

## **Note of Criteria & Procedures Industry Working Group**

**26 June 2008, 14:00-16:00, 40 Melton Street**

### **Attendees:**

David Robertson (ORR) (Chair)	Steven Alderson (DfT) (Observer)
Richard Gusanie (ORR)	Mary Bonar (WSMR)
Sam Gibbins (ORR)	Rob Holder (FGW)
Juliet Brilliant (Network Rail)	Rob Hodgkinson (Virgin West Coast)
Steven Saunders (Network Rail)	Niel Wilson (Northern)
Ray Harris (DfT) (Observer)	Nigel Oatway (EWS)

### **Apologies:**

Chris Dellard (ATW), Mike Vila (c2c), Dave Walker (Southern), Gary Taylor (ORR)

### **Actions arising from IWG meeting on 3 April 2008**

1. All of the actions arising from the last meeting relating to the industry consultation process had been completed.
2. The only outstanding actions were those related to the new version of the C&Ps document and would be implemented in due course.

### **Train operator feedback on new arrangements for consultations**

#### *Pre-application discussions*

3. Rob Hodgkinson (RHn) noted that there had been no pre-application discussion with other operators before Grand Northern had submitted its section 17 applications for London-Bradford services to ORR. Given the potential impact on the services of other operators, it was considered that Grand Northern should have discussed its proposed services with them first to identify possible issues. Nigel Oatway (NO) noted that Hull Trains had discussed its London-Harrogate section 17 application with key passenger operators but not freight operators, even though freight operators were also likely to be affected.

4. It was noted that the *Industry code of practice for track access application consultations* ("Code of Practice") said in paragraph 38 that ORR recommends that train operators who intend to make a section 17 or 22A application discuss their proposals with other potentially affected parties before proceeding. The purpose being to identify how the proposed service might affect those parties and to consider how best to mitigate this. IWG proposed making it an ORR expectation that a train operator would do this before applying. ORR agreed.

### **Action: ORR to revise paragraph 38 of the Code of Practice**

5. Juliet Brilliant (JB) said that Network Rail needed to consider why Grand Northern did not pursue negotiations with Network Rail but resorted to a section 17 application so soon, and without discussion with other operators. JB said she would also follow up on why Hull Trains did not talk to freight operators during its pre-application consultation prior to its section 22A

application. Mary Bonar (MB) suggested that applications not being discussed with Network Rail might be a consequence of concerns from the operator about timescales or the possibility of information not being kept confidential.

6. Rob Holder suggested that it would be useful if the Code of Practice contained a reminder that application timescales would be extended if an industry consultation had not been carried out prior to an application being made to ORR under section 17.

**Action: ORR to consider revising the Code of Practice to include this reminder**

*Network Rail's internal sign-off process*

7. NO said that he had not experienced any problems with the Network Rail-led consultation process. However, he raised concerns with the time it took for Network Rail to obtain internal sign-off for applications. The opportunities for obtaining 'General Manager comments' were too far apart – sometimes requiring a wait of one month or longer. He asked why sign-off could not be obtained sooner. Other train operators agreed and considered that it would be better if authority was delegated, especially if the application in question had already been validated through the timetabling process. JB said that Network Rail would consider this issue.

**Action: Network Rail to review General Manager/internal sign-off procedure**

*Consultation periods*

8. The length of consultation period was discussed. Niel Wilson (NW) said he thought the consultation period for some applications was too long – for example on minor applications such as the addition of a new route for driver training. NO said that the approach had been inconsistent as some consultations had been too short e.g. a 24-hour consultation on one Grand Central application relating to the use of Class 67s. Steven Alderson said that this application was potentially controversial and it would have been beneficial if Grand Central had been encouraged by Network Rail to discuss it with the industry prior to consultation given the short consultation period.

9. ORR said that the sufficient time needed to be given to consultees to make the consultation worthwhile. There had been complaints about the consultation which had allowed just one day for comments. The Code of Practice did provide scope for Network Rail to reduce the standard (28 day) consultation period if an application was urgent provided that a reasonable consultation period was still allowed. In extremely urgent cases, Network Rail and the applicant train operator might telephone consultees to try to secure, as soon as possible, confirmation that those parties had no objections to an application.

10. It was agreed that ORR and Network Rail should review the circumstances when a shorter consultation period might be appropriate and consider making this clearer, either in Network Rail's internal guidance or the Code of Practice.

**Action: NR/ORR to consider circumstances when a shorter consultation period might be appropriate**

*Joint responses to consultees and ORR*

11. RHn said that he thought that the process of working with Network Rail to provide joint responses to consultees was going well. NO said that EWS and Network Rail were now agreeing joint responses to consultee or ORR questions on applications. This helped to avoid any contradictions between separate responses which may lead ORR to perceive that the parties were no longer in agreement and that a joint application was no longer appropriate. JB said that Network Rail's internal guidance recommended this.

*Consultation arrangements for section 17 and 18 applications*

12. MB set out a scenario where a section 17 had been submitted to ORR by one operator (with ORR conducting the industry consultation for that application) and another operator was progressing a proposed section 18 with Network Rail (with Network Rail conducting the industry consultation) relating to the same part of the network. She was concerned with how ORR would consider the two applications, given that the consultations would be handled differently.

13. David Robertson (DR) replied that he did not consider there would be any problem with such a scenario. ORR would be aware of the proposed section 18 application (through both the casework table shared with Network Rail and through regular ORR/NR monthly meetings).

*"First come first served"*

14. IWG discussed the applications for access rights on the East Coast Main Line (ECML). MB asked whether ORR was giving any further thought to the principle of deadlines for applications – or having an 'envelope of opportunity' for operators to apply for rights over the same part of the network. DR said that this had been proposed in ORR's consultation on the review of C&Ps but there had not been sufficient support for developing the concept. DR said that it might be reconsidered in light of recent ECML applications.

**Review of the implementation of the new arrangements for industry consultations by Network Rail and ORR**

15. Sam Gibbins summarised his paper on the Network Rail/ORR review of implementation of new consultation arrangements, which had been circulated to attendees prior to the meeting. Whilst both parties considered that the transition to the new arrangements had gone smoothly, ORR had reported concerns with other aspects of the application process.

*Drafting of agreements*

16. ORR had concerns with the quality of the drafting of some of the supplemental agreements submitted to it for the May timetable change. This did not relate so much to bespoke provisions, but to whether drafting would have the effect that the parties intended. There were also instances of incorrect numbers of passenger train slots being recorded in Table 2.1 of Schedule 5.

17. JB said that she was aware that some train operators were less engaged in the drafting of contracts than others. As such, there was perhaps an issue relating to responsibility and ownership of contract development amongst some train operators. She suggested it might be useful to ask train operators not represented on IWG for their views on what they believed their involvement in the process should be.

**Action: DR to consider what might help to address this, including potentially holding another ORR industry workshop**

*Lateness of submission*

18. ORR's feedback to Network Rail also raised the issue of late submissions. Only two of the fifteen May timetable change date applications had been submitted to ORR six weeks before the required approval date, and a significant number less than four weeks. Such a large number of late applications caused problems within ORR as it created bottlenecks, especially when the key members of staff were heavily involved in other significant workstreams such as West Coast and PR08.

19. The main reasons for late submissions were identified as delays with the Network Rail sign-off process and in notification of service changes from customers, and also the consultation process for some applications taking longer than expected.

20. JB said that the new Integrated Train Planning system should contribute to reducing these timescales and improving the process generally.

*Expected issues for December 2008 timetable*

21. SG discussed the issues identified by Network Rail CRE colleagues that may arise in relation to applications for the December 2008 timetable. One of these was that it would not be possible for applications to be submitted in sufficient time to be approved by T-12. NW questioned the reason for submitting applications by T-12 when the timescales conflicted with the Part D appeal process. JB said that the alignment work Network Rail was undertaking would look to address this.

**Update on C&P review workstreams**

22. ORR reported that the new passenger and freight general approvals had been issued on 12 June 2008.

23. The recommendations made by IWG at its last meeting on the structure of the C&Ps document were in the process of being implemented and ORR hoped that the draft document could be circulated to IWG later in the summer.

24. Work on the overarching document (*Starting Mainline Railway Operations*) was almost complete. Given WSMR's experience of being a recent entrant to the rail market, MB had agreed to review the draft. ORR also planned to seek 'crystal mark' accreditation of the final document by the Plain English Campaign.

**Future remit of IWG**

25. The future remit of IWG was discussed. Whilst the transition to the new consultation arrangements was now complete, it was agreed that IWG should

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continue to exist as a forum for track access issues. A meeting would be held in early 2009 to discuss any issues arising from the processing of the December 2008 timetable applications. If necessary, a meeting in October 2008 could be held if significant issues arose in relation to this.

26. It was agreed that dialogue could continue via correspondence where appropriate. It was also noted that Michael Leadbetter had moved to a different job within Freightliner and so would no longer be on IWG.

### **AOB**

27. NO asked whether there were any plans for Network Rail to conduct the consultations for connection agreements. ORR responded that there were no firm plans to transfer this responsibility, but this was likely to be considered in due course.

### **Actions**

- Paragraph 4: ORR to revise paragraph 38 of the Code of Practice
- Paragraph 6: ORR to consider revising the Code of Practice to include a reminder that section 17 application timescales will be extended if an industry consultation has not been carried out before submission to ORR
- Paragraph 7: Network Rail to review general manager/internal sign-off procedure
- Paragraph 10: NR/ORR to consider circumstances when a shorter consultation period might be appropriate
- Paragraph 17: DR to consider what measures might help to improve TOC engagement in the contractual process