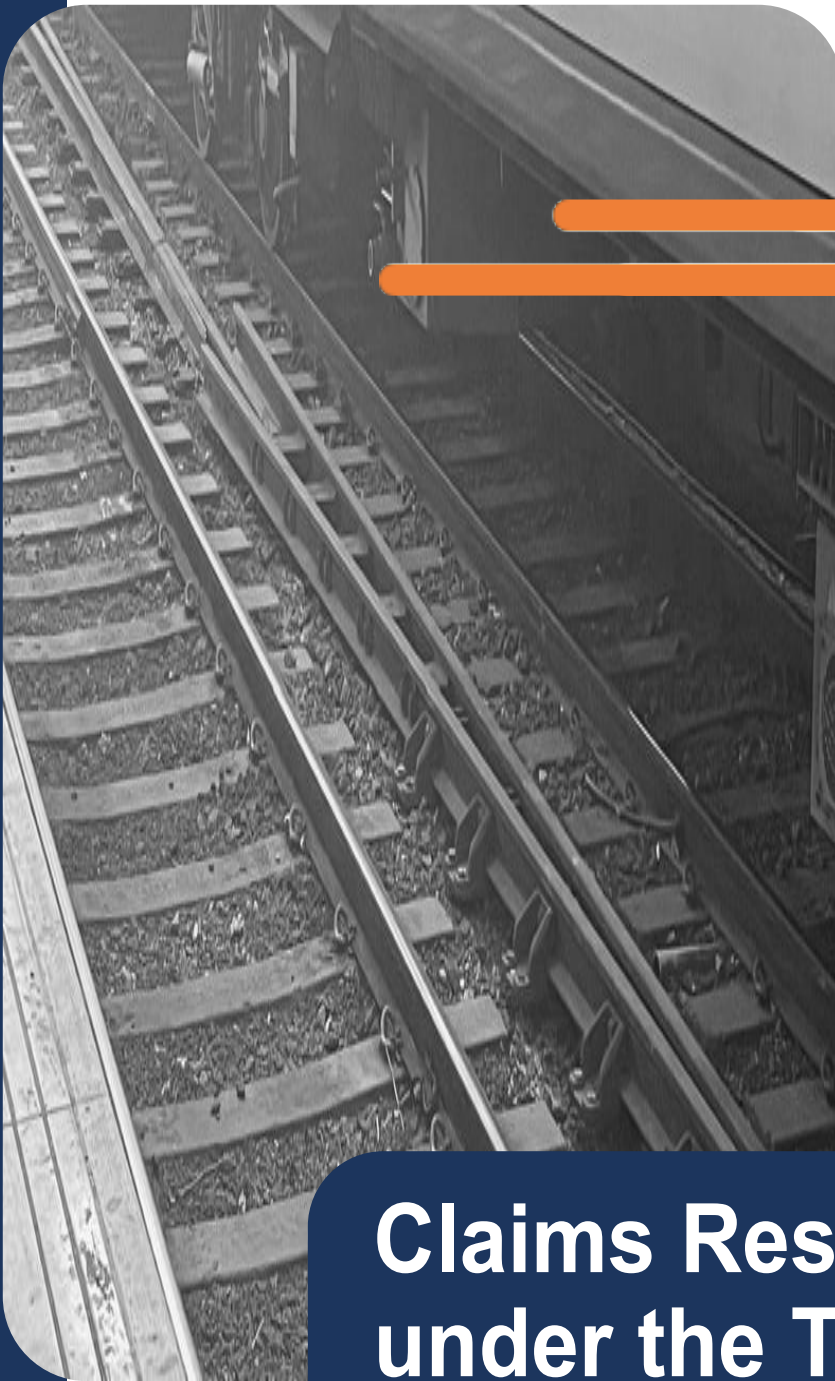




Claims Resolution under the Track Access Contract

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About this Document

Explanatory Note

The Rail Delivery Group is not a regulatory body and compliance with Guidance Notes or Approved Codes of Practice is not mandatory; they reflect good practice and are advisory only. Users are recommended to evaluate the guidance against their own arrangements in a structured and systematic way, noting that parts of the guidance may not be appropriate to their operations. It is recommended that this process of evaluation and any subsequent decision to adopt (or not adopt) elements of the guidance should be documented. Compliance with any, or all, of the contents herein, is entirely at an organisation's own discretion.

Other Guidance Notes or Approved Codes of Practice are available on the [Rail Delivery Group \(RDG\) website](#).

Executive Summary

This guidance note aims to help train operators understand the process for bringing claims for access related compensation or how to escalate a pre-existing claim under the Track Access Contract or Network Code where Network Rail is disputing liability or quantification.

Acknowledgement

Rail Delivery Group recognises the work of Rail Partners, commissioned by its Track Access Forum, to develop Issue 1 of this Guidance Note, which provided much of the content for this Issue.

Issue Record

Issue	Date	Comments
1	January 2024	First issue under Rail Partners, prepared with the support of Burges-Salmon LLP acting as technical legal experts, in addition to an overview of Network Rail's Access Contract Claims Protocol document, Version 2, April 2022
2	July 2026	Reviewed, updated and reissued under Rail Delivery Group. Alterations from Issue 1 are not highlighted

This document is reviewed on a two-yearly cycle so that it reflects the latest experience and good practice.

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1 Purpose and Background

1.1 Purpose

This guidance note aims to help train operators understand the process for bringing claims for access related compensation or how to escalate a pre-existing claim under the Track Access Contract or Network Code where Network Rail is disputing liability or quantification.

1.2 Background

The Track Access Contract (TAC) sets out the contractual relationship that is agreed between Network Rail (NR) and a train operator. Within the contract there are remedies for loss and how a train operator may bring a claim.

The Access Contract Claims Protocol details how to make a claim for damage to equipment or business losses that may occur (such as road transport or additional staff costs) where a service has not been able to run as per the TAC.

This guidance note provides advice on raising a claim and escalating a pre-existing claim for access related compensation under the TAC or Network Code¹ where NR is not accepting liability or quantification. While they are mentioned for completeness, the note is not focussed on formulaic compensation or pure access questions such as timetabling challenges or applications for slots².

For brevity and expediency, where mention is made of specific clauses or schedules, these generally refer to the Track Access Passenger Model Contract, available on the ORR website. Clauses or schedules from other model contracts (e.g. Open Access or Freight) covering the same topics may differ.

¹ Network Code and ADRR are updated from time to time. This note is based upon the versions dated 09 February 2026 (Network Code) and 29 August 2025 (ADRR), although it is anticipated other iterations may well be similar. The relevant Network Code and ADRR from time to time should be applied in relation to any claim

² Including Network Code Part D or formulaic Schedule 4 / 8 claims

1.3 Definitions

Term	Definition in the context of this document
Access Contract Claims Protocol	A Network Rail document, which has no contractual status and is not binding on train operators. It aims to foster a collaborative, open and honest approach to the management of claims made under the access contracts and provides insight into what NR may request as supporting evidence
Access Dispute Adjudication (ADA)	A determinative dispute resolution process in which independent industry advisors determines the outcome of a dispute on the basis of the parties' respective legal rights
Access Disputes Committee (ADC)	A body that deals with the resolution of disputes between parties in the railway industry in Great Britain. It operates under the Access Dispute Resolution Rules, which are part of the Network Code. See Access Disputes Committee
Access Dispute Resolution Rules (ADRR)	A clear, coherent, and effective structure for dealing with rail disputes arising under access agreements and access conditions/codes that should be dealt with under access-specific processes
Claims Allocation and Handling Agreement (CAHA)	Industry agreement that governs the allocation of liabilities and the handling of claims relating to issues such as property damage and personal injury caused by railway accidents
Determinative Step	Able to or serving to settle, determine or decide
Facilitative Step	Making something possible or easier or able to move forward
Network Code	The set of rules behind the contractual relationship between Network Rail and train operators that supports track access
Network Rail (NR)	Body that owns and manages most of the rail infrastructure network across Great Britain
Office of Rail and Road (ORR)	The independent economic and safety regulator for Britain's mainline railway
Restriction of Use (RoU)	Closure of a route (or part thereof) for an extended period, typically more than a weekend, usually to allow engineering works
Sustained Planned Disruption (SPD)	A series of planned disruption events resulting in revenue and cost impacts that cross pre-set thresholds
Sustained Poor Performance Mechanism (SPP)	Designed to protect train operators when performance levels fall to such a level that compensation under the standard Schedule 8 arrangements is inadequate
Track Access Contract (TAC)	Sets out the contractual relationship between Network Rail and a train operator
Timetabling Panel (TTP)	Determines disputes referred to it by parties to an access agreement which incorporates Part D of the Network Code which arise out of or in connection with issues of timetabling, timetable change and the allocation of capacity including restrictions of use and train slots

2 Status of Existing Protocols and Guidance

2.1 Documentation and principles

Claims for access related compensation are generally made as contractual claims for indemnity under the TAC between NR and the train operator. The scope of the obligations under the TAC indemnities in light of each set of facts will be subjective against legal interpretation. As all TACs³ are based on ORR templates, they are ultimately regulated and in some cases ORR guidance or ORR oversight will be relevant to interpreting NR's contractual obligations.

Network Rail itself (including its internal committees or structures) has no standing or entitlement to determine the outcome of a claim for indemnity under the TAC. If NR is not offering adequate compensation for a claim the decision on (whether and if so) how much to pay, is made by an independent third party. Train operators are not bound by any decision taken by NR in respect of how much compensation NR thinks it should pay.

Disputes are generally referred to and resolved in accordance with the Access Dispute Resolution Rules (ADRR) which are appended to the Network Code⁴. Clause 13 'Dispute Resolution' of a TAC incorporates the ADRR into the TAC. The ADRR itself contains the menu of dispute resolution options and, as a general rule, these are applied to any access dispute arising under the TAC whatever the TAC itself might say about the mechanism.

2.2 Types of TAC compensation claim

The TAC envisages different types of compensation provision:

- **Formulaic compensation** (similar to liquidated damages) for business as usual disruption/restrictions; and
- **Indemnity compensation** for breaches of NR obligations principally relating to damage to property (or additional costs) not arising from business as usual disruption/ restrictions.

Formulaic compensation provisions

A TAC provides for formulaic compensation in respect of:

1. Schedule 4 - Restrictions of Use (RoU). Formulaic compensation based (broadly) upon a rate⁵ per minute lateness:
 - i. Where RoUs are short (<60 hours), only formulaic compensation rates are recoverable.
 - ii. Where an RoU exceeds 60 consecutive hours, formulaic compensation is paid plus additional costs incurred.
 - iii. For RoUs exceeding 120 consecutive hours, formulaic compensation is paid up front, either party can opt to have that sum adjusted by indemnity for all revenue and costs (see below).
2. Schedule 8 - Unplanned disruption. Formulaic compensation is also based (broadly) upon a rate per minute lateness.

In each of Schedules 4 and 8 there are additional provisions where performance is very poor for an extended period which give rise to indemnity compensation in addition to the above formulaic payments (see below Sustained Planned Disruption (SPD) and Sustained Poor Performance (SPP)).

Indemnity compensation provisions

Indemnity provisions require NR to pay the train operator an indemnity for the train operator's actual losses in certain circumstances. These include:

1. TAC clause 8.2 - NR must indemnify the train operator for all Relevant Losses (costs, direct losses and expenses) arising from any breach of the TAC. While this appears broad, it is

³ [Consolidated agreements | Office of Rail and Road \(orr.gov.uk\)](#)

⁴ Although technically are not part of the Network Code

⁵ The rate is set by ORR by service group, is combined with crowding effects and attempts to compensate for the marginal effect of each minutes delay. Planned RoU rates are a fraction of unplanned rates used for Schedule 8

subject to exclusions where any other provision of the TAC takes effect. The principal point is that losses due to delays or cancellations to trains are excluded. Consequently, clause 8.2 generally relates to physical damage to trains and other equipment, etc.

2. TAC clause 10.2 - NR must indemnify the train operator against:

- i. Failure by NR to comply with its safety obligations;
- ii. Environmental damage arising directly from acts or omissions of NR⁶;
- iii. Damage to rolling stock, etc. on the network arising directly from NR's negligence.

As above, this generally relates to physical damage to traction units etc. It generally does not include costs of disruption from any incidents which are covered by Schedules 4 and 8 (above).

Network Change: the Network Code Part G provides an indemnity for all the train operator's costs, direct losses and expenses (including loss of revenue) as a consequence of a change in the network (i.e. the implications of the difference in the network before and after rather than the associated works to implement the change). These claims can represent a considerable amount of money.

Long Restrictions of Use: A single RoU of more than 60 consecutive hours allows an indemnity for additional direct costs⁷ (clause 6, Schedule 4). A single RoU of more than 120 consecutive hours allows an indemnity for RoU liability⁸ compensation i.e. additional costs and revenue (above formulaic payments).

Sustained Planned Disruption: Where there has been a very high level of planned RoUs for more than one year, NR must indemnify the train operator for all costs and revenue over and above the sum of formulaic payments (see above).

Sustained Poor Performance: Where there has been a very high level of unplanned disruption for more than one year, NR must indemnify the train operator for all costs and revenue over and above the sum of formulaic payments (see above).

Other timetabling and specific rights of action are also contemplated by the Network Code but are outside the scope of this note. The types of claims outlined are resolved under the ADRR.

Generally, compensation can only be claimed for losses which arise directly from the breach and are subject to a contractual cap on liability in Schedule 9. Note also that the Claims Allocation and Handling Agreement (CAHA) may impose some limitations on claims, particularly for property damage (e.g. rolling stock).

2.3 Usual process (not business as usual disruption or RoU)

When a potential breach arises and one of the above indemnities is engaged:

- i. The train operator must notify NR of a claim within 365 calendar days of first becoming aware of the circumstances giving rise to the claim⁹. The notice must comply with TAC clause 18.4 and Schedule 1. Failure to do so can result in the claim being lost entirely.
- ii. The train operator must take all reasonable steps to prevent, mitigate and restrict the circumstances giving rise to that claim and any relevant losses connected with that claim.

⁶ Technically this extends to historic environmental damage including Environmental Damage to the Network arising directly from any acts or omissions of the British Railways Board before 1 April 1994

⁷ RoU Direct Costs (defined in the TAC (clause 1.1, Part 3, Schedule 4)) means the aggregate amount of:

- a) bus and taxi hire cost
- b) publicity costs
- c) train planning and diagramming costs
- d) other costs directly related to the organisation and management of the Train Operator's response to a Type 2 Restriction of Use,

reasonably incurred by the Train Operator as a result of a Type 2 Restriction of Use, adjusted by:

adding any increase in RoU Variable Costs and deducting any decrease in RoU Variable Costs

⁸ RoU Liability (defined in the TAC (clause 1.1, Part 3, Schedule 4)) means any costs, direct losses and expenses (including any loss of revenue) reasonably incurred or reasonably expected to be incurred by the Train Operator (including any increase in RoU Variable Costs but net of any benefit arising from the taking of a Restriction of Use including any decrease in RoU Variable Costs) as a consequence of a Type 3 Restriction of Use or any Restriction(s) of Use covered by a SPD Claim

⁹ Clause 11.1 (a), TAC

- iii. The train operator will generally provide a calculation of loss to NR and engage with NR to agree a figure¹⁰.

There is no fixed model or form for calculating loss.

The NR Access Contract Claims Protocol¹¹ sets out the detail of the evidence it wants to see in support of a claim. This is not binding on train operators although it is helpful to understand what NR may request.

Commonly, counterfactual modelling of some type will be prepared by the train operator and discussed between the parties. This may be based upon Passenger Demand Forecast Handbook modelling, comparisons to unaffected routes, industry benchmarking or other structures.

There may be several iterations of the calculation of loss:

- i. If the parties agree a figure, NR will generally pay it to the train operator ending the claim.
- ii. If a figure cannot be agreed, NR may demand more information and/or reject the claim. NR may do so having gone to its internal claims committee or by following other internal policies. This is not binding upon train operators.
- iii. If no specific value can ultimately be agreed with NR, the claim can be referred to ADRR for resolution.

Guidance on passenger demand forecasting can be found in the [Passenger Demand Forecasting Handbook \(PDFH\)](#) which provides guidance on aspects such as the effects of service quality, fares and external factors on rail demand and is available on the RDG website.

2.4 Commencing a claim

Chapter B 'Initiating a Dispute and Allocation' of the ADRR describes the process for referring a dispute in accordance with the rules. A flowchart is included in the rules setting out the steps and options.

A train operator is required to serve a copy of the Notice of Dispute (see appendix A) on all other parties to the dispute.

Subsequently, allocation of the dispute takes place according to the ADRR (separate advice should be sought on the available processes). Train operators should note:

- i. Every dispute requires a determinative step. Generally arbitration, access disputes adjudication, expert determination or (in some cases) timetabling panel. A court process is also determinative. Determinative processes result in a binding decision given by an independent third party which both train operator and NR must obey.
- ii. Additionally, a facilitative step can be used (mediation or expert determination). A structured settlement meeting is also a facilitative step. This is optional and is not an alternative to having a determinative step. It aims to assist the parties reach a consensual agreement but cannot force them to do so.

In limited cases, the parties may refer the dispute to the ORR for guidance or a view on a particular point (other than in timetabling cases). This is generally not a determinative step; it is intended for seeking information. Issues may only be referred to the ORR by agreement or by the tribunal and if ORR agrees.

Each process has its own rules and requirements set out in the ADRR. Before initiating a dispute, train operators should take care to ensure they are ready to comply with all such rules and requirements (including, often, seeking expert input on quantification of losses).

2.5 Practical considerations

Whenever a possible claim arises, train operators should ensure they have a process in place to give the formal notice (TAC clause 18.4 and Schedule 1) as soon as possible and within 365 calendar days. This should be an automatic step, as it does not commit the train operator to pursuing a formal dispute and can take place in parallel with engagement/negotiation of a compensation amount.

NR will commonly follow a set (internal) process to assess and validate claims. Close engagement at

¹⁰ Clause 11.1 (b), TAC

¹¹ This note has been prepared by reference to Version 2.0 of the Access Contract Claims Protocol, 01 April 2022

route level can assist in clarifying the type and degree of information/data or analysis they might require to get approval to compensate.

However, if NR's internal policy/approach does not give a satisfactory answer, train operator experience is often that a claim can be substantially delayed (or never resolved). In such cases train operators are entitled to immediately escalate the claim to ADRR.

Formal disputes are very varied. They can be quick and highly industry specific or very involved and drawn out with detailed econometric modelling and/or legal submission. Train operators should ensure they have adequately prepared and do not underestimate the internal resource which may need to be available to progress the claim and consider whether this is proportionate to the value of the claim.

Train operators should take an active decision on when and whether to proceed with a facilitative process (e.g. mediation). This can help resolve the dispute by agreement but may also add time and cost if not successful. It is not an alternative to pushing on with the formal claim.

Expert evidence (e.g. econometric modelling or accounting input) may be required. If so, train operators should seek this early as it can add to the timeline of preparation. Do not underestimate the detail of the data required to produce convincing modelling of loss.

The best dispute resolution process is likely to depend on the subject matter of the dispute. Some may lend themselves best to (independent) internal industry decision making (access disputes adjudication); some to independent modelling (expert determination). Train operators may wish to take advice before proceeding with one or other option.

2.6 Key considerations

While the indemnities in the TAC should result in agreed compensation from NR, if NR does not agree or delays, a train operator can (and in some cases may have to) take the claim to dispute resolution.

A notice of the grounds of the claim must be given to NR within 365 calendar days of the dispute arising. A dispute is commenced by a further dispute notice.

NR internal policies and protocols are not binding on train operators. Where NR cites these as reasons not to pay, train operators may wish to get independent advice and refer the claim to an independent third party under the ADRR.

3 Roles in a Dispute

The following summarises the NR Access Contract Claims Protocol objective, approach and questions train operators will be asked, and how to assess and substantiate the claim.

Network Rail states within the Access Contract Claims Protocol that "the objective of the protocol is to foster a collaborative, open and honest approach whilst contributing to a reduced claims lifecycle. The protocol is not legally binding".

The onus is on the train operator to both initiate and substantiate the claim.

The train operator must notify NR of a claim within 365 calendar days of first becoming aware of the circumstances giving rise to the claim. Notice must comply with TAC clause 18.4 and Schedule 1. Failure to do so can result in the claim being lost entirely.

The train operator must take all reasonable steps to prevent, mitigate and restrict the circumstances giving rise to that claim and any Relevant Losses connected with that claim.

The train operator will generally provide a calculation of loss to NR and engage with NR to agree a figure.

The following list provides a summary of the questions that train operators may be asked to aid Network Rail in assessing costs and losses as detailed in the Access Contract Claims Protocol.

1. Establishing the factual circumstances which form the basis of the claim.
2. Establishing that each head of claim is supported by the stated contractual entitlement and is

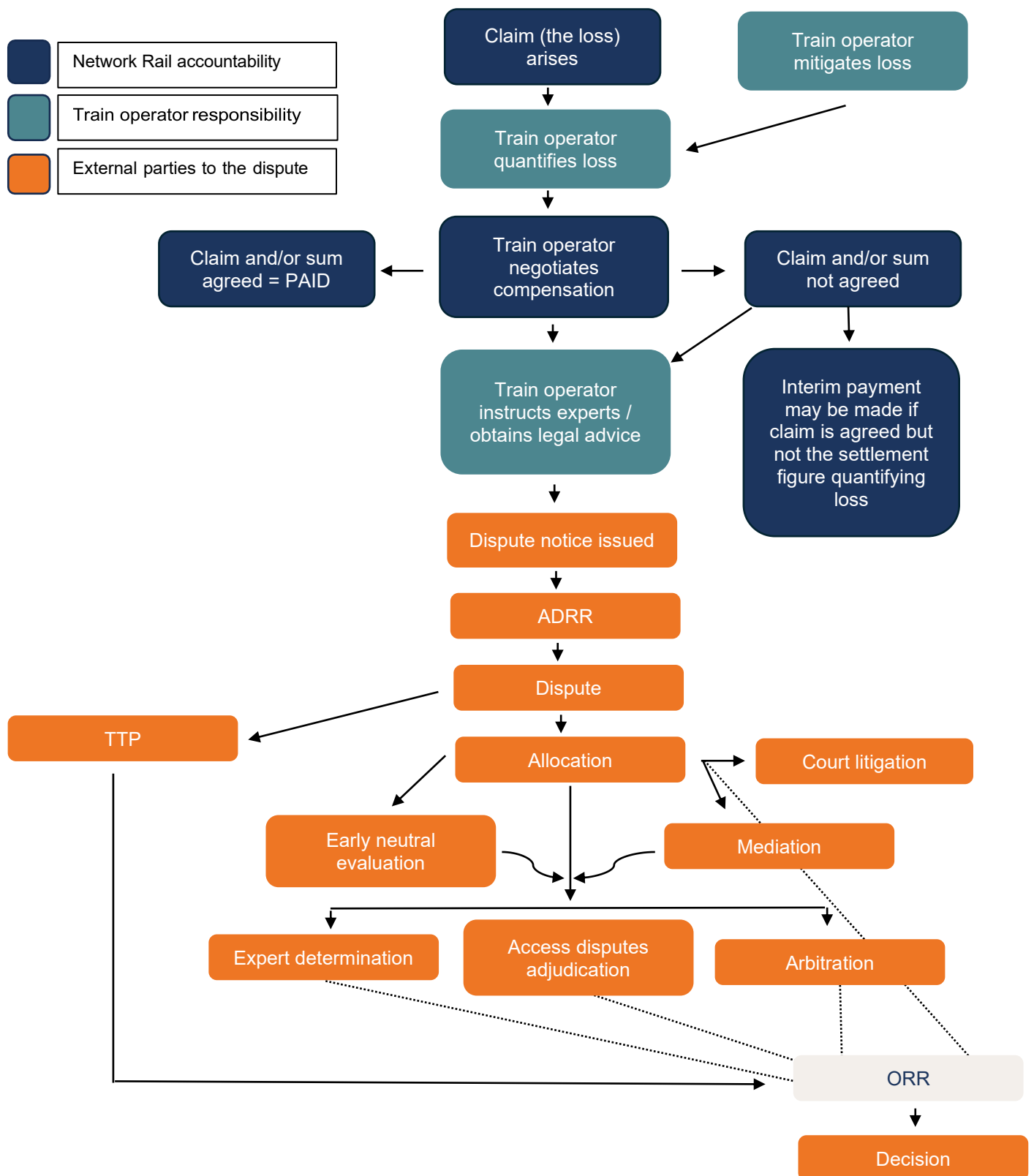
a direct consequence of the related incident.

3. Understanding how each head of claim is built up, based on clear and transparent calculations using unit rates and volumes.
4. Understanding the rationale behind claimed volumes and establish that the volume ties in with the claim amount, with evidence of corresponding amounts paid.
5. Considering the duration of heads of claim and their relevant locations, to ensure that these are as a direct result of the incident.
6. Ascertaining the net impact of the event on the train operator, including the assessment of consequential savings, and/or benefits to the train operator.
7. Understanding the normal costs for a head of claim during a given period (e.g. same time in previous year, or historical costs over a longer period) in order to ensure that the claim is only for incremental costs directly relating to the incident.
8. Establishing appropriate value proportions for i) any items requiring replacement, in order to reflect each item's remaining life only, and ii) any items with a residual value to the train operator beyond the duration of the claim.
9. Having visibility of any contractual arrangements between the train operator and third party providers (suppliers).
10. Considering whether the extent of loss has been effectively mitigated e.g. consideration of alternative suppliers.

The protocol provides clarification on the approach of NR in assessing the claim, they will undertake to:

- a) Seek to pay train operators due entitlement under the access contract as quickly as possible.
- b) Acknowledge each "intent to claim" within 5 working days.
- c) Engage with claimants early on the specifics of the emerging claim, to set and agree expectations of what claimants will provide, so that NR can expedite the claim.
- d) Follow the principles set out in that document as NR's basic framework for assessing claims, to enable a no surprises approach.
- e) Offer interim payments as the due diligence progresses, provided that doing so presents no risk of overpaying the claim's full value.
- f) Keep claimants updated at all times of each claim's status and pay it promptly once authorised.
- g) Seek to agree principles with claimants in advance of planned events, including payment of actual sums where this mitigates against further loss.

4 Claims Process Flow Chart



5 Claims Process External Party Roles

5.1 Timetabling Panel

Part D of the Network Code places a responsibility on Network Rail to manage Timetable Change to establish a "Working Timetable" which meets the principles in relation to managing the bi-annual timetable revision process, variations to the working timetable and possession strategy notices.

An Operator, known as the Timetable Participant in Part D, has the right to raise an appeal if they feel that any of the principles within the code have not been met by Network Rail.

Should a Timetable Participant feel that a decision has not been made in accordance with Part D, they have the right to submit an appeal. This will be heard by the Timetabling Panel under the rules of ADRR. Part D details the timescales that must be met for submitting an appeal.

Where the outcome of the appeal is not satisfactory to either Network Rail or the Timetable Participant under the conditions of D5.1 the matter can be referred to the ORR for determination under Part M of the Network Code.

5.2 Allocation

At an allocation hearing the Allocation Chair will consider the evidence presented and decide which is the most appropriate course of action. The Allocation Chair can recommend that the case is referred for early neutral evaluation, mediation or to the Access Disputes Adjudication panel.

5.3 Early Neutral Evaluation

Early Neutral Evaluation is a private facilitative dispute resolution process in which a neutral evaluator provides a confidential assessment of the likely merits of the case and tries to help the parties to reach a negotiated settlement. If the neutral evaluator is one of the ADC Hearing Chairs then fees for this service may be waived.

5.4 Expert determination

Expert determination is a confidential and binding process that can offer an effective means of settling a technical issue or dispute. It is an impartial and flexible process. The expert is required to act fairly and give each party a reasonable opportunity to be heard and respond to the other party. The determination of the dispute will be by an independent person with expertise relevant to the dispute.

5.5 Access Disputes Adjudication

An Access Dispute Adjudication (ADA) under these Rules is a determinative dispute resolution process in which, with the benefit of advice from independent railway Industry Advisors, a Hearing Chair determines the dispute in a timely and efficient manner on the basis of the parties' respective legal rights in accordance with the evidence and argument presented to them.

5.6 Arbitration

In the event that no agreement is reached between the parties, or parties reach a contrary agreement within seven days of the allocation hearing, the matter shall be referred to final determination by arbitration as a one stage determination procedure with appeal only in accordance with the Arbitration Acts and shall draw up the Procedure Agreement accordingly and shall sign it as Allocation Chair.

5.7 ORR

If either the Timetable Participant or Network Rail are dissatisfied with the decision on the Timetabling Panel they can refer the matter to the Office of Rail and Road for determination. Such claims must be made within a specified timescale as detailed in section 5.2 of Part D and either the Timetabling Panel or the Office of Rail and Road have the power to exercise one or more of the following decisions:

- a. It may give direction to Network Rail on the result to be achieved, but not how it could be achieved.

- b. It may allow the decision of Network Rail to stand.
- c. It may substitute an alternative decision in place of the challenged decision made by Network Rail

The power exercised in bullet c shall only be used in exceptional circumstances.

6 Access Disputes Resolution Rules

The purpose of the ADRR is to provide a clear, coherent, and effective structure for dealing with those rail disputes arising under access agreements and access conditions/codes that should be dealt with under access-specific processes.

The document is split into chapters, each providing clear guidance:

Chapter A of the ADRR sets out principles which should be applied throughout the determination procedure by the parties, Chairs, arbitrators, experts and others involved. Those using the rules are expected to respect the principles and have regard to them at all stages in the determination procedure. Failure to do so is intended to carry penalties including potential adverse costs awards.

Chapter B provides the mechanism by which a dispute will be initiated and allocated to the agreed or most appropriate forum.

Chapter C describes the mechanism by which issues of wider industry concern and issues of a regulatory nature (including those which come within the scope of the Railways Infrastructure (Access and Management) Regulations 2005) can be referred to the industry regulator at any stage of the process.

Chapters D-I set out the rules applicable to each of the dispute resolution processes provided for in the rules. These include facilitative and determinative processes which may be conducted in parallel (particularly in the case of mediation in parallel with a determinative process) or by way of offering a means of appeal from a first instance decision.

Chapter J contains the constitutional, governance and administrative arrangements required to provide the services contained within the rules.

In addition, it is envisaged that it will be possible in certain circumstances to refer cases outside these rules to ORR under the Access and Management Regulations or to court on particular issues for which a commercial jurisdiction is most beneficial. The claims process flowchart in Section 4 illustrates how allocation can take place:

Disputes are determined by the Hearing Chair of an Access Dispute Adjudication (ADA). An ADA Chair is assisted by two industry advisors from a retained pool appointed by the ADC. The composition of the various current bodies and arrangements relevant to their operation is specified in the Access Dispute Resolution Rules. The forum for resolution of some types of dispute may be prescribed either directly within the terms of an access contract or within one of the access conditions as being mediation, early neutral evaluation, arbitration or expert determination conducted in accordance with the Access Dispute Resolution Rules; the Secretary makes the necessary arrangements.

7 Frequently Asked Questions

Below are some common examples of questions relating to the Network Rail Access Contract Claims Protocol and how these have been addressed or approached.

The burden of responsibility falls on the train operator to demonstrate Network Rail's negligence. What is the legal definition of negligence?

Negligence is generally where one party owes a duty to the other to act in a certain way and its

performance falls below the standard to be expected of a reasonably competent party of the type which they claim to be. i.e. a train operator would be expected to display the standard of a reasonable train operator with skills in the subject matter. This does not mean it has to be perfect or even 'average' – it just has to reach a reasonable standard within the range of reasonable behaviour.

Can you implement a standstill agreement?

Yes, if both the operator and Network Rail agree that resolution of a claim may exceed time limitations.

Network Rail has made changes to the way it expects to see Revenue Compensation calculations evidenced. Where do I find details?

This is found in the Access Contract Claims Protocol and will provide some guidance on how revenue calculations can be presented and evidenced. However, it is not exhaustive and operators can claim direct revenue loss wherever they believe there has been an impact as long as they can substantiate the losses.

Is there a benefit to having a memorandum of understanding?

A memorandum of understanding between a train operator and Network Rail may provide consistency of approach and easier progression of claims in an environment where personnel change frequently.

Is the Access Contract Claims Protocol legally binding?

No, the Access Contract Claims Protocol is a Network Rail document which is not legally binding or a defined process that must be followed, but it does provide a framework for all parties to work to and aims to aid collaboration and a timely resolution.

Is the time limit to bring a claim (6 years in England and Wales and 5 years in Scotland) applicable to new claims, and does it also apply to the resolution of existing claims?

You are unable to bring a new claim if the period already elapsed is in excess of 6 years in England and Wales or 5 years in Scotland. However, where the claim has been formally commenced (e.g. referred under ADJR) but has not been resolved within the specified time the time limit does not apply.

Does Scottish law apply if the track access contract is governed by and construed in accordance with the laws of England and Wales?

Scottish law is not enforceable in England, English dispute processes or court proceedings unless it is specifically provided for in the contract

How can I progress with a claim that has been outstanding for years and is being held up by the panel despite me providing all the evidence requested?

If Network Rail has failed to resolve what you believe to be a valid claim and where you have made all reasonable endeavours to substantiate the losses contained in the claim you should consider progressing to ADJR.

What happens when Network Rail disputes the quality of the information, for example on revenue information?

If Network Rail has failed to resolve what you believe to be a valid claim and where you have made all reasonable endeavours to substantiate the losses contained in the claim you should consider progressing to ADJR.

How do I know what is expected, what is the baseline, what is the data and what is the recourse?

Refer to the Access Contract Claims Protocol which provides an explicit list of what is required from you to support your claim. Outside of this list unless provided with a reason Network Rail should not be asking for further information.

What happens if Network Rail retains no records of conversations or evidence of what happened in the claims panel and when requested it is not provided?

Ensure that you retain your own records of all conversations and correspondence relating to the claim.

Appendix A – Template Notice of Dispute

This appendix is taken from the Access Disputes Committee website and was correct at the time of [download](#). References to ‘the Secretary’ and ‘this website’ relate to the ADC.

Explanatory Note

Access Dispute Resolution Rule B2 requires a Resolution Service Party wishing to refer a dispute to serve a written Notice of Dispute on the Secretary and a copy on every other party to the dispute. Rule B3 requires that, unless otherwise advised by the Secretary, the Notice of Dispute shall normally be in accordance with the template format as set out below and shall do all the following:

- state the contract and relevant contractual clause under which the reference is made (or such other basis for the reference under the Rules);
- list the other parties concerned whether as a Dispute Party to the dispute or otherwise;
- summarise the basis of the claim including a brief list of issues;
- state whether the Dispute Parties have already agreed on a determination procedure, or, if not, specify the referring party's initial preference for a determination procedure, including, if it believes it is a Timetabling Dispute, a statement to this effect; and
- state whether exceptional circumstances exist requiring an expedited hearing or process.

In the case of Timetabling Disputes, disputes regarding Delay Attribution Board guidance (referred under Network Code Condition B2.4.4) and disputes concerning Changes to Access Rights (referred under Network Code Part J), Rules B5, B6 and B7 respectively set down the determination procedure and Dispute Parties have no ability to agree any alternative.

The generic template is set out below, annotated with guidance for completion of a Notice of Dispute. This generic template and specific templates for the three dispute situations where one of Rules B5, B6 or B7 applies are available separately on this website in Word format to facilitate downloading for use. The format is designed to be used as an e-mail but may be adjusted into letter format. Text in bold should be considered the essential framework of the generic Notice.

Please note

1. It is most unlikely that any determinative Forum will consider that the requirement to “summarise the basis of the claim including a brief list of issues” is satisfied by a statement such as “there is contractual deviation”. In such a situation, the Notice of Dispute may be declared to be non-compliant with Rule B3(c) and, consequently, invalid.
2. Regarding Rule B3(d), a Notice of Dispute for a matter other than those covered by Rules B5, B6 and B7 will not be compliant if a determination procedure is not indicated and may, accordingly, be declared invalid.

[Title] **Notice of Dispute**

On behalf of [insert legal name and registered company number of party bringing the dispute] **and pursuant to** [state name of the contract, relevant contractual clause under which the dispute reference is made (or other basis for referring the dispute)], **I give Notice of Dispute with** [state legal name(s) of other party/ies] **in relation to** [indicate subject matter, e.g. "Decisions on Timetable Planning Rules for 2019, Version 4"].

This dispute is brought on the basis that [summarise the basis for the dispute and give a brief list setting out the issues – this can be attached in the form of an annex if best suiting the situation. Statement such as "There is contractual deviation" does not comply with the requirements].

[Then state one of:-]

- a. **We have agreed with the party/ies detailed above that the determination procedure shall be** [insert the agreed stages, e.g. "Access Dispute Adjudication preceded by Mediation"] and
 - i. **a completed Procedure Agreement will follow** [or]
 - ii. **the Secretary is requested to draw up a Procedure Agreement on the following basis** [insert the agreed stages, e.g. "Access Dispute Adjudication preceded by Mediation"]
- b. **The determination procedure preferred by** [insert name of party bringing the dispute] **is** [insert the preferred stages, e.g. "Access Dispute Adjudication preceded by Mediation"]
- c. [Insert name of party bringing the dispute] **considers this matter to be a Timetabling Dispute.**
- d. **Determination of this matter should proceed in accordance with Access Dispute Resolution Rules B6.**
- e. **Determination of this matter should proceed in accordance with Access Dispute Resolution Rules B7.**

[Then state one of:-]

- a. **We are continuing discussions with the other party/ies and do not consider there to be requirement for the dispute resolution process to be expedited**
- b. **We request that the determination process be expedited because** [insert exceptional circumstances or reasons for urgent progression]

[Then state one of:-]

- a. **Parties which might be concerned with this matter other than as a Dispute Party are** [insert]
- b. **We are not aware of any other Party which might be concerned with this matter.**

Then

[Indicate who will deal with the matter on behalf of the referring party if it is not to be to person signing off the Notice of Dispute]

[Sign off] [Provide name, job title, telephone, fax (optional) and e-mail details of the person submitting the dispute on behalf of the referring party]

Rail Delivery Group

