

Directions issued on 26 September 2025

1. I am grateful to GBRf for submission of its Sole Reference Document ('SRD').
2. At this stage I do not think it productive to direct Network Rail ('NR') to any points of details to be included in its SRD.
3. These Directions concern the remedies sought by GBRf in Section 6 of its SRD, but also seek further information concerning 6L34.
4. It is noted that the Firm Rights being relied upon by GBRf for 6L34 are not included in Appendix A of its SRD (i.e. its Schedule 5 Rights Table) and instead seem to be specified in the National TPRs. The extracts of the National TPRs set out in Appendix B of GBRf's SRD do not specify that the rights for 6L34 are specifically allocated to GBRf or, indeed on what basis they can be relied upon by GBRf. Consequently, it would assist the Panel if GBRf would please clarify whether or not it has rights (Firm or otherwise) to operate 6L34 under a track access contract with Network Rail and, if so, which track access contract? In addition, would GBRf also please provide any relevant information to clarify the status and identity of 6L34 and why the rights for this service are contained in the National TPRs and not seemingly specified in GBRf Schedule 5 Rights Table provided at Appendix A of its SRD.
5. Having not heard any submissions from NR, my mind remains open whether failure to honour Firm Rights can be regarded as 'exceptional circumstances', so entitling me to give a direction under D5.3.1(c) in the Determination.
6. However, would the direction sought by GBRf at paragraph 6.1 require a D5.3.1(c) direction? I refer the Parties to my Clarification Note in respect of TTP2591, in which I discussed the distinction between D5.3.1(a) directions and those given under D5.3.1(c), see in particular paragraphs 32 – 43. This Clarification is currently under appeal, and we are awaiting the ORR's Determination. Unless that point is over-turned in the Appeal, however, it seems to me that - if the TTP were to be decided in GBRf's favour, which of course remains open at present - I could give the direction sought by GBRf under D5.3.1(a), as I would not be determining the means by which the relevant trains were found paths.
7. A further point in this section of GBRf's SRD is that in paragraph 6.3 GBRf is specifically claiming that NR is in breach of contract, which of course could entitle GBRf to an award of damages if proven. Paragraph 6.2, in contrast, implies that NR should pay damages to GBRf, but is not claiming that NR is in breach of contract. I am not convinced that a TTP should order that contractual negotiations are entered into leading to an award of costs: either NR is in breach of contract, creating an entitlement, or it isn't. (This relates to the issues referred to in paragraph 4 above).
8. None of these comments implies that any decision has been made of any point raised by GBRf, but it will help the Panel, and NR in drafting, if it is clear what remedies GBRf is seeking.
9. Against this background, I give leave to GBRf to amend its SRD, if it wishes, to seek in paragraph 6.1 an order either under D5.3.1(a) or D5.3.1(c), depending on the TTP's decision on exceptional circumstances, and to claim a breach of contract specifically in paragraph 6.2. This must be done no later than 1600 on 29 September 2025 if GBRf wishes to make these amendments.

[Signed on the original]

Clive Fletcher-Wood
Hearing Chair TTP2684