

Firmus Energy (Distribution) Limited v Northern Ireland Authority for Utility Regulation

Determination on Costs

Contents

| | <i>Page</i> |
|---------------------------------------------------------|-------------|
| Introduction | 3 |
| Legal framework in relation to costs | 4 |
| The Gas (Northern Ireland) Order 1996 | 4 |
| Rules and guidance | 5 |
| Duty to order payment of the CMA's costs | 5 |
| Discretion to order payment of inter partes costs | 7 |
| Third party costs | 8 |
| CMA Costs | 9 |
| Statement of CMA Costs | 9 |
| Apportionment of the CMA's costs to the parties | 10 |
| Parties' views | 10 |
| Our assessment | 11 |
| Final determination on the CMA's costs | 15 |
| Inter partes costs | 15 |
| Parties' views | 15 |
| Our assessment | 18 |
| Final costs determination | 22 |
| Final Costs Order | 23 |
| Appendix A: Statement of CMA costs | 24 |
| Overview | 24 |
| CMA Costs | 24 |
| Overheads | 24 |
| Staff costs | 25 |
| Group member costs | 25 |
| Travel and subsistence costs | 25 |
| Professional services | 25 |
| Other disbursements | 26 |
| Allocation of costs to sub-ground | 26 |
| Annex A: CMA costs for Firmus appeal | 27 |

Introduction

1. On 25 November 2016, Firmus Energy Distribution Limited (FE) brought an appeal to the Competition and Markets Authority (CMA) against the GD17 Decision by the Northern Ireland Authority for Utility Regulation (the UR) to modify the conditions of FE's licence. On 28 December 2016, the CMA granted FE permission to appeal. The Consumer Council of Northern Ireland (CCNI) was involved in the appeal as an Interested Third Party (ITP). The appeal comprised four grounds of appeal, each of which was divided into various sub-grounds.¹
2. The CMA notified the parties to the appeal of the Final Determination on 26 June 2017. The CMA allowed the appeal in respect of Ground 1C and Grounds 2A and 2B to the extent set out in the Final Determination and dismissed the appeal in respect of the remaining grounds.
3. On 30 June 2017, the CMA sent a letter to FE, the UR and CCNI explaining the proposed approach to determining costs following completion of the appeal process, and inviting representations on the appropriate allocation of CMA costs and whether it would be appropriate to make an order for *inter partes* costs.
4. Representations were received on 14 July 2017 from FE, the UR and CCNI. Following consideration of these representations, and the analysis of the CMA costs during the appeal process, the CMA provisionally determined the costs to be paid by each party, and provided the parties with the provisional determination on costs (PDC) and the draft costs order on 12 September 2017, inviting comments. Responses to the PDC were received from FE, the UR and CCNI on 26 September 2017.
5. Following consideration of these responses, the CMA has made its final determination on costs for the Firmus appeal and order requiring the payment of costs. This determination on costs covers the legal framework in relation to costs, includes a statement of the CMA's costs and presents our assessment of the cost award for the CMA's costs and in respect of *inter partes* costs.

¹ The appeal comprised a total of twelve sub-grounds. For ease of presentation, in this document the sub-grounds are referred to (as applicable) as Ground 1A, 1B, 1C, 1D, 1E, 2A, 2B, 3A, 3B, 3C, 4A and 4B.

Legal framework in relation to costs

The Gas (Northern Ireland) Order 1996

6. The CMA's duty and power to make costs orders in determining an appeal under Article 14B of the Gas (Northern Ireland) Order 1996² ('Gas Order') are set out in Schedule 3A, paragraph 12 as follows:

(1) A group that determines an appeal must make an order requiring the payment to the CMA of the costs incurred by the CMA in connection with the appeal.

(2) An order under sub-paragraph (1) must require those costs to be paid —

- (a) where the appeal is allowed in full, by the Authority;
- (b) where the appeal is dismissed in full, by the appellant;
- (c) where the appeal is partially allowed, by one or more parties in such proportions as the CMA considers appropriate in all the circumstances.

(3) The group that determines an appeal may also make such order as it thinks fit for requiring a party to the appeal to make payments to another party in respect of costs reasonably incurred by that other party in connection with the appeal.

(4) A person who is required by an order under this paragraph to pay a sum to another person must comply with the order before the end of the period of 28 days beginning with the day after the making of the order.

(5) Sums required to be paid by an order under this paragraph but not paid within the period mentioned in sub-paragraph (4) shall bear interest at such rate as may be determined in accordance with provision contained in the order.

(6) Any costs payable by virtue of an order under this paragraph and any interest that has not been paid may be recovered as a civil debt by the person in whose favour that order is made.

² [The Gas \(Northern Ireland\) Order 1996](#), S.I. 1996/275 (N.I.2), as amended by [The Gas and Electricity Licence Modification and Appeals Regulations \(Northern Ireland\) 2015](#), S.I. 2015/1 (NI).

7. Paragraph 13(2) of Schedule 3A provides that references in that Schedule to a 'party' are references to '(a) the appellant; or (b) the Authority'.

Rules and guidance

8. The CMA's appeals rules³ (the Rules) and associated guidance⁴ (the Guidance) make further provision in relation to costs. Key matters are covered in the ensuing parts of this document. In addition, the CMA will have regard to decisions of the Competition Appeal Tribunal in the specific context of regulatory appeals.
9. The CMA may also draw guidance from previous decisions of the CMA and the Competition Commission (CC) made under similar legislative regimes in relation to the determination of costs. However, the CMA is of the view that decisions on costs in respect of matters that are within the CMA's discretion should not be allowed to harden into rigid rules⁵ – in other words, they do not constitute binding precedent. A number of aspects of a determination on costs are a matter of judgement and the CMA will seek to arrive at a result that is just in all the circumstances of the case.
10. In the ensuing paragraphs, we address the matters of the CMA's costs, *inter partes* costs and third party costs.

Duty to order payment of the CMA's costs

11. FE's appeal has been partially allowed (see paragraph 2 above). Accordingly, we are required to make an order for the CMA's appeal costs to be paid by one or more of the parties in such proportions as we consider appropriate in all the circumstances.⁶ In doing so, we have had regard to the guidance provided recently by the Competition Appeal Tribunal in respect of broadly analogous provisions under the Communications Act 2003.⁷

³ Competition Commission Energy Licence Modification Appeals Rules (CC14), September 2012, as adopted by the CMA board on 13 February 2014 pursuant to paragraph 11(1) of Schedule 3A to the [Gas Order](#). Following a [public consultation](#), the CMA [decided](#) in 2015 that it would use [the Rules](#), adapted as necessary to refer to the relevant NI legislation and decisions of the UR, to govern the procedure for appeals against the UR's energy licence modification decisions.

⁴ Energy Licence Modification Appeals: Competition Commission Guide (CC15), September 2012, as adopted by the CMA.

⁵ See, by analogy, *IBA Health v OFT* [2004] CAT 6, at [35] and the dictum of Lord Lloyd of Berwick in *Bolton Metropolitan District Council v Secretary of State* [1995] 1 WLR 1176, at page 1178E that in respect of matters on costs that are within the discretion of the court 'a practice, however widespread and long-standing, must never be allowed to harden into a rule'.

⁶ Gas Order, Schedule 3A, paragraph 12(1) and 12(2)(c); see also Rule 19.1.

⁷ *BT v CMA* [2017] CAT 11.

12. In deciding on the CMA's costs and their apportionment between the parties in the present case, we have also had regard to the following principles:
- (a) The CMA will recover all its costs incurred in connection with the appeal, not just its direct costs.⁸
 - (b) The CMA must make a broad, soundly based judgement as to its costs.⁹
 - (c) There is no statutory requirement as to the proportionality or reasonableness of the CMA's costs.¹⁰ However, the CMA is not entitled to make an order in relation to costs incurred unreasonably or unnecessarily.¹¹
 - (d) Costs should be apportioned in relation to each party's success.¹²
 - (e) Where an appeal is partially allowed, an order for the CMA's costs '*should seek to reflect the substance of the appeal, and the time and effort expended by the [CMA] in connection with the substance of the appeal*'.¹³
 - (f) The CMA will ensure that the costs order reflects the time and effort expended in the appeal by reference to each ground for the purposes of apportionment bearing in mind each party's relative success.¹⁴
 - (g) Procedural flaws in the regulator's consultation process or subsequent conduct in the appeal must be sufficient to justify departure from the principle that costs should be apportioned in relation to each party's success.¹⁵

⁸ In *BT v CMA* [2017] CAT 11 at [32], the CAT set out the level of detail the CMA should give of its costs which makes it clear that it is not just the CMA's direct costs which can be recovered. In addition, the broad language of paragraph 12(1) of Schedule 3A to the Gas Order ('*costs incurred by the CMA in connection with the appeal*') implies that the CMA must recover not only direct costs such as staff costs, but all its costs (for example, including any external fees incurred).

⁹ *BT v CMA* [2017] CAT 11 at 24. We note that whereas section 193A Communications Act 2003 refers expressly to the 'total' costs of the CMA, the Gas Order merely refers to the CMA's 'costs'. However, in our view, nothing turns on that difference in legislative drafting.

¹⁰ *BT v CMA* [2017] CAT 11 at [27].

¹¹ *BT v CMA* [2017] CAT 11 at [29].

¹² E.ON UK plc and GEMA and British Gas Trading Limited Decision and Order on Costs CC02/07 (E.ON) at paragraph 9.

¹³ E.ON at paragraph 9. The 'substance of the appeal' referred to what the appeal concerned. In the E.ON case, the CC quashed a single decision by the regulator, but it concerned two modification proposals. E.ON was successful on one but not the other. In considering whether to apportion its costs, the CC noted that the amount of time and costs expended on the modification proposal on which E.ON was successful exceeded that on the other but did not consider the failure to succeed meant that E.ON should bear part of the CC's costs as it was a single decision which was quashed.

¹⁴ *British Gas Trading Limited v The Gas and Electricity Markets Authority (BGT)* September 2015 at paragraph 9.4.

¹⁵ BGT at paragraphs 9.9 and 9.11.

Discretion to order payment of inter partes costs

13. As noted above, the Gas Order provides that a group that determines an appeal may also make such order as it thinks fit for requiring a party to the appeal to pay another party in respect of costs reasonably incurred by that other party in connection with the appeal.¹⁶ These are known as *inter partes* costs.
14. In deciding whether to award *inter partes* costs in the present case, we have had regard to the following principles arising from our previous decisions:
 - (a) The starting point is that the unsuccessful party should pay the costs of the successful party.¹⁷
 - (b) Where the grounds of appeal raise discrete issues, it is appropriate to approach the matter on an issue-by-issue basis considering:
 - (i) which party was successful in respect of a given ground; and
 - (ii) whether it is appropriate in all the circumstances for the unsuccessful party in respect of that ground to pay the successful party's costs.¹⁸
15. Where the CMA has decided to exercise its discretion to make an *inter partes* costs order, the Rules provide that in deciding what order to make, the CMA will have regard to all the circumstances, including:
 - (a) the conduct of the parties, including:
 - (i) the extent to which each party has assisted the CMA to meet the overriding objective;¹⁹
 - (ii) whether it was reasonable for a party to raise, pursue or contest a particular issue;
 - (iii) the manner in which a party has pursued its case or a particular aspect of its case;

¹⁶ Gas Order, Schedule 3A, paragraph 12(3); see also Rule 19.2.

¹⁷ BGT at paragraphs 9.18 and 9.21

¹⁸ See, by analogy, BGT at paragraph 9.19 and Northern Powergrid v The Gas and Electricity Markets Authority September 2015 (NPg) at paragraph 7.14. However, that is not to say that the CMA is bound to make an 'issues-based' costs order. When making an *inter partes* costs order, it is preferable to make a single adjusted order and the starting point is that it should reflect the parties' relative success by reference to the individual grounds of appeal (BGT at paragraph 9.20).

¹⁹ That is, to dispose of the appeal fairly and efficiently within the statutory time period (Rule 4.1).

(b) whether a party has succeeded wholly or in part; and

(c) the proportionality of the costs claimed.²⁰

16. In deciding what *inter partes* costs order to make, the CMA will also have regard to the following principles (in addition to those set out in paragraph 14:

(a) In deciding whether the costs claimed by a party are proportionate, the CMA will balance the costs claimed against the significance of the appeal on the overall level of the price control if the appeal had succeeded.²¹

(b) In deciding on what costs are reasonable,²² the exercise is one of 'standing back and seeking to arrive at an approach which does justice in all the circumstances of [the] case'.²³

(c) The CMA will exercise its judgement after comparing the costs of the appellant, the respondent and the CMA, and will not conduct the level of detailed cost assessment that is typical in court proceedings.²⁴

Third party costs

17. Costs orders may only be made against or for the 'parties' to the appeal, that is, the appellant and/or the UR; there is no power to order costs against or for ITPs (see paragraphs 6 and 7 above).²⁵

18. In the present case, we considered the circumstances of the CCNI. The CCNI represents the interests of NI consumers (as recognised in the Gas Order) and was an ITP to this appeal. The Group decided it would be helpful to the determination of this appeal to have the CCNI attend the oral hearings at the CMA in person. For this case, the CMA has therefore arranged for the CCNI to be paid its necessary expenses of attendance at those hearings.²⁶ We are treating this expense as a disbursement to be included in the total CMA costs for the appeal.

²⁰ Rule 19.3.

²¹ BGT at paragraphs 9.21(c) and 9.25 and NPg at paragraph 7.17(c).

²² The CMA may only allow costs that are 'reasonably' incurred by a party in connection with the appeal (paragraph 12(3) of Schedule 3A to the Gas Order).

²³ BGT at paragraph 9.30.

²⁴ BGT at paragraph 9.30.

²⁵ See also paragraph 5.3 of Energy Licence Modification Appeals: Competition Commission Guide (CC15), September 2012, as adopted by the CMA.

²⁶ The approach taken here is consistent with paragraph 7(7) of Schedule 3A to the Gas Order, which provides that '[w]here a person is required ... to attend at a place more than 10 miles from that person's place of residence, an authorised member of the CMA must arrange for that person to be paid the necessary expenses of attendance'.

CMA Costs

Statement of CMA Costs

19. The total CMA costs of the appeal were £637,359²⁷ (see Appendix A for a detailed statement of costs). These costs include:
- (a) CMA staff and panel members' costs.
 - (b) External advisers' costs (Counsel and expert quality assurance).²⁸
 - (c) CMA overhead allowance (defined as a standard % uplift of staff and panel member costs).
 - (d) Non-staff costs and disbursements (for example, travel and accommodation costs for the CMA's visit to Belfast, transcription costs).
 - (e) Other disbursements (for example, CCNI oral hearing expenses).
20. The appeal was partially allowed. It is therefore necessary to apportion the CMA's costs to grounds to determine the starting point for the appropriate allocation between parties. Given that the amount of CMA resources expended on each sub-ground differed, we have allocated the costs between the twelve sub-grounds of the appeal based on an assessment of staff and group time spent on each sub-ground (see Appendix A for more details).
21. We note the suggested apportionment of CMA costs to grounds submitted by FE which was based on an analysis of the number of pages of appeal documents associated with each ground.²⁹ We also note the UR's submission that CMA costs should be shared evenly across grounds.³⁰ However, in our view, our approach provides a more accurate assessment of the CMA's costs incurred in respect of each sub-ground, reflecting the actual time spent by the CMA considering each ground and sub-ground.
22. Following the notification of our provisional determination,³¹ parties identified an error in the CMA's spreadsheet that underpinned its analysis in respect of Ground 2A which resulted in an amended provisional determination being prepared and notified. We note that the CMA process involves issuing a provisional determination for transparency, to assist with decision-making and

²⁷ This includes CMA costs up to notification of the Final Determination. The total CMA costs figure reflects all CMA costs in connection with the appeal.

²⁸ We instructed Alan Gregory of AGRF Ltd to conduct an expert Quality Assurance of our assessment of Ground 4 concerning the WACC and financeability.

²⁹ See FE Submission on Costs (FE SoC), Annex A.

³⁰ UR Response to PDC (RPDC), paragraph 2.18.

³¹ That is, the provisional determination on the substance of the appeal.

to ensure factual accuracy by allowing parties to comment, and for the CMA's provisional determination to be revisited before making and publishing its final determination. In the present case, the additional cost attributable to the error was minimal. We therefore do not propose to make an adjustment to the CMA's costs in respect of that error.

23. Our assessment of the CMA's costs is shown in Table 1.

Table 1: CMA costs

| Sub-ground of appeal | CMA Cost | % allocation |
|-----------------------------|-----------------|---------------------|
| Ground 1A | £44,856 | 7% |
| Ground 1B | £50,958 | 8% |
| Ground 1C | £44,450 | 7% |
| Ground 1D | £49,650 | 8% |
| Ground 1E | £42,817 | 7% |
| Ground 2A | £92,094 | 15% |
| Ground 2B | £46,306 | 7% |
| Ground 3A | £57,116 | 9% |
| Ground 3B | £47,996 | 8% |
| Ground 3C | £47,996 | 8% |
| Ground 4A | £56,560 | 9% |
| Ground 4B | £56,560 | 9% |
| Total | £637,359 | 100% |

Source: CMA analysis of CMA costs in connection with the appeal.

Apportionment of the CMA's costs to the parties

24. The parties' views on the apportionment of the CMA's costs between them are set out below.

Parties' views

25. FE submitted that any order in respect of the CMA's costs must be made on a case by case basis, having regard to all the circumstances of the specific case.³² Overall, FE considered that the UR should pay at least 60% and FE should pay no more than 40% of the total costs incurred by the CMA in connection with the appeal.

³² FE SoC, paragraph 3.1 and FE Response to PDC (FE RPDC) paragraph 1.2.

26. The UR submitted that a costs order should be in proportion to the grounds allowed or dismissed, and that the UR should pay 25% and FE 75% of the CMA's costs.³³

Our assessment

27. Our starting point was the principle that costs follow the outcome of the appeal – that is the UR pays the CMA's costs for appeal sub-grounds which were upheld, and FE pays the CMA's costs for appeal sub-grounds dismissed. We then considered for each ground (or sub-ground as applicable) whether there were good reasons to depart from this approach.

Ground 1A

28. In our Final Determination, we found the UR's GD17 Decision was not wrong on Ground 1A. Our starting point is therefore that FE should pay the CMA's costs for this ground.
29. However, in our Final Determination on Ground 1A, we found that the UR had made errors, albeit that these did not create or contribute to any errors in the level of the Opex allowance (hence we did not find the UR's GD17 Decision 'wrong' in respect of Ground 1A). In light of this, we indicated in our letter to the parties on costs³⁴ that we were considering whether the UR should contribute towards the CMA's costs in respect of Ground 1A, and invited comments from the parties.
30. FE submitted that the UR should be required to pay all of the CMA's costs in respect of Ground 1A. The CMA had found clear errors with the conclusions UR drew from its top down analysis, and if the errors had not been made FE would not have included Ground 1A in its appeal.³⁵ FE also submitted that the challenge was reasonably brought and upheld in substance, and the fact that the UR changed its position in respect of Ground 1A during the appeal materially increased the costs of Ground 1A.³⁶ In its response to the PDC, FE submitted additional reasons why the UR should pay the CMA's costs for Ground 1A, including that the CMA had upheld in substance FE's challenge to new points made by the UR in the course of the appeal.³⁷ It submitted in the alternative, that if some costs were attributed to FE, the UR should be required to pay the vast majority of the CMA's costs as it was the content of

³³ UR Submission on costs (UR SoC), paragraph 2.5 and UR RPDC, paragraph 2.6

³⁴ Letter from CMA to parties, 30 June 2017.

³⁵ FE SoC, paragraph 3.5; FE RPDC, paragraphs 2.3-2.5.

³⁶ FE SoC, paragraph 3.9.

³⁷ FE RPDC, paragraph 2.6.

the UR's GD17 Decision and the UR's subsequent conduct that gave rise to the appeal.³⁸

31. The UR submitted that Ground 1A was an unnecessary ground of appeal.³⁹ Moreover, the UR submitted that the intention of Schedule 3A, paragraph 12(2) of the Gas Order when read as a whole makes clear the intention that costs should follow the event; the suggestion that the UR might have to bear some part of the costs of the CMA in relation to Ground 1A fundamentally departs from this principle, and therefore is not within the CMA's discretion.⁴⁰ In its response to our PDC, the UR submitted that the CMA's provisional determination that the UR should contribute 40% towards the CMA's costs was wrong. The UR questioned the reasoning by which the error that the CMA held the UR to have made had a material impact on the time and expense incurred by the CMA in addressing Ground 1A.⁴¹ In addition, the UR submitted that the CMA had failed to recognise or acknowledge that FE's change of position on Ground 1A had added substantially to the costs, and that the UR had not provided the information in question to FE because of legal obligations on the UR to respect the confidential nature of the benchmarking data it had received from third parties.⁴²
32. In our view, the UR had made errors⁴³ which had a material impact on the time and expense incurred by the CMA in addressing Ground 1A. In our view, the UR had proceeded with the benchmarking without making certain data available to FE, so it was impossible for FE to determine whether the UR was wrong. FE constructed its Notice of Appeal on the basis of what it knew at the time, due to this lack of information. We note the UR's submission that it did not choose of its own volition not to provide information to FE, but was complying with its legal obligations.⁴⁴ However, in our view, the use by the UR of confidential data for determining the price control, and the consequential lack of transparency, led in part to this ground of appeal. In addition, in our final determination, we concluded that the UR had made an error in relying on the top-down analysis to determine the scope to reduce FE's Business Plan Opex costs or to 'sense check' the results of the bottom-up approach, as this analysis was not sufficiently reliable at the time of the GD17 Decision. Moreover, in the appeal the UR persisted in its submissions that the top-down analysis was not used in the final determination - a position which was not entirely consistent with the UR's contemporaneous documents and which

³⁸ FE RPDC paragraph 2.7.

³⁹ UR SoC, paragraph 2.13 and UR RPDC, paragraph 2.10.

⁴⁰ UR SoC, paragraph 2.14 to 2.15.

⁴¹ UR RPDC, paragraph 2.10.

⁴² UR RPDC, paragraph 2.11.

⁴³ CMA FD, paragraphs 4.226 to 4.232.

⁴⁴ UR RPDC, paragraph 2.11.

added to the time and expense incurred by the CMA in addressing Ground 1A.

33. We disagree with the UR's contention that we do not have discretion to order the UR to contribute to the CMA's costs for this ground. We consider that these errors, combined with the lack of transparency, contributed to the CMA's costs on Ground 1A.
34. In view of the foregoing, we maintain our view that the UR should contribute towards the CMA's costs for this sub-ground and that in all the circumstances it is appropriate that FE should pay 60% and the UR pay 40% of the CMA costs in respect of Ground 1A.

Ground 1C

35. In our Final Determination, we found the UR's GD17 Decision was 'wrong' on Ground 1C. Our starting point is therefore that the UR should pay the CMA's costs for this ground and we see no reason to depart from this approach.

Ground 2A

36. In our Final Determination, we found the UR's GD17 Decision was 'wrong' on Ground 2A. Our starting point is therefore that the UR should pay the CMA's costs for this ground.
37. In its response to the provisional determination of costs, the UR submitted that the CMA was being inconsistent in its approach to Grounds 1A and 2A. The UR submitted that in Ground 2A, the CMA had upheld the UR's position on almost all of the matters in dispute, and that a significant proportion of the CMA's time and expense on Ground 2A must have been incurred on matters on which FE was not successful. The UR compared the CMA's approach to costs for Ground 2A with that for Ground 1A, and submitted that there should be consistency of approach: the CMA should either adopt the principle that costs follow the outcome of the appeal on each ground, in which case the UR should not be liable for a percentage of the CMA's costs for Ground 1A; alternatively, if the CMA were to depart from that principle such that the UR were to be determined liable for a percentage of the CMA's costs for Ground 1A, then FE should be liable for a substantial percentage of the CMA's costs for Ground 2A.⁴⁵
38. In our view, the circumstances of Grounds 1A and 2A are different. We found in our Final Determination that the UR had made an error on Ground 1A, even

⁴⁵ UR RPDC, paragraphs 2.19 to 2.26.

if it did not find the UR 'wrong'. We accept that FE made several points within Ground 2A of which we only found the UR to be wrong on one. However, in our view, the lack of clarity of the UR's GD17 Decision in respect of the relevant matters made it necessary for the FE appeal to be wide-ranging. In determining the appropriate cost allocation between parties, the CMA will take account of relevant differences between grounds. In our view, it is not appropriate to treat Grounds 1A and 2A in the same way given relevant differences between them. Accordingly, we see no reason to depart from our starting point for Ground 2A that the UR should pay the CMA's costs for this ground.

Ground 2B

39. In our Final Determination, we found the UR's GD17 Decision was 'wrong' on Ground 2B. Our starting point is therefore that the UR should pay the CMA's costs for this ground and we see no reason to depart from this approach.

Remaining sub-grounds

40. In our Final Determination, we dismissed the appeal in respect of Grounds 1B, 1D, 1E, 3A, 3B, 3C, 4A and 4B.
41. FE submitted that the UR's conduct in respect of each of Grounds 1B, 1D, 1E and 3 added significant cost and complexity to the appeal, and in FE's view the parties should bear the CMA's costs for these grounds equally.⁴⁶ In particular, FE submitted that the UR should be accountable for an equal share of the CMA's costs for Ground 3, as (among other matters) in FE's view the UR bore significant responsibility for the lack of clarity and lack of consistency which the CMA had found applied in the relevant licence conditions, and that additional costs of Counsel engaged by the CMA were, at least in part, due to the UR's drafting of the licence.⁴⁷ FE accepted that FE should bear the CMA's costs for Ground 4.
42. We agree with FE that conduct is one of the issues which we can take into account in deciding what order is appropriate in all the circumstances. Although we expressed some concerns over the UR's procedure during the price control process, these were largely in relation to grounds where the appeal was allowed and where the UR will be paying the CMA's costs in whole or in part.

⁴⁶ FE SoC, paragraph 3.12.

⁴⁷ FE RPDC, paragraph 2.8.

43. As regards those other grounds and sub-grounds in respect of which the appeal was not allowed, where there were deficiencies in the UR's procedures, they were not such as to justify departing from the standard approach of apportioning costs according to the outcome of the appeal. As regards Ground 3 in particular, we are not persuaded that the circumstances surrounding the relevant licence conditions and related points made by FE warrant departing from the standard approach. Our view is therefore that FE should pay the CMA's costs for these grounds and sub-grounds.

Final determination on the CMA's costs

44. Our final determination is that the CMA's costs should be apportioned as follows:
- (a) The UR should pay the CMA's costs for Grounds 1C, 2A and 2B and 40% of the CMA's costs for Ground 1A.
 - (b) FE should pay the CMA's costs for Grounds 1B, 1D, 1E, 3A, 3B, 3C, 4A and 4B and 60% of the CMA's costs for Ground 1A.
45. Taking the CMA's costs for each ground to date into account (see Appendix A), this results in the UR paying £200,792 (32% of the total CMA costs) and FE paying £436,567 (68% of the total CMA costs).

Inter partes costs

46. As noted above (see paragraph 13), we have discretion to make an order as we think fit for requiring one party to the appeal to make payments to another party in respect of costs reasonably incurred by that other party in connection with the appeal.
47. In our PDC, we considered the applications of both the UR and FE in favour of an *inter partes* costs order, but we proposed that no order be made. Both FE and the UR made representations on this aspect of the PDC.

Parties' views

FE's views

48. FE submitted that the UR should be ordered to pay FE's costs reasonably incurred in connection with the appeal, as important parts of the GD17 Decision were quashed and the starting point should be that FE is entitled to its costs of the appeal (there being no automatic reduction of a successful

party's costs if it loses one or more issues).⁴⁸ If however the CMA was minded to award *inter partes* costs on an issue-by-issue basis, then FE submitted that the UR should be required to pay 50% of FE's total costs of the appeal.⁴⁹

49. FE submitted several examples of how, in its view, the UR's conduct fell well short of the high standards expected from a regulator. In particular, FE submitted that the UR had:
- (a) failed to fulfil its obligation under the Rules to assist the CMA to meet its overriding objective by: a lack of explanation in the GD17 process which led to a wider appeal than would otherwise have been necessary; a failure to disclose information of crucial importance to FE in the GD17 process (relevant to Ground 1A); an inappropriate approach to Ground 1C;⁵⁰ and conduct which was less reasonable, responsible and consistent than that of FE.⁵¹
 - (b) chosen to raise, pursue or contest particular issues in the appeal in a manner that was not reasonable; FE noted that these submissions by the UR were in the event rejected by the CMA.⁵²
 - (c) adopted a particularly litigious approach during the appeal and pursued particular aspects of its case in an inconsistent, unjustified and inappropriate manner.⁵³
50. FE submitted that, in all the circumstances, the costs it had claimed were proportionate,⁵⁴ and that it would not be possible, fair or appropriate to compare FE's and the UR's costs directly.⁵⁵
51. In response to the PDC, FE submitted that the CMA should reconsider its decision on *inter partes* costs and order the UR to pay FE's costs reasonably incurred in connection with Ground 1C on the basis that the UR's conduct in respect of this ground of appeal 'was egregious and of a different character to the other procedural and conduct deficiencies which the CMA pointed to in its

⁴⁸ FE SoC, paragraphs 4.1 to 4.2.

⁴⁹ This included an estimated proportion of PwC and Freshfields fees for Grounds 1A, 1C, 2A and 2B, all Oxera fees in connection with Grounds 1A and 2A, 95% of Oxera fees attributable to Ms Shamsi under Ground 4A, and 100% of FE's disbursements (see FE SoC, paragraphs 4.3 and 4.4).

⁵⁰ FE submitted that the UR refused to accede to the jurisdiction of the CMA on GIS costs and conducted a separate licence modification consultation process outside the CMA appeal process, pursued 'novel legal arguments', and declined to resolve the matter in a more efficient manner within the CMA appeal process (see FE SoC, paragraph 4.15)

⁵¹ FE SoC, paragraphs 4.11 to 4.16.

⁵² FE SoC, paragraphs 4.17 to 4.21.

⁵³ FE submitted that the UR had provided inconsistent evidence, changed its position on several issues, and continued to deny the existence of clear and identifiable errors, FE SoC, paragraphs 4.22 to 4.24.

⁵⁴ FE SoC, paragraph 4.28

⁵⁵ FE SoC, paragraph 4.36

Final Determination'.⁵⁶ The UR's conduct, FE submitted, had increased FE's costs in respect of this ground.⁵⁷

The UR's views

52. The UR submitted that FE should pay the UR's costs in relation to the grounds of appeal on which the UR has been successful (9 out of the twelve sub-grounds). It also submitted that there was not an even distribution of time spent and costs incurred across all of the grounds, and that it would be appropriate for FE to pay 85% of the total UR costs incurred in the appeal.⁵⁸
53. The UR submitted that there was nothing in the UR's conduct of the proceedings which, having regard to the factors specified in Rule 19.3, should have any impact on the application of the normal rule that an award should be made in respect of its costs on the grounds on which it had been successful.⁵⁹ In its submission, the UR drew our attention to the ED1 BGT appeal where the CMA had criticised the regulator's decision making process, but did not accord this any significant weight in *inter partes* costs where the grounds were still dismissed in full.⁶⁰
54. In addition, the UR submitted that on the grounds in respect of which FE had been successful (Grounds 1C, 2A and 2B), there were unusual features in each case which should have the effect of the CMA applying its discretion of denying FE an order in respect of its costs.⁶¹
55. The UR submitted that its costs were proportionate, given the number of discrete grounds, the volume of expert and other evidence adduced by FE, and in comparison with other regulators defending price control appeals.⁶² The UR also submitted that the UR's costs should provide an efficient benchmark against which FE's costs ought to be judged, and that there was no good reason why FE's costs needed to be considerably higher than those of the UR.⁶³

⁵⁶ FE RPDC paragraph 3.4.

⁵⁷ FE RPDC paragraphs 3.5 to 3.6.

⁵⁸ UR SoC, paragraph 3.13.

⁵⁹ UR SoC, paragraph 3.14.

⁶⁰ UR SoC, paragraph 3.18.

⁶¹ For example, the UR submitted that ground 1C was unnecessary as the UR had already committed to correcting its own mistake before the appeal was brought; on Ground 2A, FE ran a lengthy series of arguments and only succeeded on one of the many points which it raised; and on Ground 2B, FE had not established the merits of its alternative solution (see UR SoC, paragraphs 3.27 to 3.41).

⁶² UR SoC, paragraph 3.21.

⁶³ UR SoC, paragraphs 3.42 to 3.45.

56. The UR also submitted that any costs awarded in favour of FE would ultimately be borne by consumers, and that consumers should not unfairly be expected to pay costs associated with this appeal.⁶⁴ The UR submitted that FE had claimed £12.97 million for the correction of alleged errors, but had been awarded almost none of this as a result of the appeal.⁶⁵ In the UR's view, the value of the appeal to FE was out of all proportion to the total cost which both parties (including through their share of the CMA's costs) would have to bear.⁶⁶ The UR submitted that it was not appropriate in all the circumstances for the UR (and therefore consumers) to be required to pay FE's costs in respect of any grounds.⁶⁷
57. In response to the PDC, the UR submitted that the CMA had not followed its previously stated approach,⁶⁸ in that it did not appear to have considered the matter on an issue-by-issue basis, or have had full and proper regard to *all* the circumstances of the case or to the factors set out in Rule 19.3 of the Rules.⁶⁹ The UR also submitted that the CMA had taken an 'essentially holistic decision' based on the differential in costs incurred between FE and the UR and the CMA's view that the differential related at least in part to the UR's conduct within the price control process and the appeal.⁷⁰
58. The UR submitted that the CMA was wrong not to make an *inter partes* costs order and the proper approach would be for it to make an order providing for the UR to recover its full costs from FE in respect of the grounds on which FE's appeal was unsuccessful.⁷¹

Our assessment

59. As explained above (paragraphs 13 to 16), we have discretion to make an *inter partes* costs order as we think fit in respect of costs reasonably incurred in connection with the appeal.
60. In deciding whether to make an order for *inter partes* costs, the starting point is that the unsuccessful party should pay the costs of the successful party. In the present case, we approached the matter on an issue-by-issue basis considering (i) which party was successful in respect of a given ground and (ii)

⁶⁴ UR SoC, paragraph 3.47.

⁶⁵ UR SoC, paragraph 3.48.

⁶⁶ UR SoC, paragraph 3.49.

⁶⁷ UR SoC, paragraph 3.51.

⁶⁸ UR RPDC paragraph 3.13.

⁶⁹ UR RPDC paragraphs 3.14 and 3.15.

⁷⁰ URRPDC paragraph 3.16.

⁷¹ UR RPDC paragraph 3.68.

whether it is appropriate in all the circumstances for the unsuccessful party in respect of that ground to pay the successful party's costs.

61. Taking the first consideration, we note that the appeal was only partially allowed (FE succeeded on 3 out of twelve sub-grounds). Accordingly, taking an issue-by-issue basis, this would mean that FE should pay the UR its costs for those three quarters of the sub-grounds in respect of which the appeal was not allowed, and the UR should pay FE its costs for that quarter of the sub-grounds in respect of which the appeal was allowed. We do not accept FE's argument that it is entitled to have all its costs paid by the UR.
62. We also note that if we were to make an order for *inter partes* costs, a simple apportionment would result in a minimal net difference in costs due to each party, given that FE's costs are over [X] those claimed by the UR.
63. Under the second consideration, we examined whether it would be appropriate in all the circumstances of the case for the unsuccessful party to pay the successful party's costs. Our assessment was conducted 'in the round', including by reference to each sub-ground (as examined above and in the Final Determination). We have done so, by exercising our judgement, with the aim of arriving at a result that is just in all the circumstances of the case.
64. In our view, in the present case there are good reasons to move away from the starting point that the unsuccessful party should pay the costs of the successful party, but the arguments in question go both ways - as summarised below - in some cases in favour of FE and in others in favour of the UR.
65. We have described earlier our view that the conduct of the UR had the effect of increasing the CMA's costs for Ground 1A (see paragraph 32). It is also our view that the same justification could be made for the UR paying some of FE's costs for Ground 1A.
66. However, counter to that, there are arguments that the costs claimed by FE for the grounds in which they were successful should be reduced for the purposes of any *inter partes* costs order. As stated above, FE has claimed over [X] as much as the UR in connection with the appeal. In particular, we note that FE's legal costs were [X] compared with the UR's legal costs of around [X]. We note also that the CMA and other bodies acting in a judicial capacity have seen fit to reduce appellants' costs when making an *inter partes* costs order against a regulatory authority.
67. In the present case, although we recognise that there is a substantial difference in the costs claimed by the parties, we do not accept the UR's submission that the appellant and the regulator should be expected to have

similar reasonably incurred costs. In our view this difference reflects, at least in part, the circumstances of this appeal:

- (a) The appeal was in respect of a complex price control decision. Although FE participated in the GD17 process (including the UR's consultations), the nature and amount of work it would have had to undertake together with its external advisers and experts, in formulating its Notice of Appeal, should not be under-estimated.
- (b) We note also that the UR has the relevant expert in-house resource in order to carry out its statutory gas functions. Therefore, the UR's appeal costs would be expected to be lower than those of a company of the size of FE which would have to engage external experts in order to understand better how the UR will have reached its position on certain technical matters when formulating its Notice of Appeal.
- (c) In our view, the UR's conduct during the price control process and during the appeal had the effect of increasing FE's costs in connection with some of the grounds of the appeal. We consider that FE had to do more in formulating its Notice of Appeal and pursuing certain points in the early stages of the appeal because of a lack of clarity by the UR during the GD17 process,⁷² and also because of the manner in which the UR sought to defend the GD17 Decision during the appeal.⁷³ In our view, this would have had an impact on FE's costs in particular in relation to Ground 1A and Ground 2.⁷⁴
- (d) In addition, we note that FE incurred costs in pursuing points which in the event turned out to be immaterial or were dismissed, but at the same time we recognise that permission had been granted by the CMA to appeal on all sub-grounds in the Notice of Appeal - none of which were trivial or vexatious - and that the appeal was properly brought.⁷⁵

⁷² For example, the UR only set out clearly its methodology for calculating the connections target during the course of the appeal, rather than during the price control process (Final Determination, paragraph 5.117).

⁷³ For example, in respect of Ground 1A, the UR maintained throughout the appeal that the UR had decided not to use the top-down exercise for the purpose of setting the GD17 Opex allowance, despite explicit references in the GD17 Final Determination to the effect that the top-down analysis had provided a 'sense check' for, and 'reinforced', the bottom-up analysis (see, for example, the Final Determination, at paragraphs 4.215, 4.216 and 4.224). As noted in our Final Determination, we found some inconsistencies between the UR's contemporaneous documents and its submissions in the appeal (Final Determination, at paragraph 4.226; see also paragraph 4.227).

⁷⁴ In respect of Ground 2A, see also paragraph 38 regarding the lack of clarity in the UR's GD17 Decision which necessitated a wide-ranging appeal by FE.

⁷⁵ We note the UR's submission that the CMA was wrong to consider that the granting of permission to appeal to FE should have any effect on the award of costs, in particular for Grounds 1A, 1C and 4A (UR RPDC, paragraphs 3.40 to 3.47). However, in our view, it is relevant to note that FE was not pursuing trivial or vexatious points.

68. We note that each party has claimed that the conduct of the other party has led to increased costs being incurred.⁷⁶ We considered the conduct of both parties in reaching our conclusions in all the circumstances.
69. We note the UR's submission following the PDC that we have not followed the ED1⁷⁷ 'precedent' in terms of benchmarking an appellant's cost with the regulator's, and the extent to which criticism of the regulator's conduct is relevant to costs.⁷⁸
70. However, while we have had regard to the principles outlined by the CMA and CC in previous decisions based on similar legislative regimes, as explained above (see paragraph 9) we disagree that ED1 should be considered a precedent. Previous decisions do not constitute binding precedent.⁷⁹ A number of aspects of a determination on costs are a matter of judgement and the CMA will seek to arrive at a result that is just in all the circumstances of the case. In the present case, in our view it would not be appropriate to limit FE's costs at a benchmark level by reference to the costs of the regulator, for the reasons given above (see paragraph 67). We also note that the circumstances concerning conduct in this case are different to those in ED1, as in this appeal we did find that the UR had made errors, rather than just making a 'degree of criticism' about the regulator.
71. We note also that in its submissions, the UR dismissed the reasons given by the CMA in the PDC in respect of the differential between FE's costs and the UR's costs (as described in paragraph 67 above).⁸⁰ The UR submitted that the CMA's assessment as regards the complexity of the appeal and the UR having relevant expert in-house resource appeared to be based solely on submissions made by FE.⁸¹ We disagree. Our determination has been made having regard to the submissions of both parties and on the basis of our own assessment of the facts in this appeal.
72. The UR also submitted that it was unclear how the grant of permission to appeal explained the differential between FE's costs and the UR's costs and it was not aware of any precedent for the conclusion that granting permission

⁷⁶ For example, the UR submitted that: FE's submissions in its Notice of Appeal were unclear, inconsistent or confusing; that FE changed its position substantially during the course of the appeal; and that FE's Reply far exceeded the substance of a usual reply (UR RPDC, paragraph 3.63). Examples of FE's submissions about the UR's conduct are given above in paragraph 49.

⁷⁷ NPg and BGT are collectively referred to as ED1.

⁷⁸ UR RPDC paragraphs 3.2 to 3.12.

⁷⁹ In NPg at paragraph 7.4 the CMA noted the 'assistance' of the CC's costs decision in E.ON and in BGT at paragraph 9.4 the CMA 'had regard to' the E.ON costs determination. In neither case did the CMA find itself bound to follow the decision in E.ON.

⁸⁰ UR RPDC, paragraphs 3.30 to 3.36.

⁸¹ UR RPDC, paragraph 3.29.

should immunise the appellant against the costs consequences of being unsuccessful.⁸² In our view, the relevance of permission having been granted goes to the point that none of the grounds of appeal were trivial or vexatious. We agree with the UR that permission does not confer immunity from the costs consequences of an appeal.

73. In view of the foregoing, and in all the circumstances, we have decided to make no order as to *inter partes* costs. In our view, this reflects the specific circumstances of this case, and conveys the appropriate balance between acknowledging the impact of the UR's conduct on the appellant's costs, while guarding against creating expectations that appellants would necessarily recover costs from the regulator.
74. We note FE's submission that the UR's conduct in relation to Ground 1C was egregious, and that if no *inter partes* cost order is considered appropriate, an exception should be made for Ground 1C.⁸³ However, our view is that in all the circumstances the UR's conduct was not such as to warrant making a costs order in FE's favour.
75. Finally, the UR raised various criticisms of FE's conduct (for example, that FE had taken a persistently aggressive approach to the appeal) and submitted that the CMA had taken account only of the conduct of one party (that is, the UR) and given no consideration to the conduct of the other (that is, FE).⁸⁴ In our view, FE's conduct in this appeal has been far from aggressive. We have had regard to relevant conduct of both parties, and having re-visited the position we took in the PDC in light of the UR's further submissions, we have not found any aspects of FE's conduct to warrant making a costs order in favour of the UR.

Final costs determination

76. In summary, our final determination in relation to costs is as follows:
- (a) **CMA Costs:** FE should pay 68% and the UR should pay 32% of the CMA's costs of the appeal, which are deemed to be a total of £637,359. That is, FE will pay £436,567 and the UR will pay £200,792.
- (b) ***Inter partes* costs:** we are making no order as to *inter partes* costs in this case.

⁸² UR RPDC, paragraphs 3.42 and 3.41.

⁸³ FE RPDC, paragraphs 3.4 to 3.6.

⁸⁴ UR RPDC, paragraphs 3.49 and following.

77. The amounts payable calculated above are on the basis of costs incurred by the CMA throughout the appeal.

Final Costs Order

78. An order has been made according to our final determination on costs and notified to the parties. It has also been published on the CMA website.⁸⁵

79. We note that CCNI submitted that consumers should not pay, through their gas bills, any costs that are awarded against FE, and that the CMA should make an order to ensure that any costs awarded against FE are paid out of the company's profits and not through consumers' bills.⁸⁶ However, the applicable legislative framework empowers the CMA only to order payment by parties, not how any payments are to be funded.

⁸⁵ [CMA Firmus regulatory appeal webpage](#).

⁸⁶ CCNI SoC.

Appendix A: Statement of CMA costs

Overview

1. The table below provides a summary of the CMA costs allocated to sub-ground.

Table 2: CMA's costs

| | Group Meetings | Site Visit and Hearings | General staff costs | Professional fees | Total |
|--------------|----------------|-------------------------|---------------------|-------------------|---------------------|
| Ground 1a | [X] | [X] | [X] | [X] | £ 44,855.89 |
| Ground 1b | [X] | [X] | [X] | [X] | £ 50,958.32 |
| Ground 1c | [X] | [X] | [X] | [X] | £ 44,449.56 |
| Ground 1d | [X] | [X] | [X] | [X] | £ 49,650.40 |
| Ground 1e | [X] | [X] | [X] | [X] | £ 42,816.74 |
| Ground 2a | [X] | [X] | [X] | [X] | £ 92,094.11 |
| Ground 2b | [X] | [X] | [X] | [X] | £ 46,306.18 |
| Ground 3a | [X] | [X] | [X] | [X] | £ 57,116.36 |
| Ground 3b | [X] | [X] | [X] | [X] | £ 47,995.86 |
| Ground 3c | [X] | [X] | [X] | [X] | £ 47,995.86 |
| Ground 4a | [X] | [X] | [X] | [X] | £ 56,559.76 |
| Ground 4b | [X] | [X] | [X] | [X] | £ 56,559.76 |
| Total | [X] | [X] | [X] | [X] | £ 637,358.80 |

Source: CMA analysis of CMA costs in connection with the appeal.

2. All costs incurred by the CMA in connection with the appeal have been included in the assessment.
3. This appendix outlines how the CMA costs were calculated, and the approach used to allocate them to sub-grounds.

CMA Costs

4. Details of the costs incurred by the CMA in connection with the appeal can be seen in Annex A.

Overheads

5. The CMA is able to recover all costs incurred, not just its direct costs. It therefore includes an amount for the recovery of overheads in the amounts that it calculates as costs.
6. The CMA's overhead rate of [X] is applied to direct salaried staff and panel member costs and is calculated on the basis of the costs of accommodation, IT and central support costs. It reflects:

- (a) The total direct costs of staff working in CMA front line delivery functions excluding corporate services
 - (b) The costs of the CMA areas supporting the delivery functions, including the staff costs of the corporate support function, as well as the non-staff costs, relating to accommodation and IT; and
 - (c) Other non-staff costs relating to the CMA were also included, for example, travel and staff training
7. The overhead rate (as a percentage) is calculated on the basis that the costs of the support areas are fully absorbed in proportion to the staff costs of the delivery functions. This rate is used commonly within the CMA for these purposes.

Staff costs

8. Table 3 in Annex A sets out the names, job titles, grades and cost recovery rates (£ per hour) for each member of the staff team who worked on the reference. It also includes the number of hours worked by each member of the staff team on the appeal, and the consequent direct costs and overhead costs incurred by the staff member.

Group member costs

9. Table 4 in Annex A sets out the names, job titles, grades and cost recovery rates (£ per hour) for the panel member Chair and panel members who worked on the appeal. It also includes the number of hours worked by each group member on the appeal, and the consequent direct costs and overhead costs incurred by the group member.

Travel and subsistence costs

10. Table 5 in Annex A sets out the travel and subsistence costs incurred by the staff and group members during the appeal. Travel expenses include the travel and accommodation costs of the site visit and clarification hearings in Belfast, as well as group member travel expenses.

Professional services

11. Table 6 in Annex A sets out professional services fees incurred. These include costs of Counsel (who advised primarily on Grounds 1C and 3), and external expert quality assurance of the CMA assessment on Ground 4 (following standard CMA practice for technical aspects of projects).

Other disbursements

12. Table 7 in Annex A sets out other disbursements incurred. These include transcription services for hearings in Belfast and London, and reimbursement of the necessary expenses of the CCNI's attendance at the oral hearings in London.

Allocation of costs to sub-ground

13. The costs incurred by the CMA during the appeal have been assigned to each of the sub-grounds. The costs have been apportioned using different levels of granularity, depending on the level of information available about the nature of the work associated with the staff and non-staff costs:
 - (a) Hours of staff work performing analysis or preparing documents was allocated to specific grounds, where identifiable.
 - (b) Non-staff costs were allocated to specific grounds, where possible (eg Counsel review, QA).
 - (c) Staff and non-staff costs of group meetings were allocated equally to sub-grounds discussed in those meetings.
 - (d) Remaining costs (including staff and group work on costs following the Final Determination) were allocated to sub-grounds equally.
14. We note that in its costs submission, FE provided an analysis of the number of pages by ground in appeal documents (with an adjustment for Ground 1C), and submitted that this provided an estimate of the relative proportion of time the CMA devoted to each of FE's grounds.⁸⁷
15. We disagree with this approach in principle. We consider that a simple cost allocation on the basis of pages in submissions risks creating the wrong incentives for parties to produce unnecessarily long documents.
16. In our view, CMA costs by sub-ground can be more accurately assessed using the approach described above.

⁸⁷ FE SoC, Annex A.

Table 4: CMA Panel member costs

| Name | Role in appeal | Grade | Recovery rate | Time spent | Direct costs | Overhead | Total |
|---------------|----------------|-------|---------------|------------|--------------|----------|-------|
| Phil Evans | Group Chair | [X] | [X] | [X] | [X] | [X] | [X] |
| Roger Finbow* | Group Member | [X] | [X] | [X] | [X] | [X] | [X] |
| Jon Stern* | Group Member | [X] | [X] | [X] | [X] | [X] | [X] |
| Total | | | | | | | [X] |

*Recovery rate increased as of 1 April 2017

Table 5: Travel and subsistence costs

Travel and subsistence costs

Travel expenses, mileage and other miscellaneous expenses

[X]

Lunches for group meetings and hearings

[X]

Total

[X]

Table 6: Professional services costs

| Consultant/adviser | Date | Amount | Comment |
|--------------------|--------------------|--------|---------------------------|
| Rob Williams | Dec 2016-June 2017 | [X] | Counsel (Ground 1C and 3) |
| Alan Gregory | March-April 2017 | [X] | QA on Ground 4 |
| Total | | [X] | |

Table 7: Other disbursements

| Description | Date | Amount |
|----------------------------------|-------------------------|--------|
| CCNI travel expenses to hearings | 9/3/17 and 14/3/17 | [X] |
| Transcription services | 7/2/17, 9/3/17, 14/3/17 | [X] |
| Total | | [X] |