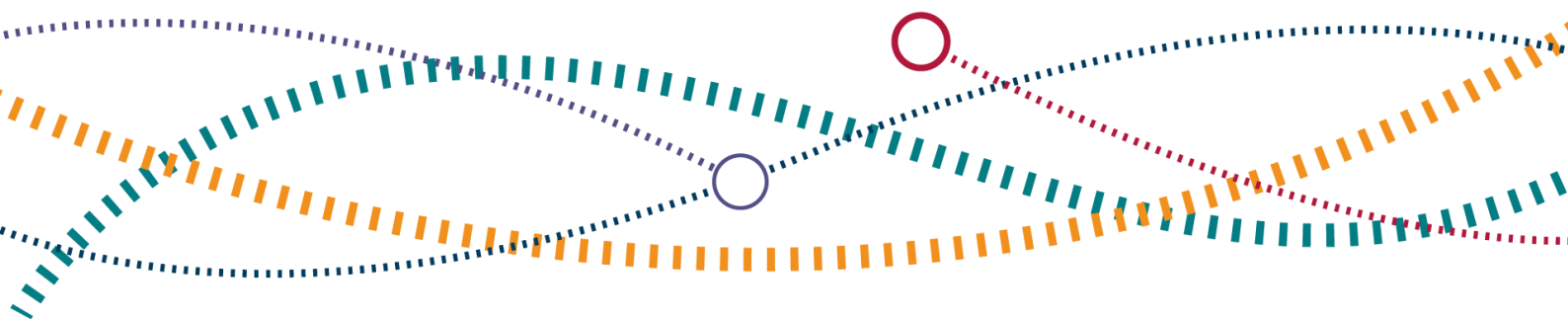




Appeal to ORR on Access Disputes Committee Timetabling Panel Determination TTP2591

ORR Determination

10 October 2025



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1. Executive Summary

- 1.1 This determination considers the appeal made by Network Rail Infrastructure Limited (“Network Rail”)¹ pursuant to Part M of the Network Code² against a clarification provided by the Timetabling Panel of the Access Disputes Committee (the “Panel”) on 19 June 2025³ (the “Clarification”). The Clarification was provided following a determination made by the Panel of 24 April 2025⁴ in respect of dispute reference TTP2591 (the “Determination”). That dispute was raised by Freightliner Group Limited (“Freightliner”) by service of a Notice of Dispute on 21 February 2025 in respect of Network Rail’s decision regarding rejection of Train Operator Variation Requests (“TOVR”) made by Freightliner. That dispute was brought on the basis that Freightliner felt that Network Rail had misinterpreted the Timetable Planning Rules and level-crossing risk assessment requirements in rejecting Freightliner’s proposals.
- 1.2 Following the Determination, Freightliner issued a Notice of Dispute on 11 June 2025⁵, alleging that Network Rail had failed to comply with the Determination. Freightliner stated that “Network Rail has failed to reconsider its Decision to reject the TOVR.”
- 1.3 The Panel subsequently wrote to Network Rail and Freightliner on 12 June 2025⁶ asking if they agreed to request a clarification per Part D5.3.2 of the Network Code, with First Supplementary Directions⁷ also issued by the Panel stating amongst other matters: “The appropriate start point is for NR and FL to set out their understanding of how the Determination of TTP2591 is to be interpreted, in other words, what should be the practical consequences of the Determination.” Following representations from Network Rail and Freightliner in response to the First Supplementary Directions, the Panel issued the Clarification.
- 1.4 Network Rail provided Notice of Appeal on 25 June 2025 against the Clarification on the following grounds:

¹ [TTP2591 Network Rail Infrastructure Limited Notice of Appeal to the Office of Rail and Road](#)

² [Network Code – Part M](#)

³ [Appendix 6 Clarifications dated 19 June 2025](#)

⁴ [Appendix 1 Determination dated 24 April 2025](#)

⁵ [Appendix 2 Notice of dispute dated 11 June 2025](#)

⁶ [Appendix 3 response from Access Disputes Committee secretary dated 12 June 2025](#)

⁷ [Appendix 5 First supplementary directions dated 12 June 2025](#)

- 1.5 Ground 1 – The Panel erred in concluding the parties had reached agreement on the TOVR being added to the timetable and, erred in placing reliance on the purported agreement when clarifying the interpretation and application of paragraph 167 of the Determination. **ORR determines that this ground is not upheld as ORR finds that the outcome was ultimately not dependent on any agreement.**
- 1.6 Ground 2 – The Panel Chair erred in giving clarification:-
- (i) which exceeded the permitted scope of clarification contained in Network Code Part D5.3.2; **ORR determines that this part of the ground is not upheld on the basis that the Clarification was consistent with the powers to provide further guidance on general directions given in the Determination.**
 - (ii) the effect of which is to re-write/amend the original Determination to include an outcome that was not previously determined; **it follows from ORR's determination of appeal ground 2(i) that ORR does not uphold ground 2(ii).**
 - (iii) in circumstances where the obligations in relevant safety legislation fall on NRIL as employer and network operator, not on a tribunal. **ORR determines that this ground is not upheld because given that the Chair's direction did not specify how Network Rail achieves the outcome, the obligation to take appropriate account of relevant safety considerations in deciding how 4L73 should be accommodated remains with Network Rail.**

2. Background

- 2.1 This determination considers the appeal made by Network Rail Infrastructure Limited (“Network Rail”) pursuant to Part M of the Network Code (“Part M”) against a clarification provided by the Timetabling Panel of the Access Disputes Committee (the “Panel”) on 19 June 2025 (the “Clarification”). The Clarification was provided following a determination made by the Panel of 24 April 2025 in respect of dispute reference TTP2591 (the “Determination”).
- 2.2 That dispute was raised by Freightliner Group Limited (“Freightliner”) by service of a Notice of Dispute on 21 February 2025 in respect of Network Rail’s decision regarding rejection of Train Operator Variation Requests (TOVR) made by Freightliner. That dispute was brought on the basis that Freightliner felt Network Rail had misinterpreted the Timetable Planning Rules and level-crossing risk assessment requirements in rejecting Freightliner’s proposals.
- 2.3 The two Train Slots were:
- i. 4L73 Monday only, Doncaster to London Gateway
 - ii. 4L73 MSX Tinsley inter-modal terminal to London Gateway
- 2.4 A Train Operator Variation Request (TOVR) is part of the process through which Network Rail develops the Working Timetable. The rules for timetable change are set out in Part D of the Network Code. Train operators will secure the majority of their Train Slots through the bi-annual process set out in D2. In the period between bi-annual revisions of the Working Timetable, train operators or Network Rail can seek to vary it using the process set out in D3. D3 sets out that train operators can bid for Train Slots after D26 by submitting a TOVR to Network Rail.
- 2.5 Part D5.3.2 states that “Where general directions have been given in accordance with Condition D5.3.1, the relevant appeal body may, on the application of Network Rail brought in accordance with Condition D5.3.3, make such further orders as it shall consider appropriate in order to provide the parties with guidance as to the interpretation and application of such general directions.”
- 2.6 ORR notes that general directions can only be given in D5.3.1(a) and not D5.3.1(c), where the Chair may substitute an alternative decision in place of a challenged decision of Network Rail; provided that the power described in (c) shall only be exercised in exceptional circumstances. As D5.3.2 only applies to D5.3.1(a), ORR considers that it is this point upon which this particular case rests.

- 2.7 ORR notes that Network Rail has run 4L73 on a trial basis since this dispute was raised. If serious safety or other concerns existed, we would expect them to prevent 4L73 from being included in the timetable, even on a trial basis.

Determination and clarification of TTP2591

- 2.8 The Determination found that:

- (a) 166. FLL's TOVR for 4L73 was compliant with the TPRs in force at the time of the TOVR and NR's Decision;
- (b) 167. NR's Decision to reject the TOVR for other reasons, beyond the issue of whether the TOVR was or was not compliant, is not upheld.
- (c) 168. In neither issue can NR be regarded as having behaved unreasonably in the arguments that it submitted, so I do not regard NR having been in breach of contract under either head. Therefore FLL has no entitlement to damages.
- (d) 169. No application was made for costs.
- (e) 170. I confirm that so far as I am aware, this determination and the process by which it has been reached are compliant in form and content with the requirements of the Access Dispute Resolution Rules.

- 2.9 The Determination also provided guidance to industry on the following matters:

- (a) Transparency on level-crossings of concern – the Panel's Chair recommended there should be a positive duty on Network Rail to share information regarding level-crossings on particular routes with all operators and potential bidders.
- (b) No standards to give guidance – the Chair recommended Network Rail leads a review of standards specifying the maximum period which barriers should be closed to road traffic, consulting external authorities such as the ORR, Department for Transport and Rail Safety and Standards Board, as appropriate.
- (c) Increased freight traffic, especially to London Gateway in light of the current constraints on the Network.
- (d) How to apply the Objective and the Considerations – on a procedural point, the Chair recommended that any templates used within Network Rail when

preparing a Decision Criteria document should also include a box to include the Objective.

- (e) The definition of headways in junction margins – The Chair noted that it was beyond their power to provide any revised definitions of headways or junction margins, no previous Dispute had arisen concerning these definitions. The Chair reached a decision on the facts of this case, but the wording in dispute, which was agreed to be ambiguous, no longer appears in the draft TPRs, as each possible move through South Tottenham Station has been assessed to provide a specific value for each move.

2.10 Freightliner issued a Notice of Dispute alleging that Network Rail had failed to comply with the Determination, stating that “Network Rail has failed to reconsider its Decision to reject the TOVR.” Subsequently, the Panel’s Chair wrote to Network Rail and Freightliner, asking Network Rail if they agreed to request a clarification per Part D5.3.2 of the Network Code, together with a request for the time limit in D5.3.3 to be disapplied and if Freightliner agreed to the D5.3.3 time limit being disapplied. Network Rail provided the request for clarification on 12 June 2025 and request for the time limit to be disapplied. Freightliner also agreed to the time limit being disapplied.

2.11 The Clarification was issued on 19 June 2025. At paragraph 24 of the Clarification, the Panel’s Chair set out guidance on Part D5.3.2 and the distinction between D5.3.1(a)⁸ and D5.3.1(c)⁹. In the Clarification, the Chair stated “that there was a clear understanding between the Parties as to the outcome if I did not uphold NR’s rejection of the TOVR, which was that 4L73 would be accepted into the WTT.”

Network Rail’s grounds of appeal

2.12 Ground 1 – The TTP erred in concluding the parties had reached agreement on 4L73 being added to the timetable and, erred in placing reliance on the purported

⁸ [Network Code Part D](#)

5.3.1(a): In determining any appeal pursuant to this Part D, any Timetabling Panel or the Office of Rail and Road (as the case may be) may exercise one or more of the following powers: (a) it may give general directions to Network Rail specifying the result to be achieved but not the means by which it shall be achieved;

⁹ [Network Code Part D](#)

5.3.1(c): In determining any appeal pursuant to this Part D, any Timetabling Panel or the Office of Rail and Road (as the case may be) may exercise one or more of the following powers:... (c) it may substitute an alternative decision in place of a challenged decision of Network Rail; provided that the power described in (c) above shall only be exercised in exceptional circumstances.

agreement when clarifying the interpretation and application of paragraph 167 of the Determination.

- 2.13 Ground 2 – The Chair erred in giving clarification:- (i) which exceeded the permitted scope of clarification contained in Network Code Part D 5.3.2; (ii) the effect of which is to re-write/amend the original Determination to include an outcome that was not previously determined; (iii) in circumstances where the obligations in relevant safety legislation fall on Network Rail as employer and network operator, not on a tribunal.

Freightliner's Respondent's Notice

- 2.14 Freightliner issued a Respondent's Notice on 9 July 2025¹⁰ stating that the appeal was invalid on a procedural basis as time limits for Network Rail seeking a clarification had been missed and the appeal should therefore be rejected.
- 2.15 However, ORR decided to proceed with the appeal on the basis that it concerns a matter which is of sufficient importance to the industry, and granted Freightliner 10 working days to provide further representations.

ORR's Handling of the appeal

- 2.16 The appeal was received on 25 June, four Working Days after the Clarification was issued on 19 June 2025. The Respondents and other interested parties also received the appeal at the same time.
- 2.17 On 4 July 2025, ORR wrote to Freightliner as a Respondent in the above Notice of Appeal, reminding them that under Part M, Section 5.1 of the Network Code they had 10 Working Days from ORR's receipt of the Notice of Appeal to provide a notice stating opposition to the appeal and insofar as reasonably practicable to attach any evidence on which the Respondent wishes to rely in opposing the appeal.
- 2.18 Freightliner were notified that ORR will determine whether to proceed with the Notice of Appeal within 10 Working Days of its receipt as per Part M, Section 4.1 of the Network Code. ORR requested that any notice should therefore be provided in writing by 17:00 on Wednesday 9 July 2025 and this was provided by the Respondent.

¹⁰ [Respondents Notice to Network Rails Appeal under Part M of the Network Code TTP2591 FL090725](#)

- 2.19 On 10 July 2025, ORR confirmed to the parties that it would proceed with hearing this appeal on the basis that it concerns a matter which is of sufficient importance to the industry as it relates to the circumstances in which a clarification can be given in order to determine an outcome and how the powers of the TTP Chair should be interpreted under Part D5.3.1 (a) and (c) of the Network Code. Both parties were unclear on what the final and binding outcome of the Determination was, which necessitated a clarification from the TTP Chair. We also noted that the parties agreed to waive the time limits in order to seek such a clarification.
- 2.20 As a Respondent to this appeal, Freightliner were granted 10 working days from the date of the notification to provide any further or substantive representations in respect of the appeal to ORR. Further representations were received on 22 July 2025.

3. ORR's Conclusions and Determination

- 3.1 ORR's Conclusions and Determination against the grounds of appeal are as follows:

Ground 1 – The TTP erred in concluding the parties had reached agreement on 4L73 being added to the timetable and, erred in placing reliance on the purported agreement when clarifying the interpretation and application of paragraph 167 of the Determination.

- 3.2 The Determination sets out the Panel's record of the exchanges between the Panel and the parties at the hearing. Although it is possible that during these discussions, the parties may have made statements that the Panel reasonably interpreted as an agreement about the consequences of the Determination, ORR considers that the existence or absence of such an agreement does not alter the outcome recorded in the Clarification. Although the Chair referenced the purported agreement several times in the Clarification, ultimately, his clarification was provided independently of this alleged agreement- see para 25, 30, and 50 of the Clarification.
- 3.3 The Clarification aimed to address a purported gap in the Determination i.e. the lack of clarity regarding its practical effect for the train slot at issue. The Panel's ability to provide this clarification was not dependent on an agreement; instead, it was giving a direction, one that it was empowered to give under D5.3.2. Therefore, ORR agrees with Freightliner's point of view in this regard (see paragraph 3 of Freightliner's Respondent's Notice). This ground is not upheld.

Ground 2 – The Chair erred in giving clarification:-

(i) which exceeded the permitted scope of clarification contained in Network Code Part D 5.3.2;

- 3.4 The parties are agreed that the Determination was a D5.3.1(a) decision, which permits the Panel to give general directions to Network Rail, specifying the result to be achieved but not the means by which it shall be achieved. D5.3.2 then allows the Panel to 'make such make such further orders as it shall consider appropriate in order to provide the parties with guidance as to the interpretation and application of such general directions.'

- 3.5 Network Rail argues that the scope of the clarification permitted to be given by the Panel was limited to giving guidance on the interpretation and application of Network Rail's decision to reject the TOVR. That is what ORR considers that the Panel did in this case. In the Clarification, the Hearing Chair acknowledges that the outcome could have been more plainly expressed in Section H of the Determination, and further that Section H would have benefitted from a fuller record of what the Chair believed had been agreed. Given the subsequent necessity for a clarification and consequent appeal we concur with this assessment and urge the Panel to ensure in future that any directions are explicitly set out. However, we note that throughout the Clarification, the Chair refers repeatedly to his intention when drafting the Determination, which was for 4L73 to be accepted into the timetable. We do not find anything in the Determination to contradict this.
- 3.6 In explicitly setting out in the Clarification that 4L73 should be accepted into the timetable, the Hearing Chair is amplifying the outcome or position that he believed was clear (mistakenly as it turns out) to both parties from his Determination. That amplification is consistent with the content of the Determination, and we find the Hearing Chair's surprise at the subsequent confusion, compelling. The Hearing Chair did not therefore exceed the scope of clarification permitted in D5.3.2.
- 3.7 Network Rail argues that D5.3.1(a) does not permit the Panel to require the inclusion of 4L73; instead, they assert that when a decision to reject a TOVR is not upheld, the decision is quashed and remitted back to Network Rail to be taken again. This seems an unnecessarily restrictive view of D5.3.1(a), which allows directions specifying the result to be achieved but not the means by which it shall be achieved. If the drafting intention was to limit the Panel to always remit a decision not upheld by the Panel back to Network Rail to effectively 'start again', this is likely to have been made clear in the language of the provision.
- 3.8 In this specific case, the decision not to uphold Network Rail's rejection of the TOVR leads to a single outcome: to accept 4L73 into the timetable. The means by which this result is to be achieved are a matter for Network Rail. It is possible that new safety or other evidence, not previously considered by the Panel, could lead to a modification of the path. However, this seems highly unlikely given the detailed submissions already provided to the Panel. The Hearing Chair recognises this at paragraph 37 of the Clarification where it is stated, *'Where does quashing a binary decision under D5.3.1(a) leave the Parties? In this Dispute, as the TOVR was held to be compliant, it should have been accepted into the WTT, **unless other issues arose.**'*[emphasis added].

- 3.9 ORR recognises that specifying the inclusion of a particular path or paths into the timetable, will not be permissible or appropriate under D5.3.1(a) in all cases and therefore the Panel will need to carefully consider the facts of each case, the limits of the provision and its interplay with D5.3.1(c) in particular. This ground is not upheld.

(ii) the effect of which is to re-write/amend the original Determination to include an outcome that was not previously determined;

- 3.10 It follows from ORR's determination of appeal ground 2(i) that ORR does not uphold ground 2(ii). The Hearing Chair was entitled to amplify the parts of the Determination that were previously unclear and doing so did not amount to a re-write or material amendment to the outcome. The outcome as intended by the Hearing Chair remained consistent, in our view, as between the Determination and the Clarification.

(iii) in circumstances where the obligations in relevant safety legislation fall on NRIL as employer and network operator, not on a tribunal.

- 3.11 With regard to ground 2(iii), ORR does not agree with Network Rail's position. Safety considerations of whether to include 4L73 into the timetable are made using a risk-based approach and were discussed extensively in the Determination and Clarification.
- 3.12 ORR does not dispute Network Rail's position that they have a duty under relevant legislation such as the HSWA and the Management of Health and Safety at Work Regulations to ensure safety on the railways. It is ORR's view that Freightliner and other operators equally also have duties under legislation that must be considered as part of their request to include TOVRs into the timetable.
- 3.13 The Panel's Chair did not override these obligations by directing that 4L73 should be accepted into the WTT. Given the Chair's direction did not instruct Network Rail on how to achieve the result, it is for Network Rail to take appropriate account of the relevant safety considerations when deciding how 4L73 should be accommodated. This ground is not upheld.



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