

# **Annex**

## **Access Dispute Resolution Rules**

## DEFINITIONS AND INTERPRETATION

In these rules, unless the context otherwise requires, the following words and phrases shall mean:

"Access Conditions"	in relation to an access contract, whichever of the Network Code, the National Station Access Conditions, the Independent Station Access Conditions or the Depot Access Conditions (or successor documents) is incorporated by reference in that access contract;
"Access Disputes Panel"	a panel established under rule E1.32;
"Access Disputes Pool"	the pool of potential members of the Access Disputes Panel established under rule E1.35;
"access disputes website"	the website to be maintained by the Secretariat as required by rule E1.53;
"arbitrator"	in Scotland, means arbiter;
"assessor"	for the purposes of Part A of the rules, a person appointed by a Panel Chairman pursuant to rule A1.53;
"claimant"	a person who initiates a dispute in accordance with Parts A, C or D;
"Committee"	the Access Disputes Committee constituted under rule E1.1;
"Committee Chairman"	the person fulfilling the duties relating to the chairmanship of the Committee set out at rule E1.12;
"Committee Member"	a person appointed to the Committee pursuant to rule E1.5;
"costs"	includes expenses;
"deputy chairman"	any deputy chairman of the Committee appointed pursuant to rule E1.13;
"disclosure"	setting out in a detailed list and schedules all documents relevant to the dispute;
"dispute"	a dispute commenced by reference under these rules;
"Disputes Chairman"	the single individual appointed by the Access Disputes Committee pursuant to rule E1.15 to carry out the functions of Committee Chairman and Panel Chairman;

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"dispute party"	<p>in relation to a dispute, a person who:</p> <ul style="list-style-type: none"> <li>(a) has made a claim in the dispute;</li> <li>(b) has had a claim made against him; or</li> <li>(c) a party that is likely to be materially affected by the outcome of the reference and has notified to the Secretary in accordance with rule A1.35 of its wish to participate as a dispute party;</li> </ul>
"documents"	hard copy or electronic data of any kind and in any format including internal or external correspondence, emails or other communications, documents, spreadsheets and databases;
"financial associate"	in relation to any party, a person from whom that party has obtained or is, in good faith, seeking to obtain any financial assistance, whether by way of loan, equity participation or otherwise;
"Flexible Panel Procedures"	those procedures set out in rules A1.31-1.34; A1.36; A1.38-1.41; A1.45; A1.51-1.54; A1.58-1.61; A1.66-1.69; that can be adapted by the Panel Chairman to meet the requirements of a specific dispute.
"inspection"	the requirement, following disclosure, to allow the other dispute party to inspect and/or take copies of documents on the disclosure list;
"joint reference"	a combined reference made by the dispute parties under rule A1.31;
"legal adviser"	a solicitor or barrister engaged by the Disputes Chairman for purposes of carrying out the review specified in rules A1.4(c) & (d) and A1.27;
"modifications"	has the meaning ascribed to it in section 151 of the Act and cognate expressions shall be construed accordingly;
"Non-Access Dispute Resolution Rules"	the rules bearing the name "The Railway Industry Disputes Resolution Rules" (formerly the "Industry Disputes Resolution Committee, Mediation, Arbitration and Expert Determination Rules");
"the Panel(s)"	the relevant panel hearing a particular dispute (being one of the Access Disputes Panel

	established under rule E1.32, the Timetabling Panel established under rule E1.32 and any other panel established under rule E1.33);
"Panel Chairman"	the Disputes Chairman or (to the extent that the Disputes Chairman has delegated the oversight and hearing of a specific dispute to him) a Vice-Chairman;
"Panel Member"	a person appointed to a Panel pursuant to rules E1.41 and E1.42;
"pleadings"	written pleas, admissions and denials of each party to an arbitration under Part C of these rules;
"Potential Access Party"	means any person who proposes in good faith to enter into an Access Agreement or become an Access Option Holder provided that such person has first undertaken to Network Rail to be bound by the relevant provisions of the Network code and the ADRR;
"predecessor body"	any of: the Access Dispute Resolution Committee; the Network and Vehicle Change Committee or the Timetabling Committee;
"the Principles"	the principles set out at rules A1.1 to A1.24;
"railway safety levy"	has the meaning ascribed to it in regulation 2 of The Railway Safety Levy Regulations 2006;
"reference"	a notice of reference submitted by a dispute party under rule A1.29;
"register"	the register maintained pursuant to rule E1.26(h);
"representative(s)"	a person or persons who act(s) as advocate for a dispute party;
"respondent(s)"	the dispute party defending, or responding to, a dispute;
"response"	the formal response to a reference submitted by the responding party under rule A1.38;
"related dispute"	a dispute which in the reasonable opinion of the Disputes Chairman raises similar or connected factual or legal issues;
"RIDR Secretary"	the disputes secretary appointed to in accordance with the Non-Access Dispute Resolution Rules;

"rules"	the provisions set out between rule A1.1 and F1.1;
"Secretary"	the individual appointed pursuant to rule E1.25;
"Secretariat"	the secretariat established pursuant rule E1.27(a);
"statements of case"	any (or all collectively) of the reference, the response and any joint reference;
"superior tribunal"	the Office of Rail Regulation and the Rail Regulator (until 4 July 2004) in their appellate capacity; the Court of Appeal or the Court of Session in Scotland; the House of Lords; the Privy Council; and any Arbitrator appointed pursuant to Part C of these rules;
"Timetabling Panel"	the panel established under rule E1.32;
"Timetabling Pool"	the pool of potential members of the Timetabling Panel established under rule E1.37;
"Vice-Chairman"	a person appointed pursuant to rule E1.23;

#### *Interpretation*

Unless the context otherwise requires:

- (a) terms and expressions defined in the Access Conditions shall have the same meanings in these rules;
- (b) the rules of interpretation in the Access Conditions shall have effect in these rules;
- (c) references to rules and parts are to rules and parts of these rules; and
- (d) the headings are used for convenience only and shall not affect the interpretation of the rules.

## **PART A – THE FUNCTION AND OPERATION OF PANELS**

### **PRINCIPLES**

#### **Purpose**

1.1 The purpose of a Panel is to determine disputes referred to it by Access Parties and which arise out of or in connection with:

- (a) an Access Agreement;
- (b) the Access Conditions incorporated by reference in the Access Agreement in question;

except where:

- (c) such a dispute is required to be resolved pursuant to the Non-Access Dispute Resolution Rules; or
- (d) the dispute parties have agreed that the dispute will be resolved pursuant to the Non-Access Dispute Resolution Rules; or
- (e) such dispute is so closely connected with a dispute or related dispute (in either case whether involving the same dispute parties or not) which is required to be resolved pursuant to the Non-Access Dispute Resolution Rules that it is expedient for the two disputes to be resolved in the same proceedings,

in each of which cases the dispute shall be referred to the Committee established under the Non-Access Dispute Resolution Rules. If any of the dispute parties disputes the application of the Non-Access Dispute Resolution Rules, Section F (Mixed Disputes) of these rules shall apply.

#### **Hierarchy**

1.2 In the event of conflict (when using these rules) between the Act, the Access Conditions, an Access Agreement, and these rules the following order of precedence shall apply:

- (a) the Act;
- (b) the Access Conditions;
- (c) the Access Agreement; and
- (d) these rules.

#### **Approach**

1.3 A Panel shall:

- (a) provide determinations as a knowledgeable peer group with relevant railway expertise;
- (b) reach fair, rapid and inexpensive determinations of disputes drawing on that expertise;

- (c) where appropriate, take the initiative in ascertaining the facts and law relating to the dispute; and
- (d) balance the formality required to achieve a fair and efficient process with the accessibility required to ensure that the process is quick and easy to use.

### **The Role of the Disputes Chairman**

#### **1.4 The Disputes Chairman has:**

- (a) oversight (under the powers contained in rule A1.6) of the effective case management of a dispute;
- (b) responsibility to ensure that all procedures of the Panel (at and before Panel hearings) are being implemented fairly and effectively in respect of each dispute;
- (c) responsibility to review (or have reviewed by an appropriate legal adviser) each dispute following submission of statements of case to identify and to itemise in written form for consideration by the Panel all relevant issues of law raised by the dispute a copy which shall be provided promptly to the dispute parties;
- (d) (subject only to rule A1.74) responsibility to ensure that the content of all determinations made by a Panel has been reviewed by him (or by an appropriate legal adviser), is legally sound, appropriate in form, is otherwise compliant with rule A1.72 and is produced and circulated promptly and (where applicable) in accordance with any mandatory time requirement.

#### **1.5 The Disputes Chairman may, where reasonable to do so, delegate the performance of any of his functions in any dispute to any one of:**

- (a) any Vice Chairman appointed under rule E1.23;
- (b) the Secretary appointed under rule E1.25 or any member of the Secretariat appointed under rule E1.27(a); or
- (c) any assessor appointed under rule A1.53,

but such delegation shall not affect the obligations and responsibilities of the Disputes Chairman set out in rule A1.4.

### **Proportionality**

#### **1.6 It is an overriding objective of these rules that disputes referred to a Panel shall be administered in a way which is proportionate to:**

- (a) the objective importance of the dispute to the dispute parties;
- (b) the complexity of the issues;
- (c) the significance (if any) of the issues involved to the railway industry; and
- (d) the scale of any financial claims involved.

Accordingly the Panel Chairman shall (where appropriate) adapt the Flexible Panel Procedures in respect of each dispute to reflect its specific requirements in terms of subject matter, timescales and value.

- 1.7 Whilst the Flexible Panel Procedures will vary all procedures adopted must reflect the Principles.

### **Timely Determination**

- 1.8 Subject to rules A1.9 and A1.42 to 1.44, the Panel shall reach its determination in a timely manner consistent with the nature and complexity of the dispute.
- 1.9 Rule A1.8 is subject to any specific timescale provisions of the Access Conditions, Access Agreement or any other legal requirements.

### **Impartiality**

- 1.10 Panel Members are chosen because of their particular industry expertise. They shall exercise their functions impartially and not on behalf of any specific organisation, Band or Class.
- 1.11 Following a determination of a dispute by the Panel any dispute party is entitled to appeal in accordance with the relevant part of the Access Conditions. The additional provisions governing appeals are set out in rule A1.72(l).
- 1.12 Appeals to the Office of Rail Regulation will be dealt with under Part M of the Network Code.

### **Appropriate Forum**

- 1.13 The Disputes Chairman shall, subject to the provisions of Part F (Mixed Disputes) or as is otherwise prescribed, ensure that each dispute is allocated to the most appropriate forum to determine the issues raised by that dispute.
- 1.14 There is a presumption that disputes referred to the Panel under Condition D5.1.1 shall, unless there are compelling reasons relating to subject matter, be allocated to the Timetabling Panel. The Disputes Chairman shall not allocate a dispute ostensibly falling within Condition D5.1.1 other than to the Timetabling Panel without first inviting written representations from the dispute parties on his intention to do so and giving proper consideration to any representations made.
- 1.15 The Disputes Chairman shall (taking into account the objectives set out in rule A1.3 and the subject of the matter of the dispute) ensure that all Panels are chaired by an appropriate Panel Chairman.
- 1.16 The dispute parties may in accordance with rule A1.14 and 1.45 make representations to the Disputes Chairman on appropriate forum.

### **Precedent**

- 1.17 In reaching its determination, the Panel shall:



- (a) take note of its prior determinations (and those of any predecessor body) and of any other relevant tribunal other than a superior tribunal, as persuasive authority but need not be bound by the same;
- (b) be bound by any relevant decision of any superior tribunal (but only, in the case of the Award of an Arbitrator appointed under Part C of these rules where that Award has been previously published to Access Parties under rule C1.31 or published on the access disputes website).

### **Determinations and Remedies**

1.18 The Panel shall reach its determination on the basis of the legal entitlements of the dispute parties and upon no other basis.

1.19 The Panel shall:

- (a) where the Access Conditions or Access Agreement require that a specific remedy be granted, grant that remedy accordingly; or
- (b) where the choice of remedy is not a matter of entitlement but is a question properly falling within the discretion of the Panel, exercise that discretion in accordance with any requirements and criteria set out in the Access Conditions and Access Agreement after due consideration of all remedies and orders that could properly be made.

### **Duties of dispute parties**

1.20 Dispute parties shall at all times:

- (a) co-operate with any reasonable request of the Disputes Chairman, the Panel Chairman, the Panel, the Secretariat and each other; and
- (b) avoid antagonistic or unduly adversarial behaviour.

1.21 Dispute parties shall provide voluntarily, or where reasonably requested, to each other and to the Panel all material required for the effective consideration and determination of the dispute, mindful of:

- (a) the requirements of proportionality at rules A1.6; and
- (b) the requirements of rules A1.46 to A1.50 (documents).

### **Consequences of procedural default**

1.22 If a dispute party fails to take a step by the time required by these rules or fails to comply with any direction of the Panel Chairman, the Panel Chairman can make, whether or not upon the application of the other dispute party, one or more of the following orders:

- (a) that the defaulting party comply with its obligation;
- (b) that the defaulting party is prohibited from relying upon the information or other matter required by the rules or such direction;

- (c) that the dispute can proceed to determination without that step being taken,

in addition, and where appropriate to do so, adverse inferences may be drawn by the Panel in respect of the position for which the defaulting party contends.

### **Representation**

- 1.23 A dispute party is entitled to be represented by such person(s) (legally qualified or otherwise), other than a Panel Member, as it chooses.
- 1.24 A dispute party shall not be prejudiced by its choice of one category of representative as against another. It shall however ensure that:
  - (a) the competencies, skills and knowledge of any chosen representative are appropriate to the issues involved in the dispute (content, subject and value);
  - (b) where a representative is also a witness that representative is able to perform both duties in full;
  - (c) where a representative is not a witness, that a witness or witnesses of appropriate seniority and knowledge are present at the hearing to provide relevant information; and
  - (d) its representatives shall respect and act at all times in accordance with the Principles.

### **PROCEDURES**

#### **General**

- 1.25 The Panel Chairman shall have the power to give directions as to all aspects of the Flexible Panel Procedures to be followed in a dispute.
- 1.26 The power referred to in rule A1.25 shall at all times be exercised in accordance with the Principles.
- 1.27 The Panel Chairman shall be entitled at any time to seek the advice of a legal adviser.

#### **Pre Reference Guidance**

- 1.28 The Disputes Chairman may, at the request of an Access Party or parties, give guidance on dispute procedure prior to the submission of a reference.

#### **Referral of Disputes to the Panel**

- 1.29 To commence proceedings a dispute party shall serve a reference upon the Secretary and upon every other dispute party.
- 1.30 The Panel expects dispute parties to submit a joint reference for its consideration which shall be compliant with the requirements of rules A1.33, A1.34, A1.38-1.41. In the event that a dispute party serves a

separate reference or response, the dispute party concerned shall upon service set out its reasons in writing for the approach taken.

- 1.31 The dispute parties' joint reference shall be in accordance with the template format for a joint reference (found on the access dispute website) as adapted by the Disputes Chairman from time to time.
- 1.32 Following service of separate reference and response documents, the Panel Chairman may, if appropriate, direct dispute parties to produce a joint reference.
- 1.33 The reference shall include the following:
  - (a) names, registered address and any relevant correspondence address (including email address) of the dispute parties;
  - (b) the subject matter of the dispute;
  - (c) identification of the provision(s) of the Access Conditions or any Access Agreement under which the reference is made;
  - (d) identification of any other provision(s) of the Access Conditions or any Access Agreement which the claimant believes are also relevant to the dispute;
  - (e) a summary of the nature and circumstances of the dispute in sufficient detail for the other dispute party or Access Parties to identify the issues and whether they are likely to be materially affected;
  - (f) the decision sought from the Panel;
  - (g) the remedy claimed; and
  - (h) an authorised signature of the referring party.
- 1.34 Copies of the following documents shall also be annexed and cross referenced to the reference:
  - (a) the relevant extracts of contractual documents containing the provision(s) under which the referral to the Panel arises (other than provision(s) from Access Conditions);
  - (b) the relevant extracts of contractual documents containing provision(s) associated with the substance of the dispute; and
  - (c) any other documents referred to in the reference.
- 1.35 Any Access Party or Potential Access Party can by notification to the Secretary at any stage become a dispute party if it fulfils the definition of a dispute party, provided that the prior consent of the Panel Chairman is obtained in order for such an Access Party or Potential Access Party to become a dispute party if such notification is made after any directions hearing pursuant to rule A1.45.
- 1.36 References made under Condition D5.1.1 of the Network Code may be made with such information as is available in order to be compliant with

the prescribed timescales for the notification of the reference. The dispute parties must however comply with the full requirements of rules A1.33, A1.34, A1.38-1.41 not later than 7 days prior to the date of the hearing.

- 1.37 Where a single party reference is submitted in accordance with rule A1.36, the claimant shall ensure that a reference complying in full with the requirements of rule A1.33 is served on the respondent in sufficient time to permit the respondent reasonable time to prepare its response. Such reference shall be in accordance with the template format for a single party reference (found on the access dispute website) as adapted by the Disputes Chairman from time to time.

### **Responses**

- 1.38 Each other dispute party shall provide to the Secretary and the other dispute parties a response within the timescales set out in rule A1.42 to 1.44 below. The response shall include the following:

- (a) a schedule identifying those parts of the reference that it agrees with and those that it disagrees with;
- (b) the reasons for any disagreement including any further references to clauses of the Access Conditions and Access Agreements not dealt with in the reference;
- (c) details of any other related claim;
- (d) the decision (and, if relevant) any remedy sought from the Panel; and
- (e) an authorised signature of the responding party.

and shall be in accordance with the template format for a response found on the access dispute website) as adapted by the Disputes Chairman from time to time.

- 1.39 Copies of the following documents shall also be annexed and cross referenced to the response if not dealt with in the reference:

- (a) the relevant extracts of contractual documents containing the provision(s) (other than provision(s) from the Access Conditions) under which the referral to the Panel arises;
- (b) the relevant extracts of contractual documents containing provision(s) associated with the substance of the dispute; and
- (c) any other documents referred to in the response.

### **Length of References, Responses and Joint References and method of service**

- 1.40 The length of every statement of case shall be in proportion to the nature and complexity of the dispute. Unless otherwise agreed by the Panel Chairman maximum length of submissions shall be as follows:

- (a) a reference or response shall be no longer than 20 A4 pages (at 1.5 spacing); and
  - (b) a joint reference shall be no longer than 30 A4 pages (at 1.5 spacing).
- 1.41 References, responses and joint references shall be made in Microsoft Word format (unless otherwise agreed with the Secretary) and attachments should be where reasonably possible, in electronic format. The normal method of service shall be electronic to the Secretary and other dispute parties.

#### **Timings**

- 1.42 Subject to rule A1.36, provisions of the Access Conditions, Access Agreement or any other legal requirement, a response shall be served within 21 days of the date of the reference.
- 1.43 The dispute parties may ask the Panel Chairman to order an extension of time to serve any statement of case.
- 1.44 The Panel Chairman shall make his decisions on any request for an extension of time based upon the Principles.

#### **Directions Hearing**

- 1.45 Following submission of a reference and response or joint reference, the Panel Chairman, if necessary, may require the dispute parties to participate in a directions hearing to decide, after hearing representations from the disputes parties:
- (a) the procedures most appropriate to the dispute;
  - (b) the nature of the issues in dispute;
  - (c) an outline timetable;
  - (d) the preparation, submission and amendments of statements of case;
  - (e) the appointment by the Panel and/or the dispute parties of expert advisers; and/or
  - (f) any submission made on forum.

#### **Documents**

- 1.46 Although documents reasonably requested should be provided in compliance with the duty at rule A1.21 disclosure will not ordinarily be ordered. However the Panel Chairman, whether or not on the application or any dispute party, has the power to:
- (a) order any dispute party to provide by way of formal disclosure and inspection, documents which it controls and which are relevant to the dispute; and
  - (b) specify the formalities, detail and timings involved.

- 1.47 The Panel Chairman shall exercise this power in accordance with the Principles.
- 1.48 No party shall be obliged to produce any document which would be privileged from production in any proceedings in an action in the courts.
- 1.49 Requests and applications to the Panel Chairman for disclosure may be made at any stage of the dispute but (whenever practicable) should be made at the time of or shortly following submission of the relevant statement of case giving rise to the request. The timing of any request (by reference to the date when it could first reasonably have been made) may be taken into account by the Panel Chairman when considering a request.
- 1.50 When considering a request for disclosure the Panel Chairman will consider the commercial sensitivity of the information requested and may exercise his discretion not to grant full disclosure.

### **Witness evidence**

- 1.51 A dispute party may rely on any witness evidence it believes to be relevant in its statements of case and at any Panel hearing.
- 1.52 Written witness statements will not normally be required. However any dispute party may apply for, and the Panel Chairman has the power to permit or require any dispute party to submit written witness statements relevant to the dispute. If the Panel Chairman permits or requires such witness statements to be submitted he shall specify the formalities, detail and timings involved.

### **Assessors**

- 1.53 The Panel Chairman may appoint one or more assessors to facilitate the determination of a dispute. Such assessors may be:
- (a) a technical assessor with a specific area of expertise relevant to one or more issues in the dispute; and/or
  - (b) a legal assessor.
- 1.54 Assessors may help undertake the procedural management of the dispute and prepare such report(s) and guidance on such issues as the Panel Chairman may direct.
- 1.55 The Panel Chairman shall provide to the dispute parties the terms of reference, qualifications and experience of any assessor appointed and a summary of his advice.
- 1.56 The Panel shall not be bound by the views of an assessor but shall be required to explain its reasons for disagreeing with those views.

### **Experts**

- 1.57 A dispute party can rely, as of right, upon expert evidence completed prior to date of reference. Where a dispute party exercises this right, the other dispute parties shall be entitled to commission expert reports.

- 1.58 When considering whether and to what extent to permit the dispute parties to commission further expert reports, the Panel Chairman shall consider what evidence is reasonably required to determine the dispute.
- 1.59 The reports of experts shall state:
- (a) the full remit against which the report has been prepared;
  - (b) the identity, qualifications and experience of the person(s) preparing the report;
  - (c) the extent (if any) to which the expert has previously been involved in the subject matter of the dispute and current or recent professional connections with any of the dispute parties.
- 1.60 The Panel Chairman, or any assessor appointed by him, may:
- (a) address questions directly to any experts; and
  - (b) convene and attend meetings of such experts for the purpose of exploring issues raised by reports or identifying matters agreed and not agreed.
- 1.61 The Panel Chairman shall determine in accordance with the specific requirements of the dispute whether the expert evidence is dealt with either by consideration of reports only or by the attendance and examination of one or more of the experts to answer questions upon their reports.

#### **Pre Hearing Conduct**

- 1.62 The dispute parties shall provide on request from the Secretary, a summary of the main elements of its evidence and an estimate of the duration of its evidence.
- 1.63 Subject to the provisions of the Access Conditions, Access Agreement or any other legal requirement, the Secretary shall notify the date and timing of the hearing to the dispute parties not later than 14 days prior to the hearing.
- 1.64 The dispute parties shall send any additional information requested by the Panel Chairman, unless directed otherwise, to the Secretary not later than 5 days prior to the hearing.

#### **Hearing Conduct**

- 1.65 The hearing will be chaired by the Panel Chairman.
- 1.66 Subject to any contrary direction of the Panel Chairman, the following procedure will be adopted at hearings:
- (a) the Panel will meet in the absence of the dispute parties to discuss issues arising from the papers submitted by the Parties;
  - (b) the Panel Chairman and Panel will confirm to the dispute parties the extent to which it has read the papers submitted by the dispute parties;

- (c) the claimant's representative will make an opening submission of its case of not longer than 10 minutes, referring if necessary to additional witness or expert evidence it wishes the Panel to consider;
  - (d) the respondent's representative will also make a brief opening submission of its response and/or counterclaim of not longer than 10 minutes, referring if necessary to additional witness or expert evidence it wishes the Panel to consider;
  - (e) if written witness evidence is permitted, the witness will not be required to read out his statement unless the Panel Chairman decides otherwise;
  - (f) if expert evidence is used, the expert will not be required to read out his/her report unless the Panel Chairman decides otherwise;
  - (g) the Panel and any assessor may put any relevant questions to the representatives, witness(es) and expert(s);
  - (h) dispute parties may put questions to any witness(es) or expert(s) in their capacity as witnesses or experts, and when any representative is acting as a witness they shall make that clear; and
  - (i) at the conclusion of questions, representatives may make closing submissions of not more than 10 minutes.
- 1.67 The hearing shall be conducted with the dispute parties present. The dispute parties will withdraw to allow the Panel to consider the evidence and arguments (with any assessor). The dispute parties shall remain available to allow the Panel Chairman, Panel and any assessor to put any additional questions.
- 1.68 The Secretary will unless otherwise directed by the Panel Chairman make a full note of the evidence given to the Panel. The Panel Chairman has the power, if necessary, to direct that a full transcript is taken.
- 1.69 The Panel may, subject to any specified requirements of any Access Condition and legal requirement, reserve its determination until a later date.

#### **Determinations**

- 1.70 If the Panel is not able to reach a unanimous decision, the Panel Chairman shall make a determination of the dispute in accordance with rule A1.72.
- 1.71 Subject to any other provision of the Access Conditions and Access Agreement in the determination of a dispute, the Panel (or, where he is required in accordance with these rules to make the determination, the Panel Chairman) may make any of the following orders that:
- (a) one dispute party shall pay an amount of money (including damages) to another dispute party, whether that amount is



specified in the determination or calculated in accordance with such procedure as the Panel shall specify;

- (b) one dispute party should take or not take specified action;
- (c) the meaning of an agreement or a dispute party's obligations under that agreement are as stated in the determination; or
- (d) any principal sum the Panel may order one party to pay to another shall carry interest at such rate and over such period as it shall determine.

1.72 The Panel's determination of a dispute shall be in writing and comprise:

- (a) the date of the determination;
- (b) the names of the Panel Members (including the person chairing the hearing) hearing the dispute;
- (c) details of all parties to the dispute;
- (d) details of the attendance and status of all witnesses and interested parties;
- (e) a brief summary of the dispute;
- (f) by reference to the requirements of rule A1.4(c) an identification of the issues of fact and law considered by the Panel;
- (g) a summary of the evidence presented;
- (h) the findings of fact made by the Panel;
- (i) identification of any precedents considered;
- (j) the decisions and conclusions reached, distinguishing clearly between:
  - (i) decisions upon legal entitlement;
  - (ii) decisions upon remedy;
  - (iii) guidance to the dispute parties or other observations not forming part of a decision upon either legal entitlement or upon remedy.
- (k) the reasons for those decisions and conclusions (including any relevant legal principles or rules of law applied); and
- (l) if the determination is not the unanimous decision of the Panel, the dissenting opinion shall be noted;
- (m) the identity of any dissenting Panel Member (or of the Panel Chairman if he dissents from a determination reached unanimously by the Panel Members);
- (n) subject to rule A 1.74, the signed confirmation of the Panel Chairman that the Panel has complied with the requirements of

this rule A1.72, and that the determination is legally sound and appropriate in form; and

- (o) if the Access Conditions or Access Agreement provides for this to be determined by the Panel, the appropriate appeal forum.
- 1.73 Any dissenting Panel Member shall be entitled to the assistance of the Secretary, the Secretariat, the Panel's legal advisers and any assessors in drafting his dissenting opinion.
- 1.74 If the Panel Chairman disagrees with a unanimous determination of the Panel he shall sign the determination in such terms as he reasonably deems appropriate. However, he shall ensure that the reasons for his dissenting view and his analysis of the relevant issues of law and fact are recorded in full in the determination.
- 1.75 The Panel shall provide a copy of its written reasoned determination to all dispute parties.
- 1.76 Except as otherwise provided in the agreement under or in respect of which the dispute arose (including the Access Conditions), the dispute parties shall comply with the terms of the determination within such period as shall be specified in the determination.
- 1.77 If a dispute party fails to comply with the terms of the determination, that failure will be dealt with by way of a new dispute through the appropriate mechanism.

#### **Publication**

- 1.78 Subject to rules E1.54 and E1.55, the determination will be published on the access disputes website in accordance with rule E1.53.

#### **Costs**

- 1.79 The Panel Chairman shall have power to order one or more dispute party to meet part or all of the costs or expenses of the Panel and of any other dispute party assessed by such means as the Panel Chairman shall determine.
- 1.80 An order for costs shall only be made where the Panel Chairman is satisfied that either:
  - (a) the case of the relevant dispute party shall have been so lacking in merit that the reference should not have been made (or defended); or
  - (b) the conduct of the relevant dispute party before or during the reference was such as to justify an award of costs being made against it (or them).