

*The following Directions Note was sent via email to the Dispute Parties on 07 July 2021.*

The Hearing Chair is grateful to GBRf for its submission on 01 July and has asked me to send this Directions Note on his behalf. Network Rail is asked to include its responses in its Sole Reference Document. GBRf is asked to respond by 16:00 on Thursday 08 July.

1. Paragraph 4.2 of GBRf's Sole Reference Document states that the disputed Decision was made under Condition D3.4 and D3.5. Network Rail's Decision document (Appendix 3.2) states it was made under Condition D3.5. Condition D3.4 relates to consultations that take place by TW-26 (Condition D3.4.7). Condition D3.5.1 states that it applies to access arranged "with less than 12 weeks notice or otherwise outside the process described in Condition D3.4". Please can both Parties, either separately or jointly, confirm at which TW-stage the Decision was issued for the affected weeks and, in that case, whether any affected weeks should have been issued under D3.4, or whether they were all - per Network Rail's Decision notice - issued under D3.5.

2. Can Network Rail address the point raised by GBRf's para 5.3, namely whether it is possible to undertake the patrolling work within existing Section 4 opportunities. In its response, would Network Rail also include data on how often the pre-existing Section 4 opportunities were used before the Decision took effect?

3. The powers of dispute resolution bodies in relation to Part D are laid out in Condition D5.3.1 and ADR Rule H50. GBRf's para 6.1(c) requests that the Panel 'strike down' Network Rail's decision. There is no express provision enabling the Panel to 'strike down' a decision of Network Rail. Please can GBRf clarify whether it is asking the Panel to substitute an alternative decision applying the 'exceptional circumstances' test and, if so, what it contends are the exceptional circumstances upon which it seeks to rely (under D5.3.1(c)). If not, please can GBRf clarify how D5.3.1 and ADR Rule H50 apply to its request. The recent ORR Determination of TTP1520 is linked here; paragraphs 40 to 62 may be of help to this dispute. NR may also wish to address this point in its Sole Reference Document.