

**TTP2207 – Network Rail Appendix B – TTP1880 Extract**

56. The Panel also takes note of the observations of the TTP in TTP1122 in respect of the paucity of information before NR and its consequent reliance on assumptions, some of which proved to have been misdirected. In this case, NR was directed to seek clearer and firmer data when the information before it was “thin” (Paragraph 6.3). The Panel is also guided by the overarching duty of a contractual decision-maker in the position of NR not to abuse its power by exercising its discretion in a manner which is either arbitrary, capricious or irrational (*Braganza v BP Shipping Ltd* [2015] UKSC 17 to which the parties were referred). In these circumstances, it seems to the Panel that the duty to consult is an important bulwark against NR exercising its contractual discretion arbitrarily and/or capriciously. These principles are mirrored in the TTP’s determination in TTP271, which established that, as a matter of principle, in order to find against NR, “the Panel would have to be satisfied that NR had failed in the execution of one of the procedures through which it is contracted through the Track Access Agreement or the Network Code, or that it had made a capricious decision, which did not take into account either the facts of the case, or the guidance embodied in... the Decision Criteria.”