
ACCESS DISPUTES COMMITTEE

REPORT FOR 2012

Access Dispute Resolution Rule J3(g) requires the Committee to "monitor and report at least annually to the Resolution Service Parties upon the work of the Committee". The Committee is pleased to issue its report for the calendar year 2012.

The Committee is especially pleased to announce that with the benefit of two years' management of the new dispute resolution arrangements, it felt able to reduce the overall levy requirement for 2012/13 by 25% compared with the previous year and expects to hold the requirement at the same level for 2013/14.

Communications

The Committee's report for 2012 follows the format adopted for the past four years. In the absence of any adverse feedback regarding the recent reports, we again invite comments regarding the adequacy of content of this one.

The Committee's website (www.accessdisputesrail.org) provides a ready source of reference material whilst also containing downloadable templates for use in connection with dispute procedures. Under the ADR Rules, the use of some of these templates is mandatory, although amendments to the Rules during 2012 reduced the number of instances where the use of a template 'Procedure Agreement' document is necessary within the dispute initiation process. The website is updated promptly following a change in any area of information.

Comments regarding the website and Committee matters in general will always be welcomed and may be passed to the Secretary, Tony Skilton (e-mail: sec.adc@btconnect.com, tel: 020 7554 0601). Alternatively, a channel of communication is available through the Committee members who have been elected or appointed on behalf of areas of the industry; the current Committee members are listed at the back of this report along with details of the operators in the respective voting Classes/Bands.

The Committee is happy to provide briefing sessions to enhance familiarity of Resolution Service Party staff with the ADR Rules and associated processes. Request should be made via the Secretary.

Administration

A number of changes took place in Committee membership during 2012. Mike Price (Franchised Passenger Class, Band 1), Lindsay Durham (Non-Passenger Class, Band 2) and Gabrielle Ormandy (Network Rail) have been replaced, respectively, by John Czyrko, Robin Nelson and Gavin Panter. Mike, Lindsay and Gabrielle were all long-serving members and the Committee thanks them sincerely for their participation in the former Access Disputes Panels as well as for their contributions to Committee business.

The Committee members elect the Committee Chair from amongst their number and John Beer remains the Chair.

The 2011 Report mentioned that the unincorporated status of the Committee complicates matters when it comes to the leasing of premises and that a Company Limited by Guarantee – Access Disputes Resolution (GB) Ltd – had been incorporated for the purpose of managing the Committee's property interests at 1 Eversholt Street as nominee and managing agent for the Committee and also to hold the Committee's interests in the associated Rent Deposit. Some adjustment of the ADR Rules has been appropriate and the necessary contractual arrangements are now approaching finalisation.

Dispute references - national network

The position regarding dispute references handled in relation to the national network during 2012 can be summarised as follows:-

For a Timetabling Panel

Unheard references on hand at 31.12.11	27
New references received in 2012	96
References withdrawn in 2012	56
Hearings held in 2012	3 (held over 4 days)
Determinations issued in 2012	2
Determinations in drafting at 31.12.12	1 (covering 3 dispute references)
Pending hearing at 31.12.12	62
Appeals submitted to ORR in 2012	0

For an Access Dispute Adjudication ("ADA")

Unheard references on hand at 31.12.11	0
New references received in 2012	1
References withdrawn in 2012	1
Pending hearing at 31.12.12	0

Additionally, on 31 December 2012 there was 1 reference on hand which had been submitted for hearing by the Access Dispute Panel but which had not been heard before the Panel was disbanded. The parties involved are actively considering the way forward under the revised ADR Rules.

No allocation hearings took place during the year. No disputes have been submitted for attention in any other dispute resolution forum covered by the ADR Rules.

Details of all dispute references received can be found on the Committee's website, together with any associated Timetabling Panel or ADA determination and any ORR appeal decision. In accordance with the ADR Rules, Timetabling Panel determinations are also issued direct to a nominated person in each operating company.

The act of referral of a matter for dispute resolution tends to concentrate minds on the issue and the process of actually preparing to attend a hearing can also lead to a solution being found; hearing arrangements have been stood down on 4 occasions in 2012 due to late discussions between the parties achieving successful resolution and a hearing was deferred on 1 occasion whilst further dialogue was attempted.

Regarding the number of Timetabling Dispute references leading to Timetabling Panel hearings, it may be of interest to compare relevant statistics for recent years:-

	<u>2012</u>	<u>2011</u>	<u>2010</u>	<u>2009</u>	<u>2008</u>	<u>2007</u>
New disputes registered	96	60	70	64	65	81
Disputes determined by Panel	5	6	8	3	11	0

The Committee would particularly hope that the relationship changes evolving within the industry might lead to better certainty of expectation in matters of capacity provision on the network rather than operators relying upon the initial stage of the dispute resolution process to establish their requirements.

A seminar was held for the Hearing Chairs in May 2012 to discuss matters of administration and legal process which had emerged since introduction of the new ADR Rules in August 2010, also to familiarise them with amendments to the Network Code. It was appreciated that representatives from ORR were able to join the event. The Committee believes such gatherings should take place occasionally in order to maintain the effectiveness of the dispute resolution service.

The timescales for notifying disputes are stringently prescribed so even where there is anticipation that an issue between parties will be resolved through discussion, it is important for the dispute to be registered with the Committee Secretary within the prescribed time in order to protect the interests of the disputing party. The ADR Rules require that a Notice of Dispute be served to initiate dispute proceedings; the templates on the Committee's website reflect changes made to the associated Rules during the year.

ADR Rule J3(h) requires the Committee to satisfy itself that the Principles (as set out in Rules A5 – A10) are being observed in the way in which disputes are being managed and determined. Having sought and considered the professional view of the Allocation Chair (Professor Richard Butler) in this regard, together with feedback received by Committee members and their own experiences under the Rules, the Committee is suitably satisfied.

Dispute references - (HS1)

No disputes have been handled under the HS1 Access Dispute Resolution Rules.

Accommodation

Resolution Service Parties are again reminded that the Committee's premises on floor 8 of 1 Eversholt Street may be found to offer an acceptable alternative to booking meeting rooms in Central London – contact the Secretary regarding facilities and availability.

Finance

Expenditure in the Financial Year to 31 March 2012 was £235,513 against a budget of £505,450. The balance was used for 2012/13 pre-payments, to meet cashflow requirements pending receipt of levies for the new 2012/13 Financial Year and to facilitate a reduced call on Resolution Service Parties for funding in 2012/13.

As headlined above, having gained experience in managing the new dispute resolution arrangements, the Committee reduced the overall levy requirement for 2012/13 by 25% against 2011/12. One complex dispute hearing late in 2012 has alone incurred direct costs to the Committee estimated to be in the order of £20k but the 2012/13 expenditure forecast is nevertheless comfortably within budget and the aspiration is to hold the 2013/14 budget at the 2012/13 level; the decision will be made towards 2012/13 Year End and the resultant levy invoices will be issued in April 2013.

One levy payment is outstanding for years prior to 2012/13 and two companies have yet to pay their levy for 2012/13, the total amount involved is £361.

On behalf of the Committee

John Beer
Committee Chair

7 February 2013

Committee members 2012/13

<u>Class/Band</u>	<u>Member</u>	<u>Company</u>	<u>Telephone</u>
Franchised Passenger Class, Band 1	John Czyrko	First Greater Western	07771 831001
Franchised Passenger Class, Band 2	Richard Dean	Southeastern	07771 830416
Franchised Passenger Class, Band 3	John Beer	First Capital Connect	020 7427 2927
Non-Franchised Passenger Class	Andy Wylie	Hull Trains	07881 510021
Non-Passenger Class, Band 1	Nigel Oatway	DB Schenker	0130 257 7010
Non-Passenger Class, Band 2	Robin Nelson	Freightliner Heavy Haul	020 7200 3931
Network Rail	Bill Davidson Gavin Panter	Network Rail Network Rail	020 3356 9210 01908 782999

Operators currently in Franchised Passenger Class, Band 1:- First ScotRail; First Greater Western; West Coast Trains ("Virgin Trains"); Northern Rail

Operators currently in Franchised Passenger Class, Band 2:- East Coast Main Line Co; Stagecoach South Western Trains; Abellio Greater Anglia; Southern Railway; XC Trains; London & South Eastern Railway ("Southeastern"); Arriva Trains Wales

Operators currently in Franchised Passenger Class, Band 3:- East Midlands Trains; First Capital Connect; Arriva Trains Wales; LOROL; c2c Rail; London & Birmingham Railway ("London Midland"); Chiltern Railway Company; Merseyrail Electrics; First/Keolis TransPennine

Operators currently in Non-Franchised Passenger Class:- Eurostar International; Hull Trains; Heathrow Express; Grand Central Railway; West Coast Railway Company; North Yorkshire Moors Railway; DB Regio Tyne and Wear

Operators currently in Non-Passenger Class, Band 1:- DB Schenker Rail (UK); Freightliner Ltd

Operators currently in Non-Passenger Class, Band 2:- GBRf; Direct Rail Services; Freightliner Heavy Haul; Rail Express Systems; EWS International; Babcock Rail; COLAS Rail; Amey Railways; Grant Rail; Balfour Beatty Plant & Fleet Services; Volker Rail; Devon & Cornwall Railways; Harsco Rail; Peak Rail; Europorte Channel SAS; Crossrail

