
ACCESS DISPUTES COMMITTEE

Annual Report for 2008

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ACCESS DISPUTES COMMITTEE

REPORT FOR 2008

The Committee is pleased to issue its report for the calendar year 2008.

Communications

The Committee's report for 2007 was issued in a revised format and invited comments regarding the adequacy of its content. In the absence of any adverse feedback, the 2008 report follows the same simplified format.

Various observations and suggestions have been received regarding the Committee's website (www.accessdisputesrail.org), which was re-launched in July 2007, and a number of improvements have been made during the course of 2008, e.g. inclusion of any ORR appeal decision alongside the relevant Panel determination (instead of referring the reader to ORR's website) and the provision of a downloadable template for joint submissions to Panel hearings (which also provides a better reminder for those compiling submissions regarding the documents and other information which should be provided in the annexes). The website is updated promptly following a change in any area of information. Comments regarding the website will always be welcomed and should be passed to the Secretary (e-mail: sec.adc@btconnect.com, tel: 020 7554 0601).

Dispute references

The position regarding dispute references handled during 2008 can be summarised as follows:-

For an Access Disputes Panel

References on hand at 31.12.07	3	
New references received in 2008	2	
References withdrawn in 2008	1	
Determinations issued in 2008	2	
Determinations not yet finalised	0	
Pending at 31.12.08	2	(including 1 hearing adjourned)
Appeals submitted to ORR in 2008	1	

For a Timetabling Panel

References on hand at 31.12.07	49	
New references received in 2008	65	
References withdrawn in 2008	92	
Determinations issued in 2008	5	(relating to 11 dispute references)
Determinations not yet finalised	0	
Pending at 31.12.08	11	
Appeals submitted to ORR in 2008	3	(relating to 8 dispute references)

Details of all references received can be found on the website, together with any associated Panel determination and ORR appeal decision.

The volume of engineering work on the national infrastructure continued to influence the number of Timetabling Panel matters, with 31 of the Timetabling references handled during 2008 relating to West Coast Route Modernisation works matters.

Continued....

For the purpose of clarifying precedent to be applied in any future similar situations, the Committee is now particularly awaiting ORR's decision in respect of Network Rail's appeals against the Timetabling Panel's interim determination and final determination of references from 6 operators in relation to Network Rail's Final West Coast Route Modernisation decision document (NAUM-30): the Panel issued its determinations (TTP210) in May 2008 and ORR is not proposing to hear the appeals until May 2009.

The laid down timescales for submitting dispute references are stringent and even where there is every expectation that an issue between Access parties will be resolved through discussions, it is important for the dispute to be registered with the Committee within timescale in order to protect the interests of the disputing party. Thereafter, the process of preparing to attend a Panel hearing is one that creates the climate in which the dispute parties can well find that their points at difference are actually much closer than initially thought: in 2008, 6 cases did not proceed into the hearing chamber because the parties found during their joint preparations for the hearing that they were actually able to settle the issues between them.

Finance

Expenditure in the financial year to 31 March 2008 was £223,628 against a budget of £332,300; the excess, which included contingency provisions, was returned to Access parties through the rebate arrangement. The Income & Expenditure Statement and the Balance Sheet were sent with invoices for the 2008/09 levy.

The expenditure outturn for the current year (2008/09) is £197,154 against a budget of £321,400; this largely reflects the unlikely requirement to call upon provision made for legal services and contingency.

At 31 December 2008, two Access parties had yet to pay their levy for 2006/07 and 2007/08: these were Carillion Construction and Advenza Freight Ltd; the latter was also outstanding for 2005/06. We had also not received settlement of the 2008/09 levy invoices sent to six Access parties, including those two still outstanding for the previous years. All payments outstanding from Carillion Construction have since been received.

The Committee remains mindful of the stewardship expectations which apply to its funding as provided through the annual levy and it is anticipated that the expenditure budget for 2009/10 will show further, albeit slight, reduction. It is very pleasing to be able to anticipate continuing a reducing trend with the expenditure budget (2007/08 - £332,300; 2006/07 - £364,000).

It has previously been the practice to send out the levy invoices in July/August each year and this has resulted in cashflow risk arising over the summer period. The Committee intends that, commencing in 2009, the levy invoices should be issued in April each year to avoid this problem. This arrangement will enable contingency provisions to be kept as low as practicable.

The Access Dispute Resolution Rules

The Committee's report for 2007 observed that the continuing fitness of purpose of the Access Dispute Resolution Rules for dealing with the complexity and value of some present-day disputes had become a matter for consideration. An industry consultation has now been initiated in connection with a review both of the Rules and of Part M of the Network Code with the intention of having in place a process which is fit for purpose and which allows disputes or appeals raised by Access parties to be considered and resolved in an appropriate, robust and fair manner. The Committee encourages all Access parties to respond to the consultation, details of which can be found on the Network Rail website (www.networkrail.co.uk) and on the Committee's website.

On behalf of the Committee



Sir Anthony Holland
Chairman

5 January 2009