

Guidance HC/2012/2 (issued 17 January 2012)

### **Guidance to Hearing Chairs – Preparation of determinations**

The procedure for promulgation of determinations is set out in ADR Rules G47 – G50 in the case of Access Dispute Adjudications (“ADAs”) and ADR Rules H49 – H52 in the case of Timetabling Panel hearings (“TTPs”).

Once the Hearing Chair has sought the advice of the Industry Advisors/Panel members and any assessor, he or she will prepare, sign and date the reasoned determination, copies of which will then be sent to the Dispute Parties and placed on the ADC website. This process of moving from hearing to final and binding determination with no intermediate reference to the Dispute Parties differs from both court and tribunal practice and gives little opportunity for errors or infelicities to be identified. Further, the process may be considered as failing to provide reasonable warning to an organisation, part of an organisation or a person who may be subject to criticism (whether explicit or implied) within the determination document.

To address these potential issues arising in relation to ADA determinations, the Access Disputes Committee advocates to Hearing Chairs the following process, which is based on practice in the High Court:-

- The reasoned determination should be drafted with the benefit of advice of the Industry Advisors/Panel members and any assessor.
- The final draft should be marked “Confidential: unapproved draft determination” and sent to the nominated representative of each Dispute Party by e-mail endorsed as “confidential”.
- The Dispute Parties should be invited to submit a written list of any suggested corrections or amendments, for which a short timeframe should be stipulated.
- It must be stressed that the purpose of this practice is not to invite fresh or additional submissions or evidence; it is essentially to help pick up typing errors, wrong references and other minor corrections.
- A Dispute Party wishing to submit any corrections in accordance with this guidance should supply a copy to all other Dispute Parties and confirm to the Secretary that this has been done.
- Upon receipt of responses from the Dispute Parties, the Hearing Chair should liaise with the Industry Advisors/Panel members and any assessor as may be considered necessary, adjust the draft as deemed appropriate and then sign and date the determination.

At the close of a hearing, the Hearing Chair should outline to the Dispute Parties what is envisaged regarding allowing sight of a confidential draft determination.

The Access Disputes Committee recognises that this practice is not necessary practicable in the case of TTPs due to the short timescale associated with issuing a determination, but Hearing Chairs are nonetheless encouraged to allow Dispute Parties advanced sight of the draft determination for confidential review, however brief the available time might be.