

**TTP1719 DIRECTIONS issued on 25 Jun 21**

1. I am grateful to GBRf for meeting the timetable to respond to my Directions of 24 Jun 21.
2. For the reasons explained in my earlier Directions, I remain of the view that a Hearing Chair of a TTP has the power to strike out a case. That power should, however, only be exercised in circumstances in which it is abundantly clear that the claim in the Dispute is legally unsound, or entirely without merit. Even then, a decision to strike out a case must allow for an appeal against that decision.
3. Network Rail has challenged GBRf's right to have this Dispute heard, relying on the reasons set out in its e-mail of 23 Jun 21. In summary, Network Rail submits that the subsequent iterations of the Part D process were not formally disputed by GBRf and that its right to have this Dispute heard has therefore been lost.
4. As a preliminary view, in principle I can envisage circumstances in which an original decision which is disputed is replaced by a decision so substantially different that it would be necessary for an Operator to raise a formal dispute again, although Part D is not explicit on this point. Equally, I can also envisage circumstances in which subsequent amendments to Network Rail's original proposal are not sufficient to extinguish the initial dispute.
5. Without any pre-judgment of the outcome, I regard Network Rail's submission as valid to the extent that it must be tested. GBRf has raised arguments in its response that must be explored before a decision can be reached as to whether the substance of this Dispute should be heard, or whether it should not be allowed to proceed as GBRf's right to pursue it has been lost.
6. Given this, there can be no question of my agreeing to strike out GBRf's claim. In my judgment there is now insufficient time for this to be decided as a preliminary matter, as the hearing is listed for 2 weeks today and the disputed possessions are to take place not long afterwards. Network Rail's claim must therefore be dealt with at the hearing.
7. Therefore **I DIRECT** that GBRf should now continue drafting its Sole Reference Document ('SRD'). The SRD must obviously deal with Network Rail's submission that GBRf has lost its right to have this Dispute heard. To that end GBRf's SRD should set out the chronology, including how GBRf responded to the original 9-day possession and how changes made by Network Rail at any stage since, including in the DPPP and CPPP, reflected any counter-proposal, comments or objections made by GBRf. The Panel will need to understand exactly what has passed between the Parties since the original EAS was issued.
8. GBRf was originally directed to serve its SRD by 1600 on Mon 28 Jun 21. That time is now extended to 1600 on Tue 29 Jun.
9. It will be very helpful if Network Rail can still serve its SRD by the time originally directed (1600 on 02 Jul 21). If, however, Network Rail considers that it needs an extension once it has seen GBRf's SRD then it is to request that extension.

[Signed on the original]

Clive Fletcher-Wood  
Hearing Chair, TTP1719