

**THE RAILWAY INDUSTRY DISPUTE
RESOLUTION RULES**

THE RAILWAY INDUSTRY DISPUTE RESOLUTION RULES

(formerly “the Industry Disputes Resolution Committee, Mediation, Arbitration and Expert Determination Rules”)

These Rules provide a number of possible dispute resolution mechanisms. The limits on the application of each mechanism are set out in paragraph 1 of each of sections A to D below. Subject to those limits, an agreement involving industry parties may provide that disputes arising under that agreement are to be resolved by one or more of these mechanisms.

These Rules are intended to apply to all agreements between industry parties, save those (such as the various access agreements and ATOC schemes and arrangements) where alternative dispute resolution mechanisms have been established.

DEFINITIONS AND INTERPRETATION

Definitions

In these Rules, unless the context otherwise requires:

“Access Dispute Resolution Committee”	means the committee established under part A of the Access Dispute Resolution Rules;
“Access Dispute Resolution Rules”	means the rules regulating the resolution of disputes between parties to access agreements entitled “The Access Dispute Resolution Rules”, as amended from time to time, the current form of which is annexed to the Railtrack Track Access Conditions 1995;
“the Act”	means the Railways Act 1993;
“affiliate”	(i) “holding company” and “subsidiary” shall have the meanings given to them in section 736 of the Companies Act 1985; and (ii) the British Railways Board shall be treated as if it were a company;
“alternate”	means an alternate of a member appointed pursuant to paragraph A2.5 or an alternate of a Council Member appointed pursuant to paragraph A9.7, as the case may be;

“arbitrator”	in Scotland, means arbiter;
“CAHA”	means the Claims Allocation and Handling Agreement dated 1 April 1994 and made between British Railways Board, Railtrack, Gatwick Express Limited, European Passenger Services Limited and RCL, as amended from time to time, and any other agreement with that name made in replacement for that agreement;
“Chairman”	means the chairman of the Committee and, where either is acting as chairman in proceedings of the Committee, the Deputy Chairman or an independent Vice-Chairman;
“claimant”	means a person who refers a dispute to the Committee or an arbitrator;
“Class”	means any one of Railtrack, the Franchised Passenger Class, the Infrastructure Maintenance Class, the Non-Franchised Passenger Class, the Non-Passenger Class and the Class of Other Industry Parties;
“Class Member”	means a member of a Class;
“Class of Other Industry Parties”	means all Other Industry Parties, as a class;
“Class Representative”	means a person who is appointed by a Class or Band to serve on the Class Representative Committee;
“Class Representative Committee”	mean the Class Representative Committee constituted in accordance with Part C of the Railtrack Track Access Conditions 1995;
“Committee”	means the Industry Disputes Resolution Committee established pursuant to paragraph A2;
“Committee Secretary”	means the person appointed as such pursuant to paragraph A3.7;
“costs”	includes expenses;
“Council”	means the Council established pursuant to paragraph A9;
“Council Chairman”	means the chairman of the Council;
“Council Member”	means a member of the Council;
“Council Secretary”	means the person appointed as such pursuant

	to paragraph A10;
“Deputy Chairman”	means the deputy chairman of the Committee appointed pursuant to paragraph A3.1(b);
“Disputes Secretary”	means the person appointed as such pursuant to paragraph A3.11;
“financial associate”	in relation to any party, means a person from whom that party has obtained or is, in good faith, seeking to obtain any financial assistance, whether by way of loan, equity participation or otherwise;
“Franchised Passenger Class”	means all Train Operators whose track access contracts are, at least in part, in respect of the provision of franchised services (or in respect of railway passenger services which the Franchising Director shall have designated as eligible for provision under franchise agreements pursuant to section 23 of the Act), as a class;
“independent Vice-Chairman”	means a person appointed pursuant to paragraph A3.12;
“Industry Party”	means any Class Member;
“Infrastructure Maintenance Class”	<p>means all those persons each of which:</p> <ul style="list-style-type: none"> (a) provides some or all of the services described at section 82(3)(a),(b),(c), (e) and (insofar as it relates to those subparagraphs) (f) of the Act, and (b) either <ul style="list-style-type: none"> (i) was in the previous financial year paid more than £10 million and has firm orders for the current financial year for more than £5 million, or (ii) has firm orders for the current financial year for more than £10 million, <p>in each case in respect of such services, as a class;</p>
“the Larger Non-Passenger Operators”	means those members of the Non-Passenger Class whose annual Track Charges relating to the provision of services for the carriage of goods by railway amount, as nearly as practicable, to the first 75 per cent of the aggregate relevant annual Track Charges

	payable by all the members of that Class, listed at the relevant time on the basis of descending value of the relevant annual Track Charges payable by them at that time;
“licence fees”	in relation to an Industry Party, means the amount payable by that Industry Party to the Regulator under each of the licences granted to it under section 8 of the Act which it holds;
“member”	means a member of the Committee;
“Non-Franchised Passenger Class”	means all Train Operators whose access agreements are, at least in part, in respect of the provision of railway passenger services (other than franchised services), as a class;
“Non-Passenger Class”	means all Train Operators whose access agreements are, at least in part, in respect of the provision of services for the carriage of goods by railway, as a class (and including both the Larger and the Smaller Non-Passenger Operators);
“Other Industry Party”	<p>means any person who:</p> <ul style="list-style-type: none">(a) is not Railtrack or a member of the Franchised Passenger Class, the Infrastructure Maintenance Class, the Non-Franchised Passenger Class or the Non-Passenger Class, and(b) has requested to be, and whom the Council has decided should be, an Other Industry Party, which persons shall be listed in Schedule 1 to these Rules, as amended from time to time. The Council may (whether in response to a request from that person or not) decide that that person should no longer be an Other Industry Party. If such person, at the time the Council so decides, is a party to a dispute that has been referred for resolution pursuant to these Rules, such person shall continue to be an Other Industry Party for the purposes of that dispute;
“party to a dispute”	<p>in relation to a dispute, means a person who:</p> <ul style="list-style-type: none">(a) has made a claim in the dispute;(b) has had a claim made against him; or(c) in the case of a reference by a party to an

	access contract under the Access conditions forming part of that contract, is likely to be materially affected by the outcome of the reference;
	(d) has been notified by RCL that RCL believes it to be wholly or partly liable for a claim, the allocation of liability for which is disputed;
“pleadings”	means the written averments, pleas, admissions and denials of each party to an arbitration;
“RCL”	means Railway Claims Limited, or any other company that is authorized to act as the Agency under CAHA;
“Railtrack”	means Railtrack PLC, incorporated in England and Wales under registered number 2904587;
“register”	means the register established and maintained pursuant to paragraph A3.11.2;
“Smaller Non-Passenger Operators”	means the members of the Non-Passenger Class other than the Larger Non-Passenger Operators;
“track access contract”	in relation to any person, means an access contract under which Railtrack grants to that person permission to use track of which Railtrack is the owner or operator;
“Track Charges”	means the charges which it is reasonably foreseeable will be levied by Railtrack for and in connection with the permission to use the network pursuant to a track access contract for the period in question;
“Train Operator”	means a person (whether or not an operator of trains) who has permission to use track pursuant to an access contract which incorporates the Railtrack Track Access Conditions 1995, as amended from time to time.

Interpretation

Unless the context otherwise requires:

- (a) terms and expressions defined in the Act shall have the same meanings in these Rules;
- (b) references to paragraphs and parts are to paragraphs and parts of these Rules;

- (c) the headings are for convenience only and shall not be taken into consideration in the interpretation of these Rules;
- (d) words importing the singular shall include the plural and vice versa. Words importing the masculine shall include the feminine;
- (e) references to a statute shall include any re-enactment of it.

A THE COMMITTEE AND THE COUNCIL

A1 Purpose of the Committee and the Council

A1.1 Disputes between Industry Parties

The purpose of the Committee is to discuss and settle disputes which are referred to it by Industry Parties. Such disputes may be referred pursuant to either:

- (a) a provision in a contract between two or more Industry Parties which requires such an issue to be resolved pursuant to this part of these Rules; or
- (b) an express reference by the parties to a dispute.

A1.2 Other disputes

A dispute between an Industry Party and another party which is not an Industry Party may be referred to the Committee only if:

- (a) the non-Industry Party consents to the dispute being so referred; and
- (b) the dispute is part of a wider dispute between more than one Industry Party, or involves the allocation of a claim falling within clause 2.1 of the CAHA, or the Committee consents.

A1.3 Purpose of the Council

The purpose of the Council is to perform the functions entrusted to it under paragraphs A3.1, 3.3, 3.4, 3.5, 3.8, 3.11, 3.12, 4.3 and 4.4.

A2 Establishment and composition of the Committee

A2.1 General

The Committee is hereby established and shall consist of the Chairman, the Committee Secretary and five members of whom one shall be appointed Deputy Chairman pursuant to paragraph A3.1. One member shall be appointed by each of the following Classes:

- (a) Railtrack;
- (b) the Franchised Passenger Class;
- (c) the Non-Passenger Class;
- (d) the Non-Franchised Passenger Class; and
- (e) the Infrastructure Maintenance Class.

None of the Chairman, any independent Vice-Chairmen appointed pursuant to paragraph A3.12 or the Committee Secretary shall be a member.

A2.2 Appointment

A2.2.1 Elections

- (a) The member appointed by Railtrack shall be nominated by Railtrack.
- (b) The members appointed by the other Classes mentioned in paragraph A2.1 shall be elected by the votes of the Industry Parties comprising that Class present (whether in person or by proxy) and voting at a meeting of the Class Members called by the Committee Secretary.
- (c) At such a meeting, each Industry Party may vote for a first and a second choice candidate (who shall be different persons). If a candidate has more first choice votes than each of the other candidates, he shall be elected. If no candidate has more first choice votes than each of the other candidates, of the two or more candidates with the greatest number of first choice votes, the candidate who has the greatest number of second choice votes shall be elected.
- (d) A passenger train operating unit of British Rail shall be regarded as a franchise operator and an infrastructure maintenance or track renewal unit of British Rail shall be regarded as a person providing the services set out in sub-paragraph (a) of the definition of Infrastructure Maintenance Class, in either case whether or not it is a legal entity. In cases of doubt the certificate of the Secretary of the British Railways Board shall be conclusive.
- (e) If, when a Class meeting to elect a member is called, any Industry Party is eligible to be a member of more than one Class, it shall be a member of the Class corresponding to the type of railway services in respect of which:
 - if a Train Operator, the greatest part of its Track Charges is likely to be payable, and
 - otherwise, the greatest part of its turnover attributable to railway services is likely to be derived,

for the period of two years following that meeting.

A2.2.2 Affiliates

Affiliates of one another (other than affiliates of the British Railways Board) shall be treated as the same person for the purpose of any election.

A2.2.3 Notification of elections

The Committee Secretary shall, as soon as reasonably practicable following the election of a new member, notify the Chairman, the independent Vice-Chairmen, all members and Class Members of that election.

A2.3 Retirement by rotation and duration of appointment

Members shall retire in rotation in the following order:

- (a) on 1 April 1996, the members elected by the Franchised Passenger Class and Railtrack;
- (b) on 1 April 1997, the members who have not retired pursuant to subparagraph (a) above.

Thereafter (and subject to paragraph A2.4 and unless he shall have been re-elected) a member shall be treated as having ceased to hold office on the 1 April which is nearest to the date which is two years after the date of his appointment.

A2.4 Loss of office

A2.4.1 A member:

- (a) if appointed by Railtrack, may be removed from office by Railtrack, on 7 days' notice to the Committee Secretary;
- (b) in the case of any other member, may be removed from office by a majority in number of Class Members of the relevant Class present (whether in person or by proxy) and voting at a meeting of the Class Members called by the Committee Secretary for the purposes of such removal; and
- (c) shall be treated as having resigned from office if he dies or becomes of unsound mind.

A2.4.2 A replacement member shall be elected in accordance with the procedure in paragraph A2.2.1.

A2.4.3 Paragraph A2.2.3 shall apply to a member's loss of office pursuant to this paragraph A2.4 or paragraph A2.3 as it does to a member's election.

A2.5 Alternates

A2.5.1 Rights to appoint or remove alternates

Each member (other than an alternate member) may:

- (a) appoint any person who is willing to act to be his alternate; and
- (b) remove that alternate from office.

A2.5.2 Notice of appointment or removal

The appointment or removal of an alternate shall be by notice given to the Chairman and the Committee Secretary within 7 days of the appointment or removal and signed by the member making or revoking the appointment.

A2.5.3 Rights of alternates

An alternate shall be entitled:

- (a) to receive notice of all Committee meetings which his appointor is entitled to attend;
- (b) to attend and vote at any such Committee meeting at which the member which appointed him would be entitled to attend and vote and is not personally present; and
- (c) generally to perform all the functions of the member which appointed him as a member in his absence.

A2.5.4 Loss of office of alternates

An alternate shall cease to be an alternate if the member which appointed him ceases to be a member.

A3 The Chairman, Deputy Chairman and Committee Secretary

A3.1 Appointment of Chairman

The Council shall appoint the Chairman, who shall:

- (i) not be a member of the Committee;
- (ii) have suitable experience of the railway industry; and
- (iii) subject to paragraph A3.5, not, during his term of office, be employed by or otherwise connected with any Industry Party or receive any benefit from any Industry Party in return for services provided to it, in either case in a way which may compromise his impartiality.

Such appointment and any re-appointment shall be made by unanimous resolution of the Council.

A3.2 Declaration of connections

The Chairman shall on appointment declare to the Committee Secretary any relevant connection which he has or has had with the railway industry, and shall during his term of office promptly disclose any new connection of that kind. The Committee Secretary shall provide a copy of any disclosure made under this paragraph to each member and to every Industry Party which requests it.

A3.3 Fees, expenses and allowances of Chairman

A3.3.1 Subject to paragraphs A3.4 and A3.5, the Chairman shall hold office on such terms as the Council shall determine. Where the terms on which the Chairman holds office include provision for the payment to him of any allowances or expenses, the rate at which those allowances and expenses are paid shall be determined by the Council.

A3.3.2 The terms on which the Chairman holds office may, in addition to providing for his

remuneration, include provision for the payment of such pensions, allowances or gratuities to or in respect of him, or such contributions or payments towards provision for such pensions, allowances or gratuities, as may be determined by the Council.

A3.4 Duration of appointment of Chairman

A3.4.1 Appointment and removal

The Chairman shall be appointed for a term of two years, and may be reappointed. The Council may remove him from office on the motion of any Council Member, provided that at least two weeks' written notice of the intention to table such a motion has been given to all members, Council Members, the Council Chairman and the Chairman. A motion to remove the Chairman shall:

- (a) in the case of removal on the ground of the incapacity or misbehaviour of the Chairman, be passed by the Council in accordance with paragraph A12; and
- (b) in any other case, be passed only by unanimous resolution of the Council.

A3.4.2 Appointment of successor Chairman

If, within 45 days of the termination (for whatever reason) of the period of office of a Chairman, the Council shall have failed to appoint a new Chairman pursuant to paragraph A3.1, the Council shall:

- (a) by unanimous resolution, determine a list of three candidates for the office of Chairman;
- (b) send the list to the Regulator, together with such information in relation to the candidates and the preferences of the members and the Council Members as the Regulator may request; and
- (c) be deemed to have appointed as Chairman the candidate selected by the Regulator.

A3.5 First Chairman from the British Railways Board

Notwithstanding paragraphs A3.1 to A3.4, until 1 October 1995 the Chairman may be an employee of the British Railways Board, appointed by the Council at its first meeting, who shall receive no payment or other remuneration in respect of his office.

A3.6 Deputy Chairman

A3.6.1 Appointment and removal

The Deputy Chairman shall be appointed by the Committee for a term of one year, and may be reappointed. The Committee may remove him from office on the motion of any member, provided that at least two weeks' written notice of the intention to table such a motion has been given to all members and the Chairman.

A3.6.2 Voting by Deputy Chairman

The Deputy Chairman shall be entitled to cast his vote as a member notwithstanding that at the relevant time he shall be acting as Chairman of the Committee or the sub-committee in question.

A3.7 Committee Secretary

The Chairman shall appoint a Committee Secretary, and an alternate, who may be employees of one or more Industry Parties. They may attend Committee meetings and may be removed from office by the Chairman.

A3.8 Terms of appointment of Deputy Chairman, Committee Secretary etc.

A3.8.1 The Deputy Chairman and the Committee Secretary and his alternate shall hold office on such terms as the Council shall determine. Where the terms on which any of them holds office include provision for the payment to him of any allowances or expenses, the rate at which those allowances and expenses are paid shall be determined by the Council.

A3.8.2 The terms on which the Deputy Chairman, Committee Secretary and his alternate holds office may, in addition to providing for his remuneration, include provision for the payment of such pensions, allowances or gratuities to or in respect of him, or such contributions or payments towards provision for such pensions, allowances or gratuities, as may be determined by the Council.

A3.9 Funding of Committee etc.

A3.9.1 Payments by Industry Parties

Each Industry Party shall, within 30 days of being requested to do so by the Committee Secretary, pay to the Committee Secretary an amount of the estimated costs and expenses of the Committee equal to the proportion which its licence fees bear to the aggregate licence fees of all Industry Parties. The amount payable by any unlicensed Industry Party shall be assessed by the Committee and shall be fair and reasonable. The Committee Secretary shall receive and hold amounts paid pursuant to these rules on behalf of the Committee.

A3.9.2 Committee to estimate costs

The estimated costs and expenses of the Committee referred to in paragraph A3.9.1 shall be the amount which the Committee reasonably expects will be its costs of operation in the year beginning with the next following 1 April, net of any receipts (including amounts received pursuant to paragraphs A5.11.4 and C5.1) which it expects to be paid to it by any person, including any unlicensed Industry Party. Remuneration of, and other payments to, members shall not form part of the costs and expenses of the Committee.

A3.9.3 Adjustments of estimates

To the extent that the actual costs and expenses of the Committee shall have been underestimated or overestimated by the Committee in respect of any period, the amount of the difference shall be carried over to the following year and shall be credited or deducted from the amounts payable by Industry Parties in that following year.

A3.9.4 Accountants' certificate

Any Industry Party shall be entitled to require the Committee Secretary to provide him with a certificate from a firm of chartered accountants of national standing in relation to the costs and expenses of the Committee in respect of any period. The Committee Secretary shall promptly comply with any such request.

A3.10 Chairman etc. not employees

None of the Chairman, the Deputy Chairman, the independent Vice-Chairmen, the Committee Secretary, his alternate or the Disputes Secretary shall by virtue of his office be an employee of the Committee, the Council or any person.

A3.11 The Disputes Secretary

A3.11.1 Appointment

The Council shall, with the approval of the Regulator and the Franchising Director, appoint a Disputes Secretary, who may be employed by an Industry Party and may be the same person as the Committee Secretary. The Disputes Secretary may be removed from office by a decision of the Council, provided that at least two weeks' written notice of the intention to table such a motion has been given to all members, Council Members, the Council Chairman, the Chairman and the Disputes Secretary.

A3.11.2 Register

The Disputes Secretary shall establish and maintain a register of persons who are suitably qualified, willing and able to act as mediators, arbitrators or experts and of organisations which are qualified to suggest such persons. The Disputes Secretary shall provide a copy of the register on request to any Industry Party or the Franchising Director.

A3.11.3 Other functions and qualifications

The Disputes Secretary shall have such other functions as the Council shall determine. The Council may authorise the Disputes Secretary to engage staff or consultants to assist him in his functions.

A3.11.4 Terms of appointment etc.

The provisions of paragraph A3.8 shall apply mutatis mutandis to the Disputes Secretary, his staff and consultants as they apply to the Committee Secretary.

A3.12 Independent Vice-Chairmen

A3.12.1 Power to appoint

If the Council shall be satisfied that, in addition to the Deputy Chairman appointed pursuant to paragraph A3.1(b), it is necessary or expedient that there shall be one or more Vice-Chairmen of the Committee who shall not be members of the Committee, it shall be entitled at any time and from time to time to make such an appointment.

A3.12.2 Method of appointment

An independent Vice-Chairman shall be appointed in the same way as, and according to the same conditions as apply to the appointment of, the Chairman, except that paragraph A3.4.2 shall not so apply.

A3.12.3 Terms of appointment of independent Vice-Chairmen

Each independent Vice-Chairman shall hold office and be liable to be removed from office in the same way as the Chairman. Paragraph A3.5 shall not apply to any independent Vice-Chairman.

A3.12.4 Rights and obligations of independent Vice-Chairmen

Except to the extent:

- (a) otherwise determined by the Council; or
- (b) that the Chairman shall have acted or given notice to the independent Vice-Chairman in question that he has determined that he shall act in the matter in question,

each independent Vice-Chairman shall have the same rights and obligations as are exercisable and dischargeable by the Chairman under these rules. References in these Rules to the Chairman shall be construed accordingly.

A4 Sub-committees

A4.1 Technical Sub-Committee

A Technical Sub-Committee of the Committee is hereby established. It shall determine all technical disputes referred to it by the Committee Secretary on the Committee's behalf.

A4.2 Constitution of the Technical Sub-Committee

A4.2.1 Membership

The membership of the Technical Sub-Committee shall be determined in the same way as members of the Committee are appointed, and Part A of these Rules shall apply mutatis mutandis to such determinations. The same person may be a member of the Committee and the Technical Sub-Committee.

A4.2.2 Chairmanship of the Technical Sub-Committee

The chairman of the Technical Sub-Committee shall be either the Chairman of the Committee or any other person elected by the Technical Sub-Committee and approved by the Chairman of the Committee.

A4.2.3 Powers of the Technical Sub-Committee chairman to make rulings

Where the chairman of the Technical Sub-Committee is a person other than the Chairman of the Committee or one of the independent Vice-Chairmen and is an officer or employee of, or is otherwise connected with, an Industry Party (in either case in a way which may compromise his impartiality), he shall not be entitled to make a ruling under paragraph A4.4 or A5.11 if the Industry Party in question is a party to the dispute in question.

A4.3 Other sub-committees

The Council may decide to establish other sub-committees.

A4.4 Constitution of sub-committees

Notwithstanding paragraph A4.2, the Council shall have the power to determine or amend the constitution of any sub-committee established pursuant to paragraph A4.

A4.5 Procedural rules

Paragraph A5.3 applies in relation to the rules of procedure of sub-committees.

A4.6 Referral of access issues to the Access Dispute Resolution Committee

Where a dispute, or a part of a dispute, relates wholly or substantially to the rights and obligations of one or more parties to one or more access contracts under those contracts (including their related Conditions and Collateral Agreements and any related lease), the Committee may decide that that dispute, or that part of the dispute, shall be referred to the Access Dispute Resolution Committee for determination in accordance with the Access Dispute Resolution Rules. Such a decision shall be taken in accordance with paragraph A7. The Access Dispute Resolution Committee shall be invited to report its determination, or that of its Chairman, to the Committee. That determination shall be treated, as between the parties to the access contract concerned (but only as between those parties) as a decision of the Committee.

A4.7 Questions of jurisdiction

In any case in which either:

- (a) more than one sub-committee of the Committee has jurisdiction in a reference; or
- (b) the parties to a dispute are not in agreement as to which sub-committee of the Committee should determine their reference,

the question of jurisdiction shall be determined by the Committee pursuant to paragraph A7.

A5 Proceedings of the Committee

A5.1 Meetings

Meetings of the Committee shall take place at the dates, times and places notified to Industry Parties by the Chairman, or the Committee Secretary on his behalf. Any Industry Party may, by notice to the Committee Secretary, require a meeting of the Committee to be called. That meeting shall take place within 14 days (or such longer period as the Industry Party in question shall agree with the Committee Secretary) of the receipt by the Committee Secretary of the notice. The quorum for each meeting of the Committee shall be the Chairman and four members or their alternates. With the consent of the Chairman or in accordance with such directions as the Chairman shall have given, the Deputy Chairman or any of the independent Vice-Chairmen may attend in the place of the Chairman and shall be counted as Chairman for the purposes of the quorum. If the Deputy Chairman so attends in place of the Chairman, he shall be counted both as Chairman and as a member.

A5.2 Chairmanship of meetings

Each meeting of the Committee shall be chaired by the Chairman, the Deputy Chairman or an independent Vice-Chairman. When he is chairing the Committee, the Deputy Chairman or the independent Vice-Chairman shall have all the powers of the Chairman, except that:

- (a) the Deputy Chairman shall not be entitled to make a ruling pursuant to paragraph A5.11 in relation to any dispute to which the Industry Party of which he is an employee (or is otherwise connected with in a way which may compromise his impartiality) is a party; and
- (b) the independent Vice-Chairman's powers shall be subject to the limitations described in paragraph A3.12.4.

A5.3 Rules of procedure of Committee and sub-committees

A5.3.1 Committee to make rules

Subject as provided in this paragraph A5.3, the Committee shall be entitled to make and from time to time revise the rules of procedure to be followed by the Committee and every sub-committee. If no rules of procedure shall have been made for any sub-committee, the rules of procedure of the Committee shall apply to the proceedings of the sub-committee as if it were the Committee.

A5.3.2 Power to delegate power to make rules

The Committee may delegate the power to make and revise rules of procedure for any sub-committee to the sub-committee in question, subject to such (if any) conditions as the Committee shall specify in the delegation. Any such delegation

may be revoked at any time by notice in writing given by the Committee to the chairman of the sub-committee in question. Notice of any such delegation or revocation shall be promptly given to each member of the Committee or the sub-committee in question. This paragraph A5.3 shall apply mutatis mutandis to rules made pursuant to a delegation, except that paragraph A5.3.3 shall apply as if references in that paragraph to the Chairman of the Committee were references to both the Chairman of the Committee and the chairman of the sub-committee in question.

A5.3.3 Consultation with Chairman and independent Vice-Chairmen

No rules of procedure may be made or revised pursuant to this paragraph A5.3 unless the Committee shall have:

- (a) consulted the Chairman of the Committee and each of the independent Vice-Chairmen and, in the case of proposed rules or revisions to the rules of a sub-committee, the chairman of the sub-committee in question, as to the proposed rules or revisions; and
- (b) taken into account any representations or objections they shall have made within such time as the Committee shall have specified for the purpose.

In so consulting, the Committee shall provide a copy of the proposed rules or revisions to the Chairman and each of the independent Vice-Chairmen.

A5.3.4 Relationship with these Rules

Rules of procedure made pursuant to this paragraph A5.3 may not be inconsistent with any provision of Part A of these Rules, except that:

- (a) a sub-committee may decide to meet with such frequency as it shall determine necessary for the proper discharge of its functions; and
- (b) rules of procedure may specify time limits which are different from those specified in this Part A provided they do not deny any party to a dispute the right:
 - (i) properly to make its case;
 - (ii) to receive proper notice of the case it has to answer; and
 - (iii) to a fair hearing.

A5.4 Commencement of proceedings

A person wishing to refer a dispute to the Committee shall serve a written notice of reference on the Committee Secretary and on every other party to the dispute. The notice shall:

- (a) state the subject-matter of the dispute;
- (b) identify the other parties concerned;

- (c) be accompanied by any papers which the claimant reasonably considers are necessary to or desirable for the Committee's consideration of the dispute; and
- (d) be sent so as to be received by each person to whom it is sent at least 14 days before the meeting of the Committee which is to consider the matter.

A5.5 Responses

Each other party to a dispute which has been notified to the Committee Secretary pursuant to paragraph A5.4 shall provide to the Committee Secretary and the other parties to the dispute such further information or documents as that party reasonably considers necessary or desirable to the Committee's consideration of the dispute. Such information or documents shall be sent so as to be received by each person to whom it is sent at least 7 days before the meeting of the Committee which is to consider the matter.

A5.6 Circulation of papers

The Committee Secretary shall circulate to members, so as to be received at least 4 days before a meeting of the Committee, a list of the issues to be tabled at that meeting, together with appropriate summaries and background papers relating to those issues. Late circulation of papers to members by the Committee Secretary shall not prevent or invalidate discussion of the disputes concerned.

A5.7 Notification to parties to dispute

The Committee Secretary shall notify a party to a dispute which is to be considered at a meeting of the Committee, of the time, date and place of the meeting. Such notification shall be sent so as to be received at least 7 days before the meeting. If a party does not receive:

- such notification; and
- the information submitted by each other party to the dispute

at least 7 days before the meeting (other than through its own fault), it shall be entitled to require the Committee to postpone its consideration of the dispute until a date which is not earlier than 7 days after its receipt of the notification and information. The Committee shall be entitled to proceed to consider any dispute referred to it unless:

- (a) any party to the dispute shall, before the beginning of the meeting, have exercised any right to have consideration of the dispute postponed; or
- (b) the Chairman, on the application of any party to the dispute, determines that the Committee's consideration of the dispute should be postponed on the grounds that the party which has made the application has received insufficient notice in any respect.

If the Committee's consideration of the dispute is not so postponed, no objection

shall be made in relation to the failure of any party to receive on time any notification, information or documents.

A5.8 Time extensions

The Chairman on cause shown may extend any period of time fixed by or pursuant to these Rules whether or not that period of time has expired. He shall notify the members, the Committee Secretary and the parties to the dispute of any such extension of time.

A5.9 Representation before the Committee

A5.9.1 Representatives

Subject to paragraphs A5.9.3, A5.9.4 and A5.9.5, each party to a dispute shall be entitled to be represented by one officer or employee at that part of the meeting of the Committee which considers a dispute to which it is a party. If a member is an officer or employee of a party to the dispute, that party may be represented by that member or another officer or employee. A party intending to be represented shall notify the Committee Secretary and the other parties to the dispute of the name and address of its representative. A person shall not be prevented from representing a party because he is or may be a witness in the proceedings.

Nothing shall prevent a party being represented by different persons in relation to different disputes or at different meetings.

A5.9.2 Right to be heard

The representative of a party to the dispute shall be entitled to make written and oral representations to the Committee on behalf of the party in question.

A5.9.3 Legal advisers and outside representation

The Chairman of the Committee shall be entitled to direct that the representative of any party to the dispute may be:

- (a) accompanied by a person who is legally qualified, but who may not, without the consent of the Chairman, address the Committee; or
- (b) a person who is not an officer or employee of the relevant party (whether legally qualified or not).

In other cases, the representative of a party to a dispute may be legally qualified, but may not be accompanied by a legal adviser.

A5.9.4 Other assistance and observers

The representative of a party to a dispute may be accompanied at the meeting of the Committee by a representative of that party's insurers and by persons with technical or professional expertise (other than legal advisers) in relation to the subject-matter of the dispute. Such persons may advise the representative, but not, without the consent of the Chairman, address the Committee.

A5.9.5 RCL

A representative of RCL shall be entitled to attend that part of a meeting at which the allocation of a claim by a third party is to be considered. He may provide written and oral information to the Committee as to that claim.

A5.10 Procedure at Committee meetings

A5.10.1 Length of proceedings

The Chairman may determine for how long a party's representative may address the Committee, provided a fair and equal opportunity is given to each party for the presentation of its case.

A5.10.2 Appointment of adviser

- (i) The Chairman may obtain independent legal or technical advice relating to a dispute, provided that the parties to the dispute consent and that the costs of obtaining such advice do not exceed any limit specified by a party to the dispute.
- (ii) The parties to the dispute may agree the apportionment of such costs between themselves but, in the absence of such agreement, the Chairman shall decide how to apportion the costs of obtaining such advice. If he fails to decide, the costs shall be shared equally by the parties to the dispute.
- (iii) The Chairman and the Committee shall have regard to but shall not be bound to adopt the views expressed by any adviser. The Chairman shall disclose the substance of the advice that has been obtained to the parties to the dispute before the conclusion of the hearing of the representatives of the parties to the dispute.

A5.11 Determination of disputes

A5.11.1 Determination by Committee or Chairman

After the conclusion of the hearing of the representatives of the parties to a dispute, the members, and one representative of each of the parties to the dispute, shall try to resolve the dispute by unanimous agreement. The Chairman may at any time hold a vote to determine whether or not unanimity has been achieved, and a decision shall be treated as agreed unanimously if no member or voting representative present votes against it. If the members fail to agree as to the resolution of a dispute, the Chairman may:

- (a) make a ruling as to the resolution of the dispute;
- (b) once only, postpone consideration of the dispute to a subsequent meeting of the Committee. In such a case he may require the parties to the dispute to provide the Committee with such further information in such form and by such times as he shall specify;
- (c) declare that the dispute has not been resolved. In such a case the parties to the dispute may agree that, before it is referred to any other means of

dispute resolution previously agreed between them, the dispute should be referred to mediation pursuant to Part B.

A5.11.2 Power to make orders

The Committee, in agreeing as to the resolution of a dispute, or the Chairman, in making a ruling as to the resolution of a dispute, may make any of the orders provided for in paragraph C4.2.

A5.11.3 Written determination and reasons for it

Any ruling by the Chairman as to the resolution of a dispute shall be in writing. The Chairman shall not be obliged to provide a written statement of his reasons for the ruling unless any of the parties to the dispute shall so require.

A5.11.4 Costs

The Committee shall have power, at the request of any party to a dispute, to order any party to a dispute to meet the costs or expenses of the Committee and of any other party to the dispute, assessed in such manner as the Committee shall determine. There shall be a presumption that no such order shall be made. Such presumption shall be rebutted only where the Committee is satisfied that either:

- (a) the case of any party to the dispute was so lacking in merit that the reference should not have been made; or
- (b) the conduct of any such party before or during the conduct of the reference was such as to justify an award of costs being made against it.

A5.11.5 Minutes

Without prejudice to paragraph A5.11.3 and subject to paragraph A5.11.6:

- (a) the Committee Secretary shall prepare full and accurate minutes of every meeting of the Committee;
- (b) the minutes shall be considered and approved (with or without modification) at the next meeting of the Committee; and
- (c) copies of the approved minutes shall be provided to every Industry Party and the Franchising Director not later than 7 days after their approval.

A5.11.6 Confidentiality of determination

Subject to compliance with any provision of an agreement between or binding on all parties to the dispute in question, the Chairman shall have a discretion to direct that the decision of the Committee or the ruling of the Chairman or any part of either shall be kept confidential. Paragraph C6.3 shall apply mutatis mutandis to decisions of the Committee and rulings of the Chairman as they apply to arbitration awards.

A6 Implementation of determination

Except as otherwise provided in the agreement under or in respect of which the dispute arose, the parties to the dispute shall comply with the terms of the decision of the Committee or the ruling of the Chairman within such period as shall be specified in it.

A7 Decisions of the Committee

Except as otherwise provided in these Rules:

- (a) all decisions of the Committee shall be made by unanimous agreement of the members present at a meeting of the Committee. Each member shall have one vote. The Chairman may hold a vote to determine whether or not unanimity has been achieved, and a decision shall be treated as agreed unanimously if no member or voting representative present votes against it;
- (b) if the members fail to agree on a decision, the Chairman may make a ruling, which shall be binding.

A8 Reference to further methods of dispute resolution

If the agreement under which a dispute arises provides that the dispute shall be referred for determination to such body or person as the Committee shall specify, the Committee shall do so by a decision reached pursuant to paragraph A7. If the Committee fails so to reach a decision, the Chairman shall decide the matter, and his decision shall be final and binding on the parties to the dispute.

A9 Establishment and composition of the Council

A9.1 General

The Council is hereby established and shall consist of the Council Secretary and eleven Council Members, of whom one shall be appointed Council Chairman pursuant to paragraph A10.2. Seven of the Council Members shall be the persons who are the Class Representatives for the time being representing Railtrack (two), the Franchised Passenger Class (three), the Non-Franchised Passenger Class (one) and the Larger Non-Passenger Operators (one). The remaining four Council Members shall be appointed by the following Classes:

- (a) two Council Members by the Infrastructure Maintenance Class;
- (b) one Council Member by the Class of Other Industry Parties; and
- (c) one Council Member by the Smaller Non-Passenger Operators.

The Council Secretary shall not be a Council Member.

A9.2 Council Members and officers may be on the Committee

A Council Member may also be a member of the Committee. The Council Secretary may also be a member or the Committee Secretary.

A9.3 Elections

A9.3.1 Election of Council Members representing the Infrastructure Maintenance Class, the Class of Other Industry Parties and the Smaller Non-Passenger Operators

The Council Members representing the Infrastructure Maintenance Class, the Class of Other Industry Parties and the Smaller Non-Passenger Operators shall be elected by the votes of the Industry Parties comprising the relevant Class or section of a Class present (whether in person or by proxy) and voting at a meeting of the Class Members (or of those in the relevant section) called by the Council Secretary. The elections shall be carried out in the manner set out below:

- (a) Each Industry Party within the Infrastructure Maintenance Class may vote for two first choice and two second choice candidates (who shall all be different persons). The two candidates with the greatest number of first choice votes shall be elected. If one candidate ("Candidate A") has more first choice votes than each of the other candidates but no other candidate has more first choice votes than each of the other candidates (excluding Candidate A), the candidates that shall be elected are:

- (i) Candidate A, and
 - (ii) the candidate who, of those who tied for second place on the basis of first choice votes, has the greatest number of second choice votes.

If no candidate has more first choice votes than any other candidate, of the candidates with the greatest number of first choice votes, the two candidates with the greatest number of second choice votes shall be elected.

- (b) Each Industry Party within the Class of Other Industry Parties may vote for a first and a second choice candidate (who shall be different persons). If a candidate has more first choice votes than any other candidate, he shall be elected. If no candidate has more first choice votes than any other candidate, of the two or more candidates with the greatest number of first choice votes, the candidate who has the greatest number of second choice votes shall be elected.
 - (c) A Council Member representing the Smaller Non-Passenger Operators shall be elected in accordance with the procedure set out in paragraph (b) *mutatis mutandis*.

A9.3.2 Affiliates

Affiliates of one another (other than affiliates of the British Railways Board) shall be treated as the same person for the purpose of any election.

A9.3.3 Eligibility

Paragraphs A2.2.1(d) and (e) shall apply to the elections of Council Members as they apply to members.

A9.3.4 Notification of elections

The Council Secretary shall, as soon as reasonably practicable following the election of a new Council Member (whether under paragraph A9.3.1 or under paragraph 9.1, as a result of election as a Class Representative), notify all Council Members and Class Members of that election.

A9.4 Duration of appointment

- (a) A Council Member, other than one representing the Infrastructure Maintenance Class, the Class of Other Industry Parties or the Smaller Non-Passenger Operators, shall cease to hold office when he ceases to be a Class Representative.
- (b) Subject to paragraph A9.5, unless he has been re-elected, a Council Member representing the Infrastructure Maintenance Class, the Class of Other Industry Parties or the Smaller Non-Passenger Operators shall cease to hold office two years after the date of his appointment.

A9.5 Loss of office

A9.5.1 A Council Member representing the Infrastructure Maintenance Class, the Class of Other Industry Parties or the Smaller Non-Passenger Operators:

- (a) may be removed from office by a majority in number of Class Members of the relevant Class (or of those in the relevant section of the Class, in the case of the Smaller Non-Passenger Operators) present (whether in person or by proxy) and voting at a meeting of the Class Members (or of those in the relevant section) called by the Committee Secretary; and
- (b) shall be treated as having resigned from office if he dies or becomes of unsound mind.

A9.5.2 A replacement for such a Council Member shall be elected in accordance with the procedure in paragraph A9.3.1.

A9.5.3 Paragraph A9.3.4 shall apply to a Council Member's loss of office pursuant to paragraph A9.4 or this paragraph A9.5 as it does to a Council Member's election.

A9.6 Alternates

The provisions of paragraph A2.5 shall apply *mutatis mutandis* to alternates of Council Members as they apply to alternates of members save that notice of the appointment or removal of an alternate shall be given to the Council Secretary.

A10 Officers and Funding of the Council

A10.1 Council Secretary and Funding

Paragraphs A3.7, 3.8, 3.9 and 3.10 shall apply *mutatis mutandis* to the position of the Council Secretary and the funding of the Council, save that references to "Committee Secretary" shall be read as references to "Council Secretary".

A10.2 The Chairman of the Council

The Council members present at a Council Meeting shall elect one of the Council Members to be the Chairman of the Council to hold office during that meeting only. The Council Chairman shall have no casting vote.

A11 Proceedings of the Council

A11.1 Meetings

Meetings of the Council shall take place at the dates, times and places notified to Industry Parties by the Council Secretary. Any Industry Party may, by notice to the Council Secretary, require a meeting of the Council to be called. That meeting shall take place within 28 days (or such longer period as the Industry Party in question shall agree with the Council Secretary) of the receipt by the Council Secretary of the notice. The quorum for each meeting of the Council shall be eight Council Members or their alternates.

A11.2 Chairmanship of meetings

Each meeting of the Committee shall be chaired by the Council Chairman, elected pursuant to paragraph A10.2.

A11.3 Decisions without a meeting

With the consent of all Council Members and the Council Chairman the Council may take decisions by means of postal or faxed votes without the need for a meeting. The provisions of these Rules as to the calling of meetings, the procedure to be followed at them and voting shall apply *mutatis mutandis* to the taking of a decision in such a manner.

A11.4 Rules of procedure of Council

The Council shall be entitled to make and from time to time revise the rules of procedure to be followed by it.

A12 Decisions of the Council

Except as otherwise provided in these Rules, all decisions of the Council shall be made by the votes of at least eight Council Members present (whether in person or by proxy) at a meeting of the Council. Each Council Member shall have one vote.

A13 Liability of Officers

None of the Chairman, the Deputy Chairman, the Independent Vice-Chairman, the Committee Secretary, the Disputes Secretary or the Council Secretary shall be liable to any party for any act or omission (including negligence) in connection

with any Committee proceedings or any dispute determined by the Committee or the Chairman under these rules unless the act or omission is established to have been in bad faith.

B MEDIATION

Mediation under these rules is a private dispute resolution process in which a neutral mediator tries to help the parties to reach a negotiated settlement.

B1 Disputes to be submitted to mediation

Any dispute between Industry Parties or the Franchising Director, or between any of those persons and other parties, which the parties to the dispute have agreed shall be submitted to mediation under these rules, shall proceed according to the rules of this Part B. Such agreement may be made when the dispute arises or previously and may be made orally or in writing.

B2 Beginning a mediation

A party wishing to refer a dispute to mediation shall so inform the Disputes Secretary and every other party to the dispute of which it is aware. The Disputes Secretary shall promptly approach all parties to the dispute and discuss with them the identity of a suitable mediator. Unless within 5 days of his initial approach the parties agree on the identity of a mediator, the Disputes Secretary shall appoint one from the register.

B3 Procedure

- B3.1** Immediately on his appointment, the mediator shall contact the parties and arrange to meet them. He may require them to provide him with a brief summary of the dispute and their contentions in relation to it. The mediator shall, at his discretion, be entitled to send a copy of such summary to the other party to the dispute.
- B3.2** Two representatives of each party shall attend each meeting with the mediator, at least one of whom shall be a senior manager with decision-making authority in relation to the dispute. No other persons may attend without the mediator's agreement.
- B3.3** The parties and the mediator may meet more than once but, unless all involved agree, the meetings shall not continue later than 35 days after the date of the appointment of the mediator.
- B3.4** The parties shall explain their respective positions to the mediator. He may see each on his own if he sees fit. The mediator shall not be entitled to disclose matters told to him in confidence without the permission of the party in question. He shall encourage the parties to resolve the dispute by agreement and may also discuss informally with any party his own views as to the merits of the dispute.

- B3.5** Within seven days of the final meeting, if the parties have not resolved the dispute by agreement the mediator may advise the parties of his views as to the likely outcome of the dispute if it were to be referred to arbitration and/or what he considers would be a fair settlement of the dispute. No party shall be bound to adopt the views expressed, or accept the advice provided, by the mediator.

B4 Confidentiality

- B4.1** The mediation is and shall be kept confidential.
- B4.2** The parties, their representatives and advisers, the mediator and the Disputes Secretary shall keep confidential all documents, submissions, statements and other information disclosed in the mediation, including any agreement for the settlement of the dispute, except when and insofar as disclosure is necessary:
- (a) to implement or enforce the agreement for settlement of the dispute;
 - (b) to comply with an obligation to disclose owed to any financial associate of the party making the disclosure.
- B4.3** Its use in the mediation shall not affect the extent to which any document, submission, statement or other information disclosed in the mediation is admissible or subject to discovery or production (or, in Scotland, recoverable by commission and diligence under section 1 of the Administration of Justice (Scotland) Act 1972 or otherwise) in any subsequent arbitration, legal or other proceedings involving the parties.
- B4.4** New documents generated in the course and for the purposes of the mediation shall be treated as being on the same basis as without prejudice negotiations in an action in the courts.

B5 Costs

Unless the parties otherwise agree, each party shall bear its own costs of the mediation. The parties shall share equally the mediator's fees and expenses, the costs of his appointment and all other administrative costs of the procedure.

B6 Termination of the mediation

The mediation shall terminate upon service by one party to the mediation on the other and on the mediator of a notice of withdrawal from the mediation.

B7 Communications, exclusion of liability, jurisdiction and governing law

Paragraphs C7, C8 and C9 shall apply to mediations as if references to the arbitrator and arbitration were references to the mediator and mediation respectively.

B8 Mediator barred from further proceedings

The mediator shall not be entitled to act in any capacity in relation to the subject matter of the mediation in which he acted as mediator in any subsequent

arbitration, legal or other similar proceedings.

C ARBITRATION

C1 Disputes to be decided by arbitration

Any dispute arising between Industry Parties or the Franchising Director, or between any of those persons and other parties, which the parties to the dispute have agreed should be referred to arbitration under these rules shall be arbitrated in accordance with the provisions of this Part C. In each of the following cases arbitration proceedings may be brought, but only if a notice of arbitration is served on the Disputes Secretary by the party wishing to begin the arbitration:

- (a) in the case of a dispute referred to the Committee or a sub-committee of it and declared by the Chairman pursuant to paragraph A5.11.1(c) not to have been resolved, subject to paragraph C1(d), within seven days of the Chairman's declaration;
- (b) in the case of a dispute referred to the Committee or a sub-committee of it and determined by a ruling by the Chairman pursuant to paragraph A5.11.1(a), subject to paragraph C1(d), within seven days of the Chairman's ruling;
- (c) in the case of a dispute between Industry Parties which has been the subject of mediation pursuant to Part B, within 14 days of the end of the period provided for in paragraph B3.3; and
- (d) in the case of a dispute as to allocation of liability for a claim falling within CAHA, within the period specified in CAHA.

A notice that is served in the case of a dispute falling within paragraphs C1(b) or (d) must certify that either:

- (i) the amount to be paid by the applicant pursuant to the ruling, or the amount reasonably claimed by it, exceeds £7,500; or
- (ii) the ruling would have a substantial effect on the applicant's business.

C2 Beginning an arbitration and appointing the arbitrator

C2.1 Notice of arbitration

A person wishing to refer a dispute to arbitration shall serve a written notice of arbitration on the Disputes Secretary and shall serve a copy of the notice of arbitration on every other party to the dispute. The notice shall summarise the basis of the claim and list the other parties concerned. It may suggest one or more appropriate arbitrators, whether from the register or otherwise.

C2.2 Appointment of arbitrator

The Disputes Secretary shall promptly approach all parties to the dispute and discuss with them the identity of an arbitrator to decide it. Subject to any agreement of the parties to the contrary, if the parties fail to agree on an arbitrator within 7 days of the Disputes Secretary's initial approach, he shall appoint an arbitrator from the register. Upon the appointment of an arbitrator, the Disputes Secretary shall send to all the parties to the dispute a notice of the appointment of the arbitrator.

C2.3 Change of arbitrator

- C2.3.1** If any arbitrator acting or appointed to act under these rules resigns, withdraws, dies or refuses to act, the Disputes Secretary shall, upon application by the arbitrator or any party to the arbitration, on proof satisfactory to the Disputes Secretary, declare the office of arbitrator vacant.
- C2.3.2** If the arbitrator or any party to the arbitration considers that the arbitrator is unable by reason of mental or physical infirmity to perform the duties of his office or is disqualified for any reason from performing the duties of his office, or has delayed unreasonably in the conduct of the arbitration or in the making of any award, the Disputes Secretary may, at the request of the arbitrator or any party to the arbitration, having heard the arbitrator and the parties if they or any of them wish to be heard, declare the office of arbitrator vacant.
- C2.3.3** Where the office of arbitrator shall have been declared to be vacant pursuant to this paragraph C2.3, paragraph C2.2 shall apply to the appointment of a replacement arbitrator.

C3 Procedure

C3.1 General

The arbitrator shall conduct the arbitration in such manner as he considers most suitable for the fair resolution of the dispute. The parties may agree that an arbitration shall be conducted on the basis of written representations only. In such a case, nothing in this paragraph C3 shall prevent the arbitrator from requiring one or more oral hearings if he considers it appropriate for the just and expeditious determination of the proceedings. The arbitrator shall have the power at any time to make or amend the procedure to be followed by the parties in the arbitration. Unless the arbitrator rules otherwise, the following timetable and procedure shall apply:

- (i) Within 14 days of the notice of appointment of the arbitrator, the claimant shall serve on the arbitrator and the other party a written statement of its claim. The statement of claim shall specify all relevant facts and matters and contentions of law (if any, and naming the principal authorities) on which the claimant relies (or admits or denies) and the relief and remedies sought.
- (ii) Within 14 days of service by the claimant of the statement of its claim, the

other party shall serve on the arbitrator and the claimant a written statement of its defence. The statement of defence shall specify the defence and all relevant facts and matters and contentions of law (if any, naming the principal authorities) on which the respondent relies (or admits or denies). The statement of defence may set out any counterclaim which the respondent wishes to make.

- (iii) The statements served pursuant to sub-paragraphs (i) and (ii) above shall be accompanied by copies of any documents referred to in them or upon which the party serving the statement wishes to rely. That party shall, if so requested, make the originals of such documents available for inspection by the arbitrator or the other party.
- (iv) After service by the respondent of its statement of defence, the arbitrator may allow the parties a period (the "adjustment period") not exceeding 14 days within which to adjust the written pleadings so that each material averment of the parties shall be answered (whether by admission, denial, explanation or otherwise).
- (v) On the expiry of the adjustment period, the pleadings shall be finalised and within 7 days thereafter the claimant shall reproduce the pleadings, as adjusted, into a single document (in Scotland, the closed record) and send 2 copies to each of the arbitrator and the other parties to the arbitration.
- (vi) Within 14 days after the pleading have been so finalised, each party shall serve upon the arbitrator and the other party signed statements of any factual or expert witnesses upon whose evidence it wishes to rely, together with any copies of documents referred to in them not already in the possession of the other party. The party serving the statements shall, if requested to do so, make the originals of such documents available for inspection by the arbitrator or the other party.
- (vii) A party may rely on the evidence of no more than one expert witness per discipline, and no more than two expert witnesses in total.
- (viii) Within 7 days after the pleadings have been finalised, the Disputes Secretary shall agree with the arbitrator and the parties a hearing date and the estimated length of the hearing. The hearing date shall be no later than 28 days after the finalisation of the pleadings.
- (ix) In relation to the production of documents:
 - (a) the arbitrator may, on the application of a party, require the production of such specific identified documents as are within the possession, custody or control of the other party which the arbitrator considers relevant; the parties to the proceedings shall be given the opportunity to inspect and to comment upon any document so produced;
 - (b) if any document is not supplied to the arbitrator and the other party within such time as the arbitrator shall prescribe, the arbitrator may:
 - (aa) proceed with the arbitration on the basis of the documents already

before him; or

- (bb) strike out (in Scotland, dismiss) the part of the claim or defence to which the document relates,

and in making his award the arbitrator shall be entitled to make such allowance as he may think fit for the failure to supply the document;

- (c) no party shall be obliged to produce any document which would be privileged from production in any proceedings in an action in the courts;
- (d) an application by a party to the arbitrator pursuant to sub-paragraph (a) above shall be made not later than 21 days before the date fixed for the hearing; a party in receipt of a request from the arbitrator to produce a document shall comply with such a request within 7 days.
- (x) At least 5 days before the hearing each party shall serve on the other and on the arbitrator its written submissions.
- (xi) At the hearing:
 - (a) there shall be no oral opening submissions, but the arbitrator may ask the parties questions arising out of their written submissions or pleadings;
 - (b) any party may apply to the arbitrator for an order that any witness whose written statement is to be relied upon by a party should attend for oral examination at a hearing and the arbitrator shall make such order unless, having heard the parties, he is satisfied that such oral examination is not likely to assist him in making his award. If a witness is ordered to attend and fails to do so, the arbitrator may:
 - (aa) place such weight on the written statement as he thinks fit; or
 - (bb) exclude it altogether;
 - (c) there shall be no examination-in-chief of factual or expert witnesses who give oral evidence. The parties may cross-examine witnesses on oath or affirmation to the extent permitted by the arbitrator;
 - (d) the parties may make oral closing submissions, not exceeding 20 minutes each;
 - (e) the parties may be legally represented; and
 - (f) the arbitrator shall be entitled to receive such evidence as he shall consider relevant, whether or not such evidence would have been admissible in a court of law.
- (xii) The arbitrator shall deliver to the parties a reasoned award within 14 days of the end of the hearing. He may make such delivery conditional upon payment of his own fees in the arbitration. Such payment may be made either in the proportions advised by him or by either or both parties without

prejudice to his order as to costs.

C3.2 Proposed amendments

Immediately after his appointment, the arbitrator shall require each party to inform him of any amendments to the procedure or the time limits set out in paragraph C3.1 which it considers appropriate (whether because more than two parties will be involved or otherwise). Each party shall promptly send any proposed amendments to the arbitrator and the other party. Before responding, the arbitrator may require the parties to meet him.

C3.3 Supplemental

C3.3.1 The arbitrator shall have power to strike out (in Scotland, dismiss) part or all of any claim or defence made in the proceedings on any one or more of the following grounds:

- (a) wilful breach of these rules;
- (b) deliberate non-compliance by a party with any order of the arbitrator; or
- (c) inordinate or inexcusable delay on the part of any party, where such act or omission has, in the opinion of the arbitrator, given rise to a substantial risk that a fair determination of the dispute will not be possible, or which is such as to cause or to have caused serious prejudice to the other party.

C3.3.2 The arbitrator shall have power to strike out (in Scotland, dismiss) part or all of any claim or defence made in the proceedings if he is satisfied that the claim or defence or any part of it is scandalous, frivolous or vexatious.

C3.3.3 If either party fails to serve a pleading within the period allowed under these rules or by order of the arbitrator, and fails to remedy his default within 14 days after despatch to him by the arbitrator or any other party to the dispute of notice of that default, the arbitrator shall be entitled to rule that he shall be treated as having abandoned his claim or defence (as the case may be) and, having made such a ruling, the arbitrator shall be entitled to proceed with the reference on an ex parte basis.

C3.3.4 Any party who becomes aware that any provision or requirement of these rules has not been complied with and who fails to state an objection to that failure within a reasonable time shall be deemed to have waived the right to object.

C4 Awards

C4.1 Final and binding

Without prejudice to the provisions of the Arbitration Act 1979 or, for arbitrations taking place in Scotland, the Administration of Justice (Scotland) Act 1972 and the provisions of any agreement between the parties to the dispute, awards shall be final and binding on the parties.

C4.2 Power to make orders

In addition to his other powers under these rules, the arbitrator may make such orders in his award as he considers necessary to resolve the dispute, including orders that:

- (a) one party shall pay an amount of money (including damages) to another party, whether that amount is specified in the arbitrator's order or calculated in accordance with such procedure as he shall specify;
- (b) one party should take or not take specified action;
- (c) the meaning of an agreement or a party's obligations under that agreement are as stated in the award; or
- (d) any principal sum he may order one party to pay to another shall carry interest at such rate and over such period as he shall determine.

C4.3 Issue of arbitration award

The arbitrator shall send a copy of his award to the parties, the Chairman and the Disputes Secretary.

Paragraph C6.3 applies in relation to the confidentiality of the award.

C5 Costs

C5.1 Arbitration fee

Any party serving a notice of arbitration shall at the same time pay to the Disputes Secretary a fee, of an amount to be published from time to time by the Disputes Secretary but not exceeding £500 (excluding VAT). The arbitration shall not start until the fee has been paid. The Disputes Secretary shall promptly certify to the arbitrator (once appointed) that the fee has been paid and remit it to the Committee Secretary.

C5.2 Discretion to order payment of costs

Whether or not the arbitration reaches the stage of a final award, the arbitrator may order any party to pay some or a specified proportion of any party's costs incurred in the arbitration, the arbitrator's fees, any costs of his appointment and any fee paid to the Disputes Secretary pursuant to paragraph C5.1, assessed in such manner as the arbitrator shall determine. Where an applicant challenges a ruling of the Chairman of the Committee and the arbitrator:

- (a) reaches a decision substantially the same as the Chairman's ruling, or a decision less favourable to the applicant; or
- (b) finds that neither of the following conditions is satisfied, that:
 - (i) the amount to be paid by the applicant pursuant to the Chairman's ruling, or the amount reasonably claimed by it, exceeded £7,500; or
 - (ii) the Chairman's ruling would have had a substantial effect on the applicant's business

the arbitrator shall retain an absolute discretion but shall usually order the applicant to pay both its own and the other party's costs and the fees mentioned above.

C6 Confidentiality

C6.1 Documents

All documents produced or disclosed in the course of an arbitration shall be treated as confidential by the arbitrator, the Chairman, the Disputes Secretary and all parties.

C6.2 Use of documents

Unless otherwise agreed by all parties, such documents shall only be used:

- (i) for the purposes of the arbitration, including any appeal against the arbitration award (or, in Scotland, any application under section 3 of the Administration of Justice (Scotland) Act 1972, or for judicial review, in respect of the award);
- (ii) for enforcing the arbitration award; or
- (iii) in support of a plea of estoppel (or, for arbitrations taking place in Scotland, of res judicata) in any subsequent proceedings.

C6.3 Confidentiality of arbitration awards

C6.3.1 Copies to Industry Parties and Franchising Director

Subject as provided in this paragraph C6, a copy of every award of an arbitrator pursuant to this Part C shall be sent by the Disputes Secretary to each Industry Party and the Franchising Director. No such copy shall be sent until the expiry of 21 days after the receipt by the Disputes Secretary of the copy of the award in question, unless the Chairman shall order otherwise.

C6.3.2 Discretion to order confidentiality

The Chairman shall be entitled to direct that an award or any part of it shall be kept confidential, to the extent stated and subject to such conditions (if any) as shall be specified in the direction, on the grounds that:

- (i) publication would or might seriously and prejudicially affect the interests of any of the parties to the dispute or any other person; and
- (ii) such prejudice outweighs or is likely to outweigh the interests of the industry in the publication of the award.

Any such direction shall be in writing and shall be given to the parties to the dispute and the Disputes Secretary.

C6.3.3 Exceptions to confidentiality directions

A direction given pursuant to paragraph C6.3.2 shall not apply to disclosure which is:

- (i) agreed in writing by all the parties to the dispute;
- (ii) made to the advisers or financial associates of the party in question, upon obtaining an undertaking of strict confidentiality from such persons;
- (iii) made to the Regulator or the Franchising Director;
- (iv) required for the purposes set out in paragraph C6.2; or
- (v) required pursuant to the order of a court of competent jurisdiction.

C6.3.4 Representations of parties as to confidentiality

Within 7 days of its receipt of the award (or such longer period as the Chairman shall allow), each party to the dispute shall give notice to the Chairman and the other parties to the dispute:

- (i) as to whether it considers that the Chairman should exercise his discretion to exclude from publication any part of the award which relates to its affairs; and
- (ii) if confidentiality is sought, its justification for considering that the grounds referred to in that paragraph exist.

C6.3.5 Hearing on confidentiality representations

The Chairman shall be entitled to hear the parties on the question of confidentiality under this paragraph C6.3.

C6.3.6 Written reasons for decision

If any representations shall have been made to him pursuant to paragraph C6.3.4, unless the parties to the dispute otherwise agree the Chairman shall provide the parties to the dispute with his reasons for making his determination. Such reasons shall be given in writing.

C7 Communications

Communications for the purposes of the arbitration shall be by telephone and confirmed in writing wherever possible. Unless the contrary is proved, faxes sent before 5.00 p.m. shall be deemed received on the day of sending and letters sent by first class post shall be deemed received two working days after posting.

C8 Exclusion of liability

None of the Chairman, the Disputes Secretary or any arbitrator shall be liable to any party for any act or omission (including negligence) in connection with any arbitration under these rules unless the act or omission is established to have

been in bad faith.

C9 Jurisdiction and governing law

Arbitrations shall take place in England and be subject to English law, save where the contract out of which the dispute arises is governed (or, if more than one, the majority of such contracts is governed) by Scots law, in which cases the arbitration shall take place in Scotland and subject to Scots law. In either case the arbitrator may order otherwise.

D EXPERT DETERMINATION

D1 General

Any dispute which the parties have agreed should be referred to expert determination under these Rules shall be determined by an expert agreed between the parties or appointed by the Disputes Secretary.

D2 Application of Part C

Part C shall apply to any such disputes, and to paragraph D1, as if references to the arbitrator and the arbitration were references to the expert and the expert determination respectively, save that in paragraph C3.1, unless otherwise ordered by the expert:

- (i) sub-paragraphs (vi), (vii), (viii), (x), (xi) and (xii) shall not apply;
- (ii) any application made under sub-paragraph (ix)(d) shall be served within 35 days of the appointment of the expert;
- (iii) the expert shall deliver his determination, and (unless the parties have agreed that he should not give them) the reasons for it within 56 days of his appointment; and
- (iv) the expert's determination shall be final and binding save where it is so clearly erroneous on its face that it would be unconscionable for it to stand.

E INTERLOCUTORY RELIEF GRANTED BY THE COURT

In an appropriate case, a party to a dispute which has been or may be submitted to resolution under these Rules may apply to the Court for interlocutory relief (whether negative or positive), notwithstanding that the relief sought may overlap with the relief which is, or may be, claimed in the proceedings under these Rules.

F AMENDMENT

These Rules may be amended by the Council by a decision in accordance with

paragraph A12, provided that:

- (i) notice of the proposed amendment shall be sent to all Industry Parties, the Regulator and the Franchising Director at least two weeks in advance of the meeting; and
- (ii) the amendment shall not have effect unless it is approved by the Regulator and the Franchising Director.