



Procedure for Railway Group Standards Code Appeals

Issue Two

**Approved by the
Board of Directors of RSSB**

13 May 2010

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Issue record

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1 Introduction

- 1.1 The Railway Group Standards Code (the Code) permits any party to submit an appeal to the Board of Directors of RSSB (the Board) in specified circumstances and sets out the criteria for the appeals.
- 1.2 This document establishes the procedure for parties submitting appeals, for RSSB dealing with the appeal and for the Board hearing the appeal.
- 1.3 Guidance on the content of the appeal submission is set out in the appendix to this procedure.
- 1.4 This procedure has been approved by a resolution of the RSSB Board.
- 1.5 The requirement that any submission, application or notification referred to in this procedure should be “in writing” is satisfied where the text of the submission, application or notification is transmitted by electronic means, is received in legible form and is capable of being used for subsequent reference.

2 Submission of appeals

- 2.1 The party submitting the appeal (known in this procedure as the Appellant) shall lodge the appeal and any other documents from time to time submitted pursuant to this procedure in writing (preferably electronically) by sending them to RSSB, Head of Standards Policy, at the address at the end of this document.
- 2.2 All appeals should be submitted by the Appellant without undue delay following the decision, delay or failure to act which gave rise to the appeal in order that the issue may be resolved as quickly as possible.
- 2.3 The Head of Standards Policy will allocate the appeal to such person(s) within RSSB whom he or she deems to have appropriate expertise and experience of the subject matter forming the basis of the appeal (provided such person(s) is not a member of RSSB’s Board) (the “Allocated Team”) and shall allocate such resources for dealing with the appeal as he or she deems necessary.
- 2.4 RSSB shall acknowledge receipt of the appeal within five working days of receipt.
- 2.5 RSSB shall make contact with the Appellant to enquire about the scope for finding a solution to the issue within ten working days of acknowledging receipt of the appeal.
- 2.6 The Appellant may withdraw the appeal at any time by notifying the Head of Standards Policy in writing, including (without limitation) in circumstances where a solution to the matter forming the basis of the appeal has been agreed between the Appellant and RSSB. Where an appeal is withdrawn the provisions of this procedure shall have no further effect.

3 Preparing for the appeal

- 3.1 The Allocated Team shall prepare a submission on the appeal to be served simultaneously on the Board and the Appellant no later than 12 working days before the date of the appeal hearing.
- 3.2 The purpose of the submission at paragraph 3.1 is to present RSSB's view of the events relating to the appeal. The submission shall not contain recommendations to the Board.
- 3.3 The Appellant may submit additional information to RSSB in support of its appeal in response to the submission at paragraph 3.1 no later than seven working days before the date of the appeal hearing.
- 3.4 RSSB shall acknowledge receipt of any response from the Appellant pursuant to paragraph 3.3 within two working days of receipt.

4 Appeal hearings

- 4.1 Subject to any postponement resolved pursuant to paragraph 4.6, the Board shall normally hear the appeal at the first scheduled Board meeting that takes place at least two months after the date the Appellant lodged its appeal.
- 4.2 RSSB shall give due notice of not less than 20 working days to the Appellant and the Board of the date of the appeal hearing.
- 4.3 RSSB and the Appellant shall each be entitled in writing to request an extension of time with respect to the date of the appeal hearing provided that any such request is submitted to the Chairman of the Board, via Head of Standards Policy, no later than ten working days before the appeal hearing.
- 4.4 An application made by a party pursuant to paragraph 4.3 shall be copied to the other party simultaneously.
- 4.5 Within five working days of receipt of the application for the extension, the party not requesting the extension may submit reasons in writing to the Chairman of the Board, via Head of Standards Policy, as to why the extension under paragraph 4.3 should not be granted.
- 4.6 The Chairman of the Board shall direct that the application for an extension of time, together with any opposition submitted by the other party, be considered by a committee properly constituted by the Board in accordance with RSSB's articles of association. The committee shall be responsible for resolving whether to grant the extension and shall not make its decision before whichever is the sooner of the expiry of the period stated in, or the written reasons submitted pursuant to, paragraph 4.5. The Chairman shall notify the parties of the committee's decision within three working days of the decision being made.

- 4.7 The Board would normally expect the appeal hearing to proceed on the basis of written submissions without the need for the Appellant or RSSB to engage legal representation. However, each party shall be represented at the hearing by an individual authorised to make submissions and answer questions on its behalf.
- 4.8 Should either party decide that it requires legal representation at the appeal hearing, it shall notify the Head of Standards Policy and the other party no later than five working days prior to the appeal hearing date. Where this notification is 15 working days or less before the date for the hearing notified under paragraph 4.2, the hearing shall be automatically postponed until the next scheduled Board meeting,
- 4.9 Prior to the commencement of the appeal hearing, directors of the Board shall declare any interests in accordance with the requirements of RSSB's articles of association, the terms of which shall apply and prevail.
- 4.10 Representatives of the Department for Transport and the Office of Rail Regulation may attend the appeal hearing in the same capacity as they would attend other meetings of the Board.
- 4.11 The decision of the Board shall be made by majority vote in accordance with RSSB's articles of association although the Board shall endeavour to achieve a consensus.

5 Actions following the appeal hearing

- 5.1 RSSB shall notify the Appellant of the Board's decision by means of a written statement.
- 5.2 The statement referred to at 5.1 shall set out the Board's decision and the reasons for it.
- 5.3 RSSB shall:
- a) Send to the Appellant a copy of the statement referred to at 5.1 within ten working days of the appeal hearing,
 - b) Invite the Appellant to make representations in respect of the wording of the statement, and
 - c) Provide the Appellant with not less than ten working days in which to respond.
- 5.4 Once the period for response at 5.3c) has elapsed, RSSB shall:
- a) Finalise the statement referred to at 5.1 b)
 - b) Send the statement to the Appellant, and to any other party who was (or had a right to be) consulted on the appeal
 - c) Publish the statement on the RSSB website.

- 5.5 As soon as reasonably practicable following receipt of the decision, the Appellant shall notify RSSB, Head of Standards Policy in writing, whether it accepts the decision or whether it intends to appeal to the Office of Rail Regulation.

6 Confidentiality

- 6.1 Information submitted in respect of an appeal shall, unless stated by the Appellant to the contrary, be deemed for the purposes of this procedure to be submitted on an open basis and capable of being reproduced and disclosed in any form as between the participants of the appeal procedure in order to give efficacy to the appeal proceedings. However, the Appellant may categorise any part of its information as:
- a) “Confidential Information” in which case, subject to paragraph 6.2, the relevant information may be reproduced and disclosed and/or copied or reproduced only as properly and reasonably necessary or desirable (in the opinion of the Appellant) for internal use by RSSB and its professional and technical advisers (but, not to RSSB’s Members or its Advisory Committee) and in any event on such terms as do not result in it being made public and which maintain its confidentiality.
 - b) “Restricted Information” in which case, subject to paragraph 6.2 the relevant information may be disclosed only as properly and reasonably necessary or desirable (in the opinion of the Appellant) within RSSB and in any event on such terms as do not result in it being made public and which maintain its confidentiality. Restricted Information may not be disclosed to any third party (including RSSB’s professional and technical advisers (other than legal advisers), RSSB’s Members or the Advisory Committee) or copied or reproduced by RSSB other than with the express written consent of the Appellant. Where the Appellant expressly categorises information as Restricted Information and has expressly specified that it is to be used only for the purposes of the appeal process, then it may not be used by RSSB except in connection with that purpose.
- 6.2 RSSB will use reasonable efforts to prevent the unauthorised disclosure of any information categorised as Confidential Information or Restricted Information and belonging to the Appellant provided that the confidentiality restrictions in this paragraph 6 shall not apply in relation to any information:
- a) Sourced directly from third parties lawfully in possession of such information and who are not restricted from disclosing it.
 - b) That is lawfully in the public domain at the time it is provided by or to RSSB or which subsequently enters into the public domain (other than by reason of the breach of paragraph 6 or any other obligation of confidence between RSSB and the Appellant or otherwise unlawfully).

- c) Disclosed by RSSB in proper compliance with any mandatory legal obligation, order of a court of competent jurisdiction or direction by a governmental or regulatory authority, but RSSB shall use all reasonable endeavours to give the Appellant prompt notice of such disclosure in order to allow the Appellant a reasonable opportunity to obtain a protective order, if permitted by law or the relevant authorities.
 - d) Which the Appellant is obliged to provide to RSSB in accordance with a Railway Group Standard.
- 6.3 Notwithstanding the confidentiality restrictions in this paragraph 6, RSSB shall be entitled to prepare and disclose a derivative work based upon any Confidential Information or Restricted Information received by RSSB in a manner which:
- a) Does not enable the Appellant to be identified from the information so provided.
 - b) Does not affect the Appellant's business and financial standing.
 - c) Presents such information from an industry-wide perspective rather than the Appellant's specific perspective.
- 6.4 Where RSSB invites the Appellant to make submissions in respect of the wording of the written statement pursuant to clause 5.3 of the procedure, the Appellant shall notify RSSB in writing within the time limit set out in clause 5.3 whether it believes the content of the written statement contains any confidential information of the Appellant. RSSB shall take the Appellant's confidentiality requirements into consideration before publishing its written statement, but shall not be obliged to amend the content of its written statement in light of such submissions.

7 Costs

- 7.1 Each party to an appeals process shall be responsible for its own costs.

Addresses for submitting appeals:

enquirydesk@rssb.co.uk (please include in the subject heading: 'for the attention of the Head of Standards Policy')

or

Head of Standards Policy
Rail Safety and Standards Board
Block 2 Angel Square
1 Torrens Street
London EC1V 1NY

Appendix A Guidance on the content of an appeal submission

This appendix is for guidance only.

- A.1 In drawing up an appeal submission, the Appellant should assume that the Board will have no knowledge of the case. The Appellant should therefore include in the submission all appropriate information it wishes the Board to consider in reaching its decision.
- A.2 The Appellant should provide the Board with a clear, factual narrative of the situation covering:
- a) The reason why the Appellant is aggrieved pursuant to section 7.1.1 of the Railway Group Standards Code
 - b) The relevant and pertinent issues forming the basis of the appeal, and
 - c) The desired outcome of the appeal.
- A.3 Although the information provided pursuant to paragraph 3 above should seek to summarise the Appellant's case, the Appellant may wish to include factual evidence in support of the appeal. This may include, but is not limited to:
- a) Correspondence with any relevant parties
 - b) Investment appraisals or other documents that demonstrate the implications of the situation for the Appellant
 - c) Drawings or photographs that illustrate the issue under consideration
 - d) Minutes of meetings relevant to the case
 - e) Reports that have a bearing on the case
 - f) Copies of relevant standards, applications for deviations, deviation certificates, proposals for change to standards or other such documents
 - g) The details of any other parties whom the Appellant believes may be affected by the case.
- A.4 There is a presumption that the appeal hearing will consider the written submissions provided by the parties in the first instance. In addition to the persons mentioned at paragraph 4.7, each party may be accompanied by a suitably informed representative to answer any questions that the Board may have arising out of the submissions and any additional papers provided.