

TIMETABLING PANEL of the ACCESS DISPUTES COMMITTEE

**Determination in respect of dispute references TTP2725 and (elements of) TTP2722
(following a hearing held in London, on 11 December 2025)**

The Panel:

Matthias Kelly KC Hearing Chair

Members appointed from the Timetabling Pool

Peter Warhurst elected representative for Franchised Passenger Class, Band 2
Chris Deal appointed representative of Network Rail

The Dispute Parties:

GB Railfreight Limited (GBRf)

Tom Mainprize Head of Timetabling
Darren Pell Engineering Access Manager

Network Rail Infrastructure Limited (NR)

Gavin Jones	Head of Planning
Ryan Rudd	Access Planning Manager
Adam Hodgson	Timetable Policy Manager
James Carmichael	Route Access Strategy Manager
Gary Fitton	Access Planning Manager
Jamie Arrand	Operational Planning Manager
Paul Yates	Managing Consultant

Involved Parties:

Invited Partier	
Dale Northedge*	Access Planning Manager (DB Cargo (UK) Ltd.)
Rob McCarthy*	Head of Train Planning (Gavia Thameslink Railway Ltd.)
<i>Unable to attend</i>	(London North Eastern Railway Ltd.)
Dan Thundercliffe	Engineering Access Manager (Northern Trains Ltd.)

Observers (professional development):

Daniel Filippov (NR)*

**Attended virtually*

In attendance:

In attendance: Tamzin Cloke Committee Secretary (“Secretary”) (until lunchtime)
Nigel Oatway Committee Secretariat (after lunchtime)

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A Background and Jurisdiction

1. Disputes TTP2722 and TTP2725 were raised by GBRf by service of Notices of Dispute on 03 and 09 October 2025, respectively. They concerned late notice engineering access in Weeks 01 to 10, 2026 (TTP2722) and the CPPP for Weeks 01 to 04 (TTP2725). The disputes were brought, pursuant to Conditions D3.4.16 and D5 of the Network Code, on the basis that GBRf disagreed with NR's decisions due to the potential impact on GBRf's business. GBRf was concerned about gauge-cleared paths for diverted services, as well as timetable studies that GBRf had requested and, allegedly, not received.
2. The specific possession references were later confirmed by NR to be: P2025/4084542, P2026/4043106 and P2026/4043086 (extended Week 01 Easter Weekend block between Camden Junction and Milton Keynes on the WCML); P2026/4080618 (9 days across Weeks 02 and 03 between Gretna Junction and Carstairs South Junction on the WCML); P2026/4246624 and P2026/4246625 (9 days across Weeks 02 and 03 between Preston and Lancaster on the WCML).
3. On 20 October 2025 GBRf served a further (later unregistered) Notice of Dispute and asked for an urgent hearing. Following some clarification questions issued by the Secretary, GBRf confirmed on 24 October 2025 that it wished to "expedite TTP2725 and elements of TTP2722 only (Weeks 02 and 03)." The unregistered Notice dated 20 October 2025 was to be withdrawn.
4. I was appointed as Hearing Chair on 30 October 2025 and I satisfied myself that the matters in dispute included grounds of appeal which may be heard by a Timetabling Panel convened in accordance with Chapter H of the ADR Rules to hear an appeal under the terms of Network Code Condition D5.
5. In its consideration of the Parties' submissions and its hearing of the Disputes, I was mindful that, as provided for in ADR Rule A5, I should "*reach [my] determination on the basis of the legal entitlements of the Dispute Parties and upon no other basis*".
6. The abbreviations used in this determination are set out in the list of Parties above, in this paragraph 4 and as otherwise defined in this determination document:

ADR Rules mean the Access Dispute Resolution Rules and **Rule** is construed accordingly
Decision Criteria means Network Code Condition D4.6

Chapter H means Chapter H of the ADR Rule

C/DPPP means Confirmed/Draft Period Possession Plan

EAS means Engineering Access Statement

ECML means East Coast Mainline

NW&C means North West and Central

ORR means the Office of Rail and Road

Part D means Part D of the Network Code

RoU means Restriction of Use

SRD means Sole Reference Document

TTP means Timetabling Panel

TW-X has the meaning shown in Network Code Condition D3.2.1;

WCML means West Coast Mainline

B History of this dispute process and documents submitted

7. At my request (and as permitted by ADR Rule H21), the Dispute Parties were required to provide SRDs. The proposed Panel hearing was notified generally by means of the website and by email to those identified as potential Involved Parties by the Dispute Parties.
8. On 12 November 2025 the Allocation Chair ordered, pursuant to ADR Rule B21 that TTP2725 and elements of TTP2722 (relating to Weeks 02 and 03) could be joined “*on the grounds that they concern the same or similar subject matter and that it would be in the interests of efficient and fair resolution to do so*”.
9. On 18 November 2025 GBRf served its SRD, in accordance with the dispute timetable as issued by the Secretary.
10. On 20 November 2025, having reviewed GBRf’s SRD, I invited GBRf - by way of a directions note - to address a number of points of clarification by resubmitting its SRD, which it did the same day. The revised SRD is now on the Committee’s website.
11. On 24 November 2025 GBRf wrote to the Secretary to request a “*delay to the hearing*” on the basis that GBRf was working with NR “*to avoid a hearing*”. On this basis, and the understanding that the Parties might be able to achieve a resolution, avoiding the additional industry cost and time involved in a hearing, I ordered that the Chapter H timescales be amended, using my powers under ADR Rule H20. The new hearing date was set for Thursday 11 December 2025.
12. On 04 December 2025 NR served its SRD in accordance with the revised dispute timetable as issued by the Secretary.
13. On 09 December 2025 GBRf provided an update as to the status of the timetable study that NR was completing to try and resolve the dispute. GBRf stated that 53 Train Slots were outstanding. NR replied on 10 December 2025 to state it believed potential paths existed “*for 43 of [GBRf’s] services with 10 services still being worked on*.” NR did not agree that the 43 paths were “*unworkable against the base timetable which is what the paths were being assessed against*.” NR provided some guarantees about Train Slots to be accommodated in the Informed Traveller offer.
14. On 09 December 2025 the Dispute Parties were advised – for the purposes of ADR Rule H18(c) – that so far as there were any relevant issues of law, for the most part the issues to be determined concerned: Was there adequate consultation by NR for the decisions in dispute?; Was there engagement and co-operation by GBRf for the same? The note provided a non-exhaustive list of questions that I, and the Panel, wished to cover during the hearing, including a request that GBRf provide the Panel with details so as to support its complaint that the RoUs would “*severely impact its customers and operations*”.
15. On 10 December 2025 GBRf was asked, following NR’s update earlier that day, to provide an update by 15:00 as follows: “[The Chair] notes NR’s update on Weeks 2 and 3, including NR’s commitment that two of the three remaining services will have paths (4M57/4S57). With this in mind, and noting both ADR Rule A9(b) (“...conduct themselves in good faith with the objective of resolving the dispute”) and standard industry practice in disputes of this nature (including GBRf’s own recent TTP2667 et al), he invites GBRf to strongly consider whether those elements of these disputes can now be withdrawn.”

16. GBRf responded by the deadline to disagree with NR's characterisation of the status of the dispute, and stated that as "*the disputes raise issues of principle*", the hearing needed to go ahead, regardless of progress made with finding indicative Train Slots.
17. It was now clear to the Panel that the dispute centred on whether, in principle and according to GBRf, NR should be compelled to produce timetable studies to support RoUs, and to provide acceptable diversionary routes, which, according to GBRf, should be acceptable to GBRf.
18. DB Cargo (UK) Ltd.; Govia Thameslink Railway Ltd.; London North Eastern Railway Ltd.; and Northern Trains Ltd. declared themselves to be Involved Parties. All, save London North Eastern Railway Ltd. who could not make the revised hearing date, were represented at the hearing.
19. The hearing took place on 11 December 2025. The Dispute Parties made opening statements, responded to questions from the Panel concerning various points and were given the opportunity to make closing statements.
20. I confirm that the Panel had read all of the papers submitted by the Dispute Parties and I confirm that I have taken into account all of the submissions, arguments, evidence and information provided to the Panel over the course of the dispute process, both written and oral, notwithstanding that only certain parts of such materials are specifically referred to or summarised in the course of this determination.

C Outcomes sought by the Dispute Parties

21. In its SRD, GBRf requested I determine that:
 - (i) NR was in breach of the Track Access Contract between NR and GBRf, in that it had failed to discharge its obligations under the National Timetable Planning Rules and the Network Code, including (without limitation) Conditions D2.5.1, D3.4.4(b)¹, D3.4.8 (and the associated procedures in Conditions D3.4.9 to D3.4.12), and D4.6.1, in relation to the disputed RoU; and,
 - (ii) NR should withdraw the disputed RoUs with immediate effect.
22. GBRf argued it had repeatedly made NR aware that the RoUs would be heavily disruptive, and that - in the absence of any written Decision Criteria document - it could not "*understand or meaningfully engage with NR's decision*", nor could it "*properly accept an "industry decision" which is materially adverse to it without understanding the basis on which that decision has been taken.*" GBRf contended that the full extent of the impact on its business and its customers had "*not been taken into account*" by NR.
23. GBRf contended exceptional circumstances had arisen on the basis of a combination of factors: alleged failure by NR to follow Network Code Part D processes; the designation by NR of the ECML diversionary route as Congested Infrastructure; earlier timetable studies being of, GBRf alleged, insufficient quality resulting in GBRf services being rejected at TW-14. GBRf felt this was a "*repeated pattern of behaviour which, if unchecked in the present circumstances, is likely to cause serious and avoidable harm to GBRf's business and its customers.*" GBRf felt that cancelling all three possessions was both "*necessary and proportionate*" in the circumstances.

¹ Later corrected by GBRf, by resubmission of its SRD, to D3.4.10(b).

24. NR asked me to determine that exceptional circumstances did not apply and that I uphold its decision using my powers under Condition D5.3.1(b).

D Relevant provisions of the Network Code and other documents

25. The versions of the Network Code Part D dated 19 November 2024 and the ADR Rules dated 29 August 2025 were applicable to these dispute proceedings.
26. Conditions D3.4.7 to D3.4.12, and D4.6 were particularly relevant and are appended in Annex A.

E Submissions by the Dispute Parties

27. GBRf's written Opening Statement can be found at Annex B.
28. NR's written Opening Statement can be found at Annex C. Following GBRf's Opening Statement, NR stated there was some new information it had not previously been made aware of. NR was granted a twenty minute adjournment to consider its response to the new information. Its response forms part of the summary in Section F below.

F Oral evidence at the hearing

29. The Parties agreed on the following points.
30. That the 'Hanslope Study', which had been completed for Week 40, was not in front of the Panel as a disputed issue. Therefore Sections 6 and 8.2(c) of GBRf's Opening Statement were withdrawn. A typographical error in GBRf's Opening Statement (para 2.5(a)) was also corrected to read, '01 December 2024'.
31. That the disputed engineering work was "necessary". The Parties agreed that the issue in dispute, on which everything else rested, was the manner in which the consultation process had been conducted. In response to direct questions, the Parties agreed that they understood the Gunning Principles², and that they adequately described the meaning of 'consultation' as envisaged by the Network Code Part D processes.
32. Agreed calendar dates for each of the blockades were provided to the Panel, as well as the consultation timescales and the responses given by GBRf and NR to each other, at each stage.
33. It was confirmed that the earliest notice GBRf had of the RoUs was in the first quarter of calendar year 2024. Formal notice, under Part D, was given to GBRf on 16 August 2024, via the EAS process. GBRf's first formal response was to the EAS on 20 September 2024, but at that stage it did not provide any counter-proposal to NR. NR agreed GBRf had asked for a timetable study throughout this early process.

² Outlined in my ADR Rule H18(c) note, and elsewhere in this determination.

34. On 15 November 2024 NR responded to GBRf in two ways. Firstly via a formal EAS response, directly to GBRf, and secondly by providing a 'capacity [timetable] study tracker' via email to all operators.
35. It was agreed that at a date (TW-30, or 26 August 2025) that GBRf argued was a key milestone in Part D (Condition D3.4.8), GBRf had neither responded to the DPPP publication, nor attended the relevant meeting, which was the last opportunity to discuss the access, and its impact, in detail. This was after the Week 40 'Hanslope Study' had been issued to operators, which was on 12 August 2025.
36. NR consequently argued that, "*The only time we were aware of it [GBRF's detailed objections] was once the CPPP was published, which we can't act on because it's obviously published. That was when we were aware that they [GBRF] were not happy with the access, and then expedited to [a] hearing.*" NR felt that if GBRf had submitted a DPPP response on, or around 26 August 2025, reflecting unhappiness with NR's proposal to 'roll over' the 'Hanslope Study' from Week 40 to Week 01, then the hearing could possibly have been avoided.
37. In response, GBRf argued that "*there was no time*" to provide an informed view to NR by 26 August 2025, and that in any event it first became aware that there were issues with the 'Hanslope Study', and its suitability for Week 01, at TW-14 for Week 40, i.e. on 19 September 2025, which was after the DPPP publication and before the CPPP dispute deadline. GBRf further contended that, as it bids amended timetables at TW-18, rather than the Part D requirement of TW-16, it had only "*a week*" to assess the 'Hanslope Study' between 12 August 2025 and submitting its bid for Week 40 on 22 August 2025. In response to a direct question, GBRf agreed that the Network Code doesn't prescribe bidding at TW-18, and this was a business choice on the part of GBRf.
38. At several points during the hearing, the issue of whether GBRf had disclosed sufficient information for NR to make an informed decision was raised.
39. GBRf confirmed, at several points, that it had not advised NR, in response to NR's original assertion on 15 November 2024 that the Week 40 Hanslope Study could 'roll over' to Week 01, that GBRf Week 01 traffic (and therefore timetabling requirements) would be different from Week 40.
40. GBRf said that "*you can't assume that a timetable study will work on one week that it will work on another week*", however it confirmed that at no stage between 15 November 2024 and 09 October 2025 had GBRf challenged NR's assumption that the study could be rolled over from Week 40 to Week 01, albeit this may be due to GBRf misunderstanding NR's 15 November 2024 response (see para 43 below).
41. GBRf further stated it could not provide NR with an informed position on the commercial impact on its business to assist NR in decision-making unless, and until, it received a detailed timetable study.
42. The Parties confirmed they were still in disagreement about the nature of the timetable study that GBRf expected to receive from NR, both prior to the CPPP and in the run-up to the hearing, as well as whether NR had consulted indirectly affected Timetable Participants under Condition D3.4.8 by TW-26, in order to exercise its flexing right in Conditions D3.4.9 to D3.4.12 for the weeks in dispute.

43. GBRf initially understood NR's response on 15 November 2024 ("NR would expect the Hanslope study to provide a significant, if not all of the information required"³) to mean that the 'Hanslope Study' would be re-worked for Week 01, whereas NR understood its response to mean - in the absence of any objection from GBRf between 15 November 2024 and 09 October 2025 - that the study could be copied across directly from Week 40 to Week 01, and NR need undertake no further work.

44. In relation to the work that had been undertaken between 24 October 2025 (hearing request) and the hearing, GBRf felt that NR should be providing guaranteed paths in order for the dispute to be resolved, whereas NR felt it should be providing an indication of available capacity and indicative timings, ahead of the formal Part D bid and offer process between TW-16 and TW-14. Due to this, NR felt that the majority of Train Slots across all three weeks in dispute had been resolved, whereas GBRf confirmed that, from its perspective, all 74 Train Slots in Week 01 were outstanding. GBRf stated that there were no other diversionary routes the trains could operate over, primarily due to gauging restrictions.

45. In terms of Condition D3.4.8, NR felt that it had undertaken sufficient consultation with indirectly affected Timetable Participants, and that it would be able to utilise its powers under Conditions D3.4.9 to D3.4.12 for the relevant weeks, and provided several examples. GBRf felt it couldn't see "*any evidence of that ... consultation to impacted parties, and indirectly impacted parties, on those diversionary routes.*"

46. Finally, in response to a series of questions about the meaning of Conditions D3.4.8 and D3.4.9, NR agreed that it would be fair to characterise the wording in those paragraphs as meaning no more than the consultation period is a "*window of opportunity*" in which access can be agreed, but that ultimately NR is the decision-maker for Part D purposes, and whilst Parties should "*try to agree*" (i.e. adequately consult) there was no obligation on NR to gain agreement to proposals before proceeding.

47. Both Parties declined to give closing statements. GBRf asked for clarification as to whether the verbal outcome (provided after the hearing concluded) or this written determination was the legally binding determination. I confirmed it was this document, and GBRf confirmed it understood my response.

48. At the conclusion of the hearing, I announced the decision as follows:

"The decision of the Panel, having listened to all of the evidence today, is that in relation to the three subject matters here. Firstly a 9-day notice blockade between Preston and Lancaster on the WCML, secondly a 9-day blockade between Gretna Junction and Carstairs South Junction on the WCML - Scotland, and thirdly, three WCML south blockades between Camden Junction and Milton Keynes over the Easter period, all those complaints are dismissed".

G Analysis/Observations and Guidance

Network Code Part D requirements

49. It is common ground that Condition D3.4.10(b) of the Network Code requires NR to specify the aspects of an operator's proposal which need to be revised, and the reasons for this.

³ NR SRD, Appendix 3.2

GBRf says that in the context of decisions in relation to the disputed RoUs, Condition D3.4.10(b), in its view, involves NR explaining how it reached its decision so that affected Timetable Participants can understand it and, if appropriate, challenge it. GBRf says that NR did not provide such detail and GBRf therefore could not understand or meaningfully engage with NR's decision. For RoUs as disruptive as those in dispute, GBRf has argued that Condition D3.4.10(b) requires a Severity 4⁴ timetable study. In short, GBRf claims that NR has failed to consult properly. GBRf also says, as a second limb, that NR, in relation to all the disputed RoUs, published its decisions without providing any written Decision Criteria document to GBRf and therefore, GBRf says, NR cannot have correctly applied the Decision Criteria, and cannot have taken into account the impact on GBRf's business and customers.

50. Condition D4.6 of the Network Code is headed "*The Decision Criteria*". Condition D4.6.1 reads:

"Where NR is required to decide any matter in this part, its objective shall be to share capacity on the network for the safe carriage of passengers and goods in the most efficient and economical manner in the overall interests of current and prospective users and providers of railway services ("the Objective")."

51. Condition D4.6.2 of the Code reads:

"In achieving the Objective, Network Rail shall apply any or all of these considerations in paragraphs (a)-(l) below ("the Considerations") in accordance with Condition D4.6.3."

52. The Decision Criteria set out the considerations that have to be taken into account, such as maintaining and developing, as well as improving the capacity of the Network; the spread of services, ensuring that spread of services reflects demand; maintaining and improving train service performance; that journey times are as short as reasonably possible; and maintaining and improving an integrated system of transport for passengers and goods.
53. Condition D4.6.3 of the Code requires NR to apply the considerations set out there to consider which of them is, or are, relevant to the particular circumstances and apply those it has identified as relevant so as to reach a decision which is fair and is not unduly discriminatory as between any individual affected Timetable Participants. In the event of a conflict, NR must decide which of the considerations is or are the most important in the circumstances and apply them with the appropriate weight. The full text of Condition D4.6 is set out in Annex A to this determination.

Consultation

54. The theme of consultation is a key thread in Network Code Part D. Condition D3.4.8, requires NR to consult all "*directly or indirectly*" affected parties when making decisions about RoUs. It reads:

"After TW-30 but by TW-26, NR shall consult with each Timetable Participant affected (directly or indirectly) by the Restrictions of Use proposed pursuant to Condition D3.4.7 and shall seek to agree all Network Rail Variations to be made."

55. That Condition clearly requires NR to give Timetable Participants, such as GBRf, a reasonable period in which to address proposals and make any counterproposals. Thus,

⁴ Definition taken from TTP773; I understand that the industry currently uses two definitions of timetable study severity.

consultation and engagement are clearly envisaged and required. GBRf says that NR has failed on both counts.

56. English law has for many years had a clear definition of what “consultation” requires. It is often termed The Gunning Principles so named after the case of the London Borough of Brent (ex parte Gunning), reported in 84LGR168. That was a High Court Decision at First Instance. However, the principles themselves have been repeatedly approved of in the Court of Appeal (for example, in R v North and East Devon Health Authority, ex parte Coughlin [2001] QB 213). A recent example of them being applied is R v Secretary of State for Business and Trade [2023] EWHC 1781 (Admin), per Mr Justice Linden. I arranged for the Secretary to provide each of the parties with copies of the Gunning case, the Devon case and the Aslef case [2023] EWHC 1781 (Admin). I also arranged in advance of the hearing, for the Secretary to provide all the parties with a summary I prepared of the relevant principles. They are:

- i. The consultation must be at a time when the proposals are at a formative stage;
- ii. The proposer must give sufficient reasons for the proposal to permit of intelligent consideration and response;
- iii. Adequate time must be given for consideration and response;
- iv. The product of the consultation must be conscientiously taken into account in finalising the proposal.

57. At the hearing both Parties agreed that was a useful summary of what the law requires (including the contract and the Code which, of course, is part of the contract and therefore legally binding).

58. I also arranged for the Secretary to provide each Party, in advance of the hearing, the following TTPs which were likely to be referred to at the hearing:

- i. TTP773;
- ii. TTP102;
- iii. TTP350;
- iv. TTP1706/TTP1708 and the ORR’s letter to industry accompanying its appeal decision;
- v. TTP1880;
- vi. TTP03; and
- vii. TTP271.

59. Having read the papers, my view was, and is, that the issues which arise for determination are:

- i. Was there adequate consultation by NR?
- ii. Was there effective engagement and co-operation by GBRf?

60. Each Party has made voluminous submissions with a multitude of appendices.

61. In R v North and East Devon Health Authority, ex parte Coughlan⁵, a Court of Appeal case decided in 2001, Lord Woolf MR said the following at paragraph 108:

⁵ [2001] QB 213

"It is common ground that whether or not consultation of interested parties and the public is a legal requirement, if it is embarked upon it must be carried out properly. To be proper, consultation must be undertaken at a time when the proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose and the product of the consultation must be conscientiously taken into account when the ultimate decision is taken."

The court cited the Gunning case with approval.

62. In the case of Aslef v The Secretary of State for Business & Trade, reported in [2023] IRLR at paragraph 19, Mr Justice Linden said, quoting Hodgson J in the Gunning case:

"These basic requirements are essential if the consultation process is to have a sensible content. First, that consultation must be at a time when the proposals are still at a formative stage. Second, that the proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response. Third, that adequate time must be given for consideration and response, and finally fourth, that the product of consultation must be conscientiously taken into account in finalising any statutory proposal."

He went on to say, at paragraph 18, that the principles were "well known"⁶ and in that case such consideration was required to be by the Secretary of State personally. Albeit, he was not required to read each of the responses or be aware of the fine detail of what they had said, he (the Secretary of State) had to be provided with sufficient information about the views expressed and the evidence provided by the responders, and in coming to his decision he had to consider what they had said. Consideration of responses by the Secretary of State's Officials or "the Government" was not sufficient.

63. To satisfy the need for consultation, NR has to demonstrate that it applied, in effect, the four criteria and that it considered the substance of the same conscientiously. That encapsulates the duty upon NR in this case.

64. In TTP102, a reference was made to the duty then placed upon NR of being "still accountable for conducting an orderly process, for making the decision, and for accepting that that decision can be tested, where appropriate, before a Timetabling Panel". At para 20 in that determination, the Panel considered:

"Is the proposal reasonable as compared to the benefits and disbenefits likely to accrue to all affected parties? The principal difference with other cases is that the Panel may consider that the nature of the "urgent safety requirements or other emergency situations" requires, or justifies, a different standard of reasonableness in respect of evaluation of possible alternatives and speed of implementation." Thus, that determination does import a degree of flexibility on the part of the decision-maker. In essence, that determination turned upon a finding by the Panel that there was no evidence that NR had explained the reasons for the possession to EWS and FHH at the time of the notification.

65. Among other criticisms of the Panel, in that case, the ORR found that there was "no summary of the evidence presented before the Panel or the considerations that the Panel took into account in reaching those conclusions". Accordingly, detailed evidence, and my considerations, are presented below.

⁶ A view I share.

66. Of relevance in this case is the determination of TTP773 of 1 April 2015. At paragraph 5.1, the Chair wrote:

"The nub of the dispute, as appears clearly from the initial sole submissions of both parties and, and indeed from the agreed joint statement produced at the Hearing, is what Network Rail needs to do to ensure its compliance with the provisions of D3.4.10(b)."

67. That is a reference to what I have earlier described as the consultation procedure. In particular, "*NR shall specify the aspects of the Access Proposals which need to be revised and its reasons for this*". At para 5.1, the Chair summarises the procedure which is the content of the Access Proposal, the necessary consultation and the requirement for submission by a Timetable Participant of a revised Access Proposal. It also directs attention to the need to apply the Decision Criteria and the obligation to consult.

68. In the Panel's view, on the evidence here, NR has clearly identified the need for the work and therefore closure or 'possession' of those sections. NR has genuinely attempted, since becoming aware that GBRf was dissatisfied with the 'Hanslope Study', to provide alternative pathways for the trains in question. However, it is my view that GBRf has not, in its dealings with NR, engaged or sought to advance alternative proposals. GBRf's response has merely been, in effect, 'we need timetable studies and your proposals are not acceptable to us'. In short, it has adopted a response which simply involves a refusal to accept what NR, in my view, reasonably proposed. In short it can be characterized as a simple 'NO'. There has been a failure of engagement in the process on the part of GBRf.

69. Key elements of the consultation process for the RoUs in dispute are outlined in detail in paragraphs 70 to 80 below.

70. NR, in its SRD, itemised opportunities which GBRf had to learn of, and respond to, the RoU consultation, including National Deconfliction meetings between October 2024 and March 2025. GBRf had attended these meetings, which covered the National Access Strategy.

71. Between August 2024 and December 2024 NR published the Advanced Register of Possessions in line with the Network Code. This included the disputed RoU in Week 01, and the RoUs in Scotland. GBRf's response was to ask for timetable studies. NR's approach to this request is outlined in paras 34 and 42 above. In its SRD, para 4.2.13, NR says "*GBRf were invited to all [access] meetings and attended at least one of these meetings but received minutes from all meetings (see Appendix 3.4, 3.5 and 3.8)*". Minutes from a meeting held on 19 August 2025 state, "*nothing of concern was raised*" regarding freight requirements. The Panel accepts NR's account, and it was not disputed by GBRf at the hearing. It reinforces the Panel's view that there was little meaningful or constructive input to the consultation by GBRf, including nil response to NR's suggestion on 15 November (see para 34) that the 'Hanslope Study' could satisfy GBRf's request for a timetable study in Week 01.

72. GBRf's Notice of Dispute against the 2026 Transitional EAS/ARP Version 2, sent on 06 December 2024 and which was available to the Panel, contained a request for 43 timetable studies, including the request covering Week 01.

73. Between January 2025 and July 2025 consultation continued. On 23 July 2025 there was a DPPP meeting for Weeks 49 to 53 held where the Easter block was discussed⁷. There was no attendance by GBRf, despite the fact that it was invited. On 26 August 2025 NR published the DPPP for Weeks 01 to 04. GBRf, in response to a direct question from the Panel, frankly (to its credit) admitted that it had not responded at all to the DPPP, instead choosing to submit a Notice of Dispute against the Weeks 01 to 04 CPPP on 09 October 2025.

74. NR made the point that they had held “*Ops Impact Working Groups periodically throughout 2025, where Easter 2026 [WCML] blocks were discussed, which included discussions around operator requirements. GBRf were invited to all meetings and attended at least one of these meetings but received minutes from all meetings*” (see paragraph 4.2.13 of NR’s SRD). Thus, in my view, NR were affording GBRf an opportunity to respond to the proposals and to discuss the same, most of which opportunities GBRf failed to avail itself of. From Appendix 3.15 attached to NR’s SRD, it can be observed that GBRf was not a frequent attender.

75. The WCML North RoUs in Weeks 02 and 03 were planned at slightly shorter notice, and the Panel heard consultation began on, or around, 28 April 2025. In its SRD NR made the point, which it stands by, at para 4.2.1, that it “*followed the consultation process outlined in Network Code D3*”. It notes that there were various meetings, including the one on 28 April 2025. NR, however, makes the point that it “*disputes that there was any discussion regarding a detailed timetable study at that time*”. It says “*therefore no meaningful discussion around timetable studies would have been a topic at this stage with the operators. The GBRf representative welcomed further discussions and highlighted gauge clearance issues with the ECML.*”

76. GBRf, at 4.3 of its submissions, stated that on 29 May 2025 GBRf attended a Teams meeting organised by NR NW&C Region to discuss the Year 3 Recovery Plan, in which various options to deliver the required work over a series of weekends and via a blockade were presented. GBRf stated that a “*timetable study was required to ensure that all required and affected services could be accommodated on diversionary routes via the [ECML]*”. NR, in response, agreed that such a meeting did in fact take place, but added:

During the discussion, a representative of the Train Operators suggested exploring an alternative approach involving a continuous 9-day possession, with the aim of reducing the number of disruptive weekends. At this stage, these discussions were exploratory, intended to gather feedback and opinions and work towards an industry position that supports the needs of all stakeholders. Network Rail interpreted the requirement for a Timetable Study by GBRf, as an observation rather than forming part of any agreed plan. No Timetable Study was commissioned, and no RoUs had been prepared for consultation at this point.

77. Thus, GBRf says that from an early stage it was raising the need for timetable studies, but NR said that the Weeks 02 and 03 discussions were merely exploratory at that stage because NR had not yet decided finally whether the access strategy would be weekend blockages or a nine day closure. NR said that the formal consultation was issued on 31 July 2025 via EAP REF: LNWN 26-005.

⁷ Friday of Week 53 is Good Friday; the ‘Week 01’ RoU therefore starts in Week 53.

78. NR says that it subsequently reissued the consultation on 04 August 2025 after a minor error had been raised and “*the same response date was maintained*” (15 August 2025). In its submissions, NR, at para 4.2.5, says:

“Network Rail accepts that GBRf responded on the 11/08/2025 advising the access needed to be supported by a Timetable Study.”

NR’s decision was published on 26 September 2025. It says that no agreement was in place to produce a timetable study at the time of publishing the decision. NR also says GBRf “*did not request a completion date for the timetable study, nor did NR agree on the scope or severity of such a study*”. NR goes on to say “*NR also disputes the need for Decision Criteria to accompany formal decisions*”.

79. NR says that a further Teams call to discuss Weeks 02 to 03 took place on 14 October 2025. At that meeting, NR said, it was confirmed that a timetable study would be completed towards the end of November 2025 in time to support operator bids for Weeks 02 and 03. No operators challenged that approach, and NR reasonably interpreted this as tacit agreement that the proposed timeline was supported. The freight requirements section of the meeting minutes, submitted by NR prior to the hearing, state “*nothing of concern was raised*”. The absence of any response at that stage by GBRf does, in my view, support NR’s case.

80. During this replanning process NR clearly took account of the points that had been raised, in particular about the length of the RoUs, because NR changed its Scotland access strategy several times. That was done, said NR, to maintain alignment with access being re-planned on NW&C Region and followed on from a conversation with GBRf on 28 April 2025, and “*feedback [from operators] that Scotland should align with NW&C*”.

81. It was only in response to the Chair’s note of 09 December 2025 that GBRf supplied, in its Opening Statement at the hearing, an indication as to what the “*commercial and economic impact of the proposed possessions*” was upon GBRf. That was an example of how, as the Panel concluded, GRRF’s engagement with NR was limited, tardy and ineffective. It had not supplied them before to NR. GBRf was well aware that such a matter was relevant to NR’s decision making, yet failed to supply it until the morning of the hearing, and argued it was not possible to supply any such information to inform NR’s decision-making without receipt of a timetable study.

82. Consultation only works if it is two-way. GBRf in its opening statement and in exchanges at the hearing accepted that “*consultation is ‘a two way street’*”. NR is obliged to comply with the Gunning principles. It is required to notify (in this case, GBRf) of the substance of the proposals in detail. It has done so. It did so at a time when the proposals were at a formative stage, as was evident from the material before us. For example, whether it should be weekend RoUs, or a continuous nine day RoU. NR gave sufficient reasons for the proposal to have permitted intelligent consideration in response. It afforded GBRf sufficient time for consideration and response. GBRf failed to respond in any meaningful way, other than saying ‘we don’t like it’. The product of the consultation with all of the relevant affected parties was conscientiously taken into account insofar as it was capable of being taken into account in finalising the proposal.

83. Where an operator decides not to attend meetings, and it is notified as to what was discussed at the meetings and of the consequent proposals, and then fails to respond until late in the day, it cannot complain. I therefore dismiss the appeal by GBRf.

84. In the light of GBRf's lack of engagement and my finding that NR did consult, and that consultation was in accord with its duties to consult under the code and "the Gunning principles" I conclude that:

- i. NR did consult GBRf in accordance with its duties
- ii. GBRf did not effectively engage with the consultation process save to demand that NR undertake studies to GBRf's satisfaction.
- iii. GBRf failed to itemize or produce examples of the impact of NR's proposals on their activities/business in any detail. They did however, at the hearing of this dispute, attempt to produce some detail such as the commercial/economic impact upon them. That could and should have been produced as part of their response to NR proposals. They did not do so.

Contemporaneous application of the Decision Criteria

85. In its SRD NR assert that it did apply the Decision Criteria. Based upon the evidence before the Panel, I find that NR did apply the Decision Criteria in this case. However, had there been a contemporaneous record kept of that it would have been of great assistance to everyone, including NR.

86. In TTP1880 the Chair, Alexander Rozicki, at para 62 notes that NR had in that case produced a document which set out its application of the Decision Criteria at Annex G of its SRD and that document post-dated the decision. In that case the Panel accepted that the Decision Criteria had been applied but noted that its post decision production gave it a "retrospective flavour".

87. In TTP350, a decision of 23 August 2010, the Chair, Suzanne Lloyd-Holt said, in relation to the publication of Decision Criteria, at 7.4.2:

"I appreciate of course that neither the Network Code nor the Access Dispute Resolution Rules require production in every case of a Decision Criteria table, but it seems to me that, even on an informal basis, it is desirable as a cross checking device in the decision-making process that such a table be prepared."

She added:

"Even if, as I equally appreciate, the preparation of a Decision Criteria table is, for whatever reason, not thought appropriate in a particular case, it does seem to me desirable, in the interests of open communication and transparency, both of which are desirable in reaching the fair determination of a dispute, that NR should endeavour to discuss with the relevant TOCs, its approach to each of the Decision Criteria. In my judgement, such an approach could well be of assistance in minimising the extent of or resolving disputes."

88. I agree with the reasoning of both of the Chairs in those determinations, and with the Chairs in numerous other determinations who have reached a similar conclusion. It seems to me that at present what the Code requires is, in all circumstances, the application of the Decision Criteria. However, it seems to me that the Code does not require its production contemporaneously with NR's decision, but its decision must be made by reference to the Decision Criteria. It would be extremely helpful to NR and all Parties in a situation such as this, if NR was to produce the Decision Criteria, and the weighting it attaches in each case, contemporaneously. It would provide strong evidence that the Decision Criteria had been

applied. The failure to produce a record of the Decision Criteria's application and how it was applied is not 'fatal' but does not help a great deal in demonstrating it was in mind and applied.

89. Equally I acknowledge that since NR makes thousands of decisions each day that, at present, it can be said that it is not practicable, even if good practice. All that can be said, at present is that each case will be judged on its own facts and it will be for each TTP to decide, should the issue arise, on the facts in that case whether or not it is established that the Decision Criteria were genuinely applied at the relevant time. Good record keeping by NR, particularly when making decisions that may be likely to be challenged, would help a Chair enormously in reaching such a decision.
90. The fact is that Condition D4.4.1(c) simply mandates the application of the Decision Criteria, not its reduction into writing at the time the decision is made: "*shall ... apply the Decision Criteria in accordance with Condition D4.6.*" Condition D4.6 sets out "*the Objective*". Condition D4.6.2 then sets out the relevant considerations. Condition D4.6.3 directs that NR "*must*" consider which are relevant to the particular circumstances and apply those it has so identified. It does not provide that the exercise must be documented at the time nor that NR must, at the time, supply any such document. However good administration seems to me to dictate that the decision be recorded in written format, albeit that a written copy of such a record does not have to accompany the decision.

Requirements of Condition D3.4.10(b) (Capacity / Timetable Studies)

91. The issue of whether NR should be compelled to undertake timetable, or capacity, studies has been raised by GBRf. That issue was considered by ORR in its consideration of the appeal in TTP1706/TTP1708 (issued on 22 December 2020). In that appeal ORR identified the issue of whether a timetable study is, or is not, mandatory whenever a RoU is sought under Condition D3.4. ORR concluded that it was not mandatory.
92. Likewise here if there are to be timetable, or capacity, studies those should be carried out as early as feasible. In the Panel's view such studies are not mandatory, however NR must be satisfied that - in the absence of creating a timetable study - it has genuinely fulfilled the requirements of Condition D3.4.10(b).
93. In TTP1706/TTP1708, it was the contention of NR that a timetable study was not mandatory where RoUs were sought under Conditions D3.4 and D3.5. At para 50, it is said that ORR's view was "*our consideration and recommendations on this point are set out in a separate published letter to Network Rail and the Class Representative Committee*". That letter was before this Panel. It is dated 22 December 2020.
94. In the letter, ORR pointed out that it would be, in its view, "*inappropriate for us to make such a definitive finding as Network Rail requested [in the appeal]*". That finding is whether or not a timetable study is mandatory when NR seeks RoUs under Conditions D3.4 or D3.5.
95. At para 23, the letter reads:

"ORR strongly recommends that Network Rail and the Class Representative Committee consider this point, in order to amend the drafting of the Rules and/or The Network Code as appropriate, in order to clarify the circumstances in which a capacity study is intended to be undertaken."

96. In short, a timetable study is not, at present, mandatory. That is because, as ORR pointed out, there is a conflict between the relevant provisions. The point that the ORR was dealing with was the Access Impact Matrix and that it did not explain clearly whether timetable studies were required for some or all of the RoUs. The Access Impact Matrix provided that the process applied to “*capacity study requests relating to the Engineering Access Statement*” as opposed to all RoUs, including those (such as the ones in dispute) published outside the (then) twice-yearly EAS revision process. ORR identified the existence of an ambiguity and for that reason found that it was unclear whether a timetable study was in fact necessary at all. It is my view in this case, that GBRf’s criticisms based on the absence of a study are not substantiated.

Status of the above guidance

97. Any guidance given above is intended to be of assistance to the Parties, and is non-binding.

H Determination

98. Having carefully considered the submissions and evidence and based on my analysis of the legal and contractual issues, my determination is as follows.

99. GBRf’s appeal is dismissed.

100. NR has complied with its obligations under the Network Code and has complied with its contractual obligations. Accordingly, NR’s decision is upheld under Condition D5.3.1(b).

101. No application was made for costs.

102. I confirm that so far as I am aware, this determination and the process by which it has been reached are compliant in form and content with the requirements of the Access Dispute Resolution Rules.

A handwritten signature in black ink, appearing to read "Matthias Kelly".

Matthias Kelly KC
Hearing Chair
22 December 2025

Annexes

Annex A: Relevant extracts from the Network Code

3.4 Network Rail Variations with at least 12 Weeks Notice

3.4.7 Where Network Rail proposes to make any variation to the Working Timetable consequent upon an amendment to the Rules made in accordance with this Condition D3.4, Network Rail shall provide to each Timetable Participant, by TW-30, its proposals for Restrictions of Use in respect of the corresponding Timetable Week. All such proposals may be amended or supplemented by Network Rail at any time prior to TW-26 and such amendments or supplements should also be provided to Timetable Participants prior to TW-26.

3.4.8 After TW-30 but by TW-26, Network Rail shall consult with each Timetable Participant affected (directly or indirectly) by the Restrictions of Use proposed pursuant to Condition D3.4.7 and shall seek to agree all Network Rail Variations to be made.

3.4.9 To facilitate the planning of any Network Rail Variation, Network Rail may require that any Timetable Participant shall submit a revised Access Proposal in respect of any Train Slot.

3.4.10 Where Network Rail requires a revised Access Proposal:

- (a) the requirement must be notified to the affected Timetable Participant no later than TW-22;
- (b) Network Rail shall specify the aspects of the Access Proposal which need to be revised and its reasons for this;
- (c) Network Rail shall specify a reasonable period in which the revised Access Proposal must be provided, and in any event the revised Access Proposal shall be submitted no later than TW-16.

3.4.11 Network Rail may modify, accept or reject a revised Access Proposal and where it modifies or rejects any revised Access Proposal, it must provide written reasons for its decision.

3.4.12 Where a revised Access Proposal has not been submitted by a Timetable Participant as required by Network Rail, Network Rail shall be entitled to make a Network Rail Variation of any Train Slot in respect of which the revised Access Proposal was required and no appeal may be made in respect of Network Rail's decision.

4.6 The Decision Criteria

4.6.1 Where Network Rail is required to decide any matter in this Part D its objective shall be to share capacity on the Network for the safe carriage of passengers and goods in the most efficient and economical manner in the overall interest of current and prospective users and providers of railway services ("the Objective").

4.6.2 In achieving the Objective, Network Rail shall apply any or all of the considerations in paragraphs (a)-(l) below ("the Considerations") in accordance with Condition D4.6.3 below:

- (a) maintaining, developing and improving the capability of the Network;
- (b) that the spread of services reflects demand;
- (c) maintaining and improving train service performance;
- (d) that journey times are as short as reasonably possible;
- (e) maintaining and improving an integrated system of transport for passengers and goods;

- (f) the commercial interests of Network Rail (apart from the terms of any maintenance contract entered into or proposed by Network Rail) or any Timetable Participant of which Network Rail is aware;
- (g) the content of any relevant Long Term Plan and any relevant Development Timetable produced by an Event Steering Group;
- (h) that, as far as possible, International Paths included in the New Working Timetable at D-48 are not subsequently changed;
- (i) mitigating the effect on the environment;
- (j) enabling operators of trains to utilise their assets efficiently;
- (k) avoiding changes, as far as possible, to a Strategic Train Slot other than changes which are consistent with the intended purpose of the Strategic Capacity to which the Strategic Train Slot relates; and
- (l) no International Freight Train Slot included in section A of an International Freight Capacity Notice shall be changed.

4.6.3 When applying the Considerations, Network Rail must consider which of them is or are relevant to the particular circumstances and apply those it has identified as relevant so as to reach a decision which is fair and is not unduly discriminatory as between any individual affected Timetable Participants or as between any individual affected Timetable Participants and Network Rail. Where, in light of the particular circumstances, Network Rail considers that application of two or more of the relevant Considerations will lead to a conflicting result then it must decide which of them is or are the most important in the circumstances and when applying it or them, do so with appropriate weight.

4.6.4. The Objective and the Considerations together form the Decision Criteria.

Annex B: GBRf's written Opening Statement

1. Introduction

1.1 This opening statement is provided by GB Railfreight Limited ("GBRf") in relation to its sole reference TTP2722/TTP2725 concerning Network Rail Infrastructure Limited's ("Network Rail") decisions to take a series of long-duration Restrictions of Use ("RoUs") on the West Coast Main Line (WCML) in April 2026.

1.2 The subject-matters are three linked blockades:

- (a) a 9-day late notice blockade between Preston and Lancaster on WCML North;
- (b) a 9-day blockade between Gretna Junction and Carstairs South Junction on WCML Scotland; and
- (c) three WCML South blockades between Camden Junction and Milton Keynes over the Easter 2026 period.

1.3 GBRf's case is not that these possessions are unnecessary in principle. It recognises that significant renewals and enhancement works must be delivered on the network. The dispute concerns the way in which Network Rail has planned, consulted upon and decided these RoUs, in particular:

- (a) the failure to operate the consultation processes in Part D of the Network Code properly and at the right time;
- (b) the failure to apply the Decision Criteria in Condition D4.6.1 on a properly informed basis; and
- (c) the failure to ensure that the package of RoUs was supported by timely and adequate timetable/capacity studies, especially in light of the congested status of the key diversionary section of the ECML.

1.4 In consequence, GBRf submits that Network Rail has breached its obligations under the Network Code and the National Timetable Planning Rules, as incorporated into the Track Access Contract, in particular Conditions D2.5.1, D3.4.4(b), D3.4.8 (and the associated procedures in Conditions D3.4.9–D3.4.12), D8.6.1 and D4.6.1. It seeks a determination to that effect and, in light of the exceptional circumstances, an order requiring Network Rail to withdraw the RoUs described at paragraph 2.5 of GBRf's sole reference to the extent set out in section 7 below.

2. Consultation under the Network Code – meaning and obligations

2.1 Condition D8.6.1 is central to defining what consultation constitutes. It requires Network Rail, when consulting in accordance with Part D, to "provide such information and allow such reasonable time as is necessary to enable each Timetable Participant likely to be affected to consider properly the matter on which it is being consulted and to respond in a considered manner". In other words, consultation is not fulfilled simply by sending out a notice. It requires sufficient information, and sufficient time, for operators to understand the implications and respond.

2.2 The Hearing Chair has asked the Parties to explain what they understand by “consultation” in the Network Code, including references in Conditions D2.3, D2.3.3–D2.3.5, D2.4.3, D3.4.3 and D3.4.8. In GBRf’s submission, those provisions, read together with Condition D8.6.1, show that consultation under Part D requires three core elements:

- (a) timing – consultation must occur at a formative stage, before Network Rail’s mind is made up and early enough in the D2/D3 timescales for operators to be able to influence the outcome;
- (b) information – operators must be given sufficient, accurate information about what is proposed (including the detail and extent of RoUs and their interaction with known constraints and diversionary routes) so that they can understand the impact and formulate meaningful responses; and
- (c) influence – Network Rail must conscientiously consider the responses it receives, be willing to adjust its proposals, and must not treat consultation as a mere formality.

2.3 That approach is reflected in the structure of Part D:

- (a) Condition D2.3 (and in particular D2.3.3–D2.3.5) requires Network Rail to circulate draft Rules, invite comments, and consider those comments before finalising the Rules;
- (b) Condition D2.4.3 requires further consultation with Timetable Participants likely to be affected where Network Rail proposes to amend the Rules after finalisation; and
- (c) Condition D3.4.4(a) requires that the procedure for amending the Rules must include consultation with “all Timetable Participants likely to be affected”, and Condition D3.4.4(b) requires that decisions be made by application of the Decision Criteria in accordance with Condition D4.6.

2.4 Condition D3.4.8 sits in that framework. It provides that after TW-30 but by TW-26 Network Rail “shall consult with each Timetable Participant affected (directly or indirectly) by the Restrictions of Use proposed pursuant to Condition D3.4.7 and shall seek to agree all Network Rail Variations to be made”. In GBRf’s submission, that language reinforces the three elements above:

- (a) the obligation to consult extends to Timetable Participants who are indirectly affected – for example “a passenger operator at the southern end of the ECML who may need its services to be retimed to accommodate diverted freight;
- (b) the consultation must be conducted while the proposals are still capable of meaningful change, within the TW-30 to TW-26 window; and
- (c) the obligation to “seek to agree” Network Rail Variations means that Network Rail must bring forward workable alternatives, test them with operators, and genuinely try to reconcile competing interests, rather than simply notifying a pre-determined plan.

2.5 GBRf fully accepts that consultation under Part D is not a one-way street. Timetable Participants are expected to engage constructively and in good faith, including by responding to EAS publications, CPPP/DPPP consultations and relevant working groups, and by bringing concerns forward early. ADR Rule A9(b) expressly requires the Parties to conduct themselves in

good faith with the objective of resolving disputes. GBRf's position is that it has done so in this case, including by:

- (a) submitting detailed responses to EAS 2026 Version 1 on 20 September 2024 and Version 2 on 1 December 2025, flagging the need for Severity 7 studies and raising specific concerns about diversionary capacity;
- (b) responding to CPPP weeks 01–04 and issuing timely Notices of Dispute on the 3 and 9 October 2025 when it became clear that RoUs were proceeding without adequate studies; and
- (c) participating in relevant meetings and calls, and continuing to engage with late timetable work even after these disputes were raised.

2.6 However, GBRf submits that the primary obligation to initiate and structure the consultation process under D2 and D3, and to operate the D3.4.8–D3.4.12 machinery, rests with Network Rail. In this case, despite some general engagement, Network Rail did not run a structured D3.4.8 process aimed at agreeing Network Rail Variations with all affected operators for the package of RoUs, particularly in relation to the use of the ECML diversionary routes. That failure is central to these references.

3. How Network Rail fell short in this case

3.1 Against that framework, GBRf's core submissions on consultation and process are:

- (a) The late notice WCML North blockade between Preston and Lancaster and the associated Scotland and WCML South blockades were not the product of a single, coherent consultation process in which the combined impacts and diversionary options were explained, tested and refined with affected operators between TW-30 and TW-26.
- (b) Network Rail did not provide GBRf with timetable studies at the point when it was seeking to fix the RoUs and Network Rail Variations. As a result, the consultations that did take place could not address the real question: what level of service could be offered to freight during these blockades, on which routes, and with what commercial impact?
- (c) Network Rail did not engage in a D3.4.8 process with operators on the ECML who would be “indirectly” affected by WCML diversions, despite the declaration of congested infrastructure between New England North Junction and Huntingdon North Junction and Network Rail's own acknowledgement of limited capacity on that section.

3.2 In its Defense Submission, Network Rail points to a range of national and route-level meetings as evidence of consultation. GBRf does not dispute that such meetings took place, nor that they served a useful general purpose. However, GBRf's case is that they did not amount to the specific, structured D3.4.8 consultation required for these blockades, for two reasons:

- (a) the meetings were not accompanied by timely, route-specific timetable or capacity studies, so industry could not see or test how services would actually be accommodated; and

(b) there was no use of the D3.4.9–D3.4.12 powers to require revised Access Proposals, consider them and, if necessary, impose Network Rail Variations to create capacity for diverted freight.

3.3 The result is that, by the time the CPPP and decisions were issued, the plan was effectively fixed without the kind of informed, two-way engagement envisaged by D3.4.8 and D8.6.1. That, GBRf submits, is not consultation in the sense used in Part D.

4. Decision Criteria, timetable studies and Condition D2.5.1

4.1 Condition D4.6.1 requires Network Rail to apply the Decision Criteria when making decisions under Part D, balancing the interests of different users and the efficient use of network capacity.

As the Timetabling Panel and ORR have emphasised in determinations such as TTP773, TTP1704 and TTP102, that balance must be struck on a fully informed basis. In practice, where major blockades and diversions are involved, this requires robust timetable or capacity studies.

4.2 GBRf does not contend that Network Rail must always produce a formal Decision Criteria table in every case. Determinations such as TTP350 and TTP439 make clear that what matters is the proper application of the Decision Criteria in substance, not the production of paperwork for its own sake. Rather, GBRf's submission is that in circumstances of this kind – multiple long-duration blockades on the WCML and limited capacity on the principal diversionary route – the absence of any contemporaneous Decision Criteria record provided to operators, coupled with the late and inadequate timetable study work, means that Network Rail cannot demonstrate that it applied D4.6.1 properly when the decisions were taken.

4.3 Condition D2.5.1 is framed as a requirement on Timetable Participants to include specified information in Access Proposals. However, the determinations in TTP773 and the ORR's determination in TTP102 make clear that Network Rail cannot lawfully make or maintain Network Rail Variations which materially affect services without understanding, and enabling operators to understand, how Train Slots will run in practice. In this case, GBRf has not seen any sufficiently detailed amendment plans or alternative Access Proposals which would show how its affected flows will be accommodated during the blockades. That is why GBRf says D2.5.1 and D4.6.1 have not been complied with in substance, even if Network Rail has now reconstructed Decision Criteria tables for the purposes of this dispute.

5. ECML congested infrastructure and loss of D3.4 powers

5.1 A critical feature of this case is Network Rail's own designation of several key sections of the ECML as congested infrastructure from 14 December 2025 on weekdays between 06:00 and 21:00. In particular, Network Rail has declared congested infrastructure between:

- a) New England North Junction (Peterborough) and Huntingdon North Junction;
- b) Northallerton Longlands Junction and Newcastle King Edward Bridge South (via the East Coast Main Line); and
- c) Doncaster Marshgate Junction and Leeds Copley Hill West Junction.

- d) Network Rail has also issued an early warning indicator of congested infrastructure between Newcastle East Junction and Monktonhall Junction (Edinburgh). Taken together, these sections form the principal routing links for diverting WCML services onto and off the ECML and for moving freight north–south and cross-country during WCML blockades.

5.2 GBRf considers that its insistence on Severity 4/7 timetable or capacity studies is particularly justified in those circumstances. Network Rail has accepted that capacity on the ECML is severely constrained, yet it has planned simultaneous long-duration WCML blockades without operating the D3.4.8–D3.4.12 machinery to re-plan services and secure capacity for diverted freight over the constrained section.

5.3 By failing to consult affected operators between TW-30 and TW-26 in the structured manner envisaged by D3.4.8, Network Rail has, in practice, not made use of the powers available to it under Conditions D3.4.9 to D3.4.12 to require revised Access Proposals, and then to accept, modify or reject those proposals, or to make Network Rail Variations where revised Access Proposals are not submitted. As a result, Network Rail has materially reduced its own ability to amend the plan so as to create capacity for diverted services during the blockades, at precisely the point when those powers are most needed.

6. Prior experience – Hanslope week 40 Christmas blockade

6.1 The importance of timely, robust timetable study is underlined by GBRf's recent experience of the week 40 Christmas 2025 Hanslope renewals blockade on WCML South. In that case, the capacity study was delivered late and, in GBRf's view, was of poor quality. As a result, 30 GBRf services were not accepted in the offer at Informed Traveller timescales.

6.2 That blockade is not the subject of this reference. However, by the time these 2026 blockades were being planned, Network Rail was well aware that inadequate and late studies on the WCML and its diversionary routes would lead to substantial freight traffic being left without workable paths. That context is relevant to the Panel's assessment of whether Network Rail has now discharged its obligations under D3.4.8, D8.6.1 and D4.6.1.

7. Commercial and Economic impact of proposed possessions to GBRf

7.1 GBRf has undertaken an initial assessment of the commercial impact of the RoUs described in its sole reference document, based on the services it expects to be unable to run or to run only in a materially degraded form during the April 2026 blockades. On current information, GBRf estimates that the combined impact across the affected intermodal, automotive, fuel and other flows is of the order of £800,000 in lost revenue over the period covered by the disputed RoUs. Of the £800,000 of lost revenue figure, circa £650,000 of lost revenue is attributable to the West Coast Mainline South block.

7.2 That headline figure does not capture the wider and longer-term effects, including:

- (a) the additional operating costs associated with longer diversionary routings, more complex train planning and re-crewing;
- (b) the risk of contractual penalties or commercial adjustments where GBRf is unable to meet agreed service levels; and

(c) the impact on customer confidence and the perceived reliability of rail freight, which in turn increases the risk of modal shift from rail to road.

7.3 GBRf therefore submits that the economic harm caused by these RoUs, if allowed to proceed in their present form, is both material and foreseeable, and should be taken into account when the Panel considers whether the circumstances are “exceptional” for the purposes of Condition D5.3.1(c).

7.4 Given the presence of GBRf’s direct competitors as Involved Parties, GBRf would be willing to provide the Panel with a more granular breakdown of the revenue at risk (for example by service type or corridor) in a confidential annex or, if the Panel prefers, in closed session, so that commercially sensitive customer-specific information is not disclosed more widely.

8. Exceptional circumstances and remedy sought

8.1 GBRf recognises that an order requiring Network Rail to withdraw RoUs is a serious remedy. It therefore accepts that Condition D5.3.1(c) requires the Panel to be satisfied that “exceptional circumstances” exist.

8.2 GBRf submits that the combination of factors in this case amounts to such exceptional circumstances:

(a) Network Rail has chosen not to operate the D3.4.8–D3.4.12 procedures as intended in circumstances where they are plainly engaged, including in relation to indirectly affected ECML operators;

(b) this failure is set against the backdrop of congested infrastructure on the key ECML diversionary section, so that the loss of those procedural powers has real and foreseeable consequences for diverted services; and

(c) the pattern of late and inadequate study work evidenced by the Hanslope week 40 blockade, together with the emerging conflicts now being identified in the (late) studies for the April 2026 blockades, shows that the risk to GBRf’s services is not speculative.

8.3 In those circumstances, GBRf invites the Panel to find that Network Rail is in breach of the Track Access Contract, in that it has failed to discharge its obligations under the National Timetable Planning Rules and the Network Code, including (without limitation) Conditions D2.5.1, D3.4.4(b), D3.4.8 (and the associated procedures in Conditions D3.4.9 to D3.4.12), D8.6.1 and D4.6.1, in relation to the RoUs described in GBRf’s sole reference.

8.4 GBRf accordingly invites the Panel to treat this as an exceptional case in which it is both necessary and proportionate to order Network Rail to withdraw the Restrictions of Use described in paragraph 2.5(a)–(c) of GBRf’s sole reference (and further particularised in section 4 of that document), rather than allowing Network Rail to proceed on the basis of decisions which are neither properly informed nor properly consulted upon.

In the alternative, if the Panel is not minded to order withdrawal of all three RoUs, GBRf submits that, at the very least, the WCML (South) Restrictions of Use between Camden Junction and Milton Keynes over the Easter 2026 period (paragraph 2.5(c)) should be withdrawn. Those Easter WCML

South blockades are the point at which the combination of long-duration WCML blockades and constrained diversionary capacity on the ECML becomes unsustainable for GBRf's business and its customers. GBRf notes that, on the current programme, TW-14 for the relevant weeks falls on 19 December 2025, when Network Rail is required under Condition D3.4.13 to notify Timetable Participants of its decisions in respect of Network Rail Variations. There is therefore still sufficient time for any direction from the Panel withdrawing or varying the disputed RoUs to be implemented through the normal Part D process without undue difficulty for Timetable Participants.

8.5 GBRf remains willing to engage constructively with Network Rail, including in light of any directions the Panel may give, to develop revised access strategies which genuinely balance the needs of renewals with the continued provision of reliable freight services for its customers.

END.

Annex C: NR's written Opening Statement

Network Rail acknowledges GBRf's right to dispute the Restrictions of Use (RoU) as set out in TTP2722 and TTP2275. While we understand the challenges of managing a freight business impacted by significant RoU's, Network Rail maintains that we have acted in good faith to accommodate GBRf's requirements, resolve issues, and avoid the need for this dispute hearing.

We believe the decision-making process has been managed appropriately and in accordance with Network Code Part D. Throughout this process, we have maintained open and constructive dialogue with GBRf via multiple consultation channels. Furthermore, Network Rail has undertaken extensive Timetable Study work at considerable cost to the industry to deliver a solution that meets GBRf's needs. We are now only days away from agreeing paths for most of GBRf requirements.

Network Rail recognises that these Restrictions of Use are not ideal. However, significant closures are essential to maintain and enhance the infrastructure, which ultimately benefits all operators. We strive to minimise disruption and work collaboratively with our industry partners to make the process as smooth as possible. The reality is that we cannot replicate the 'Normal' timetable in full – this is inherent to the nature of a RoU.

Whatever the outcome of today's hearing, Network Rail will respect the decision and continue to engage with our partners, learning from this process regardless of whether the decision favours Network Rail, GBRf, or a compromise. We thank GBRf for their continued engagement and look forward to moving beyond this dispute so we can focus on the challenging task of delivering a Timetable that serves all stakeholders.