

Fourth Directions issued on 01 October 2026

1. I am grateful to Network Rail for its further clarification note received today.
2. In the hoping of saving time at the hearing, and avoiding the Parties wasting time in preparing submissions to address unnecessary issues, let me emphasise that as I had hoped was illustrated by earlier Determinations, I fully understand that a TTP cannot determine any industry policies, arrangements or alternative approaches. A TTP may refer to such issues in any Observations and Guidance that it considers appropriate, but those are of course only suggestions.
3. As far as the Panel's powers are concerned, in theory it remains my view that a Panel could regard D5.3.1(c) as appropriate, even if it had not been proposed by any Party, but the Panel would have to explain its view in the hearing and seek submissions. Nothing that I have seen suggests that this is likely to arise in these Disputes, so D5.3.1(a) or (b) decisions are realistically those open on each point in dispute.
4. In relation to Section 1.15 and Appendix J, the Panel's powers are limited to deciding whether they are appropriate to be included in TPRs, the point of principle, and whether there was sufficient consultation, a question of fact.
5. It is helpful (and time-saving) that Network has set out its arguments on the point of principle so clearly; I await the Claimants' submissions on this issue. The Panel will reach its conclusion on the issue of consultation on the basis of the evidence, looking separately at Section 1.15, Appendix J, and the detailed points in 5.2.2.
6. In relation to H18(c), it seems that there may be a difference of opinion as to the purpose of this provision, which I do not think has ever been considered in any Dispute. My interpretation is that this enables a Hearing Chair to alert the Parties to any new issue of law that he/she thinks may be relevant, to enable the Parties to consider it before the hearing. I do not use it to refer to legal principles which are fully understood by all Parties and which will be used by the Panel in reaching its decision on the adequacy of consultation. It does not seem to me that Network Rail has been disadvantaged by this difference in interpretation of the purpose of this rule, as it clearly understands the principles which will be used by the Panel.

[Signed on the original]

Clive Fletcher-Wood
Hearing Chair TTP2861