

Nigel,

Apologies for delayed confirmation of receipt – I've been having IT issues for much of the day and I am presently unable to reissue the SRD in any way. Hopefully, the commentary below will be sufficient.

In response to the Directions Letter:

Re 6L34, the National TPRs specify which paths, included in Appendix I, are allocated to which operator; that is shown in the extract in Appendix B on the right-hand side.

Such paths have traditionally not appeared in GBRf's (or other FOCs') Freight Services Track Access Contracts, the effective "Firm Right" being held by Network Rail and documented in the National TPRs. Unfortunately, I do not know why this is the case – it appears to be historic, and has been the case since at least 2009, presumably with ORR's approval.

In terms of remedy for the above, GBRf believes this is a breach of contract due to non-compliance with the TPRs (which are an integral part of the Network Code, which is embedded in our Track Access Contract). We would, therefore, welcome a determination that acknowledges breach of contract in order to create an entitlement.

Regarding the other three services and paragraphs 6.1 and 6.3, GBRf believes that exceptional circumstances do apply – the word "knowingly" was used in terms of the breach of contract to rule out the possibility that this was an error on Network Rail's part but instead a deliberate act.

In terms of remedy, we believe that obtaining compliant paths may well require adjustments to other operators' services which it might not be possible to agree by consent: this would then mean the Panel may have to specify the means by which the outcome is achieved.

Regards

Jason