
ACCESS DISPUTES COMMITTEE

MINUTES of MEETING No. 20
held in London on 18 March 2009

Present:

Sir Anthony Holland, Chairman
John Beer (First Capital Connect)
Bill Davidson (Network Rail)
Lindsay Durham (Freightliner)
Tony Deighan (Eurostar (U.K.))
Nigel Oatway (DB Schenker Rail (UK))
Gabrielle Ormandy (Network Rail)
Mike Price (First ScotRail) – by continuous conference telephone

In attendance:

Martin Shrubsole (Secretariat – Clerk to the Panels)
Tony Skilton (Secretary)

20/1 Approval of Minutes of Meeting no.19

The Minutes of Meeting no.19, held on 9 December 2008, were approved. The Chairman signed a copy of the Minutes as a true record of the proceedings.

20/2 Matters arising from the Minutes of the previous Meeting

19/2 Quorum for meetings of the Committee

Access Dispute Resolution Rule E1.6 had now been revised to enable Committee Members to participate in meetings by means such as conference telephone, the first opportunity for which was currently being taken. New ADR Rule E1.7(b) provided for the Committee to decide issues by correspondence.

20/3 Update on references

The Committee noted the current position regarding the references on hand.

20/4 Issues arising out of recent findings

The Committee noted that ORR had issued a “first determination” in connection with an appeal against the Panel’s decision in relation to reference TTP244, deferring the issue of a “second determination” (regarding compensation matters which had not been raised with the Panel) until further information had been provided by the parties. In the course of the first determination, ORR had addressed a complaint that the Panel had taken 12 Working Days to issue its determination, thereby exceeding the time limit of 10 Working Days provided for in the Access and Management Regulations. ORR had concluded that the slight delay had

caused no particular prejudice to the complainant and had not considered it necessary to comment on the Panel's reasons for the delay. The Secretary outlined the unfortunate combination of unexpected circumstances through which the delay had occurred and indicated measures which would be taken to mitigate foreseeable risk of delay in dealing with future determinations.

20/5 Update on the website

The website was reported as being up to date in all aspects except for directory incorporation of ORR's recent "first determination" for reference TTP244. Recent changes to the directory had hopefully made it more user-friendly.

20/6 Review of the Access Disputes process

The consultation document issued in December on behalf of the Access Dispute Resolution Rules Reform Working Group and the notes of the industry seminar held on 9 January had been made available to Committee members.

The Committee was informed that the Working Group was now considering how to take forward the responses from the consultation, with a view to setting out its final proposals to Industry Steering Group in June.

The key change under consideration was for a tribunal body and/or for a Panel arrangement whereby a legally qualified Panel Chairman would be responsible for making the determination instead of the Panel members as currently.

The Chairman observed that there had been a proliferation of tribunal bodies in recent years and the prevailing concept was that all tribunals should form part of the Court Service and be operated by the Lord Chancellor's Department. The Chairman counselled that those able to influence decision-making within the industry should endeavour to avoid any Access dispute resolution process becoming part of the official tribunal system. In discussion, the Committee was alert to the likelihood that it would prove very challenging to find independent people with relevant railway industry knowledge and expertise for providing suitable support and guidance to a tribunal chairman.

Regarding a change in Panel arrangements to have the Chairman making the determination, there was some concern that removing the responsibility for the determination away from Panel members might serve to reduce the quality of their individual efforts towards reaching a proper outcome and could lead to partisan positions being adopted in seeking to influence the Panel Chairman's conclusions. It was, however, accepted that the Panel process would become simpler, remove the possibility of dissenting views in a determination and become more fair-trial compliant.

20/7 Accommodation

The Committee noted that the new landlord of Central House had served a Notice to Quit with effect from 22 July 2009. It was understood that the decision had been taken to enable the landlord to be certain of having the basement space available to use as a worksite for an intended schedule of maintenance and improvement works in the building but there was

anticipation of being able to remain in situ on a short term basis until perhaps December 2009 whilst work plans and contractor appointments were finalised.

The Committee noted the position and endorsed a specification to be used for seeking alternative premises, concluding that it would be preferable to secure premises which are suitable for all foreseeable needs rather than to occupy a small administrative office and seek to hire adequate rooms – potentially at short notice, costly and subject to cancellation fees – when required for hearings or meetings.

In view of the costs of leasing accommodation, the Committee gave thought to whether the leather topped desk and four chairs originating from Kings Cross station should be retained, these items not being particularly suitable for present-day activities. It was decided that the Secretary should seek to establish the provenance and potential value of the items, also whether there were any railway heritage considerations, and to report to the next meeting to enable a reasonably informed decision to be taken.

20/8 Outturn for 2008/09 and budget for 2009/10

Members noted the final outturn forecast for 2008/09 as provided in a paper from the Secretary, authorised the writing off of outstanding aged levy fees and associated interest and authorised provisions to be made towards costs already committed in connection with removal to new premises.

The proposed expenditure budget for 2009/10 was reviewed. Being satisfied that sufficient contingency provision was included for the office relocation and for possible head-hunting for resourcing continuity of the current arrangements, the expenditure budget was approved, setting the expenditure budget for the year at £318,000.

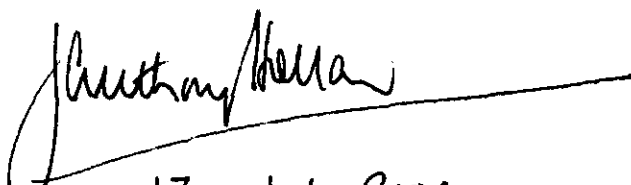
20/9 Resources matters

The Committee decided that consideration of the renewal of its contracts with the three Chairmen and the Clerk to the Panels (which would all terminate in the latter part of the 2009/10 financial year) should be carried forward to the next meeting, by when any changed resource requirements likely to emerge through the ADR Rules Review might be known.

20/10 Committee and pool membership from 1 April 2009

Members noted forthcoming changes in the elected membership of the Access Disputes Pool and the Timetabling Pool.

T Deighan indicated that as Eurostar's use of the national network was now much reduced, it was to be anticipated that the other Non-Franchised Passenger Class operators would be called upon to resource the "open access" positions on the Committee and the two Pools with effect from 1 April 2012; he confirmed that the operators concerned were aware of the situation.


17th. July 2009