



Office of Rail and Road
25 Cabot Sq,
London
E14 4QZ

Freightliner Group Limited

6th Floor the Lewis Building
35 Bull Street
Birmingham
United Kingdom
B4 6EQ

Tel: [REDACTED]

Email: [REDACTED]

Web: www.freightliner.co.uk

By email

9th July 2025

Dear Sirs,

Subject: Respondent's Notice to Network Rail's Appeal under Part M of Network Code – TTP2591

Freightliner writes in response to Network Rail Infrastructure Ltd's (NR's) appeal dated 25 June 2025, regarding the Clarification issued by the Hearing Chair of TTP2591 on 19 June 2025 under Network Code Part D, Condition D5.3.2.

We submit that the appeal is procedurally invalid and, in any event, without merit.

1. Invalidity of Appeal under the Network Code

Network Rail has brought its appeal under Part M of the Network Code, citing the Clarification issued under Condition D5.3.2 as the subject of that appeal.

This raises a fundamental issue of jurisdiction:

- Part M only permits appeal of a Determination issued by the Access Disputes Committee (Condition M4.1.1).
- The Clarification issued on 19 June 2025 was made under D5.3.2, well beyond the 5 day opportunity for this. Agreement for the Clarification to be issued was made by both parties expressly with the intention of avoiding the need for a further dispute hearing. This followed Freightliner's registering of a second Dispute (on the grounds Network Rail had not complied with the Determination of TTP2591).
- Had Network Rail been any doubt over the Determination of TTP2591, they were entitled to request further information under D5.3.2 within 5 days of the Determination, at which point a valid appeal could have been raised. This was not done.
- Network Rail's appeal is therefore made without any express or implied right of appeal under the Network Code.

Furthermore, NR expressly did not appeal the Determination issued on 24 April 2025, despite being fully aware of its content and outcome. As NR acknowledges in paragraph 1.2 of its appeal notice, it did not appeal the Determination within the time permitted under Condition M4.1.1 (10 working days). That Determination is now final and binding.

The Clarification merely reaffirms the Determination's effect: that Network Rail's rejection of Freightliner's TOVR for 4L73 was not upheld and that, as recorded in the Determination itself, the train should be accepted into the Working Timetable.

*Freightliner Group is the name and brand under which the members of Freightliner Group Limited and their respective controlled, managed or affiliated companies provide services to customers.
Freightliner Group Limited is registered in England and Wales with Company Number 05313119*

2. The Clarification Did Not Amend the Determination

Contrary to NR's assertions, the Clarification did not rewrite or amend the Determination. It merely set out what was already understood by the parties and what was reflected in the Determination itself – in particular, at paragraph 85, where Network Rail confirmed that it would accept 4L73 into the timetable. The Chair's Clarification was issued in response to NR's own request, following NR's failure to act on the Determination in a timely manner.

Nothing in the Clarification went beyond the scope of what the TTP had already decided – that NR's rejection of the TOVR could not stand, and that the TOVR should be accommodated in the WTT. The Chair was careful to state that he was not issuing a direction as to the means by which 4L73 should be accepted, only reaffirming what was already the outcome of the Determination.

3. Conclusion

The appeal made by Network Rail is procedurally invalid, as there is no appeal mechanism in the Network Code for guidance issued under Condition D5.3.2, where this is made outside the timescales stipulated by that Condition. Moreover, the appeal seeks to reopen a Determination which is now final and binding.

Freightliner respectfully requests that the ORR reject this appeal in its entirety.

Yours sincerely,



Policy & Government Affairs Director