

Developing ORR's process for GBR appeals

[Rail Reform and the Railways Bill | Office of Rail and Road](#)

<https://www.orr.gov.uk/search-consultations/developing-orr-process-gbr-appeals-discussion-document>

1. [Access Disputes Committee](#)
2. [Amey Infrastructure Wales](#)
3. [AllRail](#)
4. [Arriva Rail London](#)
5. [DB Cargo](#)
6. [East Midlands Railway](#)
7. [First Greater Western](#)
8. [Freightliner](#)
9. [GB Railfreight](#)
10. [GTS](#)
11. [Heathrow Airport Limited](#)
[\(Heathrow Rail\)](#)
12. [Heathrow Express](#)
13. [London St Pancras Highspeed](#)
14. [Network Rail](#)
15. [Rail Freight Group](#)
16. [Transport for Greater](#)
[Manchester](#)
17. [Transport for London](#)
18. [Transport Scotland](#)

ACCESS DISPUTES COMMITTEE

To:

[REDACTED]
Office of Rail and Road
25 Cabot Square
London
E14 4QZ

[REDACTED]
Access Disputes Committee
Floor 1
Mimet House
5A Praed Street
London W2 1NY

By email: track.access@orr.gov.uk

[REDACTED]

Date: 04 February 2026

Dear [REDACTED]

Thank you for the opportunity to comment on ORR's developing process for GBR appeals. This document represents the Access Disputes Committee's (ADC) response. ADC is happy for its response to be published on ORR's website, and would welcome the opportunity to attend round-table discussions when those are held.

The response addresses each of the questions posed by the policy document in turn, save for those where we do not have any comment to make. In general, ADC welcomes the support, and consensus, industry has provided for the continuation of its services.

Do you have any comments on the proposed design principles? Are there other design principles that we should consider when developing our appeals policy?

No specific comment. ADC remains open to sharing any information from ADC's experience that the ORR feels would be helpful, particularly in relation to timetable, or other contractual, disputes.

Do you think it is helpful for ORR to retain an option to combine appeals when we receive multiple appeals on the same subject? Are there particular circumstances or types of appeal where you think combining appeals would be particularly useful, or conversely where it would be unhelpful?

Combining appeals - using the Allocation Chair's power under Access Dispute Resolution Rule (ADRR) B21 - has been very helpful, in ADC's experience, for efficient and fair dispute resolution and case management. ADC Hearing Chairs have also occasionally permitted joint submissions from appellants, either at their or Network Rail's (NR) request, if appropriate. Examples of previous combined appeals include TTP2453 et al and TTP1706/TTP1708, both of which can be found on ADC's website.

Do you agree with our initial consideration that persons with a commercial or public interest in securing capacity and other infrastructure managers are likely to have “sufficient interest” to appeal?

ADC agrees with ORR on this point. We have had experience of both Heathrow Airport Ltd. (HAL) and NR being heavily involved in timetabling disputes that had a potential cross-border impact, with each company usually declaring itself to be an Involved Party in disputes on the other's infrastructure, and both typically needing to respond to questions from the Hearing Chair during the course of a hearing, regardless of which infrastructure was the subject of a dispute.

Do you have any comments on these suggested windows for appeals? We have proposed that the appeal window starts after the industry disputes (or internal GBR) process has been concluded, and GBR has made its final decision. This reflects the process today in which the disputes process is accommodated within timetable production. Do you agree with this approach? We have not suggested an appeal window in cases where GBR has not reached a decision or not published information. Do you think it would be more effective to include an appeal window?

For appeal types where no deadline is proposed, ADC suggests that, as part of the appeals process, ORR considers setting a deadline by which time all 'potentially interested parties' declare themselves or forfeit subsequent appeal rights. Otherwise there is a risk of a different, but similarly affected, organisation appealing the same issue several months later and trying to have a 'second bite at the cherry' if the outcome of the first appeal isn't satisfactory to them.

ADC agrees that five working days is sufficient for appeals related to operational timetabling matters and would be consistent with the aim of current ADRR H16(d): *“It is an overriding objective of these Rules that disputes referred to a Timetabling Panel shall be administered in a way which is proportionate to ... the need to ensure that the production processes for the railway operational timetable are not disrupted to the potential detriment of third parties.”*

ADC understands that, generally, ORR's intention is for timetabling appeals to follow the path: GBR decision and appeal window > ADC appeal and outcome > appeal to ORR against ADC decision within five working days, with the intention that ORR's appeal is final. ADC is supportive of this indicative process, as it would enable a conclusion in sufficient time to support the railway operational timetable.

Do you have any comments on these suggested windows for appeals? We have proposed that the appeal window starts after the industry disputes (or internal GBR) process has been concluded, and GBR has made its final decision. This reflects the process today in which the disputes process is accommodated within timetable production. Do you agree with this approach? We have not suggested an appeal window in cases where GBR has not reached a decision or not published information. Do you think it would be more effective to include an appeal window?

ADC welcomes the support, and consensus, industry has provided for the continuation of its services. In para 2.21 there is an implication that, in some circumstances, ORR might accept appeals outside the appeal window. ADC notes that it does not accept appeals outside the

deadline, even in exceptional circumstances, for reasons of procedural fairness, and this may be an issue ORR is minded to further consider.

Does the time allowed for representations (ten working days for GBR and five working days for the applicant) in the proposed standard process strike an appropriate balance between robust and informed decision making and maintaining a fast-paced process?

The proposed timescales feel appropriate in ADC's experience. By the time an appeal reaches ORR, parties should have a clear idea of the issues, and have the facts to hand. A condensed process feels appropriate for issues relating to timetabling, or other matters that may impact on the operational railway (as opposed to commercial matters, which tend to have longer lead times).

Should ORR consider the potential to dismiss appeals at an early stage if they are found to be without merit or vexatious?

This would seem appropriate; similar powers exist in the current ADRR, although they have not been needed to date.

Are there particular factors you think ORR should consider when deciding on remedies following an appeal alongside the legal requirements established in the Bill?

ADC does not have a specific view on this, as Members are not legally-trained. However, if ORR would like to discuss the issue with ADC's Hearing Chairs to draw on their experience, it is something ADC can facilitate; perhaps at the Chairs' Gathering later this year, which ORR usually attends.

We have assumed that a contractual disputes process, like that operated today by the Access Disputes Committee, will continue to exist and that operators will use this process to deal with disputes arising from the new GBR network code. Do you think that it remains appropriate to have an independently administered contractual disputes process for the provisions of the GBR network code?

The ADC Members, who represent a cross-section of companies across the industry, feel this remains appropriate, and it is welcomed.

Do you have any comments about how ORR should approach any pre-appeals processes that GBR may develop?

ORR should satisfy itself that genuine attempts have been made to resolve the issue, as ADC's Hearing Chairs do. This is usually evident during questioning, and can sometimes be satisfied by the Hearing Chair requesting a jointly-agreed timeline be submitted by the parties. If ORR were to make mandatory the submission of a timeline of key events for all non-timetabling appeals (one should already be present in any timetabling appeal paperwork on ADC's website) that should make it clear whether genuine discussions have been had.

Do you agree with our proposals to allow interested parties to make representations as part of the appeals process?

Yes, in ADC's experience this assists with ensuring a transparent, and supported, process.

Do you have any comments on ORR's draft definition of interested parties?

It matches ADC's understanding.

Do you agree that applicants, GBR and ORR and interested parties themselves should be able to identify interested parties who are able to make representations? Do you agree that ORR should reserve the right to decide whether to accept interested parties' contributions as part of an appeal?

Yes, to both. In terms of accepting other contributions, TTP hearings have, at times, had up to 20 participants, which is difficult to manage. At well-attended hearings, not all of those present make submissions, and some could have potentially simply reviewed the outcome.

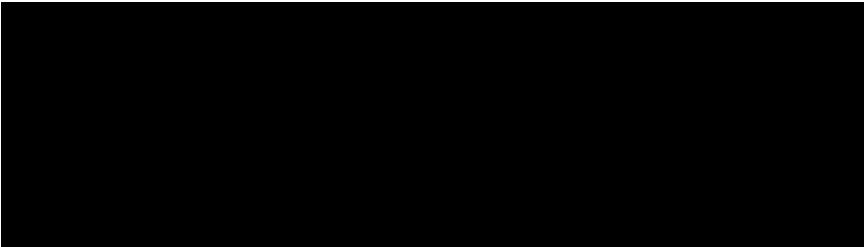
At what stage of the process should interested parties make their contributions, and how much time should they be given?

In ADC's processes, Involved Parties are invited to comment at the end of a hearing, having read and heard the submissions, and / or if a potential remedy being discussed during the hearing would cause significant impact to that Party. This seems to work well in practice. The Hearing Chair does not, legally, have to take their submissions into account.

Do you have any comments on ORR's proposed approach to delivering transparency?

This is consistent with ADC's existing practice.

If you have any questions about any of ADC's comments on the proposals, please do not hesitate to contact me.



Signed on behalf of the Access Disputes Committee by



ORR's process for GBR appeals:

1. Design Principles

We broadly support the proposed design principles but wish to highlight a critical omission: the principle of early resolution. Existing arrangements, such as Part D and Regulation 32, place considerable emphasis on collaborative dispute resolution prior to formal escalation. This approach has proven pivotal in promoting efficiency and proportionality in resolving disagreements. Therefore, we request that early resolution is explicitly incorporated as a design principle, maintaining continuity with current best practices and fostering a less adversarial, more efficient system.

Additional design principles should be considered, including the retention of Regulation 32 rights for vital services such as depot access and operational data. These rights are fundamental, and their exclusion would significantly weaken existing safeguards. Furthermore, there must be recognition of latent impacts, particularly in timetabling decisions, where adverse effects may not become evident until long after the decision has been made.

2. Combining Appeals

We support retaining the option for the Office of Rail and Road (ORR) to combine appeals concerning the same subject, as this can enhance efficiency when multiple parties contest a single decision. Combining appeals is beneficial where the issues and sought remedies are fully aligned and where no party's arguments are diminished. Conversely, it is unhelpful where appellants face materially different circumstances or require distinct remedies, as this could obscure important nuances. To safeguard fairness, parties must have the right to object to combination, and ORR must be empowered to issue differentiated outcomes within a combined appeal process.

3. Who Can Appeal

We agree that persons with commercial or public interests, as well as infrastructure managers, generally have sufficient interest to appeal. However, the present definition omits entities such as Seilwaith Amey Cymru / Amey Infrastructure Wales Limited, (AIW), which act as infrastructure managers but are neither competent authorities nor railway undertakings. We therefore request explicit clarification that all infrastructure managers, regardless of ownership, have sufficient interest to appeal. Passengers and passenger groups should continue to utilise watchdog processes rather than formal appeals, in line with current practice. This approach helps to prevent unnecessary strain on the appeals process.

4. Appeal Windows

The suggested appeal windows are reasonable and consistent with existing procedures, ensuring timely resolution without disadvantaging smaller organisations. The appeal window should commence after the conclusion of the dispute or GBR process, providing a clear and fair trigger. If GBR has not reached a decision, we do not support an appeal window, as there would be no definitive starting or ending point for appeals.

5. Process and Timescales

The proposed representation periods of 10 working days for GBR and 5 working days for applicants strike an appropriate balance and meet expectations. ORR's suggested timeframes of 5 days for scope determination and 25 days for decision represent an improvement over Regulation 32 processes and reflect the need for faster, more efficient resolution. We support these measures.

To further strengthen the process, we recommend guidance on how latent impacts should be addressed if they emerge after appeal deadlines. We also support the use of a condensed, one-stage process, as it enhances efficiency while upholding the legal threshold for appeals.

6. Determining Whether an Appeal Is in Scope

ORR should resolve doubts regarding an applicant's eligibility using transparent and well-defined criteria, particularly clarifying the eligibility of infrastructure managers such as AIW Limited. Appeals should only be dismissed early if an industry-agreed definition of 'vexatious' or 'without merit' exists. Unilateral dismissals risk inconsistency and perceptions of unfairness. Where dismissals do occur, ORR should publish the criteria used and provide written reasons to ensure transparency.

7. Developing Requirements for Submitting an Appeal

No further comments are provided on this topic.

8. ORR Decision-Making

When determining solutions, the ORR should base its decisions on compliance with statutory and secondary legislation, avoid overreach by GBR, and ensure non-discriminatory access to capacity and operational information. The ORR's role is not to regulate competition directly, except where competition law is relevant to the appeal's legal basis.

9. Relationship Between Contractual Disputes and Appeals

It is important that an independently administered contractual disputes process remains in place. Mechanisms such as the ADC and early resolution options are essential for resolving most timetable and operational disputes without escalation. The contractual disputes and appeals systems should complement one another, with contractual systems managing operational and commercial issues and appeals focusing on the legal compliance of GBR decisions.

10. Internal GBR Escalation Processes

We support the use of GBR's internal pre-appeal processes, provided they do not delay access to statutory appeal routes and complement, rather than replace, early resolution mechanisms.

11. Interested Parties

We agree that interested parties should be allowed to make representations, subject to appropriate safeguards. A cautious definition of 'interested party' is essential; an overly broad definition may allow numerous small groups to intervene unnecessarily. Only ORR should identify interested parties, and dispute parties should not influence this process. ORR should have sole discretion to accept or reject contributions from interested parties, ensuring impartiality. Interested parties should adhere to the same submission timelines as the main parties to prevent strategic late interventions.

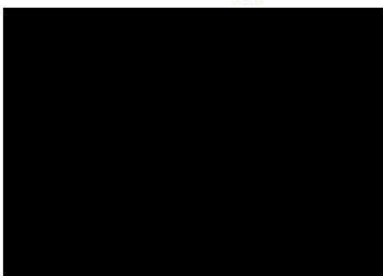
12. Transparency and Disclosure

We support ORR's commitment to transparency but note that forthcoming legislation, such as the Public Office Accountability Bill, may alter disclosure obligations. To safeguard parties, ORR should assume responsibility for redacting confidential or sensitive information after receiving full, unredacted submissions. This approach promotes fairness, consistency, and confidence in the process.

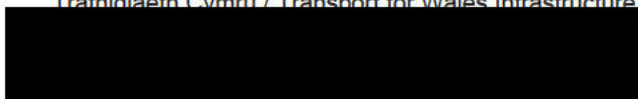
13. Additional Questions

- Under what circumstances may the ORR overturn decisions made by GBR, and how will the legal threshold for appeals be clearly communicated to stakeholders?
- Given that timetabling decisions can have long-term impacts, is there scope for introducing mechanisms that allow appeals or compensation claims to be reopened after the initial appeal window has closed?
- How will the new appeals framework ensure that the role of ADR-style early dispute resolution mechanisms, such as the ADC, is not undermined?
- What guidance will ORR provide to parties regarding the withdrawal of appeals, particularly given that withdrawing results in a loss of the right to appeal again on the same issue?
- How does ORR intend to handle competition concerns within the appeals process, especially where such concerns overlap with legal compliance and competition law?
- Will appeals regarding international train paths be subject to the same legal framework as domestic appeals, and how will GBR's obligations in this area be monitored?
- What steps will ORR take to ensure that appeals are only dismissed as vexatious or meritless where industry-agreed definitions exist, and how will criteria and written reasons for dismissal be published?
- How will ORR manage disclosure obligations and the duty of candour, particularly in light of pending legislation such as the Public Office Accountability Bill, and ensure the protection of sensitive information? The preferred approach is for ORR to receive unredacted submissions and take responsibility for redacting sensitive information.
- Will Regulation 32 continue to be available for appeals concerning depot access, traffic information, and capacity data in the new structure?
- How will the appeal rights of AIW be ensured, given its unique status as an infrastructure manager that is neither a competent authority nor a railway undertaking?

Yours faithfully,



Rheolwr Rheoleiddio a Chysylltiadau Cwsmeriaid / Regulatory & Customer Manager
Trafnidiaeth Cymru / Transport for Wales Infrastructure Hub, Trefforest Industrial Estate, Pontypridd CF37 5UT

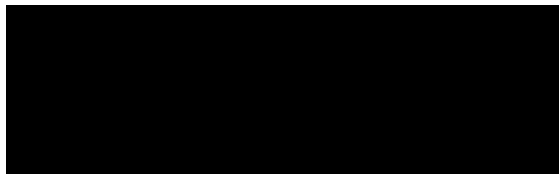




 [Subscribe to our Press Releases](#)

ALLRAIL asbl

The Alliance of Passenger Rail New Entrants



Rue Washington 40, 1050 Brussels, Belgium

EU Transparency Reg. Nr: 828617341174-24

VAT BE0675784944 RPM Bruxelles

I have read your appeals discussion document. My views are as follows:

1. It is not clear on what basis appeals will be made and could ever be successful. GBR's statutory functions and duties are heavily skewed in favour of GBR services (with the exception of the duty to promote freight growth). As long as GBR follows its own (potentially discriminatory) policies, including the AUP, an appeal would never be successful. Given that the ORR could not take into account the benefits of competition in an appeal, the odds are stacked heavily against open access operators.

We are asking for a function for GBR's decision making to be fair, transparent and non-discriminatory. This would give a much stronger basis to appeal. We are also asking that ORR's current duty to promote competition for the benefit of users, when hearing appeals, remains.

I do understand why the ORR document is a process document but we are more interested on the substance of what an appeal could be based upon.

2. I think the requirement for ORR to determine appeals on JR principles is too narrow. I don't believe that the RA 1993 or the Competition Act or the Enterprise Act places such a narrow definition on appeals? Nor do I believe other regulators are placed under the JR principles. Please correct me if I am wrong.

One final related point is that we are asking for ORR's current access decision powers to be retained. I know that the chances of success in the HoC will be low but we want to put down a marker for when it gets to the Lords.

As you know, we are strong advocates of ORR's economic regulation function.

Thanks,

3. Organisation

Arriva Rail London

4. Email Address *

[REDACTED]

5. How would you describe the organisation you work for or represent?

- ☐ Aspirant open access operator
- ☐ Consultancy
- ☐ Government
- ☐ Infrastructure manager
- ☐ Open access operator
- ☐ Owning group
- ☒ Publicly funded (franchised/PSC) train operator
- ☐ Rail industry group
- ☐ None of these - I am a private individual
- ☐ Other

Design principles

Our proposed design principles are:

- **Evidence based and independent:** we will base our decisions regarding any appeals on our independent assessment of the facts of the case and on the basis set out in legislation.
- **Proportionality:** we will design the appeals process to minimise burdens and costs for GBR and applicants.
- **Pace and efficiency:** we will resolve appeals in a timely manner while ensuring fairness and accuracy. We will monitor and report on our own performance as an appeals body to ensure we deliver operational efficiency and good value for money.
- **Transparency:** we plan to publish the full content of appeals, GBR's response to them, and our conduct of the process - except where there are clear reasons to redact confidential details. We consider it important to publish the reasoning for our decisions to provide clarity for applicants.
- **Consistency and predictability:** we will develop, consult upon, publish (and where necessary review) policy on our appeals process and decision criteria. We will adhere to this policy to it to ensure consistency and predictability.

6. Do you have any comments on the proposed design principles?

No further comments.

7. Are there other design principles that we should consider when developing our appeals process?

No further comments.

Combining appeals

We think it could be useful to include an option to combine our consideration if we receive multiple appeals of the same GBR decision.

8. Do you think it is helpful for ORR to retain an option to combine appeals when we receive multiple appeals on the same subject?

Yes.

9. Are there particular circumstances or types of appeal that you think combining appeals would be particularly useful, or conversely where it would be unhelpful?

Combining appeals would be useful where there are clear thematic or contractual interfaces and dependencies, ideally within a specific policy area. This will enable consistency of understanding and decision making, and ensure that views from a variety of appellants and affected stakeholders can be heard within a shared context. It would also make efficient use of industry expertise and better enable swift resolution of appeals.

Combination of appeals across distinct areas of GBR policy, on the other hand, should be avoided, to prevent undue complexity hampering decision making.

Who can appeal

The bill says that “a person aggrieved” by specified decisions may appeal to the ORR. The Bill also says that ORR “must apply the same principles as would be applied by the High Court on an application for judicial review, or in Scotland, on an application to the supervisory jurisdiction of the Court of Session.” We think that the reference to judicial review principles further defines “person aggrieved” because, where a person applies to the Court of Session or High Court for judicial review, they must have “sufficient interest” in the decision to bring a judicial review.

We will need to determine whether a person has “sufficient interest” as part of our appeals process. We plan to develop a policy on the definition of “a person aggrieved” to support this. This will take account of the precedents of judicial review processes in England and Wales and Scotland. We think it’s likely that the people or organisations that would have “sufficient interest” could be very similar to the definition of “applicant” in the AMRs, which in summary refers to those with a public or commercial interest in securing capacity.

We think it likely that other Infrastructure Managers would also have “sufficient interest” to be able to appeal as they are directly affected by services crossing between GBR infrastructure and their own.

The Bill has a narrower definition of those who can make appeals on the preparation or amendment of the working timetable. In this case it is only those who have made the application for a train movement to be included in the working timetable who may appeal under clause 61 or clause 62.

We do not currently expect that individual passengers would be able to make appeals. Government intends to create a new Passenger Watchdog to champion passenger’s interests, and this may be a more appropriate avenue through which passengers can raise their concerns.

10. Do you agree with our initial consideration that persons with a commercial or public interest in securing capacity and other Infrastructure Managers are likely to have “sufficient interest” to appeal?

Yes.

11. Do you agree that our policy should reflect the expectation that passengers and passenger groups will use the processes established by the Passenger Watchdog and not the appeals process?

Yes, that is appropriate, although we would like to understand how subsequent feedback and evidence could be used to inform the appeals process where such information would be useful.

Appeal windows

In the interests of supporting clarity within industry decision making (for both GBR and third parties), we intend to establish deadlines by which parties should make appeals.

- Failure of GBR to reach a decision within the timeframes established within its policies - **no deadline**
- Provisions of the Access and use policy (clause 59(6)) - **40 working days**
- Provisions of the Infrastructure capacity plan (clause 60(6)) - **30 working days**
- Decision not to add an applied for train movement to the working timetable or any conditions subject to which the movement is added to the working timetable (clause 61(5)) (subject to the industry disputes process) - **5 working days**
- Decision on application for including in the working timetable (clause 62(7)) (subject to the industry disputes process) - **20 working days**
- Provisions contained within the Charging scheme (clause 64(8)) - **30 working days**
- Provisions contained with the Performance scheme (clause 65(7)) - **30 working days**
- Decisions on the access or the use of GBR infrastructure for the operation of trains (clause 67(1)a) - **20 working days**
- Decisions made under the charging scheme (clause 67(1)b) - **20 working days**
- Decisions made under the performance scheme (clause 67(1)b) - **20 working days**
- Publication of information - **no deadline**
- Appeal of outcome of disputes process - **5 working days**
- Any other type of decisions - **20 working days**

Where there is an applicable industry disputes process, we expect applicants to attempt to resolve their disputes through this process initially. The windows below would therefore begin after a final decision has been made by GBR, including the conclusion of any industry disputes process that may be in place.

12. Do you have any comments on these suggested windows for appeals?

It is certainly useful to establish windows for appeals as this facilitates structured industry engagement in the process. However, it is difficult to comment on the proposed timescales without a detailed understanding of the regulated processes underpinning the discrete areas of GBR policy (still in design phases) and the practical implications thereof.

13. We have proposed that the appeal window starts after the industry disputes (or internal GBR) process has been concluded, and GBR has made its decision. This reflects the process today in which the disputes process is accommodated within timetable production. Do you agree with this approach?

Yes, this is appropriate. However, it is important that the aforementioned industry disputes processes are structured in a way to give fair hearing to GBR and non-GBR participants to enable these to produce satisfactory decisions and manage the requirement for further appeal to ORR.

14. We have not suggested an appeal window in cases where GBR has not reached a decision or not published information – do you think it would be more effective to include an appeals window?

ARL would like to see an appeal window under these circumstances. This would primarily be where a lack of either a decision or provision of information has prejudicial impact on a stakeholder's aspirations, investments, operations etc, particularly where this might refer to non-GBR participants.

Process and timescales

ORR plans to include an overview of a standard process for appeals within our policy to set clear expectations for what the stages in an appeal are and we have proposed indicative timescales for the process here to inform discussion with industry.

We anticipate that there may be cases where the outline process or timescales need to be adjusted according to the nature of the appeal.

Proposed standard process

- Applicant lodges appeal
- ORR considers whether the appeal is in scope of the appeals process - 5 working days
- GBR responds to the appeal - 10 working days
- Applicant response to GBR representation - 5 working days
- ORR considers merits of the case and if required, what the remedy should be - 25 working days
- ORR shares conclusion on the merits of the case and the remedy with all parties - 2 working days
- ORR publishes decision

15. Does the time allowed for representations (ten working days for GBR and five working days for the applicant) in the proposed standard process strike an appropriate balance between robust and informed decision making and maintaining a fast-paced process?

No, this does not seem appropriate. There should be equal time for representations from both parties to ensure fairness in the process.

16. Do you have any comments on the proposal to indicatively allow ORR five working days to determine whether to hear the appeal and a further 25 working days to determine it?

Those timescales appear reasonable.

17. Are there any improvements that could be made to the standard process proposed?

It is difficult to comment on this without more detailed information on the form and content of the industry disputes process / GBR disputes process which will precede the ORR appeal stage under discussion here.

18. Do you have any comments on ORR's proposal to use a condensed process in which we consider the merits of the case and any proposed directions at the same time, rather than a two staged process?

This might be appropriate under certain circumstances (for instance where an expedited decision is requested by the appellant), but not all. In general, we would prefer the more structured two-stage process.

Including a stage in which ORR decides whether to hear an appeal

19. How should ORR approach resolving doubts about an applicant's eligibility to appeal? For example, should ORR consult GBR or ask the applicant for further evidence?

The ORR should consult with the applicant to ascertain eligibility to appeal. The ORR should act as the sole independent arbiter on these matters; it does not seem appropriate to consult GBR on an applicant's eligibility to appeal GBR decisions.

20. Should ORR consider the potential to dismiss appeals at an early stage if they are found to be without merit or vexatious?

Yes, where the ORR considers there being justification to do so.

ORR decision making

21. Are there particular factors you think ORR should consider when deciding on remedies following an appeal alongside the legal requirements established in the Bill?

The remedies should address the points raised by the applicant if a decision is made in their favour. The ORR should also take account of any potential wider implications of its determinations, including public and private costs/investments and social and economic impacts.

There should also be consideration given to potential impact of an ORR determination on adjacent operations and infrastructure managers.

The relationship between contractual disputes and appeals

We have assumed that a contractual disputes process, like that operated today by the Access Disputes Committee, will continue to exist and that operators will use this process to deal with disputes arising from the new GBR Code.

22. Do you think that it remains appropriate to have an independently administered contractual disputes process for the provisions of the GBR Code?

Yes, this is appropriate, and the relevant body/bodies should have the authority to direct parties to the dispute in its determinations.

23. Do you have any comments about how we, together with GBR and industry, should approach the interplay between contractual disputes and other types of appeal?

Not at this time; we would wish to revisit this once more is known about the contractual architecture within GBR.

The relationship between appeals and any internal GBR escalation processes

Network Rail have also suggested in their discussion document [LINK] that the AUP could include a mechanism for industry to challenge GBR decisions prior to escalating to a formal appeal to ORR.

As explained above in reference to the contractual disputes process, we expect industry parties to work together to resolve disagreements, and we would not expect to hear any appeal until other available avenues have been exhausted. This will require any pre-appeal GBR processes to be fast, focused and time bound.

24. Do you have any comments about how ORR should approach any pre-appeals processes that GBR may develop?

ORR should scrutinise these to ensure that they are transparent, auditable, evidence-based and fair to all (GBR and non-GBR participants).

Interested parties

We are minded to define interested parties as organisations which experience a demonstrable harm or benefit as a result of the GBR decision being appealed.

25. Do you agree with our proposals to allow interested parties to make representations as part of the appeals process?

Yes.

26. Do you have any comments on ORR's draft definition of interested parties?

The definition is appropriate.

27. Do you agree that applicants, GBR and ORR should be able to identify interested parties who are able to make representations?

Yes.

28. Do you agree that ORR should determine whether to accept interested parties? Do you agree that ORR should reserve the right to decide whether to accept interested parties' contributions as part of an appeal?

Having been identified, an interested party's contribution should be accepted within the process to ensure fair representation.

29. At what stage of the process should interested parties make their contributions, and how much time should they be given?

Once the appeal to which they are an interested party has been accepted as valid.

Transparency and disclosure

We propose to publish documents at the end of the appeal, including:

- Appeal applications and the associated evidence
- ORR's decision on whether the appeal is within scope of the appeals process
- Other submissions made as part of the appeal
- ORR's decisions and rationale on the merits of the case and any direction

We intend to ask that applicants, GBR and any interested parties provide an accessible redacted version of any document submitted that contains personal or commercially sensitive information, and to justify why information is confidential.

30. Do you have any comments on ORR's proposed approach to delivering transparency?

These are appropriate.

Any other issues

31. Please use this space if you wish to make any comments on any other matters

No answer provided.

Publishing your response

We plan to publish all responses to this consultation on our website. Should you wish for any information that you provide to be treated as confidential, please be aware that this may be subject to publication, or release to other parties or to disclosure, in accordance with the access to information regimes. These regimes are primarily the Freedom of Information Act 2000 (FOIA), the UK General Data Protection Regulation (UK GDPR) the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004.

Under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, if you are seeking confidentiality for information you are providing, please explain why. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on ORR.

Any personal data you provide to us will be used for the purposes of this consultation and will be handled in accordance with our privacy notice, which sets out how we comply with the UK General Data Protection Regulation and Data Protection Act 2018.

Privacy

In responding to this consultation you consent to us:

- handling your personal data for the purposes of this consultation; and
- publishing your response on our website (unless you have indicated to us that you wish for your response to be treated as confidential as set out above.)

Your consent to either of the above can be withdrawn at any time. Further information about how we handle your personal data and your rights is set out in our privacy notice.

When we are carrying out the consultation it will be necessary for ORR to obtain your personal data. When you submit your response to the consultation we may collect the following information:

- name
- job title
- organisation
- email address
- consultation response answers

Our privacy notice is available here: <https://www.orr.gov.uk/privacy-notice>

Use of your personal data

The information you provide during the consultation response will only be used for the purpose of creating and publishing a response to the consultation. We will publish your consultation response answers, subject to your approval, withholding or redacting commercially sensitive information. We will not publish your personal data.

ORR staff may have access to your information for the duration of the consultation process. This will be no longer than a year's duration and all information submitted in response to consultation which hasn't been published on our website, will be deleted. You can read our privacy notice on our website: [orr.gov.uk/privacy-notice](https://www.orr.gov.uk/privacy-notice).

32. ORR would like your permission to publish your consultation response. We do not publish the names of individuals with consultation responses. Please indicate your publishing preference: *

- ☒ Publish response with the name of your organisation
- ☐ Publish anonymous response



Cargo UK

Track.Access@orr.gov.uk



DB Cargo (UK) Limited
Lakeside Business Park
Carolina Way
Doncaster DN4 5PN
www.uk.dbcargo.com



10 February 2026

Dear Sir/Madam,

DEVELOPING ORR's PROCESS FOR GBR APPEALS: RESPONSE

This letter constitutes the response of DB Cargo (UK) Limited ("DB Cargo") to the "Developing ORR's process for GBR appeals" discussion document.

Introduction

1.1. DB Cargo is amongst the largest operators of rail freight in the UK. We provide freight, infrastructure and passenger charter trains throughout the UK, and freight services to and from mainland Europe via the Channel Tunnel.

1.2. DB Cargo welcomes the opportunity to respond to the discussion document developing ORR's process for GBR appeals. This response is not confidential.

Comments

2.1. Planned changes to the new access framework which will include capacity allocation, access charges, network capability/change and a performance regime will require a strong, effective and independent appeals function.

2.2 Non-GBR operators must be able to challenge decisions made by GBR, where they believe such decisions to be contrary to process (AUP, GBR network code etc.), unfair and/or discriminatory.



2.3 The application of Judicial Review principles to the appeals function as outlined in the Railways Bill 2025 is concerning. This requirement appears designed to restrict an appellant's ability to appeal. Furthermore, timescales applicable to judicial review place heavy constraints on an appeal, which must be lodged within three months of a decision. Any internal GBR review mechanisms and/or ADC process will need to align and complement an effective appeals process.

2.4 The ORR's appeals function will apply to GBR's new model contracts and the GBR network code as outlined in paragraph 1.9. It is helpful that ORR considers this to fall under the broad right of appeal set out in Clause 67 of the Railways Bill 2025. When Part M in the current Network Code is presumably replaced by the GBR network code, it will need to align with an overall decision making and appeals framework.

Questions on the design principles

3.1 DB Cargo is supportive of the proposed design principles outlined in the document. It is important that any appeals process minimises the burdens and costs for both GBR and applicants. GBR is likely to have considerable resource at its disposal, which may contrast with those of some applicants.

3.2 When publishing decisions, the need to redact confidential information / details in circumstances such as a competitive rail freight market is endorsed.

Questions on combining appeals

4.1 An option for ORR to combine appeals on the same matter would appear prudent and efficient, particularly if there is broad scope as to who can bring an appeal.

4.2 Would ORR consider joint appeals where two or more appellants wish to appeal a decision?

Questions on who can appeal?

5.1 Paragraphs 2.10 and 2.11 set out the proposed scope as to who can appeal. This appears to be adequate for appeals relating to decisions on the allocation of capacity. A broader definition is required for other areas, such as access charges, proposed changes to network capability and timetabling, which should include freight customers, facility owners, rolling stock owners and parties who have entered into connection agreements with GBR.



5.2 It is to be expected that passengers and passenger groups will use the processes established by the passenger watchdog and not the appeals process. However, for the Charter Train sector, those established processes are unlikely to be applicable to tour promoters and charter passengers.

Questions on appeals windows

6.1 DB Cargo concurs that any appeals window should only commence after a final decision has been made by GBR, including exhausting any industry disputes process. The GBR Code will need to ensure that final decisions cannot be unnecessarily held up to frustrate the appeals process.

6.2 The timescales in Table 1 appear reasonable, but other than in complex cases should be considered as maximum windows. There should be a desire to expedite matters where the full window is not needed.

6.3 GBR policies and procedures such as the AUP and GBR Code should be subject to appeal at any point. Future decisions may highlight unintended consequences, not evident at the time policies and procedural arrangements are enacted.

Questions on process and timescales

7.1 An imbalance can be expected between GBR as a powerful monopoly with significant resource and those at the disposal of some applicants. DB Cargo has some concerns with the timescales set out in Table 2. Firstly, we believe applicants should be afforded an equivalent response period as that proposed for GBR. 10 working days for both elements would appear sufficient. Secondly, the period proposed to review and make factual corrections is inadequate. DB Cargo notes that this task is an opportunity to make factual corrections only and that no new issues are to be considered. 5 working days would appear appropriate for both applicants and GBR to respond.

7.2 Paragraph 2.32 proposes that applicants choosing to withdraw an appeal “may not subsequently re-submit an appeal on the same matter.” This appears reasonable in many situations, such as an individual decision relating to allocation of capacity. However, this stipulation should not be applied where it relates more generally to a GBR policy or procedure.



7.3 DB Cargo is concerned that a two-staged process would take longer than ORR's proposal to use a condensed appeals process. Our preference is for the outcome of an appeal and directions to be issued concurrently.

Questions on including a stage in which ORR decides whether to hear an appeal

8.1 DB Cargo welcomes the proposed inclusion at the start of the process of a step confirming that an appeal is in scope, that the applicant is eligible and that required timescales have been met. This will assist applicants in framing any appeal effectively and avoid further wasted resource.

8.2 To reach a decision as to whether to hear an appeal, ORR may need to request information from the potential applicant and/or GBR. It should be obvious that GBR is unlikely to want its decisions appealed. Therefore, ORR must consider how it should proceed if information requested is not provided expediently.

Question on ORR decision making

9.1 DB Cargo believes the development of a template as proposed in paragraph 2.37 to support applications would add helpful structure to the appeals process.

Question about the relationship between contractual disputes and appeals

10.1 Noting the requirement to bring an appeal within three months of a decision, it is essential that timescales for any ORR appeal give due consideration to GBR, or other industry processes that may need to reach a conclusion. This should not be permitted to impinge on the three months.

10.2 The Railways Bill 2025 contains provisions outlining GBR's internal disputes process. An efficient, cost-effective and independent process will be needed as a formal stage in seeking to resolve disputes relating to access, capacity allocation and timetabling decisions. This could be comparable to the role currently performed by the Access Disputes Committee. For reasons that should be entirely obvious, GBR cannot "mark its own homework" and administer this activity.



Question about the relationship between appeals and any internal GBR escalation processes

11.1 DB Cargo supports a contractual disputes process which is independent and comparable to that operated by the Access Disputes Committee. This will be to deal with contractual disputes relating to the GBR network code. ADC determinations can be appealed to ORR and presumably this will continue in the new structure. We would not anticipate ADC involvement in various policy matters, such as disputes relating to usage charges. The three month limitation in bringing an appeal to ORR should not be impinged and would only commence once any dispute process has been concluded.

Questions on interested parties

12.1 DB Cargo agrees with the proposals to allow interested parties to make representations as part of an appeal.

12.2 A wider definition of interested parties than ORR has listed in paragraph 2.59 may experience harm or benefit resulting from the outcome of GBR decisions and subsequent ORR appeals. Freight customers, rolling stock owners and parties who have entered into a connection agreement with GBR should be included.

12.3 DB Cargo agrees that applicants, ORR, GBR and interested parties should be able to identify interested parties able to make representations. We agree that ORR should decide whether to accept the contributions of interested parties at appeal.

12.4 On balance, our preference is for the process to stipulate that interested parties make their contributions as outlined in paragraphs 2.64 and 2.65.

Question on transparency and disclosure

13.1 DB Cargo supports ORR's proposed approach to transparency. Where documentation submitted contains personal or commercially sensitive information, this will need to be redacted. There may be circumstances where sensitive information should not be shared with interested parties and a redacted version provided, with justification as to why the information should remain confidential and not be disclosed.



It will be necessary to consider transitional arrangements which may need to be applied as industry reform is implemented.

Thank you for the opportunity to respond to the discussion document.

[Redacted signature block]

[Redacted contact information]

I have shared the documents with EMR colleagues and have received some feedback. Hope it is okay to drop these feedback/comments in an email rather than in the survey.

- Had a very quick skim through this and looks sensible given the Railways Bill content.
- Will be very interesting to see how many disputes end up with ORR now that GBR assigns access – document refers to only specific issues being able to be appealed and not addressed by the ADRC – do you have a summary of what these are and therefore what the scope of appeals might be?
- Depending on the response to point 1, I think the ORR timelines to consider appeals might be too long – it's a 10 week end to end process which might not work if there are a significant number of appeals.
- I definitely agree that the right of appeal shouldn't apply to user groups but those with an economic interest.

Regards,

[REDACTED]

[REDACTED]

East Midlands Railway

[REDACTED]

E M R

3. Organisation

First Greater Western Limited ("GWR")

4. Email Address *

[REDACTED]

5. How would you describe the organisation you work for or represent?

- ☐ Aspirant open access operator
- ☐ Consultancy
- ☐ Government
- ☐ Infrastructure manager
- ☐ Open access operator
- ☐ Owning group
- ☒ Publicly funded (franchised/PSC) train operator
- ☐ Rail industry group
- ☐ None of these - I am a private individual
- ☐ Other

Design principles

Our proposed design principles are:

- **Evidence based and independent:** we will base our decisions regarding any appeals on our independent assessment of the facts of the case and on the basis set out in legislation.
- **Proportionality:** we will design the appeals process to minimise burdens and costs for GBR and applicants.
- **Pace and efficiency:** we will resolve appeals in a timely manner while ensuring fairness and accuracy. We will monitor and report on our own performance as an appeals body to ensure we deliver operational efficiency and good value for money.
- **Transparency:** we plan to publish the full content of appeals, GBR's response to them, and our conduct of the process - except where there are clear reasons to redact confidential details. We consider it important to publish the reasoning for our decisions to provide clarity for applicants.
- **Consistency and predictability:** we will develop, consult upon, publish (and where necessary review) policy on our appeals process and decision criteria. We will adhere to this policy to it to ensure consistency and predictability.

6. Do you have any comments on the proposed design principles?

Very professionally done thank you. Full support.

7. Are there other design principles that we should consider when developing our appeals process?

I don't think so thank you.

Combining appeals

We think it could be useful to include an option to combine our consideration if we receive multiple appeals of the same GBR decision.

8. Do you think it is helpful for ORR to retain an option to combine appeals when we receive multiple appeals on the same subject?

Yes certainly if the issues are the same. This will save time and ensure consistency. It will enable all factors and implications to be considered where germane.

9. Are there particular circumstances or types of appeal that you think combining appeals would be particularly useful, or conversely where it would be unhelpful?

1: Access Right; 2: Engineering Access; 3: Timetable.

Who can appeal

The bill says that “a person aggrieved” by specified decisions may appeal to the ORR. The Bill also says that ORR “must apply the same principles as would be applied by the High Court on an application for judicial review, or in Scotland, on an application to the supervisory jurisdiction of the Court of Session.” We think that the reference to judicial review principles further defines “person aggrieved” because, where a person applies to the Court of Session or High Court for judicial review, they must have “sufficient interest” in the decision to bring a judicial review.

We will need to determine whether a person has “sufficient interest” as part of our appeals process. We plan to develop a policy on the definition of “a person aggrieved” to support this. This will take account of the precedents of judicial review processes in England and Wales and Scotland. We think it’s likely that the people or organisations that would have “sufficient interest” could be very similar to the definition of “applicant” in the AMRs, which in summary refers to those with a public or commercial interest in securing capacity.

We think it likely that other Infrastructure Managers would also have “sufficient interest” to be able to appeal as they are directly affected by services crossing between GBR infrastructure and their own.

The Bill has a narrower definition of those who can make appeals on the preparation or amendment of the working timetable. In this case it is only those who have made the application for a train movement to be included in the working timetable who may appeal under clause 61 or clause 62.

We do not currently expect that individual passengers would be able to make appeals. Government intends to create a new Passenger Watchdog to champion passenger’s interests, and this may be a more appropriate avenue through which passengers can raise their concerns.

10. Do you agree with our initial consideration that persons with a commercial or public interest in securing capacity and other Infrastructure Managers are likely to have “sufficient interest” to appeal?

Yes. There is a need to avoid spurious appeals. The process is set up for professional industry engagement as you say there are other routes for individual end-users.

11. Do you agree that our policy should reflect the expectation that passengers and passenger groups will use the processes established by the Passenger Watchdog and not the appeals process?

Certainly. For the above reasons.

Appeal windows

In the interests of supporting clarity within industry decision making (for both GBR and third parties), we intend to establish deadlines by which parties should make appeals.

- Failure of GBR to reach a decision within the timeframes established within its policies - **no deadline**
- Provisions of the Access and use policy (clause 59(6)) - **40 working days**
- Provisions of the Infrastructure capacity plan (clause 60(6)) - **30 working days**
- Decision not to add an applied for train movement to the working timetable or any conditions subject to which the movement is added to the working timetable (clause 61(5)) (subject to the industry disputes process) - **5 working days**
- Decision on application for including in the working timetable (clause 62(7)) (subject to the industry disputes process) - **20 working days**
- Provisions contained within the Charging scheme (clause 64(8)) - **30 working days**
- Provisions contained with the Performance scheme (clause 65(7)) - **30 working days**
- Decisions on the access or the use of GBR infrastructure for the operation of trains (clause 67(1)a) - **20 working days**
- Decisions made under the charging scheme (clause 67(1)b) - **20 working days**
- Decisions made under the performance scheme (clause 67(1)b) - **20 working days**
- Publication of information - **no deadline**
- Appeal of outcome of disputes process - **5 working days**
- Any other type of decisions - **20 working days**

Where there is an applicable industry disputes process, we expect applicants to attempt to resolve their disputes through this process initially. The windows below would therefore begin after a final decision has been made by GBR, including the conclusion of any industry disputes process that may be in place.

12. Do you have any comments on these suggested windows for appeals?

These will have been well thought through. I can see no obvious problem thank you.

13. We have proposed that the appeal window starts after the industry disputes (or internal GBR) process has been concluded, and GBR has made its decision. This reflects the process today in which the disputes process is accommodated within timetable production. Do you agree with this approach?

Yes. Please don't extend the time it takes to reach a decision unless its through complexity of case.

14. We have not suggested an appeal window in cases where GBR has not reached a decision or not published information – do you think it would be more effective to include an appeals window?

There has never been any real remedy when something is not done as opposed to something being done. Appeals are on decisions aren't they? Why is this (decision not yet made) facility needed at all?

Process and timescales

ORR plans to include an overview of a standard process for appeals within our policy to set clear expectations for what the stages in an appeal are and we have proposed indicative timescales for the process here to inform discussion with industry.

We anticipate that there may be cases where the outline process or timescales need to be adjusted according to the nature of the appeal.

Proposed standard process

- Applicant lodges appeal
- ORR considers whether the appeal is in scope of the appeals process - 5 working days
- GBR responds to the appeal - 10 working days
- Applicant response to GBR representation - 5 working days
- ORR considers merits of the case and if required, what the remedy should be - 25 working days
- ORR shares conclusion on the merits of the case and the remedy with all parties - 2 working days
- ORR publishes decision

15. Does the time allowed for representations (ten working days for GBR and five working days for the applicant) in the proposed standard process strike an appropriate balance between robust and informed decision making and maintaining a fast-paced process?

Looks good to me having been involved in disputes processes.

16. Do you have any comments on the proposal to indicatively allow ORR five working days to determine whether to hear the appeal and a further 25 working days to determine it?

Yes that seems very good thank you.

17. Are there any improvements that could be made to the standard process proposed?

I was myself surprised that the industry disputes process was still a possibility. To my mind that adds delay especially where people can be encouraged to appeal and just treat the disputes process as a means of getting there. The criterion for analysis and output is very tightly defined in the Bill / ORR Process but not so currently in the industry disputes process rules. (These have a concept of "exceptional circumstances" which so far as I can see has not been reached in disputes to date, so having the comfort of the definition in the ORR process is a great help.

18. Do you have any comments on ORR's proposal to use a condensed process in which we consider the merits of the case and any proposed directions at the same time, rather than a two staged process?

Very good idea thank you.

Including a stage in which ORR decides whether to hear an appeal

19. How should ORR approach resolving doubts about an applicant's eligibility to appeal? For example, should ORR consult GBR or ask the applicant for further evidence?

Yes this is standard ORR practice now on access and is helpful.

20. Should ORR consider the potential to dismiss appeals at an early stage if they are found to be without merit or vexatious?

Definitely.

ORR decision making

21. Are there particular factors you think ORR should consider when deciding on remedies following an appeal alongside the legal requirements established in the Bill?

the solution has to be practical (ie one able to be implemented) within the structures and timescales of the industry. No-one is going to change that just to get one determination through as the cost outweighs the benefit. Having said that there needs to be a mechanism to ensure remedies that pass this test are implemented, and implemented in a certain time.

The relationship between contractual disputes and appeals

We have assumed that a contractual disputes process, like that operated today by the Access Disputes Committee, will continue to exist and that operators will use this process to deal with disputes arising from the new GBR Code.

22. Do you think that it remains appropriate to have an independently administered contractual disputes process for the provisions of the GBR Code?

Yes for non- timetable matters although there is a wealth of opinion throughout the industry including within my own company that seeks such an arrangement to continue for timetable matters too.

23. Do you have any comments about how we, together with GBR and industry, should approach the interplay between contractual disputes and other types of appeal?

They are separate now in the industry disputes process and should be kept that way wherever possible.

The relationship between appeals and any internal GBR escalation processes

Network Rail have also suggested in their discussion document [LINK] that the AUP could include a mechanism for industry to challenge GBR decisions prior to escalating to a formal appeal to ORR.

As explained above in reference to the contractual disputes process, we expect industry parties to work together to resolve disagreements, and we would not expect to hear any appeal until other available avenues have been exhausted. This will require any pre-appeal GBR processes to be fast, focused and time bound.

24. Do you have any comments about how ORR should approach any pre-appeals processes that GBR may develop?

Provide comments based on experience and pragmatism to any consultation.

Interested parties

We are minded to define interested parties as organisations which experience a demonstrable harm or benefit as a result of the GBR decision being appealed.

25. Do you agree with our proposals to allow interested parties to make representations as part of the appeals process?

This is an industry process not a service to the customer (individual or trade) process. I would be wary of broadening access and factors for consideration too much.

26. Do you have any comments on ORR's draft definition of interested parties?

"(e.g. train operators, infrastructure managers, facility owners, devolved authorities)." I would define the categories. My understanding is that Network Rail's standard response when asked is "none". The Bill is said not to constrain the ORR on this. I would keep the opportunity small. Always better to define than rely on interpretation that can change or be changed by decisions way outside the industry. So many disputes arise because of different interpretations on a contract. Should the SoS be an interested party if devolved authorities are? I would say the SoS is an interested party in access right decisions.

27. Do you agree that applicants, GBR and ORR should be able to identify interested parties who are able to make representations?

The ORR needs to define the types. This can be updated through further consultation if needed.

28. Do you agree that ORR should determine whether to accept interested parties? Do you agree that ORR should reserve the right to decide whether to accept interested parties' contributions as part of an appeal?

Yes on both counts where consistent with its published policies as consulted the industry.

29. At what stage of the process should interested parties make their contributions, and how much time should they be given?

When the ORR seeks their view, then opportunity for parties (and other interested parties?) to comment.

Transparency and disclosure

We propose to publish documents at the end of the appeal, including:

- Appeal applications and the associated evidence
- ORR's decision on whether the appeal is within scope of the appeals process
- Other submissions made as part of the appeal
- ORR's decisions and rationale on the merits of the case and any direction

We intend to ask that applicants, GBR and any interested parties provide an accessible redacted version of any document submitted that contains personal or commercially sensitive information, and to justify why information is confidential.

30. Do you have any comments on ORR's proposed approach to delivering transparency?

The current ORR philosophy and technique on this is perfect and should be reflected going forward.

Any other issues

31. Please use this space if you wish to make any comments on any other matters

Both the documents supplied (this and the ORR Role one) show great thought has gone into this as is to be expected, and both are very welcome. I have recommended the "Role" one to many others as an aid to understanding where we are all going if the Bill gets through. Many thanks.

Publishing your response

We plan to publish all responses to this consultation on our website. Should you wish for any information that you provide to be treated as confidential, please be aware that this may be subject to publication, or release to other parties or to disclosure, in accordance with the access to information regimes. These regimes are primarily the Freedom of Information Act 2000 (FOIA), the UK General Data Protection Regulation (UK GDPR) the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004.

Under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, if you are seeking confidentiality for information you are providing, please explain why. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on ORR.

Any personal data you provide to us will be used for the purposes of this consultation and will be handled in accordance with our privacy notice, which sets out how we comply with the UK General Data Protection Regulation and Data Protection Act 2018.

Privacy

In responding to this consultation you consent to us:

- handling your personal data for the purposes of this consultation; and
- publishing your response on our website (unless you have indicated to us that you wish for your response to be treated as confidential as set out above.)

Your consent to either of the above can be withdrawn at any time. Further information about how we handle your personal data and your rights is set out in our privacy notice.

When we are carrying out the consultation it will be necessary for ORR to obtain your personal data. When you submit your response to the consultation we may collect the following information:

- name
- job title
- organisation
- email address
- consultation response answers

Our privacy notice is available here: <https://www.orr.gov.uk/privacy-notice>

Use of your personal data

The information you provide during the consultation response will only be used for the purpose of creating and publishing a response to the consultation. We will publish your consultation response answers, subject to your approval, withholding or redacting commercially sensitive information. We will not publish your personal data.

ORR staff may have access to your information for the duration of the consultation process. This will be no longer than a year's duration and all information submitted in response to consultation which hasn't been published on our website, will be deleted. You can read our privacy notice on our website: [orr.gov.uk/privacy-notice](https://www.orr.gov.uk/privacy-notice).

32. ORR would like your permission to publish your consultation response. We do not publish the names of individuals with consultation responses. Please indicate your publishing preference: *

- ☐ Publish response with the name of your organisation
- ☒ Publish anonymous response

Introduction

1. Freightliner welcomes the opportunity to respond to ORR's discussion document on its proposed approach to developing an appeals process for decisions taken by Great British Railways (GBR). As a non-GBR operator operating in a market where GBR will act as both infrastructure manager and train operator, it is essential that the appeals framework is robust, credible and effective in practice.

2. We strongly support the principle of an independent ORR appeals function with real effect. However, we continue to have concerns that, as currently framed in the Railways Bill, the scope of appeal and the remedies available to ORR may be materially constrained by the application of judicial review (JR) principles. While we recognise that ORR must work within the statutory framework, greater clarity is needed on how ORR expects these powers to operate in practice, and how effective they are likely to be for appellants.

3. In particular, the application of JR principles appears to set a high bar for appeal, potentially limiting challenges to procedural or legal defects rather than the substance or outcome of GBR decisions. It would be helpful for ORR to explain clearly how it interprets these principles in the context of sector-specific appeals, and how operators should understand the practical threshold for bringing an appeal.

Judicial review principles and threshold for appeal

4. The Bill requires ORR to apply the same principles as the High Court on an application for judicial review. In practice, JR is generally understood as a mechanism for challenging the lawfulness of a decision-making process, rather than the merits or outcome of a decision itself.

5. It would be helpful for ORR to explain plainly what this means for appellants. For example:

- whether an appeal can succeed where the outcome is materially unfair but the process has technically been followed;
- how operators should assess whether an adverse outcome amounts to procedural unfairness, irrationality or illegality; and
- how this differs in practice from current appeal or dispute resolution thresholds.

6. ORR's description of the relevant JR grounds is helpful, but further guidance would assist operators in understanding how these principles are likely to be applied in the rail context, particularly for complex operational decisions such as timetabling, charging and performance regimes.

7. Without such clarity, there is a risk that the JR threshold is perceived as so high that appeals are rarely permitted in practice, undermining confidence in the appeals regime as a meaningful safeguard.

ORR's powers and remedies

8. The Bill allows ORR to substitute its own decision only where there has been an error of law and, absent that error, there would have been only one decision that GBR could have reached.

9. It is unclear how often this test will realistically be met, particularly for decisions such as timetabling or capacity allocation, where multiple reasonable outcomes will almost always exist. In such cases, ORR may be limited to quashing and remitting decisions even where GBR's decision-making has been materially flawed.

10. It would therefore be helpful for ORR to be clear about how constrained its remedies are in practice, and how it expects to use its powers within those constraints.

Design principles

11. We broadly agree with ORR's proposed design principles of independence, proportionality, pace and efficiency, transparency, and consistency and predictability.

12. While pace and efficiency are important, accuracy and robustness must remain paramount. Speed should not be an objective in its own right where it risks undermining the quality or credibility of decisions.

13. Transparency, including publication of decisions and reasoning, will be essential to building confidence in the new regime, subject to appropriate protection of commercially sensitive information.

Combining appeals

14. We strongly support ORR retaining the ability to combine appeals where multiple parties are affected by the same or closely related GBR decisions.

15. Combining appeals is likely to improve efficiency, reduce duplication, and provide earlier clarity to the industry, particularly where decisions have common impacts across multiple operators.

16. ORR may wish to consider whether appellants should be able to opt out of a combined appeal where their circumstances are materially distinct.

Scope of appeals

17. We seek clarity on whether decisions taken as part of GBR's long-term planning processes are fully within scope of the appeals regime. It is currently unclear whether decisions taken outside the AUP, but which nonetheless have material impacts, would be appealable.

18. Given the long-term and potentially significant implications of such decisions, clarity on this point is essential.

Who can appeal and “sufficient interest”

19. We broadly agree that persons with a commercial or public interest in securing capacity, and other infrastructure managers, are likely to have sufficient interest to appeal.

20. However, clearer guidance would be helpful on what this means in practice for operators, including what evidence would be required to demonstrate sufficient interest and how this threshold compares with current appeal or dispute resolution mechanisms.

21. We also consider that ORR should clarify how it will approach cases involving future or contingent harm, rather than immediate impact. For instance the harm from a policy within the AUP may not be immediately clear until after the application has been made in practice. Would an appellant be able to bring an appeal in those circumstances or is there a risk that they will be time-barred?

22. We agree that passengers and passenger groups should generally be expected to use the passenger watchdog rather than the ORR appeals process.

Appeal windows and interaction with JR timescales

23. We are concerned about the interaction between proposed appeal windows and the JR principle that applications must be brought within three months of a decision.

24. It is unclear when this three-month period would begin in practice. For example, in the case of the AUP, harm may only become apparent once the policy has been applied, rather than at the point of publication.

25. We therefore strongly support ORR’s proposal that the appeal window should start only once industry dispute processes or internal GBR processes have concluded and GBR has made its final decision.

26. This approach is essential to avoid appeals timing out before their implications can reasonably be assessed.

27. We also agree that clarity would be helpful in cases where GBR has failed to reach a decision or failed to publish information.

Process and timescales

28. We broadly agree with the proposed overall timescales and support the use of indicative rather than absolute targets.

29. However, we do not consider it appropriate for applicants to have only five working days to respond to GBR’s representations where GBR is afforded ten working days. A symmetrical

approach of ten working days for both parties would be fairer and better reflect the relative resourcing of the parties.

30. We support ORR's proposal to determine scope and merits within a single, condensed process, provided ORR has sufficient capacity to do so robustly.

Relationship with contractual disputes

31. We strongly support the continuation of an independently administered contractual disputes process, such as the current Access Disputes Committee, which provides an efficient and expert route for resolving technical disputes.

32. It is currently unclear how the new legislation affects the powers of such a body, particularly whether constraints on ORR's remedies would also apply to contractual dispute resolution. This needs to be clarified to ensure coherence between the regimes.

33. It is also essential that time spent in contractual dispute resolution does not risk appellants timing out under JR-based appeal windows.

Internal GBR escalation processes

34. We have concerns about the potential development of internal GBR pre-appeal escalation processes.

35. There is currently insufficient clarity on how such processes would interact with contractual dispute resolution and ORR appeals, or what types of decisions they would cover.

36. We would not support an internal process that delays access to independent dispute resolution or appeal. Any such process must be clearly defined, fast, focused and strictly time-bound.

37. The requirement that all other avenues be "exhausted" before ORR hears an appeal appears to set a high bar and creates a risk of appeals timing out without clear safeguards.

Interested parties

38. We agree that interested parties should be able to make representations as part of the appeals process, but this must not be allowed to delay or frustrate decision-making.

39. Interested parties should be identified as early as possible, recognising that this may not always be feasible at the outset.

40. Representations from interested parties should be subject to the same procedural timescales as other submissions.

Conclusion

41. We support the establishment of a strong ORR appeals function and recognise that ORR is constrained by the statutory framework set by the Railways Bill. We remain concerned about these constraints and continue to make representations accordingly to DfT.

42. However, significant clarity is needed on how the JR-based appeal framework will operate in practice, how high the threshold for appeal will be, and how effective ORR's remedies are likely to be.

43. We would welcome further engagement with ORR as the appeals policy is developed and refined. We would be happy to discuss any of our response further, or provide any necessary clarification.

GB Railfreight has already engaged, in the 13th January 2026 workshop, on matters of importance regarding a future ORR process for GBR appeals and GBRf's comments and concerns were noted there. Having said that, GBRf has some specific high-level to put in writing, as follows:

- The discussion document states in Paragraph 1.8 that *“ORR will no longer approve access contracts in advance for GBR, as we currently do for Network Rail”*. Please advise what takes place between now and GBR “Access Day” in 2027/28. Given we have no idea when Access Day might yet be, can ORR please give clarity as to its decision-making process from now and over the next 2-3 years? Will ORR still be approving access rights that extend well into the expected GBR timeframe? If not, under what contractual basis will ORR not do that? Clarity is needed here, please.
- With regard to the proposed Design Principles for the new appeals process, GB Railfreight has no issues with the five described principles however what does need to occur is that the “pace & efficiency” aspect will need to be massively stepped up and appeal decisions made far more quickly than now. Currently, ORR appeals tend to take a minimum of 3 months, more likely 3-6 months, and due to the potential monopolistic behaviours of GBR on capacity outcomes, clearly published appeal decisions become far more urgent and critical than now.
- From a funding perspective, we need to understand how this will take place from GBR “Access Day” onwards. How will ORR be adequately funded so that it can always hear appeals during the course of a year, or a Control Period? Is funding made on an annual or 5-years basis? We need to understand this far more.
- GBRf believes that the bar for ORR substituting its own appeal decision, in place of GBR's position, is far too high a bar as, in many cases of timetabling and access decisions, there is often more than one possible decision.
- Regarding the combining of similar appeals, GBR has no real issues with the proposal for combining, depending on the exact dispute in question.

- Paragraph 2.12 of the discussion document implies that there can be no “Involved Parties” in a dispute, going forward. Is this correct? GBRf has no particular issue with this proposal but would like clarity, please. I do not necessarily agree that **any** person with a commercial or public interest in securing capacity should necessarily have the capacity to appeal. A body may have an interest (funded or unfunded) in appealing a TOC or FOC timetabling decision, however it may not be appropriate for that person/body to appeal on a 3rd Party’s timetabling concern (e.g. a freight operator). GB Railfreight definitely does not believe that passengers or passenger groups should be using the proposed appeals process for its concerns.
- In general, the suggested timescales for appeal windows seem just too long. For provisions of the AUP or Infrastructure Capacity Plan, I feel a number closer to 20 working days (1 month) for lodging a dispute is more suitable. As for timescales for lodging a WTT dispute, 20 working days is too long. Currently, the timescale is 5 working days and, in the interest of speeding up the process, this definitely needs to stay at 5 working days. I feel that many of the other suggested windows of “20 working days” are also too long and that something nearer 5 working days (or 10 in some case, at worst) is far more what is needed for the desired urgency.
- GB Railfreight fully supports the principle something akin to today’s Access Disputes Resolution Process, or even the exact same dispute process, taking place as the first line of appeal before ORR, itself, would hear a true appeal of a decision. It is a process that, GBRf believes, works well and one which is very cost-effective when compared to the alternatives. It is imperative that this stage of a dispute process is handled by a truly independent body, i.e. independent of Great British Railways. Nothing associated with GBR would be seen to be acting in an independent manner.
- In addition, GBRf believes that to only have ORR hear any type of dispute/appeal, would lead to an unacceptable “log-jam” of decision-making, hence the need for an ADRC-type process.
- GB Railfreight agrees that any “true appeal” window starts after any industry disputes process has concluded. This is only right and what occurs now. For this

very reason, I also believe the above changes to “suggested window” timescales need to come down in number to help speed up the whole process. GBRf does not believe that appeal windows should be suggested where GBR has not reached a decision.

- With regard to the indicative working days number for appeals, for ORR to “*consider the merits of the case and, if required, what the remedy should be*”, 25 working days does seem a little too high if it does not contain the formal appeal outcome. GBRf would accept a 25 working days ORR appeal publication, as that is more the timescale that is required for final appeal decisions. We must have a short, decisive appeals determination process. The condensed process is preferable.
- Given that many appeals will be against Great British Railway’s timetabling or access decisions, GBRf believes that, if there are appeal eligibility issues to resolve, that ORR ought, in the first instance, to consult with the party that has brought the dispute to appeal. GB Railfreight would be content for ORR to dismiss appeals at an early stage if they are found to be vexatious. Certainty of process, as early on as possible, is what is required.
- GBRf does not support a potential “3-stage appeals process” as a standard, i.e. firstly a possible internal GBR escalation process, then a typical ADRC hearing, finally an ORR appeal. That is just too much as a standard process.

I hope this gives ORR GB Railfreight’s key views of the initial discussion document on future GBR appeals.

Regards,

GB Railfreight

INDUSTRY CONSULTATIONS TEMPLATE



Description	
Type of Consultation	Discussion Document
Title	Developing ORR's process for GBR appeals
Summary	GBR Dispute Process

Timeline	Date	Complete
Received by GTS	03/12/2025	✓
GTS Forwarded to TfL (5 days from receipt)	04/12/2025	✓
GTS Recommendation to TfL (7 days before response date)	03/02/2026	✓
TfL Approval		
GTS Response		
Consultation Response due date	06/02/2026	✓

Summary of Consultation
(a) share our understanding of the proposal to establish ORR as an appeals body for Great British Railways' (GBR) decisions on capacity allocation, access and charging; (b) provide industry with information about how ORR intends to approach developing a GBR appeals process; and (c) provide an opportunity for industry to provide comments on our emerging thinking, which we will use to inform our draft appeals policy

Risks
See below

Benefits
See below

Other Issues
See below

GTS Recommendation
See below

TfL Authority	Name
Response Approved	

INDUSTRY CONSULTATIONS TEMPLATE



Proposed ORR Response

Draft responses to consultation questions posed by ORR in relation to its draft approach to hearing GBR appeals.

Questions on design principles

Do you have any comments on the proposed design principles?

No

Are there other design principles that we should consider when developing our appeals policy?

No

Questions on combining appeals

Do you think it is helpful for ORR to retain an option to combine appeals when we receive multiple appeals on the same subject?

Yes - we support this approach.

Are there particular circumstances or types of appeal where you think combining appeals would be particularly useful, or conversely where it would be unhelpful?

It would be useful if the ORR could clarify how it will approach disputes involving GBR and other Infrastructure Managers, and where services operate across network boundaries.

Questions on who can appeal

Do you agree with our initial consideration that persons with a commercial or public interest in securing capacity and other infrastructure managers are likely to have “sufficient interest” to appeal?

Yes.

Do you agree that our policy should reflect the expectation that passengers and passenger groups will use the processes established by the passenger watchdog and not the appeals process?

Yes - we support this approach.

The appeal process should be able to consider the views, and supporting evidence, provided by the passenger watchdog.

INDUSTRY CONSULTATIONS TEMPLATE



Questions on appeals windows

Do you have any comments on these suggested windows for appeals?

We suggest that the ORR undertake an initial assessment of each appeal, including its complexity, previous precedent and when a decision is needed by – and prioritise appropriately.

Including where decisions are needed to support investments, such as new rolling stock.

We have proposed that the appeal window starts after the industry disputes (or internal GBR) process has been concluded, and GBR has made its final decision. This reflects the process today in which the disputes process is accommodated within timetable production. Do you agree with this approach?

We support this approach.

However, the GBR internal disputes process needs to be transparent, consistent, evidence based and applied fairly and equally to GBR and non-GBR train operators.

We would like to understand how GBR will apply the Network Code Part D process, including the Decision Criteria (or similar) to GBR and non-GBR operators and whether there will be a Sale of Access Rights Panel (or equivalent) to assess GBR and non-GBR timetable proposals.

The same standards should be applied to GBR and non-GBR operators, for example timetable performance analysis or modelling.

Where there are multiple operators, including non-GBR operators, will GBR lead any performance modelling and align this with other Infrastructure Managers where required.

GBR needs to make available sufficient information about the Capacity and Capability of the network, and be able to demonstrate that capacity and charges are allocated fairly and consistently for GBR and non-GBR operators.

We do not believe that Network Rail has a clear understanding of the capacity and capability of the network currently.

GTS may have further comments once that the GBR processes have been described in more detail.

It is difficult to comment on the proposed timescales, but the overall process should be as efficient and as timely as possible.

INDUSTRY CONSULTATIONS TEMPLATE



It would be useful if the ORR could clarify how it will approach disputes involving GBR and other Infrastructure Managers, and where services operate across network boundaries.

We have not suggested an appeal window in cases where GBR has not reached a decision or not published information. Do you think it would be more effective to include an appeal window under these circumstances?

We are generally supportive.

There may be some cases where an appeal would be justified, for example if a Network Statement is not published on time and this impacts on non-GBR operators developing their timetable, securing long-term investments and incurring additional costs, or has an impact on other Infrastructure Managers, or where services operate across network boundaries.

Where possible, the ORR should encourage the parties to resolve their issues without proceeding to a formal dispute,

Questions on process and timescales

Does the time allowed for representations (ten working days for GBR and five working days for the applicant) in the proposed standard process strike an appropriate balance between robust and informed decision making and maintaining a fast-paced process?

The same timescale should be offered to GBR and the applicant to ensure the fairness of the process.

Either party should be able to request a longer-period, provided that their request is reasonable, noting the potential impact to the timetable development process.

The overall timeline, including the GBR internal process (details currently unknown), a reference to the Access Disputes Committee (or equivalent) and an appeal to the ORR, needs to be managed to avoid unnecessary delays to the timetable development process, especially if there is an impact on other Infrastructure Managers, or where services operate across network boundaries.

Do you have any comments on the proposal to allow ORR an indicative five working days to determine whether to hear the appeal and a further 25 working days to determine it?

The timescales appear reasonable.

INDUSTRY CONSULTATIONS TEMPLATE



We suggest that the ORR undertake an initial assessment of each appeal, including its complexity, previous precedent and when a decision is needed to support the timetable development process, and prioritise appropriately.

We suggest that the initial assessment identifies the optimum number of days to hear each appeal, which should be as short as possible.

The initial assessment may identify where a decision needs to be expedited or where a dispute may take longer due to its complexity.

Are there any improvements that could be made to the standard process proposed?

We need to have a better understanding of the GBR internal process and the Access Disputes Committee arrangements, before commenting further. The overall objective should be to resolve any issues as quickly as possible.

This process may be expedited if GBR, ADC and ORR utilise similar templates.

Do you have any comments on ORR's proposal to use a condensed process in which we consider the merits of the case and any proposed directions at the same time, rather than a two-staged process?

We think there are certain circumstances when this may be appropriate, for example where there is previous precedent or a quick decision is needed.

Questions on including a stage in which ORR decides whether to hear an appeal

How should ORR approach resolving doubts about an applicant's eligibility to appeal? For example, should ORR consult GBR or ask the applicant for further evidence?

We suggest that the relevant parties are consulted, and the outcome of any internal GBR assessment and the Access Disputes Committee decision are considered

The ORR should be clear on applicant eligibility criteria and consult with the applicant to ascertain its eligibility to appeal where there is uncertainty.

The ORR should be required to explain why an appeal has been rejected, with the applicant being given the opportunity to challenge any such decision.

The ORR should form its own view on the merits of the dispute and should act independently.

INDUSTRY CONSULTATIONS TEMPLATE

Should ORR consider the potential to dismiss appeals at an early stage if they are found to be without merit or vexatious

Yes but only after a balanced consideration of the evidence presented by GBR and the applicant in relation to the eligibility of the appeal.

Question on ORR decision making

Are there particular factors you think ORR should consider when deciding on remedies following an appeal alongside the legal requirements established in the Bill?

Where appropriate, the ORR should take into account any impact that their decision could have on adjacent infrastructure managers, who sit outside of the GBR framework.

The ORR should also be cognisant of the wider public interest, wider social and economic benefits, and the impact on tax payer and private sector costs.

This should include any private investment decisions, for example the purchase of new rolling stock or investment in a new freight terminal, which need long-term security to justify the investment.

Operators that operate on more than one infrastructure manager should also be considered. This could include GBR and non-GBR services.

The ORR should be able to instruct GBR to review or amend their position.

Questions about the relationship between contractual disputes and appeals

We have assumed that a contractual disputes process, like that operated today by the Access Disputes Committee, will continue to exist and that operators will use this process to deal with disputes arising from the new GBR network code. Do you think that it remains appropriate to have an independently administered contractual disputes process for the provisions of the GBR network code?

We support the continuation of a fully independent party, such as the Access Disputes Committee, to manage disputes, and that they should have the necessary authority to direct GBR, other infrastructure managers and non-GBR operators where appropriate.

We also need further clarity on the internal GBR processes for non-GBR operators.

Do you have any comments about how we, together with GBR and industry, should approach the interplay between contractual disputes and other types of appeal?

INDUSTRY CONSULTATIONS TEMPLATE



There may be occasions when the ORR could facilitate cross-industry discussions, especially where there is no consensus between infrastructure managers, GBR and non-GBR operators (and other interested parties, such as funders).

Question about the relationship between appeals and any internal GBR escalation processes

Do you have any comments about how ORR should approach any pre-appeals processes that GBR may develop?

The GBR internal process needs to be transparent, consistent, evidence based and applied fairly and equally to GBR and non-GBR train operators. The ORR should be able to scrutinise this process to ensure that the above criteria are met and the process is objective and evidence-based.

Questions on interested parties

Do you agree with our proposals to allow interested parties to make representations as part of the appeals process?

Yes, in some circumstances this would be appropriate, for example TfL, as they fund the GTS Concession.

Do you have any comments on ORR's draft definition of interested parties?

The definition is appropriate.

Do you agree that applicants, GBR and ORR and interested parties themselves should be able to identify interested parties who are able to make representations?

Yes, provided that the interested parties have a legitimate reason for attending.

Generally, we would encourage local interest groups, councils etc to feed in their comments via the consultation process or utilise other parties to represent their position.

Do you agree that ORR should reserve the right to decide whether to accept interested parties' contributions as part of an appeal?

The ORR should have a set of criteria to inform an initial decision on whether the interested party should be represented.

At what stage of the process should interested parties make their contributions, and how much time should they be given?

We suggest that the same timescales are applied to all parties.

INDUSTRY CONSULTATIONS TEMPLATE



Question on transparency and disclosure

Do you have any comments on ORR's proposed approach to delivering transparency?

GBR, Access Disputes Committee and the ORR need to have an appropriate level of transparency and consistency.

There may be occasions where information is withheld (i.e. commercially sensitive information), but this should be clearly explained.

Please see below the HAL response to the ORR's published discussion document on Developing ORR's process for GBR appeals:

Design principles

1. Do you have any comments on the proposed design principles?
 - a. *No comment.*
2. Are there other design principles that we should consider when developing our appeals policy?
 - a. *The basis for an appeal and the powers ORR will have to direct GBR are much limited compared to the powers ORR have today for NR. ORR powers should not be watered down to make things easier for GBR.*

Combining appeals

3. Do you think it is helpful for ORR to retain an option to combine appeals when we receive multiple appeals on the same subject?
 - a. *That would be useful in terms of efficiency.*
4. Are there particular circumstances or types of appeal where you think combining appeals would be particularly useful, or conversely where it would be unhelpful?
 - a. *It would be helpful to combine appeals both where the parties either agree and disagree a GBR decision. We are concerned that GBR will have a wide range of powers across from access to charges, but at the same time the ORR's power to challenge will be much reduced.*

Who can appeal / sufficient interest

5. Do you agree with our initial consideration that persons with a commercial or public interest in securing capacity and other infrastructure managers are likely to have “sufficient interest” to appeal?
 - a. *Yes, definitely Infrastructure Managers must have a sufficient interest to appeal.*
6. Do you agree that our policy should reflect the expectation that passengers and passenger groups will use the processes established by the passenger watchdog and not the appeals process?
 - a. *Yes but this probably should be made clear.*

Appeal window and timescales

7. Do you have any comments on these suggested windows for appeals?
 - a. *There should be an opportunity to see how these windows work in practice, with an undertaking to revisit after a period of these going live.*
8. We have proposed that the appeal window starts after the industry disputes (or internal GBR) process has been concluded, and GBR has made its final decision. This reflects the process today in which the disputes process is accommodated within timetable production. Do you agree with this approach?
 - a. *Yes we agree this approach.*
9. We have not suggested an appeal window in cases where GBR has not reached a decision or not published information. Do you think it would be more effective to include an appeal window
 - a. *It might be prudent to still include an appeal window. Not having an appeal window where GBR fails to reach a decision or has not published information may not be the fault of the party who may wish to launch an appeal.*

Process and representations

10. Does the time allowed for representations (ten working days for GBR and five working days for the applicant) in the proposed standard process strike an appropriate balance between robust and informed decision making and maintaining a fast-paced process?
- a. *Should the time allowed for representation be the same for both GBR and the applicant?*
11. Do you have any comments on the proposal to allow ORR an indicative five working days to determine whether to hear the appeal and a further 25 working days to determine it?
- a. *Is 25 working days too long for ORR to provide a determination for all but complex appeals?*
12. Are there any improvements that could be made to the standard process proposed?
- a. *We have no comments.*
13. Do you have any comments on ORR's proposal to use a condensed process in which we consider the merits of the case and any proposed directions at the same time, rather than a two-staged process?
- a. *We would like to understand why the ORR thinks this will be a longer process.*

Eligibility and filtering of appeals

14. How should ORR approach resolving doubts about an applicant's eligibility to appeal? For example, should ORR consult GBR or ask the applicant for further evidence?
- a. *In the first instance it might be better to ask the applicant for further evidence.*

15. Should ORR consider the potential to dismiss appeals at an early stage if they are found to be without merit or vexatious?

- a. *That appears sensible and to stop appeals without merit from being submitted and wasting industry time.*

Remedies

16. Are there particular factors you think ORR should consider when deciding on remedies following an appeal alongside the legal requirements established in the Bill?

- a. *Fairness, GBR has followed the process, competition, discrimination and GBR has acted in good faith etc.*

Relationship with contractual disputes

17. We have assumed that a contractual disputes process, like that operated today by the Access Disputes Committee, will continue to exist and that operators will use this process to deal with disputes arising from the new GBR network code. Do you think that it remains appropriate to have an independently administered contractual disputes process for the provisions of the GBR network code?

- a. *Yes, HALs strongly supports the continuation of an independently administered contractual disputes process for the provisions of the GBR code.*

18. Do you have any comments about how we, together with GBR and industry, should approach the interplay between contractual disputes and other types of appeal?

- a. *Clarity will be essential for parties to understand when issues should be addressed through contractual mechanisms and when escalation to the ORR is appropriate.*

Pre-appeals processes

19. Do you have any comments about how ORR should approach any pre-appeals processes that GBR may develop?

- a. *HAL would expect GBR to have a pre appeals process that must be exhausted before any appeal to the ORR.*

Interested parties

20. Do you agree with our proposals to allow interested parties to make representations as part of the appeals process?

- a. *HAL supports this.*

21. Do you have any comments on ORR's draft definition of interested parties?

- a. *HAL notes and supports IMs are included in this definition.*

22. Do you agree that applicants, GBR and ORR and interested parties themselves should be able to identify interested parties who are able to make representations?

- a. *Yes, provided there is a mechanism to challenge refusal if required.*

23. Do you agree that ORR should reserve the right to decide whether to accept interested parties' contributions as part of an appeal?

- a. *Yes, as this will be determined independently of GBR and the applicants.*

24. At what stage of the process should interested parties make their contributions, and how much time should they be given?

- a. *We are minded to agree the proposal that interested parties to submit once ORR has decided whether the appeal is scope.*

Transparency

25. Do you have any comments on ORR's proposed approach to delivering transparency?

- a. *HAL has no comments.*

Thanks,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Heathrow Rail – Ensuring the best rail service for Heathrow, its passengers and colleagues.

Heathrow

[REDACTED]
[REDACTED]
[REDACTED]
[Heathrowexpress.com](https://www.heathrowexpress.com)



Dear ORR team,

Thank you for the opportunity to respond to your discussion document, Developing ORR's process for GBR appeals. Heathrow Express Operating Company (HEOC) welcomes early engagement on the proposed appeals framework and recognises the challenge ORR faces in defining a credible and effective role within the framework established by the Railways Bill.

As a non-GBR passenger operator with long-standing contractual access arrangements and a critical role in national airport connectivity, HEOC has a strong interest in ensuring that the proposed appeals process provides meaningful procedural protection, transparency, and confidence for non-GBR users of the network.

Set out below are our responses to the consultation questions as presented in the discussion document. For clarity, we have reproduced each question in full, followed by our response.

Design principles

1. Do you have any comments on the proposed design principles?

We broadly understand and accept the proposed design principles, particularly the emphasis on proportionality, timeliness, transparency and procedural fairness. We also recognise that these principles necessarily reflect the significantly altered institutional landscape created by the Railways Bill, in which GBR becomes the primary decision-maker for access, capacity and charging matters. However, we note that the design principles implicitly acknowledge a substantially reduced role for ORR compared with the current regime. In that context, it is essential that the appeals framework is sufficiently robust to give non-GBR operators confidence that GBR's extensive powers will be exercised consistently, transparently and in accordance with its statutory duties.

2. Are there other design principles that we should consider when developing our appeals policy?

Yes. We consider that an additional explicit design principle should be that the appeals framework must provide an effective counter-balance to the concentration of decision-making power within GBR, particularly given GBR's dual role as infrastructure manager and operator of the majority of passenger services. While we recognise the limits imposed by the Bill, the appeals regime should not be framed so narrowly that successful appeals are only possible in extreme or theoretical circumstances. The process should provide a realistic means of challenge where GBR has failed to apply its policies, criteria or statutory duties correctly.

Combining appeals

3. Do you think it is helpful for ORR to retain an option to combine appeals when we receive multiple appeals on the same subject?

Yes. We agree that retaining the option to combine appeals would be helpful, particularly in promoting efficiency and consistency of outcomes where multiple parties are affected by, or seek to challenge, the same GBR decision.

4. Are there particular circumstances or types of appeal where you think combining appeals would be particularly useful, or conversely where it would be unhelpful?

Combining appeals may be particularly useful where multiple parties either support or oppose the same GBR decision, or where different aspects of a single decision (for

example access and charging) are challenged by different parties. Given GBR's wide remit, the ability to consider related appeals together could help ensure coherent reasoning and transparency. Care should be taken, however, to ensure that the specific circumstances and impacts on individual appellants are not lost where appeals are combined.

Who can appeal / sufficient interest

5. Do you agree with our initial consideration that persons with a commercial or public interest in securing capacity and other infrastructure managers are likely to have “sufficient interest” to appeal?

Yes. We agree that train operators, infrastructure managers and other parties with a commercial or public interest in securing capacity should be regarded as having sufficient interest. It is particularly important that adjacent infrastructure managers retain the ability to appeal, given the interfaces between GBR-managed infrastructure and neighbouring networks.

6. Do you agree that our policy should reflect the expectation that passengers and passenger groups will use the processes established by the passenger watchdog and not the appeals process?

Yes. We agree that this expectation is appropriate. It would be helpful for this distinction to be clearly articulated in the appeals policy to avoid uncertainty or duplication between the appeals process and the passenger watchdog regime.

Appeal windows and timescales

7. Do you have any comments on these suggested windows for appeals?

We understand the rationale for the proposed appeal windows and recognise the importance of balancing robust scrutiny with timely decision-making. However, given the novelty of the new regime, we consider it important that there is an explicit commitment to review these timeframes after the process has been operating in practice for a period.

8. We have proposed that the appeal window starts after the industry disputes (or internal GBR) process has been concluded, and GBR has made its final decision. This reflects the process today in which the disputes process is accommodated within timetable production. Do you agree with this approach?

Yes. We agree with this approach. It is sensible for the appeal window to commence only once relevant contractual dispute mechanisms, or internal GBR escalation processes have been exhausted and a final GBR decision has been reached.

9. We have not suggested an appeal window in cases where GBR has not reached a decision or not published information. Do you think it would be more effective to include an appeal window?

Yes. We consider it prudent to include an appeal mechanism in circumstances where GBR has failed to reach a decision or has not published information it is required to provide. In such cases, the absence of a decision should not, in itself, prevent an affected party from seeking recourse.

Process and representations

10. Does the time allowed for representations (ten working days for GBR and five working days for the applicant) in the proposed standard process strike an appropriate balance between robust and informed decision making and maintaining a fast-paced process?

We question whether the proposed asymmetry between the time allowed for GBR and the applicant is appropriate. There is a strong case for parity, particularly given GBR's access to internal resources and information. Equal time allowances would better reflect the principle of procedural fairness.

11. Do you have any comments on the proposal to allow ORR an indicative five working days to determine whether to hear the appeal and a further 25 working days to determine it?

We recognise the need for ORR to have sufficient time to reach well-reasoned decisions. However, 25 working days may be lengthy for all but the most complex appeals. We would

welcome further clarity on how ORR expects to differentiate between standard and complex cases and whether shorter determination periods could apply in more straightforward matters.

12. Are there any improvements that could be made to the standard process proposed?

We have no specific comments at this stage.

13. Do you have any comments on ORR's proposal to use a condensed process in which we consider the merits of the case and any proposed directions at the same time, rather than a two-staged process?

We would welcome further explanation of why ORR considers the condensed process to be more efficient, and in what circumstances it would be applied. In particular, it would be helpful to understand how this approach would affect the rights of parties to make representations on potential remedies.

Eligibility and filtering of appeals

14. How should ORR approach resolving doubts about an applicant's eligibility to appeal? For example, should ORR consult GBR or ask the applicant for further evidence?

In the first instance, we consider it preferable for ORR to seek further evidence directly from the applicant rather than consulting GBR, to preserve the independence of the eligibility assessment.

15. Should ORR consider the potential to dismiss appeals at an early stage if they are found to be without merit or vexatious?

Yes. We agree that ORR should have the ability to dismiss appeals at an early stage where they are clearly without merit or vexatious, in order to avoid unnecessary use of industry and regulatory resources.

Remedies

16. Are there particular factors you think ORR should consider when deciding on remedies following an appeal alongside the legal requirements established in the Bill?

The ORR is very limited in the circumstances in which it may substitute its own decision, ie only when it is clear that GBR has acted unlawfully. In addition to the legal requirements, ORR should be able to consider whether GBR has acted fairly, without discrimination, in good faith, and in accordance with its published policies, criteria and procedures. Any remedies should be designed to have clear and effective corrective impact where failings are identified, rather than simply remitting matters to GBR without direction.

Relationship with contractual disputes

17. We have assumed that a contractual disputes process, like that operated today by the Access Disputes Committee, will continue to exist and that operators will use this process to deal with disputes arising from the new GBR network code. Do you think that it remains appropriate to have an independently administered contractual disputes process for the provisions of the GBR network code?

Yes. HEOC strongly supports the continuation of an independently administered contractual disputes process for disputes arising under the future GBR Network Code.

18. Do you have any comments about how we, together with GBR and industry, should approach the interplay between contractual disputes and other types of appeal?

Clarity will be essential to ensure that parties understand when issues should be addressed through contractual mechanisms and when escalation to ORR is appropriate, and to avoid duplication or procedural gaps.

Pre-appeals processes

19. Do you have any comments about how ORR should approach any pre-appeals processes that GBR may develop?

We would expect GBR to operate a clear and transparent pre-appeals or internal escalation process, and that this should normally be exhausted before an appeal is brought to ORR.

Interested parties

20. Do you agree with our proposals to allow interested parties to make representations as part of the appeals process?

Yes. We support this proposal.

21. Do you have any comments on ORR's draft definition of interested parties?

We note and support the inclusion of infrastructure managers within the definition of interested parties.

22. Do you agree that applicants, GBR and ORR and interested parties themselves should be able to identify interested parties who are able to make representations?

Yes, provided there is an appropriate mechanism to challenge refusals where necessary.

23. Do you agree that ORR should reserve the right to decide whether to accept interested parties' contributions as part of an appeal?

Yes. This discretion should sit with ORR and be exercised independently of both GBR and applicants.

24. At what stage of the process should interested parties make their contributions, and how much time should they be given?

We are minded to agree with the proposal that interested parties should normally make representations once ORR has determined that an appeal is within scope.

Transparency

25. Do you have any comments on ORR's proposed approach to delivering transparency?

We have no specific comments and broadly support ORR's intention to publish appeals and determinations.

Closing remarks

We recognise that ORR's proposed appeals role is necessarily constrained by the Railways Bill. However, given the significant transfer of power to GBR, it is essential that the appeals framework is designed and operated in a way that provides real confidence to non-GBR operators that decisions affecting access, capacity and charges are subject to meaningful independent scrutiny.

We would welcome further engagement as ORR develops its policy and would be pleased to discuss any aspect of this response in more detail.

5 February 2026

Dear ORR Team,

Re: Development of ORR's Appeals Process for the Great British Railways (GBR) Network

We are writing in response to your discussion document *Developing ORR's process for GBR appeals*. We appreciate the opportunity to contribute at this early stage as you shape the future appeals framework for access-related decisions made by GBR.

About London St. Pancras Highspeed

HS1 Ltd, trading as London St. Pancras Highspeed, has the 30-year concession to own, operate and maintain High Speed 1 (HS1), the UK's only high-speed railway, as well as the stations along the route: St Pancras International, Stratford International, Ebbsfleet International and Ashford International. HS1 route is the 109km rail line between St Pancras International in London and the Channel Tunnel and connects the international high-speed routes between London and Paris, London and Brussels and London and Amsterdam, as well as the domestic route from London to Kent.

In July 2017, HS1 Ltd was acquired by a consortium comprising of funds advised and managed by InfraRed Capital Partners Limited and Equitix Investment Management Limited.

Comments on ORR's Appeals Process for GBR Network

As noted in your paper, the Railways Bill 2026 will significantly amend the existing regulatory structure by removing GBR from the definition of "infrastructure manager" under the Access and Management Regulations 2016 (AMRs). LSPH will, however, continue to fall within the AMR regime and remain subject to Regulation 32. While many disputes are therefore expected to continue to follow the existing Regulation 32 process, the evolving boundary between GBR and non-GBR infrastructure managers raises several scenarios where the appropriate appeals route is unclear.

London St. Pancras Highspeed
5th Floor Kings Place
90 York Way
London N1 9AG

T +44 (0) 207 014 2700
E info@stpancras-highspeed.com

We would welcome clarification on how ORR intends the future appeals process to apply in cases where decisions made by GBR have direct implications for LSPH, our international operators, or cross-network services. In particular, we would appreciate your view on the following scenarios.

Scenario 1 – Access to the domestic track outside Ashford International

International operators must traverse a short but operationally critical section of Network Rail Infrastructure Limited (NRIL)/GBR track outside Ashford International in order to access the station. This requires international operators to hold a framework track access agreement (FTAA) with NRIL today, and with GBR in the future.

Should GBR decline to issue or modify an FTAA for this section, international operators would be unable to access Ashford International station. In such circumstances, it is unclear whether a dispute concerning access to a GBR-managed asset—but which determines an operator's ability to reach LSPH infrastructure—should be considered under:-

- Regulation 32, because the dispute concerns access to LSPH's international station; or
- the new GBR Appeals Process, because the decision arises from GBR's domestic network functions.

Given the importance of Ashford's domestic link to international operations, we would welcome ORR's guidance on how such mixed-network decisions are expected to be handled. We are also interested in whether the ORR considers it possible to classify this domestic section of track outside Ashford International as a special "service facility" under Schedule 2 of the AMRs. Doing so would address this issue by bringing it under the scope of the AMRs.

Scenario 2 – GBR domestic timetabling decisions affecting international services

Under the AMRs, HSI is designated as specialised infrastructure, which obliges us to prioritise international services over domestic services in the timetable. Timetabling activities for our network are managed by NRIL today (and GBR in the future) – both on the Kent side and for high-speed services operating on LSPH infrastructure. If GBR were to make a domestic timetabling decision that disrupts, displaces, or constrains international paths on the LSPH network—for example, by prioritising its own domestic traffic ahead of international services (given GBR will not be bound by the AMRs)—it is unclear which appeals mechanism would apply.

We would appreciate confirmation of how ORR intends to approach appeals relating to GBR's timetabling or capacity-allocation decisions where the downstream effects fall partly or wholly on a non-GBR infrastructure manager.

Scenario 3 – Open access international services operating across both LSPH and GBR networks

London St. Pancras Highspeed
5th Floor Kings Place
90 York Way
London N1 9AG

T +44 (0) 207 014 2700
E info@stpancras-highspeed.com

A future open access international operator may propose a through-service from the Channel Tunnel to destinations on the GBR network (such as Birmingham). Such a service would operate across both LSPH-managed and GBR-managed infrastructure, potentially generating separate access or timetable disputes on each network.

It would be helpful to understand whether ORR intends:

- that such disputes be handled under two distinct regimes (Regulation 32 for LSPH matters, and the new GBR Appeals Process for GBR matters); or
- that ORR may consider such cross-network disputes jointly, under a single procedural framework, for the sake of consistency, efficiency and regulatory coherence.

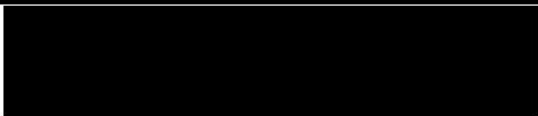
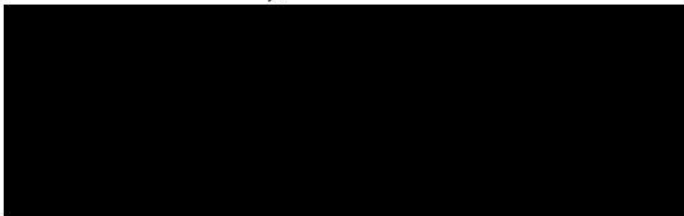
We would welcome your views on whether the proposed appeals system is designed to accommodate such integrated, cross-network matters within one coordinated process.

Next Steps

To support the development of a framework that provides clarity for operators and infrastructure managers, we would welcome an initial discussion with ORR on the scenarios outlined above. These questions are not intended as formal representations but as early engagement to ensure that the future appeals mechanism clearly and consistently applies to situations where GBR and non-GBR networks interface.

We look forward to continuing to work constructively with you as the new regulatory framework develops.

Yours sincerely,



London St. Pancras Highspeed
5th Floor Kings Place
90 York Way
London N1 9AG

T +44 (0) 207 014 2700
E info@stpancras-highspeed.com

stpancras-highspeed.com

Developing ORR's process for GBR Appeals

Response from Network Rail, System Operator

To (by email):

[REDACTED]

[REDACTED]

ORR

[REDACTED]

[REDACTED]

Network Rail Infrastructure Ltd
Waterloo Station General Offices
Walker Suite
London, SE1 8SW

05 February 2026

Dear [REDACTED]

We welcome the publication of the Office of Rail and Road's (ORR) discussion document on developing the appeals process for Great British Railways (GBR), and the opportunity to contribute to the evolution of this policy.

We support the direction set out in the discussion document and are pleased to see this framework taking shape. The appeals process is an important part of a reformed system in which GBR and ORR work from a foundation of shared duties: helping the railway put freight customers and passengers first and ensuring that private and devolved partners have a clear and effective mechanism for holding GBR to account.

We support your ambition to establish a robust appeals function that ensures GBR's Access and Use Policy (AUP) operates consistently with its duties and functions. The policy intent set out by Ministers – and reflected in the provisions of the Railways Bill – safeguards the integrity of GBR's role as directing mind while providing proportionate and robust regulatory oversight.

Please find our response to the discussion document in the annex attached to this letter. We look forward to continuing working with the ORR as it develops this policy further.

Yours sincerely,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Annex - Network Rail's response to the ORR's discussion document on developing the appeals process for GBR

Questions on design principles

The proposed principles (1.28–1.30) for the ORR's future appeals role appear sensible and consistent with the Government's policy intent. There may be merit in having an additional principle which captures the importance of decisions becoming final at appropriate stages, to provide industry with the certainty needed to progress work with confidence. For example, ensuring that appeals relating to the setting of project objectives for capacity plans are concluded before detailed optioneering and testing begins, so that subsequent stages proceed on a stable and agreed foundation.

The principles lean towards developing a quick appeals process (Table 2) which we support. However, the appeals system should also avoid creating pressures that lead to rushed responses or partial information where this could compromise accuracy or fairness. It may be helpful to include a balancing design principle that emphasises the need for accuracy and providing time to assemble useful data, by giving proportionate time for parties to respond – whilst avoiding unnecessary delay or creating routine extensions and incentives for inefficiency.

Questions on combining appeals

We consider it sensible for ORR to retain discretion to combine appeals (paragraphs 2.3–2.4) where doing so would support efficiency and consistency, particularly in cases where multiple appeals relate to the same decision and are likely to have comparable impacts. However, this discretion should be exercised carefully to avoid creating additional complexity – for example, by merging appeals that would be better considered individually, or by inadvertently prolonging the resolution of a case. Retaining flexibility, rather than establishing a default expectation that appeals will be combined, will help ensure that any efficiency gains do not come at the expense of fairness, clarity, or timely decision-making.

Questions on who can appeal

Defining who is eligible to appeal will be an important issue for both ORR and the wider industry (2.9-2.13). It appears appropriate that individual passengers or passenger groups are not included within scope, with the appeals process instead focused on parties directly involved in access-related matters (paragraph 2.13). Passenger interests would be more effectively represented through the proposed passenger watchdog. Including individual passengers as potential appellants would create a significant risk of overwhelming the system with large volumes of appeals that fall outside the intended scope, each of which ORR would nevertheless be obliged to assess for standing. This could divert resources from substantive industry issues and undermine the efficiency and purpose of the appeals framework.

We also note the proposal to create a separate channel for interested parties (2.52-2.54). We agree that there are risks related to including interested parties within the appeals process and allowing interested parties the opportunity to make formal representations. Notably this could prolong the process, and it is unclear what would make the representations of interested parties' material (2.53-2.54). If new information were introduced through a parallel route, it could become difficult for either GBR or the appellant to address these issues effectively or within the proposed timelines. We welcome ORR's intention to undertake further policy development in this area.

Questions on appeal window

While we recognise the rationale for the timescales assumed within the charging and performance schemes (Table 1), early consultation and transparency should give appellants advance visibility of proposals. For instance, if appellants are engaged before decisions are made, there may be scope to reduce the 20- and 30- working day windows to lodge an appeal for charges and performance

schemes, given that these periods are then followed by the standard 47 working day appeals process.

Questions on process and timescales

Although the proposed 10 working days for GBR to respond to an appeal (Table 2) is tight, we consider it to be largely manageable for most appeals. This relies on information being collected and recorded by GBR at the point a relevant decision is made, so that it can be provided quickly if an appeal is raised. In most cases we would expect relevant information to be published when a decision was taken.

Some flexibility should, however, be built in for parties to request extra time in cases where the relevant information cannot be produced within the indicative timeframe. It could be helpful to define further what type of issues or complex cases might merit granting limited extensions. For example, the 10 working days may not be achievable for more complex appeals, such as appeals on charging decisions. More generally, if GBR needs to identify or release new information that has not already been published, then a 10 day working period could be challenging, not least because of internal governance and sign-off processes.

We support allowing 25 working days for ORR to consider the merits of an appeal and to reach a conclusion. We recognise that the full 25 working days may be necessary in more complex cases, but we hope the ORR would aim to use shorter timeframes for less complex appeals.

We also support ORR's proposal for a streamlined appeals window (Table 2), which we consider preferable to the alternative two-stage decision-making process suggested at paragraph 2.30. We welcome the proposal that activities associated with a decision under appeal – such as updating timetables, implementing charging and performance regimes, and issuing access agreements – will not automatically be paused (paragraph 2.24). This approach will help maintain momentum across the industry while appeals are being resolved.

Questions on including a stage in which ORR decides whether to hear an appeal

We support the proposal for ORR to have the ability to dismiss an appeal where it is clearly without merit or vexatious (paragraph 2.35). Introducing an initial filter of this kind would help ensure that the appeals process remains focused on substantive issues and avoids unnecessary delays to decision-making. There may also be value in drawing on good practice from the management of judicial reviews, to ensure that only credible, well-founded challenges proceed. Adapting elements of this approach could assist ORR in refining its criteria and processes for screening appeals, while maintaining fairness and transparency for all parties.

Question about the relationship between appeals and any internal GBR escalation processes

In the AUP Discussion Document published by Network Rail, System Operator in December 2025, Annex 1 explored the possible introduction of a mechanism for industry partners to challenge GBR decisions before escalating to a formal independent appeal to the ORR. While we note your reference to this (2.49-2.51), we want to clarify that this is a suggested proposal. It was included to test stakeholder views on whether such mechanism would be valuable. We welcome continued discussion with the industry on this and we recognise there are potential risks as well as benefits. We agree with the proposal in 2.49 that ORR appeals can logically only start once a GBR process is concluded.

Developing ORR's process for GBR Appeals

Response from Rail Freight Group (RFG)

January 2026

Introduction

1. Rail Freight Group is pleased to respond to the ORR's consultation on developing ORR's process for GBR Appeals. This response is not confidential.
2. RFG is the representative body for rail freight in the UK, and we campaign for a greater use of rail freight, to deliver environmental and economic benefits for the UK. We have over 130 member companies including train operators, end customers, ports and terminal operators, suppliers including locomotive and wagon companies and support services.

Summary

3. The changes being progressed through the Railways Bill 2025 will have a significant impact for all parties in UK rail, whether or not they become an integrated part of Great British Railways (GBR). The new body will be a powerful entity controlling the vast majority of the UK rail infrastructure and passenger services, but there will still be significant parts of the rail sector outside GBR including rail freight and some passenger services. Although the current narrative is positive towards rail freight, there is the potential for an integrated monopoly business to prioritise its own services in future, and so it is essential that the legal and regulatory frameworks act to ensure that non-GBR operators are effectively protected.
4. To that end we are strongly supportive of the principle of a strong and effective appeals function, particularly in relation to the planned new access framework covering areas such as the allocation of track capacity, charges and performance regimes. It is essential that freight operators can challenge decisions made by GBR where they are believed to be improper or unfair, and that GBR can be made to reconsider and overturn decisions.
5. We have significant concerns that the appeals function described in the Railways Bill 2025 is inadequate to deliver this aim. In particular the application of judicial review principles to the appeals function appears to significantly limit the ability to raise an appeal and the timescales associated with judicial review mean that an appeal against any policies or documents would be very constrained. The ability of the Secretary of State to set further requirements, including fees, adds further concern. Our published position paper on the appeals function is attached to this response.

6. We recognise that ORR must work within the legal framework which is set by the Bill and that this consultation does not have the ability to amend the legal framework. Our comments in this response therefore relate to the questions in the consultation as set out, rather than our wider concerns. Yet unless the legal framework is amended, we think it unlikely that the appeals function will see many cases in practice – by way of reference there were only around 2,500 judicial reviews in 2023 in England and Wales, suggesting the threshold for bringing a case is particularly high.
7. In that context our key points on this consultation are;
 - a. The proposals need to be tested against the widest range of potential appeals and not just capacity and access appeals – for example appeals against GBR policies. Certain types of appeal may require wider or different considerations than others.
 - b. The definition of interested parties needs to be broader in some areas, including freight customers and connected parties especially for appeals on areas such as track access charges, GBR policies or GBR Code.
 - c. The timescales need to recognise that judicial review principles require an appeal to be lodged within 3 months of a decision. The interface with any internal GBR process / ADR processes needs to be considered on that basis.
 - d. ORR should consider whether ‘future harm’ is a valid basis for appeal, particularly in relation to GBR policies. An appellant may believe that a policy or decision could create harm in future albeit they have not been harmed at the point of appealing. ORR needs to consider whether this is a valid basis of appeal.

Specific Comments

8. Para 1.9 notes that GBR’s new model contracts and the GBR network code will be subject to ORR appeals function, but these are not listed at para 2.2. We agree that they should be subject to appeal, and it should be clarified if they would be captured under the broad right of appeal at Clause 67.
9. Our comments on the Judicial Review principles (para 1.15) are attached at the Annex.
10. We note that ORR will continue to have an appeals role under the AMRs for service facilities. We are concerned over the powers contained in Clause 72 which gives the Secretary of State the ability to intervene in private freight terminals, and thus remove their right of appeal under the AMRs. Although this is not a matter for this consultation it is an area of significant concern for us. We note that changes to ORR’s statutory duties

could also impact on their existing role here.

Questions on design principles

11. We have no comments on the design principles which we support.
12. As rail freight will remain a competitive market, we note that on occasion and with clear reasons some confidential data can be redacted and this will be important for some appellants.

Questions on combining appeals

13. We support the principle of combining appeals where the circumstances support this. For example, it may be that multiple parties choose to appeal against a particular access or charging document, or that a decision on capacity allocation negatively affects multiple parties. ORR may also wish to consider whether joint appeals can also be submitted, for example if different appellants wished to submit a joint appeal on a particular policy or decision.
14. However, ORR should ensure that a combined appeal does not unnecessarily delay the timescales for hearing an appeal, particularly if the appealed decision relates to a service that has been removed from the timetable or capacity plan, or to a new or increased charge which is about to apply.

Questions on who can appeal

15. We note the grounds for appeal in paragraphs 2.7 and 2.8, and as previously, our comments on this are provided in the Annex.
16. We broadly agree with the proposed scope for who can bring an appeal as described in para 2.10. The definition works particularly well when considering appeals against a decision on capacity allocation and timetabling.
17. However, for other areas, a slightly wider definition may be helpful, for example a freight customer might legitimately wish to bring an appeal on track charges if the charges are passed onto them via their haulage contract. A connected party may wish to appeal if the new GBR Code hampers their interests.
18. ORR may wish to consider whether a party can appeal if they believe that their future prospects could be harmed through a GBR policy, or whether an appeal must relate to a specific decision made under the framework. This is important because the judicial review window requires an appeal to be made within 3 months, meaning that businesses must choose whether to appeal a policy if they believe they might be harmed by it in

future. Additional guidance on this would be welcome.

19. We have no comment on passengers, but note that freight customers will not have recourse to an alternative appeals function so must be in scope here.

Questions on appeals windows

20. We do not have any specific comments on the appeals windows shown in Table 1, although we believe it could be slightly simplified. However, and as outlined above, we are concerned over the appeals windows for GBR policies such as the AUP. In practical reality it will be very difficult to show harm at the point a policy has been written, other than in the most obvious cases, but future actions and decisions may highlight a weakness in the policy which is worthy of appeal. We therefore believe that GBR policies including the AUP should be capable of challenge at any point, subject to the considerations below.
21. We are concerned therefore between the timelines for an ORR appeal and the requirements of 'judicial review principles' which require applications within 3 months. We are unclear how Table 1 can have 'no deadline' for some types of appeal given this constraint, or, if ORR are choosing to disapply the 3 month rule, we are concerned to understand how this would align with the requirements of the Railways Bill. This needs to be clarified.
22. We agree that the appeals window should start after GBR has concluded its internal disputes process, however this relies on GBR's own processes proceeding at a suitable pace and not being used to frustrate the ORR appeal. Appellants should reserve the right to lodge an appeal with ORR if the timescales of the GBR process are protracted. As above the interface with the 3 month windows for judicial review need to be clarified – does the 3 months also start after the GBR process or at the original decision point?

Questions on process and timescales

23. We have no significant issues with the process and timescales set out in Table 2. However, we believe the timescales for GBR and the applicant ought to be aligned – GBR will have significantly more resources than the majority of applicants and therefore we do not understand why they will get twice the time to respond. Both steps should therefore have 10 working days.
24. We do not believe 2 working days in the final step is reasonable for applicants to make factual corrections. Although we note that this step does not introduce any new issues, the processes for internal review and sign off mean that for most applicants 2 working days will be too short, and we suggest 5 working days would be more appropriate.

25. We note in para 2.32 that applicants who withdraw may not re-submit on the same issue. Whilst this is reasonable for a specific decision for example in a timetable, this barrier should not be applied to appeals against a GBR policy or procedure, where an applicant may wish to appeal in future against a different part or application of that policy.

Questions on including a stage in which ORR decides whether to hear an appeal

26. We agree that ORR should explicitly confirm that an appeal is in scope and whether the applicant has eligibility at the start of the process. This will help potential applicants to scope any appeal effectively, and also to avoid wasted resources. ORR should keep records of any cases that were deemed out of scope in order to consider whether any future changes to scope or process would be appropriate.
27. We accept that in reaching a decision, ORR may need to seek information from the potential applicant and also from GBR. However, ORR should be alert to the fact that GBR is an integrated monopoly that will not wish to have its decisions appealed against, and so ORR will need to consider how to proceed if information is not provided in a timely manner as required.

Question on ORR decision making

28. We note the information requirements in 2.37, which is necessary for an applicant to apply for an appeal. If an initial stage is introduced (para 2.33), ORR may wish to consider whether a streamlined set of information could be used for this stage. Otherwise, we have no comments on the requirements.
29. We have a number of concerns relating to the Bill provisions on ORR appeals and the remedies as set out in the Annex. In particular the requirement for there to be 'only one decision which GBR could have reached' will be a major barrier to any appeal being found given that timetabling decisions are rarely black and white. However, we note that this consultation is being conducted on the basis of the Bill as written.
30. In relation to para 2.40 we note that the capacity duty is only relevant to appeals on capacity allocation and not other appeals that may be lodged. We further note that there could be other types of appeal (para 1.9 refers) and the criteria will need to be considered to ensure they work for any type of appeal that is ultimately in scope.

Question about the relationship between contractual disputes and appeals

31. We note the Bill provisions relating to GBR's own disputes process. We have not yet had any significant discussions on this, but our strong preference is for this to be an independent process as today's Access Disputes Resolution process provides. We are concerned that GBR does not seek to act as 'judge and jury' in considering disputes.

32. As outlined above it is essential that the timescales for any ORR appeal take into account the need to first go via the GBR process noting the requirement for the appeal to be launched within three months of the decision.

Question about the relationship between appeals and any internal GBR escalation process

33. We agree that GBR should have an internal process for disputes not covered by the ADR rules, but it will be essential that the process is clearly defined, as independent as possible within GBR and working to defined timescales. The process must not be allowed to frustrate applicants from appealing to the ORR, and as such we believe the right of appeal to ORR should not be contingent on the GBR process being complete. As outlined previously, it is vital that applicants can meet the three month requirement in bringing an appeal to ORR.

Questions on interested parties

34. We agree that interested parties should be able to make representations during an appeal. As the appeals process is required in law to follow judicial review principles, the relevant definition ought to apply (para 2.58).
35. In addition to the categories of parties listed in para 2.59 we would add freight customers and, in some circumstances potential freight customers (for example where a decision impacts on a new facility in planning or construction). The definition also needs to be tested against all the potential types of appeal, as the current definition is particularly relevant to appeals on capacity allocation, not for example on the AUP which could have a wider set of interested parties.
36. Representations from interested parties need to be submitted early in the process to give time for full consideration, but noting that interested parties will need time to prepare their submissions.

Question on transparency and disclosure

37. We agree with these proposals noting the potential for commercially sensitive information to be redacted.

RFG Position Paper on ORR Appeals Function and Railways Bill 2025

January 2026

Introduction

The rail freight sector is a thriving and growing part of UK railways, delivering over £2.5bn in economic value for the country each year. At the heart of rail freight is a network of businesses from freight train operators to ports, terminals, suppliers and end customers investing to support sustainable rail based supply chains. From new locomotives, new and upgraded wagons, terminals, interchanges, handling equipment and changing supply chains this private sector investment is essential if rail freight is to deliver its potential for the UK economy through the growth which Government wishes to see.

We know that our members want to keep investing in UK rail freight, but these are challenging times, with global volatility and a suppressed national economy making it harder to justify projects. At the same time, plans for rail reform and the establishment of Great British Railways (GBR) in law are creating uncertainty across the railways, and particularly for those businesses who will not be an integrated part of GBR.

Why Does Freight Need an Independent Appeals Function?

RFG and its members are not opposed to rail reform; indeed, we have welcomed the progress being made towards GBR and the publication of the Railways Bill 2025. We strongly support the provisions in the Bill which support freight, including the statutory duty to promote freight and the requirement to publish a target for rail freight growth. However, the Bill also makes sweeping changes to the framework for allocating track capacity and charges, removing the current role of the Office of Rail and Road (ORR) and leaving GBR in charge of deciding which trains are able to run on the network, and what they should pay. As GBR will be an integrated monopoly of track and its own trains, there is a real nervousness that, despite the legal framework, GBR could act to prioritise its own trains over those of others, and act to discourage investment and growth.

We know from our discussions across the industry that there is no intention for GBR to damage the prospects for rail freight – quite the opposite in fact. We welcome the

strong support for our sector, the consultation, discussions and meetings. Yet we are also aware that legislation, once passed, can last for many decades through political change, economic cycles and demographic and global changes. Our members need to be assured that the Bill is fit for purpose in any future circumstance, including those where the support for rail freight is diminished, as we have seen at times in the past. This means we need a strong, robust and independent right of appeal for circumstances where a decision or policy of GBR acts to harm rail freight's prospects and deter investment.

What are RFG's concerns over the proposals in the Bill?

The Bill sets out the new proposed framework for how GBR will decide which trains get capacity on the network and what they should pay. This includes GBR being able to extinguish rights for existing services to remove them from the network. The Government maintain that the ORR will continue to have a robust and independent role as the new appeals body for GBR's access and charging decisions. The Bill sets out the legal framework for this new role in Clause 68. However, it is these specific provisions which are causing concerns for our members because

- The bar for submitting an appeal is incredibly high, meaning that appeals cannot be taken on merit of a decision but only on legal compliance by GBR.
- ORR will have to satisfy legal tests to determine an appeal which, due to the broad and discretionary powers within the legislation, are unlikely to be met.
- Ministers are being given powers to add further layers of process impacting the time, cost and rules for bringing, or hearing, an appeal.
- Industry is currently unable to determine how access and use of the network will be granted by GBR because the final policy has not been published alongside the legislation.
- With the Bill providing sweeping new and discretionary powers to GBR and Ministers, and with GBR determining access to its own network the importance of an independent regulator and appeals process becomes of even greater importance if the industry is to continue to invest with certainty and confidence.
- Without changes to the Bill, the ORR will become toothless and unable to challenge GBR's decisions. As the rail regulator today, the ORR has a track record of using its powers to grow the railway whereas the Bill will rip up this role and enable GBR to mark its own homework and stymie economic growth

Legal Advice

Legal advice commissioned by the RFG describes an appeals process for which the barriers to challenge will be so high that it will be limited to the point of being rarely usable, because

- The requirement for an appeal case to meet judicial review thresholds (clause 68(1)), and equivalents in Scotland, makes for a very high bar to satisfy. By further consideration of the new broad and discretionary powers granted to GBR and Ministers, the bar to proving that GBR has acted in a way which breaches the principles of public decision making (illegality, irrationally, not following due process or not honouring legitimate expectations) will become high and difficult to envisage.
- The determining issue will no longer be whether the decision reached by GBR was correct but whether it has been lawfully reached.
- Any remit for the ORR to utilise competition law will be negated by Clause 63 which grants GBR a duty to ensure current and future capacity for its own operators regardless of its duties (Clause 18(4))
- The usual time to bring a claim under Judicial Review procedures is three months from the decision. Although this may be reasonable for specific appeals for example against a capacity decision, it will act to limit appeals against published GBR policies where our members will need to decide whether a policy could cause harm at a future date in order to meet the deadline. It is also unclear how this timescale will work alongside any internal GBR disputes processes which we expect to be created.
- In addition, due to the additional powers at Clause 68(6), the Secretary of State may give directions which could reduce time limits on the ORR, use fees to price out the challenge and place further barriers on an appeal being brought or heard. We understand there is no intention to use the clause for GBR inception, but it remains an extant risk for future.
- Even if the barriers described above are overcome, the ORR is only able to substitute its own decision over that made by GBR if the decision relates to timetabling and, as described in Clause 68(4)(b), there had been an error of law and, without the error, there could only have been only one decision which Great British Railways could have reached. To take just the last barrier, considering the number of timetable options across the network, it is difficult to envisage only one timetabling determination.

- With regard to GBR's determinations around access and use, charging and performance, ORR cannot substitute a decision and only remit a decision for GBR to reconsider with some directions. We are yet to be assured that the framework will be sufficiently strong for GBR to act on this reconsideration, given that ORR has no further recourse if they do not.

Taken together we have serious concerns that the appeals function will be essentially unusable for rail freight operators and customers, failing to give the necessary comfort to support investment. We compare this to the new Passenger Watchdog which will provide a strong and forceful route to appeals for passengers, based on the merits of the case not legal compliance and with a strong enforcement role through ORR.

How can it be improved?

To provide fairness, accountability and a mechanism to grow the railways, RFG is calling on Parliamentarians to make the following amendments to the Bill:

- Remove the requirement that appeals may only be made under Judicial Review principles (Clause 68(1)). Instead allow the ORR to determine all appeals contemplated in the Bill on the merits.
- Remove or amend the barriers to the ORR substituting a decision, (the need to demonstrate an error of law and that only one decision could be reached. (Clause 68 (4)(b))
- Remove the broad regulations allowing Ministers to erode time limits/increase the fees/add further layers, to the appeal process or require Parliament to scrutinise. (Clause 68(6))

Developing ORR's process for GBR appeals

Transport for Greater Manchester (TfGM) response to industry consultation

February 2026

1 **Executive summary**

Transport for Greater Manchester (TfGM) welcomes the opportunity to respond to ORR's discussion document on developing its process for GBR appeals. Overall, TfGM supports the establishment of a clear, transparent and independent appeals process that provides confidence to industry and passengers alike. TfGM broadly supports ORR's proposed design principles and approach, particularly the emphasis on transparency, pace and proportionality. However, TfGM considers that there are substantive issues that require addressing.

The appeals framework must adequately recognise the role of Mayoral Strategic Authorities (MSAs), ensuring they are treated as having sufficient interest where GBR decisions affect the specification, delivery and performance of passenger services, this is an essential safeguard for MSAs with devolved rail accountabilities and GBR acting as their sole supplier.

TfGM also wishes to highlight the importance of strong safeguards against conflicts of interest, given GBR's dual role as infrastructure decision-maker and operator, and in this context ORR's independence is important, especially so where an MSA may operate its services over GBR infrastructure. MSAs need to know that GBR will be balanced and fair in allocating access and that they can hold GBR to account if GBR fails in its access duties.

In addition, TfGM believes that if GBR repeatedly fails to resolve issues remitted by ORR, the regulator should be able to intervene.

Finally, TfGM notes that scope of the proposed appeals process excludes MSAs being able to appeal against direction given by the Secretary of State to GBR, or agreements between the Secretary of State and GBR, which may conflict with an MSA's ability to deliver its statutory obligations.

TfGM would welcome continued engagement with ORR as the appeals policy is developed to ensure that the needs of devolved authorities in England, as outlined in our response, are met.

2 **About Transport for Greater Manchester (TfGM)**

We are the local government body responsible for the provision of public transport services in Greater Manchester. As part of this role, we're accountable to the Greater Manchester Combined Authority (GMCA), together with the Greater Manchester Mayor and Bee Network Committee.

We've developed the Bee Network, which is our vision for a world class, joined up transport system under local control, and has already been rolled out across local bus, Metrolink (light-rail), active travel, and highways. Although we do not presently have direct control over rail services, we are developing our proposition to bring local rail into this system, with integrated tap-&-go ticketing, improved station wayfinding and accessibility, new railway stations, more frequent and reliable rail services, and improved information provision.

We have set out this response with consideration for our expanded influence over rail services both inside and outside of Greater Manchester as we move forward with our Bee Network Rail proposals, which include establishing a Local Commissioning Mayoral Partnership with government and GBR through which we plan to deliver Bee Network Rail by 2030 and our wider vision of a world class all mode Bee Network by 2050.

3 TfGM's Response

TfGM's response is aligned to ORR question numbering to support ease of reference and review.

1.31 Questions on design principles

1.31 Do you have any comments on the proposed design principles?

TfGM response:

- **Evidence-based and independent:** We agree this is correct.
- **Proportionality:** We agree that this is correct.
- **Pace and efficiency:** In addition to pace and efficiency, ORR should widen this principle's definition to encompass functionality – ensuring the form of each element of the appeals process is designed to deliver a decision as quickly and efficiently as possible.
- **Transparency:** To strengthen transparency, ORR should include redaction grounds within the scope of its appeals policy, setting out in advance the grounds for redaction.
- **Consistency and predictability:** We agree this is correct.

1.31 Are there other design principles that we should consider when developing our appeals policy?

TfGM response: TfGM believes the design principles are sufficient.

2.3 Questions on combining appeals

2.3 Do you think it is helpful for ORR to retain an option to combine appeals when we receive multiple appeals on the same subject?

TfGM response: Yes. Combining appeals may help reduce the number of appeals and strengthen cases where multiple applicants have similar issues, provided that each appellant's ownership of issues is clearly referenced and any differences between parties' requirements are clearly articulated.

2.3 Are there particular circumstances or types of appeal where combining appeals would be particularly useful, or conversely where it would be unhelpful?

TfGM response: Combining appeals may be helpful where there is clear alignment between appellants' grievances. However, the effect of combining appeals should not be abstractive and must maintain clarity and purpose for all appellants.

2.13 Questions on who can appeal

2.13 Do you agree with our initial consideration that persons with a commercial or public interest in securing capacity and other infrastructure managers are likely to have sufficient interest to appeal?

TfGM response: Yes, provided that a Mayoral Strategic Authority (MSA) is automatically considered to have sufficient interest where matters directly or indirectly impact the specification and provision of services affecting MSA passengers, including but not limited to developing and agreeing the AUP, Network Code (where we have historically been a consultee), access charging decisions, and timetabling decisions.

The scope of sufficient interest should not be geographically restricted, but should be flexible enough to allow MSAs to challenge decisions that would impact its economic or passenger interests.

2.13 Do you agree that our policy should reflect the expectation that passengers and passenger groups will use the processes established by the passenger watchdog and not the appeals process?

TfGM response: At a national level having the passenger watchdog set the appeals process is appropriate. However, in the context of local mayoral commissioning partnerships, MSAs must be able to hold GBR to account for passenger performance, either appealing through the passenger watchdog or the ORR depending on the approach yet to be defined.

2.21 Questions on appeal windows

2.21 Do you have any comments on these suggested windows for appeals?

TfGM response: No.

2.21 We have proposed that the appeal window starts after the industry disputes (or internal GBR) process has been concluded. Do you agree with this approach?

TfGM response: Yes.

2.21 We have not suggested an appeal window in cases where GBR has not reached a decision or not published information. Do you think it would be more effective to include an appeal window?

TfGM response: Appeals should be allowed where GBR fails to meet its own deadlines set out in the AUP, and in other access and charging policies that impact on MSA accountability, including where GBR does not adequately publish information explaining

its reasons for rejecting access or timetabling requirements, or modifying charging decisions. This is critical for reasons of transparency and GBR accountability.

2.32 Questions on process and timescales

2.32 Does the time allowed for representations strike an appropriate balance between robust decision making and maintaining a fast-paced process?

TfGM response: GM would prefer the difference in timescales for appeal responses, 5 days for applicants, and 10 days for GBR, to be removed and both parties having an equal time to respond. It is important the process is seen to fair to all parties.

2.32 Do you have any comments on the proposal to allow ORR an indicative five working days to determine whether to hear the appeal and a further 25 working days to determine it?

TfGM response: No comments.

2.32 Are there any improvements that could be made to the standard process proposed?

TfGM response: Where an appeal is lodged due to GBR failing to supply relevant information, or where GBR provides new information not previously disclosed, applicants should be given sufficient time proportionate to the complexity of the new assessment required.

2.32 Do you have any comments on ORR's proposal to use a condensed process rather than a two-staged process?

TfGM response: Paragraph 2.30 of the discussion document suggests the condensed process is two-stage. Assuming this interpretation, we prefer the Table 2 seven-stage process for the greater clarity it provides.

2.35 Questions on including a stage in which ORR decides whether to hear an appeal

2.35 How should ORR approach resolving doubts about an applicant's eligibility to appeal?

TfGM response: ORR should retain an independent role and avoid over-reliance on GBR due to potential conflicts of interest. Maintaining independence at both eligibility and detailed stages would bolster confidence in the appeals process.

2.35 Should ORR consider the potential to dismiss appeals at an early stage if they are found to be without merit or vexatious?

TfGM response: Yes. Dismissal of vexatious or meritless appeals is supported. However, it is essential that clear objective criteria are established that govern whether an appeal should be dismissed as vexatious, or allowed.

2.43 Question on ORR decision making

2.43 Are there particular factors ORR should consider when deciding on remedies following an appeal alongside the legal requirements established in the Bill?

TfGM response: The current test for substituting ORR's own decision is overly restrictive. As proposed, ORR can substitute a timetabling decision, but only where there has been a failing of law, and where only one decision could have been reached. We feel that the ORR should be able to additionally substitute a decision if and when GBR repeatedly fails to resolve issues remitted by ORR, including where GBR has repeatedly not correctly applied its own procedures, and including in relation to AUP, infrastructure and charging decisions.

2.67 Interested parties – representations

2.67 Do you agree with our proposals to allow interested parties to make representations as part of the appeals process?

TfGM response:

Currently section 2.59 states: *"We are minded to define interested parties as organisations which experience a demonstrable harm or benefit as a result of the GBR decision being appealed. We consider it likely that these organisations will generally be eligible to appeal GBR decisions (e.g. train operators, infrastructure managers, facility owners, devolved authorities)"*.

TfGM supports this approach provided that MSAs are automatically recognised as devolved authorities and interested parties for decisions that may harm or benefit the delivery of their statutory transport obligations, this is highly important in cases where MSAs will operate part of their networks over GBR infrastructure, in our case Metrolink light rail services, and where MSAs will commission services for GBR to deliver.

2.67 Interested parties – definition

2.67 Do you have any comments on ORR's draft definition of interested parties?

TfGM response: TfGM considers that the definition should include Mayoral Strategic Authorities and the scope of an MSA's interest should cover all decisions pertaining directly, or indirectly, that impact on delivery of an MSA's statutory obligations including use of infrastructure, access, access charging, and timetabling, and wider passenger outcomes.

2.67 Interested parties – identification

2.67 Do you agree that applicants, GBR, ORR and interested parties themselves should be able to identify interested parties who are able to make representations?

TfGM response: TfGM agrees, subject to ORR having discretion to ensure the process remains proportionate and manageable.

2.67 Interested parties – acceptance of contributions

2.67 Do you agree that ORR should reserve the right to decide whether to accept interested parties' contributions as part of an appeal?

TfGM response: Yes. ORR should retain this discretion to balance inclusivity with efficiency and clarity of decision-making.

2.67 Interested parties – timing

2.67 At what stage of the process should interested parties make their contributions, and how much time should they be given?

TfGM response: Interested parties should be invited to contribute once ORR has confirmed that an appeal is in scope, with clear and proportionate time limits. Time limits should be at ORR's discretion

2.73 Transparency and disclosure

2.73 Do you have any comments on ORR's proposed approach to delivering transparency?

TfGM response: TfGM supports ORR's commitment to transparency. ORR should clearly set out in advance the grounds on which information may be redacted, to ensure consistency and confidence in the appeals process.

4 Any other issues

TfGM response:

TfGM wishes to highlight the importance of strong safeguards against conflicts of interest, given GBR's dual role as infrastructure decision-maker and operator, and in this context ORR's independence is important. Where a GBR conflict of interest exists, or where GBR repeatedly fails to resolve issues remitted by ORR, the regulator should be able to intervene; though it is not for us to say how such interventions should be implemented.

TfGM notes that there is no provision within the proposed process for MSAs to be able to appeal against direction given by the Secretary of State to GBR, or agreements between the Secretary of State and GBR, that may conflict with an MSAs ability to deliver its statutory obligations. This may relate to access, infrastructure or charging decisions covered within the scope of the ORR's appeals proposals, but also to matters outside of the current scope: e.g. GBR funding decisions, MSA requests for further

devolution, or to GBR's performance in delivering outputs specified by an MSA. This requirement for a widening of the scope of the appeals process is particularly pertinent where MSAs operate services over GBR infrastructure and where a SoS-GBR decision conflicts with the successful operation of those services.

TfGM wishes to work with the Secretary of State, GBR and the ORR to ensure that the needs of devolved local governments in England are met and we would welcome continued engagement with ORR as the appeals policy is developed.

5 **Publishing your response**

TfGM is content for this response to be published by ORR as part of the consultation process.

3. Organisation

Transport for London

4. Email Address *

[REDACTED]

5. How would you describe the organisation you work for or represent?

- ☐ Aspirant open access operator
- ☐ Consultancy
- ☐ Government
- ☐ Infrastructure manager
- ☐ Open access operator
- ☐ Owning group
- ☐ Publicly funded (franchised/PSC) train operator
- ☐ Rail industry group
- ☐ None of these - I am a private individual
- ☒ Integrated Transport Authority

Design principles

Our proposed design principles are:

- **Evidence based and independent:** we will base our decisions regarding any appeals on our independent assessment of the facts of the case and on the basis set out in legislation.
- **Proportionality:** we will design the appeals process to minimise burdens and costs for GBR and applicants.
- **Pace and efficiency:** we will resolve appeals in a timely manner while ensuring fairness and accuracy. We will monitor and report on our own performance as an appeals body to ensure we deliver operational efficiency and good value for money.
- **Transparency:** we plan to publish the full content of appeals, GBR's response to them, and our conduct of the process - except where there are clear reasons to redact confidential details. We consider it important to publish the reasoning for our decisions to provide clarity for applicants.
- **Consistency and predictability:** we will develop, consult upon, publish (and where necessary review) policy on our appeals process and decision criteria. We will adhere to this policy to it to ensure consistency and predictability.

6. Do you have any comments on the proposed design principles?

No comments

7. Are there other design principles that we should consider when developing our appeals process?

No

Combining appeals

We think it could be useful to include an option to combine our consideration if we receive multiple appeals of the same GBR decision.

8. Do you think it is helpful for ORR to retain an option to combine appeals when we receive multiple appeals on the same subject?

Yes. Such an approach is sensible to ensure that the views of all parties with a related interest in the subject matter are considered as part of the appeals process.

9. Are there particular circumstances or types of appeal that you think combining appeals would be particularly useful, or conversely where it would be unhelpful?

Combining appeals is useful where there is clear thematic or contractual interfaces and dependencies, ideally within a specific policy area. This enables consistency of understanding and decision making and could ensure that views from a variety of appellants and affected stakeholders can be heard within a shared context. It would naturally make the most efficient use of industry expertise and expedite resolution.

Combination of appeals across distinct areas of GBR policy e.g. access and usage, charging, etc. should be avoided to ensure they have a clear focus and to avoid excessive complexity which could hamper the decision-making process.

ORR should also consider how it will approach disputes featuring GBR and other Infrastructure Manager networks and where affected services work across network boundaries.

ORR may wish to clarify how it will handle situations where combined appeals raise both shared issues and distinct operator specific considerations, to avoid potential procedural unfairness.

Who can appeal

The bill says that “a person aggrieved” by specified decisions may appeal to the ORR. The Bill also says that ORR “must apply the same principles as would be applied by the High Court on an application for judicial review, or in Scotland, on an application to the supervisory jurisdiction of the Court of Session.” We think that the reference to judicial review principles further defines “person aggrieved” because, where a person applies to the Court of Session or High Court for judicial review, they must have “sufficient interest” in the decision to bring a judicial review.

We will need to determine whether a person has “sufficient interest” as part of our appeals process. We plan to develop a policy on the definition of “a person aggrieved” to support this. This will take account of the precedents of judicial review processes in England and Wales and Scotland. We think it’s likely that the people or organisations that would have “sufficient interest” could be very similar to the definition of “applicant” in the AMRs, which in summary refers to those with a public or commercial interest in securing capacity.

We think it likely that other Infrastructure Managers would also have “sufficient interest” to be able to appeal as they are directly affected by services crossing between GBR infrastructure and their own.

The Bill has a narrower definition of those who can make appeals on the preparation or amendment of the working timetable. In this case it is only those who have made the application for a train movement to be included in the working timetable who may appeal under clause 61 or clause 62.

We do not currently expect that individual passengers would be able to make appeals. Government intends to create a new Passenger Watchdog to champion passenger’s interests, and this may be a more appropriate avenue through which passengers can raise their concerns.

10. Do you agree with our initial consideration that persons with a commercial or public interest in securing capacity and other Infrastructure Managers are likely to have “sufficient interest” to appeal?

Yes, that definition is appropriate.

11. Do you agree that our policy should reflect the expectation that passengers and passenger groups will use the processes established by the Passenger Watchdog and not the appeals process?

Yes that approach is appropriate, to avoid appeals that are either vexatious or based on highly specific concerns.

It may be helpful for ORR to clarify how evidence from the passenger watchdog will be weighed where it is directly relevant to operator behaviour or network capacity impacts.

Appeal windows

In the interests of supporting clarity within industry decision making (for both GBR and third parties), we intend to establish deadlines by which parties should make appeals.

- Failure of GBR to reach a decision within the timeframes established within its policies - **no deadline**
- Provisions of the Access and use policy (clause 59(6)) - **40 working days**
- Provisions of the Infrastructure capacity plan (clause 60(6)) - **30 working days**
- Decision not to add an applied for train movement to the working timetable or any conditions subject to which the movement is added to the working timetable (clause 61(5)) (subject to the industry disputes process) - **5 working days**
- Decision on application for including in the working timetable (clause 62(7)) (subject to the industry disputes process) - **20 working days**
- Provisions contained within the Charging scheme (clause 64(8)) - **30 working days**
- Provisions contained with the Performance scheme (clause 65(7)) - **30 working days**
- Decisions on the access or the use of GBR infrastructure for the operation of trains (clause 67(1)a) - **20 working days**
- Decisions made under the charging scheme (clause 67(1)b) - **20 working days**
- Decisions made under the performance scheme (clause 67(1)b) - **20 working days**
- Publication of information - **no deadline**
- Appeal of outcome of disputes process - **5 working days**
- Any other type of decisions - **20 working days**

Where there is an applicable industry disputes process, we expect applicants to attempt to resolve their disputes through this process initially. The windows below would therefore begin after a final decision has been made by GBR, including the conclusion of any industry disputes process that may be in place.

12. Do you have any comments on these suggested windows for appeals?

It is certainly useful to establish windows for appeals as this facilitates structured industry engagement in the process. Where detailed GBR processes are not yet available, ORR may wish to signal that the proposed timelines will be subject to review once the AUP and Network Code drafting is finalised.

13. We have proposed that the appeal window starts after the industry disputes (or internal GBR) process has been concluded, and GBR has made its decision. This reflects the process today in which the disputes process is accommodated within timetable production. Do you agree with this approach?

We support this approach. It is important that any industry or internal GBR appeals process is completed before an appeal is lodged to give the best opportunity for matters to be resolved prior to formal appeal.

However, it is critical that the aforementioned industry disputes processes are structured in a way to give fair hearing to GBR and non-GBR participants to enable these to produce satisfactory decisions.

14. We have not suggested an appeal window in cases where GBR has not reached a decision or not published information – do you think it would be more effective to include an appeals window?

In general, we support this position as an appeal should only occur once GBR's decision is known and a justification has been provided, otherwise the grounds for appeal would be unclear.

However, an appeal window where GBR has not reached a decision or has not published information could be appropriate where the lack of either, may have a prejudicial impact on a stakeholder's aspirations, investments, operations etc, particularly where this might refer to non-GBR participants.

Process and timescales

ORR plans to include an overview of a standard process for appeals within our policy to set clear expectations for what the stages in an appeal are and we have proposed indicative timescales for the process here to inform discussion with industry.

We anticipate that there may be cases where the outline process or timescales need to be adjusted according to the nature of the appeal.

Proposed standard process

- Applicant lodges appeal
- ORR considers whether the appeal is in scope of the appeals process - 5 working days
- GBR responds to the appeal - 10 working days
- Applicant response to GBR representation - 5 working days
- ORR considers merits of the case and if required, what the remedy should be - 25 working days
- ORR shares conclusion on the merits of the case and the remedy with all parties - 2 working days
- ORR publishes decision

15. Does the time allowed for representations (ten working days for GBR and five working days for the applicant) in the proposed standard process strike an appropriate balance between robust and informed decision making and maintaining a fast-paced process?

The same timescale should be offered to GBR and the applicant to ensure the fairness of the process. Alternatively, if asymmetric timelines are retained, ORR should explain the reasoning.

Either party should be able to request a longer-period, provided that their request is reasonable, noting potential impact to the timetable development process.

16. Do you have any comments on the proposal to indicatively allow ORR five working days to determine whether to hear the appeal and a further 25 working days to determine it?

Those timescales appear reasonable.

ORR could undertake an initial assessment of each appeal, including its complexity, previous precedent and when a decision is needed by and where possible, a shorter period of time could be agreed.

17. Are there any improvements that could be made to the standard process proposed?

It is difficult to offer any comment on this without more detailed information on the form and content of the GBR disputes process and any arrangements involving either the Access Disputes Committee (or its successor body) which will precede the ORR appeal stage under discussion here.

Consideration should be given to whether there should be a process allowing parties to apply for extensions of time in appropriate circumstances.

18. Do you have any comments on ORR's proposal to use a condensed process in which we consider the merits of the case and any proposed directions at the same time, rather than a two staged process?

TfL's preference would be for a two staged process to avoid nugatory activity if the ORR declines to accept the appeal. A two staged process may be helpful to allow for input on what directions should be made with the knowledge of the substantive outcome.

The ORR should be required to explain why an appeal has been rejected with the applicant being given the opportunity to challenge any such decision.

A condensed process might be appropriate under certain circumstances but such circumstances and rationale for a condensed process should be clearly defined. Where a condensed process is used, ORR should ensure clear guardrails are in place to avoid parties being required to commit resource before scope decisions are finalised.

Including a stage in which ORR decides whether to hear an appeal

19. How should ORR approach resolving doubts about an applicant's eligibility to appeal? For example, should ORR consult GBR or ask the applicant for further evidence?

The ORR should be clear on applicant eligibility criteria and consult with the applicant to ascertain its eligibility to appeal where there is uncertainty. GBR should not be consulted on the eligibility of an applicant in an appeal against a GBR decision.

The applicant should have the opportunity to challenge a decision not to hear an appeal.

Emphasis should remain on encouraging Parties to find non-legal routes to dispute resolution.

ORR may also wish to state how it will manage situations where eligibility is contested between multiple applicants or where appeals are inter-related.

20. Should ORR consider the potential to dismiss appeals at an early stage if they are found to be without merit or vexatious?

Yes, but only after a balanced consideration of the evidence presented by GBR and the applicant in relation to the eligibility of the appeal.

ORR should consider publishing anonymised data on early dismissals to support transparency and predictability.

ORR decision making

21. Are there particular factors you think ORR should consider when deciding on remedies following an appeal alongside the legal requirements established in the Bill?

The remedies should address the points raised by the applicant if a decision is made in their favour, with GBR being required to alter its prior decision to meet the requirements of the applicant. The impact of the decision on the applicant's business should also be considered when determining the remedy e.g. the proportion of their revenue that is affected.

ORR should take into account any impact that their decision could have on adjacent non-GBR infrastructure managers remaining under the existing Access Management regulations. Equally, consideration should be given to Operators that operate on more than one infrastructure manager should also be considered.

The ORR should also be cognisant of the wider public interest, wider social and economic benefits, and the impact on taxpayer and third party/ private sector costs.

This should include any private investment decisions, for example the purchase of new rolling stock or investment in a new freight terminal, which need long-term security to justify the investment.

ORR may additionally wish to consider operational deliverability and transition timelines when specifying remedies, particularly where timetable, infrastructure or charging changes may require phased implementation.

The relationship between contractual disputes and appeals

We have assumed that a contractual disputes process, like that operated today by the Access Disputes Committee, will continue to exist and that operators will use this process to deal with disputes arising from the new GBR Code.

22. Do you think that it remains appropriate to have an independently administered contractual disputes process for the provisions of the GBR Code?

Yes, we agree that this is appropriate and necessary to give the industry the opportunity to resolve disputes internally prior to recourse to a formal dispute process. This will also help to ensure that the volume of appeals is manageable.

ORR may also want to clarify escalation thresholds so that parties understand clearly when a dispute becomes appropriate for the appeals route rather than contractual resolution.

A fully independent party, such as the Access Disputes Committee (ADC), undertaking this activity should be funded by the industry (in a similar way to the current industry arrangements) and have the necessary authority to direct GBR, other infrastructure managers and non-GBR operators as appropriate.

23. Do you have any comments about how we, together with GBR and industry, should approach the interplay between contractual disputes and other types of appeal?

There may be occasions when the ORR could facilitate cross-industry discussions. This could have considerable utility, for example, in circumstances where there is no consensus between infrastructure managers, GBR and non-GBR operators (and potentially other interested parties, such as funders).

The relationship between appeals and any internal GBR escalation processes

Network Rail have also suggested in their discussion document [LINK] that the AUP could include a mechanism for industry to challenge GBR decisions prior to escalating to a formal appeal to ORR.

As explained above in reference to the contractual disputes process, we expect industry parties to work together to resolve disagreements, and we would not expect to hear any appeal until other available avenues have been exhausted. This will require any pre-appeal GBR processes to be fast, focused and time bound.

24. Do you have any comments about how ORR should approach any pre-appeals processes that GBR may develop?

ORR should scrutinise these to ensure that they treat applicants in a fair manner. GBR processes needs to be transparent, consistent and applied fairly to both GBR and non-GBR train operators. Such processes should be objective and evidence-based.

Interested parties

We are minded to define interested parties as organisations which experience a demonstrable harm or benefit as a result of the GBR decision being appealed.

25. Do you agree with our proposals to allow interested parties to make representations as part of the appeals process?

Yes, we agree that this is appropriate as other parties will often have a significant economic and financial stake in the decisions made where they own and / or fund the operators concerned.

26. Do you have any comments on ORR's draft definition of interested parties?

The definition is appropriate. It needs to encompass all those parties who would experience material effects arising from the decision made. ORR may wish to clarify whether funders or local/combined authorities with statutory transport responsibilities are included.

27. Do you agree that applicants, GBR and ORR should be able to identify interested parties who are able to make representations?

Yes that is appropriate, provided that the concept of interested parties is not extended to passengers or passenger groups to reduce the risk of vexatious appeals or appeals based on highly specific concerns. Such individuals or groups should be encouraged to participate in relevant consultations.

28. Do you agree that ORR should determine whether to accept interested parties? Do you agree that ORR should reserve the right to decide whether to accept interested parties' contributions as part of an appeal?

Once an interested party has been identified their contribution to the appeal process should always be accepted and reviewed by the ORR as part of the decision-making process in relation to any appeal.

ORR may also wish to consider the option to limit the scope of representations to issues materially related to the appeal to avoid undue process expansion.

The ORR should establish criteria to inform whether an interested party should be represented.

29. At what stage of the process should interested parties make their contributions, and how much time should they be given?

The contributions should be made once an appeal has been accepted as valid. Interested parties should have 20 working days to make their submission.

Transparency and disclosure

We propose to publish documents at the end of the appeal, including:

- Appeal applications and the associated evidence
- ORR's decision on whether the appeal is within scope of the appeals process
- Other submissions made as part of the appeal
- ORR's decisions and rationale on the merits of the case and any direction

We intend to ask that applicants, GBR and any interested parties provide an accessible redacted version of any document submitted that contains personal or commercially sensitive information, and to justify why information is confidential.

30. Do you have any comments on ORR's proposed approach to delivering transparency?

These seem appropriate on the basis that ORR need to demonstrate an appropriate level of transparency and consistency. In exceptional circumstances, where information is withheld (i.e. commercially sensitive information), a rationale should be given.

ORR may also wish to clarify how it will handle situations where parties disagree on redaction levels, and whether ORR will publish a summary where redaction significantly limits disclosure.

Any other issues

31. Please use this space if you wish to make any comments on any other matters

No answer provided.

Publishing your response

We plan to publish all responses to this consultation on our website. Should you wish for any information that you provide to be treated as confidential, please be aware that this may be subject to publication, or release to other parties or to disclosure, in accordance with the access to information regimes. These regimes are primarily the Freedom of Information Act 2000 (FOIA), the UK General Data Protection Regulation (UK GDPR) the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004.

Under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, if you are seeking confidentiality for information you are providing, please explain why. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on ORR.

Any personal data you provide to us will be used for the purposes of this consultation and will be handled in accordance with our privacy notice, which sets out how we comply with the UK General Data Protection Regulation and Data Protection Act 2018.

Privacy

In responding to this consultation you consent to us:

- handling your personal data for the purposes of this consultation; and
- publishing your response on our website (unless you have indicated to us that you wish for your response to be treated as confidential as set out above.)

Your consent to either of the above can be withdrawn at any time. Further information about how we handle your personal data and your rights is set out in our privacy notice.

When we are carrying out the consultation it will be necessary for ORR to obtain your personal data. When you submit your response to the consultation we may collect the following information:

- name
- job title
- organisation
- email address
- consultation response answers

Our privacy notice is available here: <https://www.orr.gov.uk/privacy-notice>

Use of your personal data

The information you provide during the consultation response will only be used for the purpose of creating and publishing a response to the consultation. We will publish your consultation response answers, subject to your approval, withholding or redacting commercially sensitive information. We will not publish your personal data.

ORR staff may have access to your information for the duration of the consultation process. This will be no longer than a year's duration and all information submitted in response to consultation which hasn't been published on our website, will be deleted. You can read our privacy notice on our website: [orr.gov.uk/privacy-notice](https://www.orr.gov.uk/privacy-notice).

32. ORR would like your permission to publish your consultation response. We do not publish the names of individuals with consultation responses. Please indicate your publishing preference: *

- ☒ Publish response with the name of your organisation
- ☐ Publish anonymous response

Date:
2 March 2026

Office of Rail and Road (ORR)
25 Cabot Square
London
E14 4QZ
esther.sumner@orr.gov.uk

Dear [REDACTED]

Developing ORR's process for GBR Appeals – Discussion Document, December 2025

I am writing in respect of the above document, and some suggestions on future engagement between the ORR and Transport Scotland (TS) on this issue.

TS welcomes the consideration that the ORR has given to this important issue and its decision to place this material in the public domain. We are sure this will be of benefit to stakeholders; it is also of value to TS acting on behalf of Scottish Ministers as funders.

The purpose of the document is set out clearly, with its three elements described as follows:

share our understanding of the proposal to establish ORR as an appeals body for Great British Railways' (GBR) decisions on capacity allocation, access and charging;

provide industry with information about how ORR intends to approach developing a GBR appeals process; and

provide an opportunity for industry to provide comments on our emerging thinking, which we will use to inform our draft appeals policy. (page 3)

We would not typically comment in detail on a discussion document of this type. However, we can confirm that the information presented, the initial consideration of how the process would operate and other explanatory information all seem reasonable from our perspective, and we have no objection to any material included within it. We note, however, that it reflects the ORR's interpretation of the legislation and beliefs on how the process should be conducted. It will be important for the ORR's decision making framework for appeals to take account of the strategies of the Scottish Ministers.

Once the Bill is passed, Scottish Ministers and the Scottish Government will, of course, comply with the duties and obligations within the legislation.

There is one practical point to note regarding the ORR's intent not to consult on its proposed appeals policy until after Royal Assent. TS understands that the Dept for Transport will expect to move quickly to establish GBR once the Bill receives Royal Assent. This will mean timescales will be tight for conducting the proposed consultation, considering responses, undertaking any necessary associated follow-up actions, finalising the appeals process itself and publishing the arrangements. As indicated in the document, there are implications for Scots' law (and English

and Welsh law (2.77-2.79)) and we would suggest that the ORR will also need to allocate time to allow Scottish Ministers and Scottish Government officials to consider those. Where consideration can take place prior to Royal Assent, TS will seek to support that to reduce subsequent timescales.

Next Steps

As you will know, TS has regular engagement with the ORR, for instance through bi-lateral discussions and through ORR colleagues in the Glasgow Office. It should be possible to use those regular meetings and / or hold topic specific discussions on the Appeals process as the Bill makes its passage through Parliament. This will allow the ORR to brief TS on its ongoing policy development.

If you have any queries or comments on the above, do not hesitate to contact Raymond Convill (07824 383 147) in our Rail Governance Team or me.

Yours sincerely,