

NI Railways Rail Operations	Dispute Resolution Process (Allocation of Capacity)	I-SYP-PRO-1805	
		Issue:	1.0
		Date:	Oct 2018

DISPUTE RESOLUTION PROCESS (ALLOCATION OF CAPACITY)

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REVISION HISTORY

When the document is updated by the issue of a complete replacement, the issue number will be changed.

Date	Issue / Revision	Page(s)	Detail of Amendment	Amended By
<i>October 2018</i>	1.0	All	New Document	<i>Jane Kerr</i>

Circulation List

01	Director of Infrastructure and Project Delivery
02	Translink Infrastructure Systems and Performance Manager
03	Translink Performance and Planning Manager – Rail
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1.0 Introduction

This document provides an overview of the Dispute Resolution Processes, relating to allocation of capacity, applied to manage the Infrastructure Manager (IM) responsibilities as defined in the Railways Infrastructure (Access, Management and Licencing of Railway Undertakings) Regulations (Northern Ireland) 2016.

1.1 Purpose

The purpose of the process is to determine disputes referred to it by parties to an access agreement which rise out of issues of timetabling, timetable change and the allocation of capacity in the normal working timetable. *This process does not provide for ad hoc service requests.*

1.2 Background

Translink's Infrastructure Division acts as the 'Infrastructure Manager' (IM) under the Regulations (see above).

The Planning and Access Manager (PAM) is responsible for discharging the relevant IM responsibilities within the Regulations.

Translink's sponsoring Government Department is the Department for Infrastructure (DfI), previously the Department for Regional Development (DRD) - 'the Department' as defined in the Regulations.

Translink's economic regulator is the Office of Rail and Road (ORR). The role of the ORR in Northern Ireland includes ensuring track access charges are compliant with the Regulations, reviewing the Network Statement and acting as the appeals body for applicants for capacity.

1.3 Scope

The processes described in this document cover the IM functions of the Regulations in regards to Dispute Resolution, only in relation to Working Timetable capacity allocation. This requires interfaces with stakeholders (within the IM and RUs) to be defined and managed. Some of the IM functions are performed on behalf of the PAM from other areas within Translink (e.g. Timetable Planning).

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2.0 Capacity Allocation

2.1 Disputes arising from the Capacity Allocation Process

According to the Regulations, the IM must facilitate the establishment and operation of a system to resolve disputes about the allocation of infrastructure capacity. This is to be done in accordance with Regulation 23 et al.

The PAM oversees and co-ordinates the consideration of the applications for capacity and any resulting disputes, as per the terms of the Capacity Allocation Process (I/NOP/PRO/1701).

The PAM is supported in this by:

- Infrastructure Systems and Performance Manager
- Planning and Performance Manager – Rail

Any disputes by Applicants for capacity which arise from the Capacity Allocation Process should be resolved within this process. In the event of conflict, the IM must use all best endeavours to coordinate requests. The IM may propose alternative capacity to accommodate requests and resolve conflict. If the IM is unable to resolve the conflict, an Applicant may then initiate the Dispute Resolution Process.

The Dispute Resolution Process should be progressed concurrently with normal Working Timetable validation and should not be allowed to disrupt or delay the validation.

2.2 Declaration of Congested Infrastructure

Where, after the coordination of requests for capacity and consultation with the applicants, it is not possible for the IM to satisfy requests for infrastructure capacity adequately, the IM must declare that element of the infrastructure on which requests cannot be satisfied to be congested. The IM should then initiate the Process for Congested Infrastructure and inform:

- a) Existing users of that railway infrastructure;
- b) New applicants for that element of railway infrastructure;
- c) The Office of Rail and Road; and
- d) The Department.

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3.0 Duties of Parties Involved in the Dispute Resolution Process

3.1 Duties of Dispute Parties

Dispute Parties shall at all times:

- a) Co-operate with any reasonable request of the Chair, the Mediator, the Panel and each other;
- b) Conduct themselves in good faith with the objective of resolving the dispute; and
- c) Avoid antagonistic or unduly adversarial behaviour.

Dispute Parties shall provide as requested all material required for the effective consideration and determination of the dispute.

3.2 Duties of the Chair

The role of the Chair is carried out by the Planning and Access Manager. The Chair is responsible for the overall management of the Dispute Resolution Process and should oversee Mediation or manage the Access Dispute Settlement as necessary. If the Disputing Parties elect to resolve a dispute through Mediation, the Chair should assist in appointing a Mediator. If the Mediation is not successful, the Chair will refer the disputing parties to the Access Dispute Settlement (ADS). The Chair will then preside over the ADS and should:

- a) Effectively and fairly manage the dispute and the Access Dispute Settlement;
- b) Establish a Panel and consider the necessity of Assessors as part of that panel;
- c) Consider the Notice of Dispute, written statements and arguments of the Disputing Parties;
- d) Seek to facilitate an agreement between the parties regarding the issues in dispute;
- e) Initiate a Hearing to reach a determination in a timely manner;
- f) Make a final determination of the dispute and prepare a written judgement which is legally sound; and
- g) Circulate the final determination of the dispute.

3.3 Duties of the Mediator

The person to be in the role of Mediator is agreed by the Disputing Parties or appointed by the Chair. The role of the Mediator is to support the Disputing Parties in reaching an agreement. The Mediator is a neutral facilitator who helps the Disputing Parties to discuss the issues and find options to resolve. The Mediator does not offer a determination or a decision regarding the dispute, but can offer guidance and advice. The Mediator must be competent to carry out their role and therefore must have expertise in train service planning, capacity allocation and dispute resolution. The Mediator is responsible for:

- a) Agreeing a date and time for the Mediation to take place;
- b) Protecting the confidentiality of all parties;
- c) Reading all documentation presented as part of the Mediation; and
- d) Recording and signing any agreements resulting from the Mediation.

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3.4 Duties of the Panel

The Panel should be made up of individuals whose expertise is in train services planning and the allocation of capacity. The Chair may also appoint one or more Assessors to facilitate the determination of a dispute. Any such Assessor may be a technical Assessor with a specific area of relevant expertise and / or a legal Assessor.

The Panel should consider the Notice of Dispute, written statements and arguments of the Disputing Parties, under the general guidance of the Chair. The Panel should advise the Chair of their findings and conclusions and reach its determination in a timely manner consistent with the nature and complexity of the dispute.

4.0 Process for Dispute Resolution

4.1 Stages of Dispute Resolution

There are four key stages to the Dispute Resolution Process. The process will be initiated when a Notice of Dispute is received. If there is consensus between the parties in dispute to do so, they may instigate a Mediation process. If there is no consensus, they will proceed to the Access Dispute Settlement. A determination will then be made, which all Disputing Parties must adhere to. If the Disputing Parties are unsatisfied, they may appeal to the ORR. All stages are described in detail below.

4.2 Initiating a Dispute

A party wishing to refer a dispute relating to capacity allocation shall submit a written Notice of Dispute to the Planning and Access Manager and a copy to every other party involved or cited in the dispute.

The Notice of Dispute shall do all the following:

- a) Clearly state that it is a Notice of Dispute;
- b) Be issued within 5 working days of the party being informed of the relevant capacity allocation;
- c) State the contract under which the dispute is made;
- d) List the other parties concerned;
- e) Summarise the basis of the claim including a brief list of issues; and
- f) State whether exceptional circumstances exist requiring an expedited hearing or process.

4.3 Processing a Dispute

Within 10 working days of receipt of the Notice of Dispute, the Chair should acknowledge receipt of the Notice and arrange to meet with the Disputing Parties. At this meeting, the Chair should encourage the parties to reach agreement through Mediation. If Mediation is not deemed to be

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appropriate by the Disputing Parties, the Chair should indicate an approximate date and time for the hearing and an estimated duration for the hearing.

4.4 Mediation

Mediation is a private facilitative dispute resolution process which allows a neutral Mediator to help reach a negotiated settlement.

A dispute can be submitted to Mediation when agreed by the Disputing Parties and it will commence upon notification of Mediation to the Chair. The Chair should then assist the parties in the timely appointing of a Mediator. Upon appointment of a Mediator, the Disputing Parties and Mediator will agree a date for the Mediation session to be held within 15 working days.

Each of the parties in dispute should provide a concise summary of its dispute and any documents which they may refer to during Mediation. The summary and documents should then be exchanged between the Disputing Parties and with the Mediator at least 5 working days prior to the Mediation.

The Mediator should consult with all parties prior to the Mediation, read all supplied documentation and facilitate the drawing up of any settlement agreement. The Mediation will take place at a time and place stipulated by the Mediator.

Each party should be represented at the Mediation session by at least one senior manager with full decision-making authority to settle the dispute.

Minutes will not be taken of the Mediation; the Mediation should be kept confidential.

Any settlement reached in the Mediation will not be legally binding until it has been recorded in writing and signed by all parties. If the parties have not resolved the dispute within 10 working days of the mediation session, the dispute will be referred back to the Access Dispute Settlement process.

4.5 Access Dispute Settlement

An Access Dispute Settlement is a determinative dispute resolution process. A Panel will be created to consider the legal rights of the parties in dispute in accordance with the evidence and argument presented and determine the outcome in a timely and efficient manner. The final determination is made by the Chair.

The Access Dispute Settlement shall be administered in a way which is proportionate to the complexity of the issues and the scale of any financial claims involved.

The Chair and Panel of the Access Dispute Settlement shall:

- a) Provide relevant expertise in the form of a Panel to make an informed decision;
- b) Endeavour to reach fair, rapid and inexpensive determinations of disputes drawing on that expertise; and
- c) Ensure a fair and efficient process.

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The Panel shall be made up of individuals with expertise and experience in train services planning and capacity allocation, and Assessor(s) where required, who can then advise on timetabling disputes.

Each of the parties in dispute should provide a concise summary of its dispute and any documents which they may refer to during the Hearing. The summary and documents should then be exchanged between the Disputing Parties and with the Chair at least 5 working days prior to the Hearing.

A Hearing shall be conducted by the Chair, other Panel members and any Assessors. The Hearing shall be conducted with the Disputing Parties present. At the conclusion of the submissions, the Panel will withdraw to consider the evidence and deliberate. The decision will be based on legal constraints and recommendations as detailed in the Regulations. Consideration should also be given to:

- a) Whether an alternative to the current allocation of capacity is viable which would resolve the dispute;
- b) Whether it is possible to accommodate the conflicting requests on the basis of demonstrated need; and
- c) Whether, and if so what, part of the service capacity could be granted to the applicant.

The Chair, supported by the Panel, shall then make a determination of the dispute in writing to include:

- a) The date of the determination;
- b) The names of the Chair and Panel members, including Assessors;
- c) A brief summary of the dispute;
- d) An identification of the facts and law considered by the Panel;
- e) A summary of evidence provided;
- f) Detail of findings and decisions made;
- g) Detail of conclusions reached by the Chair;
- h) Reasons for these decisions and conclusions;
- i) A timeline for compliance to the determination;
- j) Any additional guidance to the Dispute Parties; and
- k) Signed and dated confirmation from the Chair that the determination is legally sound and appropriate in form.

All Disputing Parties should adhere to the determination within the specified timeline for compliance.

If the Disputing Parties are unsatisfied with the outcome of the Hearing, they may then appeal the decision of the Chair to the Office of Rail and Road (ORR).

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5.0 Appeals Process

The Office of Rail and Road is designated as the regulatory body under the Regulations. A Disputing Party has the right of appeal to the Office of Rail and Road if it believes it has been unfairly treated, discriminated against or is in any other way aggrieved, in particular with regards to concerns relating to the allocation process.

A Disputing Party may complete an application to ORR on appeal, found on the ORR website (<http://orr.gov.uk/rail/access-to-the-network/the-network-code/current-appeals>).

The ORR will then progress the application as per their Appeals Process.

A decision by the ORR on an appeal brought under the regulations is binding on all parties affected by that decision and it is the duty of any person to whom a direction is given to comply with and give effect to that direction.

Appendix A Summary of Dispute Resolution Process



