACTED]; HORLEY Darren [REDACTED]
Cc: Clancy, Gareth [REDACTED]; Lewicki, Emyl [REDACTED]; Reed, David [REDACTED]; Paul Harris (Customer Manager) [REDACTED]; Peter Northfield [REDACTED] (he/him) [REDACTED]; Robert Neep [REDACTED]
Subject: RE: Virgin - Part J queries

OFFICIAL

Gian

Thanks for your note.

As you know we feel that the paths we are seeking are those in theory allocated to Avanti and therefore given the capacity and other information shared recently it is difficult to see how our aspirations may be accommodated, but we are willing to hear more if you believe there is a route through.

For now though, your note below does not answer substantively any of the points raised which leaves us with a differing view on how Part J has been applied, and just because you say that's not how it operates doesn't necessarily mean NR are correct.

We will therefore start preparing our Regulation 32 Appeal but happy to meet to discuss how we may move forward in the meantime.

Regards

Phil

Form R32: Application to appeal

For use with appeals to ORR under regulation 32 of The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (the 2016 Regulations). You may also adapt this form for appeals under section 17 of the Railways Act 1993 for access to yards and freight terminals etc.

Using this form

This form sets out our standard information requirements for considering appeals under regulation 32 of the 2016 Regulations.

Please read our [guidance module](#) on the 2016 Regulations before making an application.

Please provide the following information:

1. Your contact details:

Company: Virgin Management Limited

Contact individual: Phil Whittingham

Job title: Project Lead

Address: 50A Charlotte Street, London. W1T 2NS

Telephone: [REDACTED]

E-mail: [REDACTED]

2. Your appeal

2.1 Your status

In what capacity are you making this application (e.g. Railway Undertaking, Infrastructure Manager, Service Provider or other *Please specify*): Aspirant Railway Undertaking

2.2 Grounds for applying to ORR

Which matter are you appealing about under regulation 32?

(Please tick at least one box)

- 32(2)(a) a network statement in its provisional or final version
- 32(2)(b) the information to be included in a network statement
- 32(2)(c) the allocation process for infrastructure capacity and its result
- 32(2)(d) the charging scheme, the charging system or the Channel Tunnel charging framework
- 32(2)(e) the level or structure of railway infrastructure charges
- 32(2)(f) the arrangements for access provided for under Part 2 and Schedule 2 of the 2016 Regulations
- 32(2)(g) access to and charging for services provided under Part 2 and Schedule 2 of the 2016 Regulations
- 32(2)(h) traffic management
- 32(2)(i) renewal planning and scheduled or unscheduled maintenance
- Compliance with the requirements, including those regarding conflicts of interest, set out in regulations 8A, 8B, 8C, 9A, 14(9) and 19(4)

- unfair treatment, discrimination or aggrieved

2.3 The matter or issue subject to appeal

Is the matter one in relation to which directions could be sought from ORR under sections 17 or 22A of the Railways Act 1993? (Please tick Yes or No.)

Yes Please stop and complete Form F or P instead, as appropriate.

No Please explain why: Virgin is appealing against the process followed by Network Rail rather than seeking to amend or direct an access agreement

2.4 Reasons for making this appeal

Set out here the reasons for making this appeal under the 2016 Regulations (e.g. are you appealing against a particular decision concerning any of the matters set out in regulation 32(2) or do you feel unfairly treated or discriminated against or in any other way aggrieved?) Please provide copies of correspondence between the parties relevant to your application.

This appeal relates to the decision by Network Rail ("NR") dated 5 August 2024 (the "Notice") to modify the Track Access Contract of First Trenitalia West Coast Rail Limited's ("Avanti") dated 1 December 2022 as set out in Appendix 1 of the Notice.

The Notice is set out at the following link:

[Part J Notification to the ORR - Temporary surrender of rights 2.pdf](#)

The applicant considers that, in respect of its decision, NR failed to correctly follow and incorrectly applied the required process for the surrender of access rights, as set out in Part J of the Network Code.

In particular, NR incorrectly accepted a "temporary" voluntary surrender of access rights from Avanti. Had the correct process been followed, NR would have served a Failure to Use notice under J4 or consulted other operators under J2.6.

The impact is that paths that should have been made available for other operators to bid for (from the December 2025 timetable change date) due to Avanti's non-use have instead been protected for Avanti.

For these reasons, Virgin requests that the ORR overturns NR's decision, as set out in the Notice, and instructs the correct application of Part J.

2.5 Summary

Please provide in the box below a summary of the proposed appeal.

Mistaken decision to follow J2

NR has confirmed that Avanti's rights for the second Liverpool paths (as referred to in Section 2.4 above) came into effect in December 2023.

Successive System Operator letters in April 2023 and February 2024 made it clear that unused rights should be discussed at periodic review meetings with a view to their voluntary surrender. It follows that these unused paths would have been part of those regular discussions.

By March 2024, following 13 consecutive weeks of the paths being unused, and with no voluntary surrender having been made, NR could, and to comply with its Better

Use obligations under the Network Code and System Operator guidance letters, *should* have served a Failure to Use notification under J4.1 and J4.4. This did not occur.

In any event, Virgin's Form P application on 17th May 2024, seeking reallocation of the unused second Liverpool paths, should have triggered a Failure to Use notice per J4, or if discussions were already taking place with Avanti about possible voluntary surrender under J2, a consultation process under J2.6.

What instead appears to have happened is that NR subsequently accepted a notification from Avanti on 22nd July 2024 for the purported '*temporary* surrender' of the paths under J2.1, without consultation, some two months after Virgin's Form P application was submitted.

Incorrect application of J2

Despite NR's mistaken decision to follow J2 (as outlined above), it could nevertheless have delivered the correct outcome if J2 had been properly applied. Unfortunately, this was not the case.

Failure to consult under J2.6

Part 2 envisages that an Access Beneficiary may make (and NR is obliged to answer) Relevant Enquiries to inform any decision to surrender its access rights. J2.6 is clear that in preparing its Relevant Responses, NR must carry out a consultation including with "*persons whom it has reason to believe intend to become operators of trains*".

Relevant Enquiries are very broadly described in Part 2, covering the matters that would inevitably be covered in any J2.1 surrender, and J2.4 sets out the Relevant Information that NR must provide in response (again the information that an Access Beneficiary would want if considering surrendering rights under J2.1) with J2.6 going on to require NR to carry out a consultation with various operators and those who NR has reason to believe intend to become operators.

Virgin considers that the only way that a surrender could have been made under J2 without triggering the need for consultation under J2.6 is if no Relevant Enquiry was made at all. This would seemingly require the Access Beneficiary to have made an unsolicited approach to NR and to have unilaterally surrendered its access rights, without asking for or receiving any of the information that NR would otherwise be obliged to provide under J2.4. This would imply that Avanti surrendered access without having discussed with NR how the access amounts payable by Avanti might be affected by such surrender, the length of the purported "temporary surrender" nor the extent to which the released capacity might be used by other operators.

In short, it is inconceivable that there was no engagement between Avanti and NR constituting a Relevant Enquiry prior to Avanti's 22nd July 2024 notice. Indeed, with NR's 19th February 2024 system operator letter specifying the need for regular dialogue regarding unused access rights, and NR's letter of 5th August 2024 specifying Avanti had "agreed" to the surrender, it suggests that: (i) discussions around the surrender of the paths must have taken place between Avanti and NR in advance of the 22nd July 2024 surrender; and (ii) the surrender of those paths was not unilaterally volunteered by Avanti. Any such discussions must have formed a Relevant Enquiry as envisaged in J2.3. As part of that process, a consultation under J2.6 should have occurred, and this should have included Virgin.

Inappropriate use of voluntary surrender provisions

Further, if NR's position is that J2.1 is separate from the J2.2 process then it is clear that a *temporary* voluntary surrender is not available under J2.1. J2.1.1 specifies that these rights must have been assessed as being of "no current or foreseeable reasonable on-going commercial need". No mention is made in J2.1.1 of a "*temporary* voluntary surrender": a surrender under J2.1 must be permanent.

If Avanti considered in July 2024 that there would be a commercial need for the rights from December 2024 and May 2025 (and hence sought to make its surrender temporary) the mechanism in J2.1 should not have been applied as a separate mechanism without the process in J2.2 being followed (including a consultation).

It is clear that reference to "part or parts of such Access Rights" in J2.1.1 refers to the length of the paths (i.e. adjusted to stop short of planned destination) rather than to the duration in time of the period of the surrender of any Access Rights. Indeed, the only reference to a "temporary" surrender in J2 is under J2.3 regarding Relevant Enquiries, which NR maintain does not apply.

Conclusion

Why NR chose to continue with its agreement to a J2.1 surrender is unclear. NR clearly knew of Virgin's interest in these paths and that Avanti claimed to have a current or foreseeable on-going commercial need to use the paths (by virtue of wanting only a temporary surrender), thus making J2 the wrong process to follow and adding weight to the argument that any surrender under J2.1 should be permanent.

That NR failed to implement the Part J4 Failure to Use process once Virgin's Form P application was submitted on 17th May 2024 and also failed to use the Relevant Enquiry process under J2 forms the basis of Virgin's appeal under the infrastructure capacity allocation process. J4 would have freed up the rights Virgin had identified as being available to bid for and the J2.3 Relevant Enquiry process would have given Virgin the ability to respond via a consultation.

NR's approach of allowing temporary surrenders of paths under J2.1 without any consultation with those who could put those paths to good use is completely at odds with the requirements to make best use of the network. In addition, its interpretation of the J2.1 process could enable multiple "temporary" surrenders (one after the other), resulting in the reservation of paths for an operator without them (ever) being used, and no consultation with operators who could use them.

2.6 Events leading up to the appeal

What were the events leading up to the appeal and what were you told by the infrastructure manager/service provider/ allocation body/charging body/railway undertaking? Were any codes of practices cited or used.

Virgin's 17th May 2024 Form P application included plans to operate services between London Euston and Liverpool Lime Street utilising an existing path allocated to Avanti. This application was made on the basis that Avanti had not used, nor was likely to use, those paths to operate a second hourly Liverpool service for the foreseeable future, and therefore that those paths should be made available for other operators to bid for.

Since Virgin became aware of NR's agreement to amend Avanti's rights under Part J 2.1 on 5th August 2024 under the Notice, to reflect a temporary surrender of rights, Virgin has engaged with NR (and ORR in copy) to understand the process followed and the rationale, given Virgin's views on how Part J should have been applied.

Despite several in person meeting requests, only written correspondence has been forthcoming.

Without the ability to discuss in person or virtually, in summary Virgin believe NR's argument is that:

1. Virgin is not a Part J Access Beneficiary and therefore the process set out in J5 does not apply
2. J2.1 is a totally separate process to the remainder of the process set out in J2

Given NR knew of Virgin's interest in these paths following its 17th May 2024 application, it was clear that Virgin was seeking to become an Access Beneficiary, thus making the J4 Failure to Use provisions the most appropriate action to take. This would have enabled NR to make best use of the Network, make use of paths that were not being used and comply with the spirit of the network use guidance.

Even if J4 was not followed, Virgin has made it clear why it believes J2.1 cannot be followed on its own and in isolation from the rest of J2. There is nothing in the intro or any other part of Part J that would show there being two processes. Therefore, the J2.3 Relevant Enquiry process, involving a consultation, should have been applied. Notably the Relevant Enquiry and Relevant Response provisions are defined by reference to the whole of J2, and do not exclude J2.1.

Should NR's stated position on J2.1 be correct, it would follow that any surrender notified by an Access Beneficiary can only be indefinite (or until the end of their access contract at least). If that is not the case, and an Access Beneficiary can unilaterally surrender access temporarily, that would leave NR without any contractual ability to free up those paths for other potential operators. That is clearly not the intention of Part J, nor is it consistent with NR's Better Use obligations.

3. Supporting information

3.1 Other material

If there is any further justification or relevant information that will support your application, please provide it below. Please itemise and describe any other material being submitted with this form.

No additional supporting information is contained. ORR has been party to much of the correspondence with NR, but the information is summarised in this appeal in any case.

3.2 Side letters and collateral agreements

Please confirm that the whole of the proposed agreement, where applicable, between the parties has been submitted with this application. If there are any side letters or other documents which qualify or otherwise affect the proposed application, please list these below and provide copies.

This is the entire appeal

3.3 Associated applications to ORR

Please provide details of any other related applications that are also being made to ORR (e.g. under sections 17, 18, 22 or 22A of the Act).

None

4. Access appeals

Only complete section 4 for appeals relating to access under Part 2 and Schedule 2 of the 2016 Regulations. Otherwise go straight to [section 5](#).

4.1 Details of the facility to which access is requested

Name of facility:

Name of owner/provider:

Contact individual:

Job title:

Address:

Telephone:

E-mail:

4.2 Details of which services you want

Details of services you need:

(eg stabling, tyre turning, loading, unloading, shunting, refuelling,....)

4.3 Suitability of preferred facility (if applicable)

- Explain the purpose for requiring the access/service and why you consider that this particular facility is competent to supply the access/service.

4.4 Summary

- Please provide in the box below a summary of the type and level of rail access required (including number of train slots and timings if relevant) or services required from the infrastructure manager/service provider
- the commercial terms proposed; and
- your reasons for seeking the contract in the terms proposed.

This section should also include an explanation of the extent to which you have evaluated available capacity at the named facility to satisfy yourself that the level and type of services being sought can be provided. Please also include a draft agreement showing the contractual terms between the applicant and infrastructure manager/service provider.

5 Confidentiality and market sensitivity

5.1 Confidentiality

Indicate clearly any elements in the application and the proposed agreement (if relevant) that you believe should be excluded from any wider consultation on the grounds of confidentiality. Please provide a summary that can be cited instead, if we agree to make redactions.

The email and telephone details are asked to remain confidential. The remainder can be shared publicly

5.2 Market sensitivity

Indicate clearly whether you consider that a final decision in relation to the application would be market sensitive.

If NR is determined to have applied the wrong process, this may become market sensitive

Note: Under regulation 42 of the Regulations if any person, in giving any information or making any application under or for the purposes of any provision of the Regulations, makes any statement which s/he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, s/he is guilty of an offence and liable to prosecution.

6. Signature

Signed:


Date: 26th February 2025
Name (in caps): PHIL WHITTINGHAM
Job title: Project Lead
For (company): Virgin Management Limited

7. Submission

Please check you are sending electronic copies of:

- this application form;
- the proposed draft agreement (where appropriate);
- any documents incorporated by reference (other than established standard industry codes or other instruments); and
- any other attachments, supporting documents or information.

Send by e-mail to: [REDACTED]

Privacy Notice

We respect your right to privacy. Our Privacy Notice sets out details about the way ORR processes personal data that we collect from and about you and how we may use your information in accordance with the General Data Protection Regulation (GDPR) and Data Protection Act 2018. For details please see our website: <https://orr.gov.uk/about-orr/corporate-data/freedom-of-information/privacy-notice>

Network Code Part J - Changes to Access Rights - overview

J1 – Introduction

J2 – Adjustment of access rights

- generic obligation to surrender unused rights
- “relevant enquiry” by train operator testing financial effects of adjusting or surrendering used rights

J3 – Confidentiality

J4 – Failure to use

- not obtaining a slot in the NWT, or
- obtaining it and not using it (use quota 1 in 13 weeks)

J5 – Failure to use: third party application

- applicant must have “reasonable commercial need”; follows J4 procedure

J6 – Not used

J7 – Freight transfer mechanism

- for continuity of traffic where the customer is switching FOC

J8 – Not used

J9 – Rights review meetings

- hold them “as frequently as necessary” to ensure efficient use of network

J10 – Right of Network Rail to make an access right change

- for “better use”; the bar is high

*NB: in J4, J5 & J7,
“rights subject to surrender”
includes rights and
associated timetable slots*

Access Rights Changes (Network Code Part J)

Section owner:	Andriana Shiakallis Regulatory Reform Manager [REDACTED]
Date content last reviewed:	21 February 2020
Comments:	Reviewed & updated

Useful contacts:

[Christopher Meadows](#) Senior Reform Specialist [REDACTED]

Purpose of the process:

The purpose of [Part J](#) is to improve the utilisation of scarce capacity where rights may be held by an operator or access option holder, together referred to as “Part J Access Beneficiaries” but they are being not used for traffic.

Introduction

The [Railways Act 1993](#) provides 4 mechanisms by which Operators’ rights within the TAC can be changed (subject to [ORR](#) approval):

- Section 17 (operator) for new contracts
- Section 18 (joint) for new contracts
- Section 22 (joint) for contract changes
- Section 22A (operator) for contract changes

ORR created the new [Part J](#) in 2005 and provides a number of mechanisms for changing rights.

Network Rail’s key responsibilities:

1. Rights review meetings - NR must arrange with freight operators every 6 months
2. NR is central to the delivery of all the mechanisms - ranging from consultation, information provision, negotiation of compensation through to dispute resolution and submission to ORR for approval
3. Maintain records of usage of rights - in delivering the above, particularly J4
4. NR is required to publish on the NR website – all material steps
5. Maintaining confidentiality (J3)

There are a number of other responsibilities which Customer Teams will wish to be aware of.

The accountable manager for Part J process delivery is the Customer Team responsible for the operator in question.

Transitional Provision

The new Part J was implemented on 29 June 2012. Any notice served under the previous version of Part J

the previous Part J shall apply in relation to the process, any consequential notice, decision or appeal related to that notice.

Rights removal mechanisms

The key mechanisms are:

- Operator initiated surrender of own surplus rights (J2)
- NR initiated removal of operator's rights if unused for a given period (J4)
- Third party operator initiated transfer of rights from operator if rights are unused for a given period applicant has a reasonable ongoing commercial need (J5)
- Cordon cap reduction (J6) – subject to rights reduction through J4 and J5
- Third party operator initiated transfer of rights from existing operator reflecting shift of business between freight operators (J7)
- A Freight Customer Access Option Holder can also apply for the rights held by a freight operator provided those are used for the provision of transport services on their behalf who wishes to draw down those rights to another freight operator of its choice (J7)
- Cordon cap reduction (J8) - subject to rights reduction through J7
- NR initiated rights review meetings to reduce freight operator rights or cordon caps where there the operator no longer has a reasonable on-going commercial need for them (J9)

The following paragraphs describe the mechanisms and provide a step by step process for each one.

Condition J2: operator voluntary surrender of access rights

Condition J2 sets out a process by which an access beneficiary can request information about the voluntary surrender or adjustment of its access rights and, if it wishes to take up that opportunity, can secure the surrender or adjustment, including compensation where applicable. The two main changes from the old provisions are:

- a wider consultation obligation for NR, including any funders that may be directly affected by the relevant adjustment or surrender, which will include the DfT, Passenger Transport Executives, local authorities and the Transport Scotland
- where there is a failure to agree the parties can go to expert determination if they prefer, rather than going to arbitration

The following table below summarises the key steps:

No.	Document Type	Dependency	Responsible Party	Timescales	From	To	Copy ORR	Material Step
	Adjustment of Access Rights (J2)							
1	Relevant enquiry from Access beneficiary (J2.2)	-	TO	-	TO	NR-CT		Y
2	Notice of consultation by Network Rail (J2.6)	1	NR-CT	REASONABLE (but see 5 below)	NR-CT	OTO funders		Y
3	*TOC responses to consultation * (J2.7)	2	OTO	REASONABLE (but see 5 below)	OTO	NR-CT		Y
4	Relevant response cost estimates (J2.8)	1	NR-CT	REASONABLE	NR-CT	TO		N
5	Relevant Response from Network Rail (J2.2)	2+3 OR 2+3+ 4	NR-CT	30 WD from Step 1	NR-CT	TO		Y
6	TOC election to surrender or adjustment (J2.11 +J2.12)	5	TO	WITHIN 15 WD	TO	NR-CT	Y (adjustment)	Y
7	Seek ORR consent to Surrender or Adjustment (J2.13)	6	NR-CT	WITHIN 10 WD	NR-CT	ORR		Y
8	Notify ORR of surrender (J2.11.3)	6	NR-CT	WITHIN 10 WD	NR-CT	ORR		Y
9	TOC notice of referral of issue to ADRR Panel (J11.1)	5	TO	WITHIN 5 WD	TO	NR-CT		Y

10	ADRR Panel decision (J11.1)	9	ADRR Panel	UP TO 100 DAYS +	ADRR Sec	NR-CT TO		Y
11	ORR consent (J2.13)	6 (Adjustment only)	ORR	NOT SPECIFIED	ORR	NR-CT TO		Y

Key to tables: TO – access beneficiary; NR – Network Rail; OTO – other access beneficiaries; CT – Customer Team; CCM – Contract Compliance Manager; Sec. ADC – Secretary, Access Disputes Committee; AO – applicant operator; ITO – incumbent access beneficiary

Condition J4: failure to use

This is one of two elements to the ‘use it or lose it’ (UIOLI) mechanism in Part J. It empowers Network Rail to initiate a process leading to the loss of an operator’s rights, for example:

- Where, in a new working timetable established by Network Rail after the commencement date the access beneficiary fails to secure one or more train slots in respect of that quantum firm right or any subsequent variation.
- Where the access beneficiary fails to make use of a train slot in the working timetable, which relates to that quantum firm right.

The above shall not apply if the operator is unable to secure the quantum of Train Slots permitted by the Quantum Access Right because of Restrictions of Use and to level two rights or contingent rights where Network Rail has been unable to accommodate the access proposal into the New Working Timetable.

If an access beneficiary fails to make use of a train slot for less than the “use quota” during the relevant “use period”. Both the use quota and the use period are to be determined and revised from time to time by the ORR, after such consultation as it considers appropriate. These are currently set at one movement in 90 days. Where a Train Slot is derived from quantum access right that allows a train slot to be obtained on more than one day of the week, the use of the Train Slot on each relevant day of the week shall be assessed separately. Similarly a train movement shall not count towards the Use Quota if it is made with main purpose of achieving the Use Quota for that Train slot.

A period of non-use which would otherwise count under the UIOLI mechanism must be disregarded if, and to the extent that it is attributable to, non-economic reasons beyond the access beneficiary’s control or it is temporary. The non-use must also be continuing, so that Network Rail cannot initiate the mechanism where the non-use happened some time in the past, but was no longer continuing.

Before a failure to use notice has been served, there will be a cessation of a failure to use if the access beneficiary make a access beneficiary variation request for the train slot in respect of the relevant quantum access right in the working timetable or an access proposal is made in any subsequent new working timetable. Similarly if the access beneficiary makes use of the relevant train slot that the use quota is met.

The UIOLI mechanism starts with Network Rail serving a failure to use notice on the access beneficiary and copying it to the Office of Rail Regulation. The notice must specify details of the failure to use and the rights which Network Rail requires the access beneficiary to surrender. If the operator accepts Network Rail’s request to surrender the right then the rights are surrendered with effect from the date on which notice is given to the Office of Rail Regulation. If the access beneficiary disagrees and wishes to retain the rights, within 10 working days of receipt of the failure to use notice it must serve a Counter Notice on Network Rail and copy it to the Office of Rail Regulation specifying that it consider the notice to be invalid; or there has been no failure to use; there has been a cessation to the failure to use; and/or that the failure to use was not continuing at the date the failure to use notice was served; and/or that there are grounds for objection to the proposed surrender.

If the access beneficiary serves a Counter Notice to the proposed loss of rights, it must provide evidence in support of its contentions. For a passenger access beneficiary, the grounds for objection could be that the rights specified by Network Rail are essential for the fulfilment of the access beneficiary’s obligations under a franchise agreement. For freight the access beneficiary,

they could be that they have a reasonable on-going commercial need in respect of the rights in question. The access beneficiary could also argue that the rights in question relate to an enhancement to the network which the access beneficiary is contracted to pay for through access charges.

If the parties agree that a failure to use did not occur or did not come within the scope of the UIOLI mechanism, the failure to use notice shall have failed and Network Rail shall notify the access beneficiary in writing that this is the case.

If the parties cannot agree, there is provision for the matter to go to arbitration or, if the parties prefer, expert determination. In all cases the surrender of rights is subject to the consent of the Office of Rail Regulation. The Office of Rail Regulation can give its consent to the surrender of part only of the rights.

The following table summarises the key steps.

No.	Document Type	Dependency	Responsible Party	Timescales	From	To	Copy ORR	Material Step
	Failure to use (J4)							
1	Failure to Use Notice served by Network Rail (J4.4)	-	NR-CT	NOT SPECIFIED	NR-CT	TO	Y	Y
2	TO agreement to surrender rights (J4.7)	1	TO	WITHIN 10 WORKING DAYS	TO	NR-CT	Y	Y
3	TO Counter Notice (J4.8)	1	TO	10 DAYS OF RECEIPT OF "1"	TO	NR-CT	Y	Y
4	TO & NR agreement to cessation of notice (J4.10)	3	NR-CT AND TO	5 WD FROM RECEIPT OF CN	NR-CT	TO		Y
5	NR notice of deemed agreement to surrender of rights (J4.8.2).	1	NR-CT	BETWEEN 11 AND 21 DAYS OF RECEIPT OF "1"	NR-CT	ORR	-	Y
6	Notice of referral to ADRR Panel (J11.1)	3	NR-CT	5 WD FROM RECEIPT OF CN OR WHERE THE PERIOD REFERRED TO INCLUDES CHRISTMAS DAY WITHIN 10 WORKING DAYS.	NR-CT	SEC. ADC		Y
7	NR notice to ORR (J4.7, or J4.12)	2 or 5	NR-CT	WITHIN 10 WD OF 2 or 7	NR-CT	ORR		Y
8	Advise Ops Planning regarding impact on Bids/Train Slots	7	NR-CT	NOT SPECIFIED – SUGGEST ASAP	NR-CT	NR Ops Planning		

Condition J5: failure to use: third party application

This is the second element of the UIOLI mechanism in Part J. It deals with circumstances where a third party access beneficiary wishes to use capacity on the network which it considers the access beneficiary is not using and where the third party access beneficiary cannot otherwise gain the access it wishes. In many respects the procedure is the same as that under Condition J4, but there are some important differences:

- (a) if Network Rail receives an application from a third party access beneficiary (the Applicant), it must initiate the UIOLI mechanism if the train slot requested is one in respect of which the Applicant can demonstrate a reasonable commercial need was secured in exercise of an incumbent operator's quantum access right; and there has been a continuing failure to use by the incumbent operator. This is unlike Condition J4, where Network Rail can choose whether to initiate the mechanism;
- (b) Whilst any dispute is between the incumbent access beneficiary and Network Rail, the applicant has to accept that the award or determination will close the matter as far as they and Network Rail are concerned.

The following table summarises the key steps.

No.	Document Type	Dependency	Responsible Party	Timescales	From	To	Copy ORR	Material Step
	Failure to Use (third party application) (J5)							
1	Application from Applicant operator	-	AO	NOT SPECIFIED	AO	NR-CT		Y
2	NR Third Party Failure to Use Notice to incumbent (J5.1) Subject to 5.1.(b)	1	NR-CT	WITHIN 10 WD	NR-CT	ITO	Y	Y
3	Incumbent's agreement of surrender (J4.7)	2	ITO	WITHIN 10 WD	ITO	NR-CT	Y	Y
4	Incumbent's Counter Notice (J5.3(b))	2	ITO	WITHIN 10 W DAYS OF RECEIPT OF 2	ITO	NR-CT	Y	Y
5	NR notice of deemed agreement to surrender of rights (J4.9.2 and T4.13)	2	NR-CT	BETWEEN 11 - 21 WD OF 2	NR-CT	ORR		Y
6	TO & NR agreement to cessation of notice (J4.10)	4	NR-CT/TO	NOT SPECIFIED	NR-CT	TO		Y
7	Notice of referral to ADRR Panel (J11.1))	4	NR-CT	5 WD FROM RECEIPT OF CN	NR-CT	SEC. ADC		Y
8	ADRR Panel decision (J11.1)	7	ADRR Panel	UP TO 100 DAYS +	ADRR Sec	NR-CT TO		Y

9	NR notice to ORR (J4.7 and J4.12)	3 OR 8	NR-CT	WITHIN 10 WD OF 3 OR 8	NR-CT	ORR		Y
10	Advise Ops Planning regarding impacts on Bids/Train Slots	10	NR-CT	NOT SPECIFIED – SUGGES T ASAP	NR-CT	NR – Ops Planning		

Condition J6: cordon cap reduction, failure to use

This mechanism provides for the reduction of the incumbent operator's cordon cap where it loses rights under the UIOLI mechanism. This is necessary because cordon caps are not in themselves rights, or characteristics of rights, but are a restriction on the access beneficiary's use of a right¹. Condition J6.1 provides that Condition J6 cannot apply in isolation from the use it or lose it mechanism. So, for example, if Network Rail initiates the UIOLI mechanism in respect of level 2 rights and the access beneficiary succeeds in retaining those rights, Network Rail cannot continue the process under Condition J6 in order to reduce the access beneficiary's cordon cap in respect of those rights. This mechanism technically applies to both freight and passenger but in practice is freight only because cordon caps only apply to such services.

The process is intended to ensure that any changes to cordon caps can be dealt with as part of the related UIOLI mechanism. Network Rail must initially specify any reduction to an existing cordon cap that it considers should be made if the access beneficiary's associated rights are surrendered. In doing so, Network Rail must consider what is reasonable in all the circumstances, having regard to any rules or criteria on the interpretation of the expression 'reasonable on-going commercial need' (see Condition J12). The proposed reduction must be specified in a notice to the access beneficiary and the access beneficiary can agree or disagree with the proposed reduction. If the access beneficiary disagrees, there is provision for disputes to be resolved by reference to the ADRR Panel As with the UIOLI mechanism, any reduction in the incumbent's cordon cap must be notified to the Office of Rail Regulation

The Cordon Cap Reduction is calculated by the following formula:

$$\text{Cordon Cap Reduction} = (R_r/R) \times C$$

"R_r" mean the number of Level 2 Rights being transferred, "R" means the total number of Level 2 Rights related to the cordon cap held by the Part J Access Beneficiary before transfer and "C" means the Part J Access Beneficiary's cordon cap before transfer. If the formula does not result in a whole number, the result shall be rounded down.

The following table summarises the key steps.

¹ A cordon cap is the maximum number of train slots per day in a given direction in respect of a service to which a level 2 right applies which is planned to go via a named cordon on the network. Cordon caps are used for parts of the network where capacity is constrained, allowing for other operators' firm rights and in some cases a margin of unused capacity for other potential operators or short term spot bidding. Without the cordon caps, Network Rail would be required to include more train slots in the working timetable than the network could accommodate.

No.	Document Type	Dependency	Responsible Party	Timescales	From	To	Copy ORR	Material Step
	Cordon Cap Reduction (Failure to Use) (J6)							
1	NR Failure to Use Notice or Third Party Failure to Use Notice to incumbent containing specification of Cordon Cap Reduction (J6.2.2 & 6.2.3)	J4/5 RIGHTS SURRENDER	NR-CT	NOT SPECIFIED	NR-CT	ITO	Y	Y
2	Incumbent's agreement to Cordon Cap Reduction (J6.2.4)	1	TO	WITHIN 10 WD	TO	NR-CT	Y	Y
3	Incumbent's Counter Notice (J6.2.5)	1	TO	WITHIN 10 W DAYS OF RECEIPT OF 1	TO	NR-CT	Y	Y
4	NR notice of deemed agreement to Cordon Cap Reduction (J6.2.7)	1	NR-CT	BETWEEN 11 - 21 WD OF TO RECEIPT OF 1	NR-CT	ORR		Y
5	TO & NR agreement to cessation of notice (J6.2.7)	3	NR-CT TO	NOT SPECIFIED	NR-CT	TO		Y
6	Notice of referral to ADRR Panel (J11.1)	3	NR-CT	5 WD FROM RECEIPT OF CN	NR-CT	ADRR Sec		Y
7	ADRR Panel decision (J11.1)	6	ADRR Panel	UP TO 100 DAYS +	ADRR Sec	NR-CT TO		Y

8	NR notice to ORR (J6.3)	2 OR 4 OR 7	NR-CT	WITHIN 10 WD OF 2, 4 OR 7	NR-CT	ORR	Y
9	Send copy of ADRR Panel decision to AO	7	NR-CT	ON RECEIPT	NR-CT	AO	

Condition J7: freight transfer mechanism

[This is all under review]

This applies only to freight access beneficiaries. The purpose of the mechanism is to ensure the smooth transfer of rights where an operator wins existing freight traffic from another freight operator. The transfer mechanism is triggered by the (applicant) access beneficiary serving a third party notice on the incumbent and sending a copy of that notice to Network Rail.

The incumbent can accept the proposed surrender, or contest it by giving a counter notice within 10 working days, arguing that it has a reasonable on-going commercial need for the rights in question and providing evidence in support of its contention. If Network Rail does not accept the incumbent's argument, there is provision for disputes to be resolved by reference to ADRR Panel. Whilst the dispute resolution is between the incumbent and Network Rail, the applicant has to accept that the award or determination of the Panel, or appeal to ORR will close out the matter between the applicant and Network Rail as well.

Where it has been agreed the period of time the right will be enjoyed by the applicant is the remaining period over which the incumbent would have enjoyed the right, or until the expiry of the applicant's access agreement, whichever is the shorter. The service characteristics of the rights transferred must be substantially the same and like the UIOLI process, the transfer mechanism does not require ORR consent although it does require the ORR to be notified of the modifications.

The following table summarises the key steps.

No.	Document Type	Dependency	Responsible Party	Timescales	From	To	Copy ORR	Material Step
	Freight Transfer Mechanism (J7)							
1	Application from Applicant Operator (J7.1.2)	-	AO	-	AO	NR-CT copy ITO		Y
2	Third Party Notice (J7.2)	1	AO	-	NR-CT	NR-CT		Y
3	Third Party Counter Notice from the incumbent (J7.5)	2	ITO	WITHIN 10 WD OF RECEIPT	ITO	NR-CT	Y	Y
4	Notice from incumbent of agreement to surrender of rights (J7.4.1(a))	2	ITO	WITHIN 10 WORKING DAYS	ITO	NR-CT		Y
5	Network Rail Grant to Applicant (J7.9) (Including notice of deemed agreement to surrender of rights (J7.5.5))	2+4 OR 8	NR-CT	11+ WD FROM "2"	NR-CT	AO		Y
6	NR & FOC agreement to ongoing commercial need (J7.6.1)	3 or 8	NR-CT / ITO	WITHIN 10 WORKING DAYS	NR-CT	AO		Y
7	Notice of referral to ADRR Panel (J13.1)	3	NR-CT	5 WD FROM RECEIPT O F TPCN	NR-CT	ADRR Sec		Y
8	ADRR Panel decision (J11.1)	7	ADRR Panel	UP TO 100 DAYS +	ADRR Sec	NR-CT TO		Y
9	Notification to ORR of modifications to relevant access agreements (J7.8.2)	5 or 8	NR-CCM	WITHIN 10 WD OF 5 OR 8	NR-CT	ORR		Y

10	Send copy of ADRR Panel decision to AO	8	NR-CT	ON RECEIPT	NR-CT	AO		
11	Advise Ops Planning regarding impacts on Bids/Train Slots	5 or 8	NR-CT	NOT SPECIFIED SUGGEST ASAP	NR-CT	NR – Ops Planning		

Condition J8 (cordon cap reduction (transfer))

This is similar to Condition J6 in that it deals with reductions to cordon caps as part of the transfer mechanism in the same way that Condition J6 deals with reductions in cordon caps associated with the UIOLI mechanism. Condition J8.1 ensures that the mechanism for adjusting cordon caps must be associated with the transfer mechanism and that it cannot be used unilaterally (e.g. if the applicant fails to secure the transfer of a right under the transfer mechanism, it cannot require the reduction of the incumbent's associated cordon cap). The main difference between Condition J7 and Condition J8 is that the Office of Rail Regulation's consent is required to the adjustment of cordon caps, whereas it is not required to the transfer of the associated rights. The Office of Rail Regulation can elect to determine the appropriate adjustment of cordon caps, after consultation with the parties, rather than give its consent to, or reject, the adjustment submitted to it.

In addition Condition J8.3 makes provision for Network Rail to propose in the Applicant's Cordon Cap, or the introduction of a new Cordon Cap, to take effect at the same time as the transfer of rights.

The cordon cap reduction is calculated in the same way as condition J6.

The following table summarises the key steps.

No.	Document Type	Dependency	Responsible Party	Timescales	From	To	Copy ORR	Material Step
	Cordon Cap Reduction (transfer) (J8)							
1	NR Third Party Failure to Use Notice to incumbent containing specification of Cordon Cap Reduction (J8.2 .2 & 8.2.3)	J7 RIGHTS TRANSFER	NR-CT	NOT SPECIFIED	NR-CT	ITO	Y	Y
2	Incumbent's agreement to Cordon Cap Reduction (J8.2.4)	1	ITO	WITHIN 10WD	ITO	NR-CT		Y
3	Incumbent's Third Party Counter Notice (J8.2.5)	1	ITO	WITHIN 10 W DAYS OF RECEIPT OF 1	ITO	NR-CT	Y	Y
4	NR notice of deemed agreement to Cordon Cap Reduction (J8.2.6)	1	NR-CT	BETWEEN 11 - 21 WD OF RECEIPT OF 1	NR-CT	ITO		Y
5	TO & NR agreement to cessation of notice (J8.2.8)	3 OR 9	NR-CT	NOT SPECIFIED	NR-CT	ITO AO		Y
6	NR notice of Cordon Cap increase (J8.3.1)	1	NR	NOT SPECIFIED	NR-CT	AO		Y
7	Applicant's Counter Notice	6	AO	WITHIN 10 WD	AO	NR-CT		Y
8	Notice of referral to ADRR Panel (J11.1)	3 OR 6	NR-CT	5 WD FROM RECEIPT OF TPCN OR CN	NR-CT	ADRR Sec		Y

OFFICIAL

9	ADRR Panel decision (J11.1)	8	ADRR Panel	UP TO 100 DAYS +	ADRR Sec	NR-CT TOADRR Sec		Y
10	NR Request for ORR consent (J8.4.1)	2 OR 4 OR 9	NR-CT	WITHIN 10 WD OF 7	NR-CCM	ORR		Y
11	ORR consent (J8.4.3)	10	ORR	NOT SPECIFIED	ORR	NR-CT/TO		Y

Condition J9 (rights review meetings)

It sets out a process by which Network Rail and the access beneficiary will hold rights review meetings as frequently as necessary. Both parties will consider whether the access beneficiary has rights for which it no longer has a reasonable on-going commercial need.

The process starts with Network Rail serving a notice specifying any rights or cordon caps which Network Rail believes should be removed or reduced on the grounds that Network Rail considers the access beneficiary no longer has a reasonable on-going commercial need for them. If the access beneficiary agrees with Network Rail, the rights can be removed or the cordon cap reduced without the meeting going ahead. Similarly, the meeting could agree either to reduce the number of rights or the levels of the cordon caps, or that the access beneficiary has a reasonable on-going commercial need to the existing level of rights and cordon caps. If the parties have not been able to agree, there is provision for disputes to be referred to ADRR Panel. In all cases, any reduction in rights or of the level of cordon caps takes effect from the date that notice is given by Network Rail to the Office of Rail Regulation, of the relevant modifications to the Access beneficiary's access agreement.

If the ORR considers that an access beneficiary is not using any of its access rights and Network Rail has not held a rights review meeting, the ORR may direct Network Rail to hold a rights review meeting. Similarly if any third part access beneficiary reasonably believes that another access beneficiary is not using any of its access rights and Network Rail has not held a rights review meeting, they may report the matter to the ORR who will then consider whether it is appropriate for them to direct Network Rail to hold a rights review meeting.

The following table summarises the key steps.

No.	Document Type	Dependency	Responsible Party	Timescales	From	To	Copy ORR	Material Step
	Freight Rights Review Meetings (J9)							
1	NR Notice of Rights Review Meetings (J9.1.2)	-	NR-CT	AT LEAST 10 WD NOTICE	NR-CT	TO	Y	Y
2	Access beneficiary has received a rights review notice and shall attend the meeting.	1	TO					Y
3	Further to a rights review meeting, NR can commence and pursue the failure to use procedure under condition J4 (J9.1.5)	1, 2	NR-CT	As per J4	NR-CT	TO	Y	Y
4	If ORR considers that a access beneficiary is not using any of its access and NR has not held a rights review meeting, the ORR can direct NR to hold a rights review meeting (J9.2.1).	-	NR-CT	Within 10 days of ORR direction	NR-CT	TO	Y	Y
5	If another access beneficiary believes another access beneficiary is not using any of its access rights and NR has not held rights review meetings it may report the matter to the ORR. The ORR may then consider it appropriate for it to direct NR,	4						Y

	pursuant to condition J9.2.1 for Network Rail to hold a rights review meeting							
6	If the access beneficiary agrees a relevant surrender or adjustment of any rights Network Rail shall inform the ORR of any relevant modifications. The modifications shall be deemed to have effect on the date notice is given to the ORR.	2, 3, 4 or can be agreed before or Nafter review meeting	NR-CT	Within 10 working days	NR-CE	TO	Y	Y
7	Advise Ops Planning regarding impacts on Bids/Train Slots	3, 4, 6	NR-CT	NOT SPECIFIED – SUGGEST ASAP	NR-CT	NR – Ops Plannin g		

Part J: Other Conditions

- Introduction of Part J (J1)
- Confidentiality (J3)
- Obligation of Network Rail to publish documentation (J10)
- Appeals (J11)

Condition J1: Introduction

This provision aims to give an overview of part J and key definitions.

Condition J3: confidentiality

This provision aims to ensure that confidential information relating to a proposed surrender or adjustment of access rights is dealt with in a way that protects the interests of all parties, including other access beneficiaries who have provided information to Network Rail under an access agreement where disclosure would or might, in Network Rail's reasonable opinion, seriously and prejudicially affect the interests of that access beneficiary.

Condition J10: Obligation on Network Rail to publish documentation

Network Rail is required to publish notices given or received and a statement of every material step taken so that persons holding or contemplating holding or surrendering access rights can be informed about how the allocation of capacity on the network might change over time.

Condition J11: Appeals

This encompasses the process and provisions for dealing with disputes in accordance with the ADRR and the ORR.

Standard letters

Part J is a very structured process with a clear progression from the initial stages through to completion.

The process has been detailed in the preceding section, with the individual stages included on the relevant sheets.

It has been proposed that standard letters would provide a distinct benefit to those people dealing with this for the first time. To that extent the attached sample letters have been drawn up from actual letters that have successfully negotiated the process.

These drafts cover the main activities for which we are responsible, and can be modified to cover other areas as necessary.

The following letters are set out in the following order below:

See Annex:

1. Failure to use notice (Part J4)
2. Failure to use counter notice (Part J4)
3. Third party failure to use notice (Part J7)
4. Third party failure to use counter notice (Part J7)
5. Rights Review Notice (Part J9)

Waterloo General office

[registered address of company being served the notice]

London

SE1 8SW

URGENT: ATTENTION the Company Secretary

Network Code Condition J4: Failure to Use Notice

This letter constitutes a Failure to Use Notice and is served pursuant to Condition J4.4 of the Network Code.

Failure to Use

Network Rail Infrastructure Limited considers that there has been a Failure to Use by *[name of party on whom the notice is being served]* in relation to the following Quantum Access Right(s) *[give details of the rights]* (“the Quantum Access Right(s)”) because

Either:

you have failed to secure the quantum of Train Slots in the New Working Timetable which the Quantum Access Right(s) permit(s) in that *[give details of which Train Slot(s) was/were not secured]*

Or:

you have failed to make use of (a) Train Slot(s) which has/have been included in the Working Timetable and which relates to the Quantum Access Right(s) in that the Train Slot(s) have been used for less than the Use Quota during the relevant Use Period in accordance with Condition J4.2 of the Network Code. This is because *[give details of the Train Slot(s) and why the Access Beneficiary has failed to meet the Use Quota/Use Period]*.

Rights Subject to Surrender

We require you to surrender the following Right(s) Subject to Surrender:

The Quantum Access Right(s) and

use whichever of the below apply:

The following Train Slot(s) (including any Y-Path(s)) in the Working Timetable which relate(s) to the Quantum Access Right(s) *[give details]*;

The following Ancillary Movements *or* Stabling which we consider are directly associated with the Quantum Access Right(s) and will no longer be required by you following the surrender of the Quantum Access Right(s) *[give details]*;

The following Access Proposal(s) which relate to the Quantum Access Right(s) *[give details]*.

Date of Surrender

We intend that the Rights Subject to Surrender will be surrendered with effect from *[date]*.

In accordance with Condition J10.2.1, we will publish this Failure to Use Notice.

Yours faithfully,

Network Rail Infrastructure
Limited

*[registered address of company serving the
counter notice]*

Waterloo General Office

London SE1 8SW

URGENT: ATTENTION the Company Secretary Network Code Condition J4: Counter Notice

This letter constitutes a Counter Notice and is served pursuant to Network Code Condition J4.8 following receipt of a Failure to Use Notice from Network Rail Infrastructure Limited pursuant to Condition J4.4 dated **[date]** (“the Failure to Use Notice”).

We consider that:

Include all of the following (i) to (iv) which apply and delete any which do not apply:

The Failure to Use Notice is invalid **[give reasons]**;

There has been no Failure to Use **or** There has been a cessation of the Failure to Use in accordance with Condition J4.5 **[give details]**;

The Ancillary Movements **or** Stabling specified in section 2 of the Failure to Use Notice:

are not directly associated with the relevant Quantum Access Right(s) because **[give reasons]**

and/or

are still required by us following the surrender of the Quantum Access Right(s) because **[give details]**

There is a Ground for Objection to the proposed surrender because, in accordance with Condition J4.9, the Rights Subject to Surrender relate to an enhancement of the Network for which we are contracted to pay through access charges **[give details]**.

We attach the following evidence in support of our above contentions **[give details of attached evidence in support]**.

In accordance with Condition J10.2.1, Network Rail shall publish this Counter Notice.

Yours faithfully,

[registered address of incumbent company being served the notice] *[Registered address of the applicant]*

URGENT: ATTENTION of the Company Secretary

Network Code Condition J7: Third Party Notice

This letter constitutes a Third Party Notice and is served pursuant to Network Code Condition J7.2 from *[name of applicant]* requesting (a) Quantum Access Right(s) which *is/are* substantially similar to (an) existing Quantum Access Right(s) held by *[name of Incumbent]*.

Quantum Access Right(s)

We are seeking the following Quantum Access Right(s):

Give details here of the Quantum Access Right(s) sought.

Rights Subject to Surrender

We require the surrender of the following right(s):

The Quantum Access Right(s) set out in paragraph 1. above and

Use whichever of (i) to (iii) below apply:

The following Train Slot(s) (including Y-Path(s)) which relate to your Quantum Access Right(s) *[give details]*;

The following Ancillary Movements *or* Stabling which we consider are directly associated with your Quantum Access Right(s) and will no longer be required by you following the surrender of your Quantum Access Right(s) *[give details]*;

The following Access Proposal(s) which relate to your Quantum Access Right(s) *[give details]*.

Date of Surrender

We intend that the Rights Subject to Surrender will be surrendered with effect from *[date]*.

Suitable Access

We have suitable access to and from the freight customer's relevant facility in accordance with paragraph 6.4 of our Access Agreement.

Characteristics of the Quantum Access Right(s)

Where J7.1.2(a) applies, use the following paragraph:

The Quantum Access Right(s) sought *is/are* required for the provision of transport services to a third party which were previously provided by you. We attach to this Third Party Notice a letter from the relevant freight customer confirming this.

OR

Where J7.1.2(b) applies, use the following paragraph:

We are a Freight Customer Access Option Holder. The Quantum Access Right(s) sought *is/are* currently held by you for the provision of transport services *to/on behalf of* us, and we intend to draw down *that/those* Quantum Access Right(s) into the Access Agreement of a Train Operator so that such Train Operator can become an Appointed Operator to provide those transport services *to/on behalf of* us.

In accordance with Condition J7.2 a copy of this Third Party Notice is being sent to Network Rail Infrastructure

Limited, who shall publish it in accordance with Condition J10.2.1.

Yours faithfully,

Network Rail Infrastructure Limited
 Waterloo General Office
 London
 SE1 8SW

*[registered address of company serving
 the counter notice]*

URGENT: ATTENTION the Company Secretary

Network Code Condition J7: Third Party Counter Notice

This letter constitutes a Third Party Counter Notice and is served pursuant to Network Code Condition J7.5.1 following receipt of a Third Party Notice from *[name of applicant who served the Third Party Notice]* (“the Applicant”) pursuant to Condition J7.2 dated *[date]* (“the Third Party Notice”).

Include either or both of paragraphs 1 and 2, as appropriate.

Grounds for Objection

We consider that we have Grounds for Objection to the surrender of the Rights Subject to Surrender proposed in the Third Party Notice because we require the Rights Subject to Surrender to continue to convey traffic for another customer and this currently is the primary purpose for which the Rights Subject to Surrender are used. *[set out evidence in support of this contention]*

Disagree with detail in Third Party Notice

We disagree with the following part(s) of section 2 of the Third Party Notice:

The Train Slot(s) shown as relating to the Quantum Access Right(s); **or**

The Ancillary Movements **or** Stabling shown as being directly related to the Quantum Access Right(s) which the Applicant says are no longer required by us following the surrender of the Quantum Access Right(s); **or**

The Access Proposal(s) shown as relating to the Quantum Access Right(s).

We disagree with the above part(s) of section 2 of the Third Party Notice because *[set out your reasons here]*.

In accordance with Condition J7.5.1, a copy of this Third Party Counter Notice has been sent to the Applicant subject to commercially sensitive redactions.

In accordance with Condition J10.2.1, Network Rail Infrastructure Limited shall publish this Third Party Counter Notice.

Yours faithfully,

[registered address of company being served the notice] Network Rail Infrastructure Limited

Waterloo General
Office

London

SE1 8SW

URGENT: ATTENTION the Company Secretary

Network Code Condition J9: Rights Review Notice

This letter is served pursuant to Condition J9.1.2 of the Network Code to give notice that Network Rail will hold a Rights Review Meeting with *[name of party on whom the notice is being served]* on *[date on which the meeting is to be held which has to be at least 5 Working Days from the date of the letter]* at *[time and place]*. In accordance with Condition J9.1.3, *[name of party on whom notice is served]* is expected to attend the Rights Review Meeting.

The Rights under Review at the Rights Review Meeting will be:

Quantum Access Right(s) *[give details]*; and

[use whichever of the below apply]

The following Train Slot(s) (including any Y-Path(s)) in the Working Timetable which relate(s) to the Quantum Access Right(s) *[give details]*;

The following Ancillary Movements or Stabling which we consider are directly associated with the Quantum Access Right(s) and will no longer be required by you following the surrender of the Quantum Access Right(s) *[give details]*;

In accordance with Condition J10.2.1, we will publish this Rights Review Notice.

Yours faithfully,

Waterloo General office

[registered address of company being served the notice]

London

SE1 8SW

URGENT: ATTENTION the Company Secretary

Network Code Condition J4: Failure to Use Notice

This letter constitutes a Failure to Use Notice and is served pursuant to Condition J4.4 of the Network Code.

Failure to Use

Network Rail Infrastructure Limited considers that there has been a Failure to Use by *[name of party on whom the notice is being served]* in relation to the following Quantum Access Right(s) *[give details of the rights]* (“the Quantum Access Right(s)”) because

Either:

you have failed to secure the quantum of Train Slots in the New Working Timetable which the Quantum Access Right(s) permit(s) in that *[give details of which Train Slot(s) was/were not secured]*

Or:

you have failed to make use of (a) Train Slot(s) which has/have been included in the Working Timetable and which relates to the Quantum Access Right(s) in that the Train Slot(s) have been used for less than the Use Quota during the relevant Use Period in accordance with Condition J4.2 of the Network Code. This is because *[give details of the Train Slot(s) and why the Access Beneficiary has failed to meet the Use Quota/Use Period]*.

Rights Subject to Surrender

We require you to surrender the following Right(s) Subject to Surrender:

The Quantum Access Right(s) and

use whichever of the below apply:

The following Train Slot(s) (including any Y-Path(s)) in the Working Timetable which relate(s) to the Quantum Access Right(s) *[give details]*;

The following Ancillary Movements *or* Stabling which we consider are directly associated with the Quantum Access Right(s) and will no longer be required by you following the surrender of the Quantum Access Right(s) *[give details]*;

The following Access Proposal(s) which relate to the Quantum Access Right(s) *[give details]*.

Date of Surrender

We intend that the Rights Subject to Surrender will be surrendered with effect from *[date]*.

In accordance with Condition J10.2.1, we will publish this Failure to Use Notice.

Yours faithfully,

Network Rail Infrastructure
Limited

[registered address of company serving the
counter notice]

Waterloo General Office
London SE1 8SW

URGENT: ATTENTION the Company Secretary Network Code Condition J4: Counter Notice

This letter constitutes a Counter Notice and is served pursuant to Network Code Condition J4.8 following receipt of a Failure to Use Notice from Network Rail Infrastructure Limited pursuant to Condition J4.4 dated [date] (“the Failure to Use Notice”).

We consider that:

Include all of the following (i) to (iv) which apply and delete any which do not apply:

The Failure to Use Notice is invalid [give reasons];

There has been no Failure to Use or There has been a cessation of the Failure to Use in accordance with Condition J4.5 [give details];

The Ancillary Movements or Stabling specified in section 2 of the Failure to Use Notice:

are not directly associated with the relevant Quantum Access Right(s) because [give reasons]

and/or

are still required by us following the surrender of the Quantum Access Right(s) because [give details]

There is a Ground for Objection to the proposed surrender because, in accordance with Condition J4.9, the Rights Subject to Surrender relate to an enhancement of the Network for which we are contracted to pay through access charges [give details].

We attach the following evidence in support of our above contentions [give details of attached evidence in support].

In accordance with Condition J10.2.1, Network Rail shall publish this Counter Notice.

Yours faithfully,

[registered address of incumbent company being served the notice] [Registered address of the applicant]

URGENT: ATTENTION of the Company Secretary

Network Code Condition J7: Third Party Notice

This letter constitutes a Third Party Notice and is served pursuant to Network Code Condition J7.2 from *[name of applicant]* requesting (a) Quantum Access Right(s) which *is/are* substantially similar to (an) existing Quantum Access Right(s) held by *[name of Incumbent]*.

Quantum Access Right(s)

We are seeking the following Quantum Access Right(s):

Give details here of the Quantum Access Right(s) sought.

Rights Subject to Surrender

We require the surrender of the following right(s):

The Quantum Access Right(s) set out in paragraph 1. above and

Use whichever of (i) to (iii) below apply:

The following Train Slot(s) (including Y-Path(s)) which relate to your Quantum Access Right(s) *[give details]*;

The following Ancillary Movements *or* Stabling which we consider are directly associated with your Quantum Access Right(s) and will no longer be required by you following the surrender of your Quantum Access Right(s) *[give details]*;

The following Access Proposal(s) which relate to your Quantum Access Right(s) *[give details]*.

Date of Surrender

We intend that the Rights Subject to Surrender will be surrendered with effect from *[date]*.

Suitable Access

We have suitable access to and from the freight customer's relevant facility in accordance with paragraph 6.4 of our Access Agreement.

Characteristics of the Quantum Access Right(s)

Where J7.1.2(a) applies, use the following paragraph:

The Quantum Access Right(s) sought *is/are* required for the provision of transport services to a third party which were previously provided by you. We attach to this Third Party Notice a letter from the relevant freight customer confirming this.

OR

Where J7.1.2(b) applies, use the following paragraph:

We are a Freight Customer Access Option Holder. The Quantum Access Right(s) sought *is/are* currently held by you for the provision of transport services *to/on behalf of* us, and we intend to draw down *that/those* Quantum Access Right(s) into the Access Agreement of a Train Operator so that such Train Operator can become an Appointed Operator to provide those transport services *to/on behalf of* us.

In accordance with Condition J7.2 a copy of this Third Party Notice is being sent to Network Rail Infrastructure

Limited, who shall publish it in accordance with Condition J10.2.1.

Yours faithfully,

Network Rail Infrastructure Limited
Waterloo General Office

London

SE1 8SW

*[registered address of company serving
the counter notice]*

URGENT: ATTENTION the Company Secretary

Network Code Condition J7: Third Party Counter Notice

This letter constitutes a Third Party Counter Notice and is served pursuant to Network Code Condition J7.5.1 following receipt of a Third Party Notice from *[name of applicant who served the Third Party Notice]* ("the Applicant") pursuant to Condition J7.2 dated *[date]* ("the Third Party Notice").

Include either or both of paragraphs 1 and 2, as appropriate.

Grounds for Objection

We consider that we have Grounds for Objection to the surrender of the Rights Subject to Surrender proposed in the Third Party Notice because we require the Rights Subject to Surrender to continue to convey traffic for another customer and this currently is the primary purpose for which the Rights Subject to Surrender are used. *[set out evidence in support of this contention]*

Disagree with detail in Third Party Notice

We disagree with the following part(s) of section 2 of the Third Party Notice:

The Train Slot(s) shown as relating to the Quantum Access Right(s); **or**

The Ancillary Movements **or** Stabling shown as being directly related to the Quantum Access Right(s) which the Applicant says are no longer required by us following the surrender of the Quantum Access Right(s); **or**

The Access Proposal(s) shown as relating to the Quantum Access Right(s).

We disagree with the above part(s) of section 2 of the Third Party Notice because *[set out your reasons here]*.

In accordance with Condition J7.5.1, a copy of this Third Party Counter Notice has been sent to the Applicant subject to commercially sensitive redactions.

In accordance with Condition J10.2.1, Network Rail Infrastructure Limited shall publish this Third Party Counter Notice.

Yours faithfully,

[registered address of company being served the notice] Network Rail Infrastructure Limited

Waterloo General
Office

London

SE1 8SW

URGENT: ATTENTION the Company Secretary

Network Code Condition J9: Rights Review Notice

This letter is served pursuant to Condition J9.1.2 of the Network Code to give notice that Network Rail will hold a Rights Review Meeting with *[name of party on whom the notice is being served]* on *[date on which the meeting is to be held which has to be at least 5 Working Days from the date of the letter]* at *[time and place]*. In accordance with Condition J9.1.3, *[name of party on whom notice is served]* is expected to attend the Rights Review Meeting.

The Rights under Review at the Rights Review Meeting will be:

Quantum Access Right(s) *[give details]*; and

[use whichever of the below apply]

The following Train Slot(s) (including any Y-Path(s)) in the Working Timetable which relate(s) to the Quantum Access Right(s) *[give details]*;

The following Ancillary Movements or Stabling which we consider are directly associated with the Quantum Access Right(s) and will no longer be required by you following the surrender of the Quantum Access Right(s) *[give details]*;

In accordance with Condition J10.2.1, we will publish this Rights Review Notice.

Yours faithfully,