
ACCESS DISPUTES COMMITTEE

MINUTES of MEETING No. 23
held in London on 2 December 2009

Present:

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

In attendance:

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

23/1 Approval of Minutes of Meeting no.22

The Minutes of Meeting no.22, held on 30 September 2009, were approved. The Chairman signed a copy of the Minutes as a true record of the proceedings.

23/2 Matters arising from the Minutes of the previous Meeting

22/6 Website hit monitoring

Elementary hit monitoring of the Committee's website and, within it, the directory, had been arranged without cost; reports would be received monthly.

In the 30 days to 23 November, the site had received 129 hits, with 288 pages being visited, whilst 39 directory pages had been visited in 18 hits. Whilst some of these hits would have been by the Secretariat for administrative purposes, there was clear evidence of others making use of the site and Committee felt that this initial information confirmed the on-going need for a website to be maintained for the time being.

22/7 ORR's consultation on proposed Model Clauses for Freight Customer Access contracts

Using comments provided by Committee members, a response had been provided to ORR's consultation.

22/8 Resources

G Renwick had agreed to extension of his contract for services as a Panel Chairman Committee until 31 March 2010.

22/8 Access dispute resolution process for HS1 Ltd

It was reported that HS1 was not now expected to request the Committee to provide it with a dispute service, having decided to make alternative arrangements (for which consultation was being arranged).

23/3 Matters determined in correspondence

No matters had been determined in correspondence since Meeting no. 22.

23/4 Committee and Pool membership

Recent changes to the membership of the Committee, the Access Disputes Pool and the Timetabling Pool were noted.

23/5 Position on references

The Committee noted a report on the current position regarding references on hand. In terms of the number of Panel hearings arranged, 2009 was emerging as the busiest since the Access Dispute Resolution Rules Revision in 2005.

The Chairman noted that the issue of a determination for reference ADP40 had taken in excess of a month and, in view of the potential transition to revised ADR Rules, particularly encouraged the avoidance of delay in concluding determinations at the current point in time.

23/6 Update on the website

It was reported that a significant amount of amendment material had been prepared for the directory area of the website; some further work was needed in respect of recent matters relating to Parts D and J of the Network Code and a major upload was intended prior to Christmas. The website was reported as being up to date in all other respects.

23/7 Review of the Access Disputes Resolution Rules and associated resources matters

The Committee noted proposals and supporting material which had been sent to the Secretary of the Class Representative Committee ("CRC") following the considerable work undertaken by the Rules Reform Working Group. Some further cost/benefit analysis was being undertaken in order to fully confirm the appropriateness of the proposed new arrangements to industry stakeholders but if accepted by CRC, it was anticipated that early in 2010 the Office of Rail Regulation would be in a position to approve the proposals for implementation on whichever would be the later of 1 April 2010 or "the date on which ADC has retained adequate staff, Chairs and Experts to offer a viable service in accordance with the new Rules".

The Chairman identified a number of areas within the draft new Rules regarding which he considered the Committee should seek its own legal advice in order to avoid any potential for the new arrangements to produce a sub-optimal outcome.

The meeting then adjourned whilst the Committee members conferred regarding their role in securing successful implementation of the new Rules once approved and the resourcing arrangements to be put in place for the interim.

Following adjournment, the Committee members reported their decision that they would form a Steering Group to take forward the implementation, advising the Secretary regarding those aspects of the process which he would be required to progress. To ensure consensus and thereby best serve the industry, the Committee members intended to address matters as a cohesive group and not just leave the task to those members based in London.

The Committee members regarded 1 August 2010 as a reasonable target date for the implementation and this would enable the project milestones to be established.

The Committee members wished to promptly renew its exploration of setting up a company limited by guarantee to provide appropriate services and wished work to also commence on the development of contracts for individuals who would be engaged to perform dispute resolution work under the new Rules.

Regarding recruitment to fill the future roles, the Committee members' preference was that the Committee would undertake own initial advertising but if this were not productive, then to explore the option of procuring essential services through a legal practice and finally to resort to utilisation of a recruitment agency.

Regarding ensuring continuity of resources for providing a disputes service in the interim, the Committee members had noted that the Secretary's current contract continued through into 2011 but that all other contracts terminated in either February or March 2010. It was understood that Bryan Driver was not seeking continuation as a Panel Chairman but all others concerned had indicated willingness to extend their contracts up to the start of the new process and to assist with work on any matters necessary for a successful transition. Accordingly, the Committee members authorised the Secretary to progress renewal of contracts with Sir Anthony Holland, George Renwick and Martin Shrubsole to undertake the roles of Disputes Chairman, Panel Chairman and Clerk to the Panels respectively until 31 July 2010.

23/8 Banking arrangements

Recognising that the existing Chairman roles performed by Sir Anthony Holland and Bryan Driver would be withdrawn upon implementation of the new ADR Rules, with consequential loss of two of the current signatories to the account held with NatWest bank, the Committee resolved that Gabrielle Ormandy and Lindsay Durham be appointed as bank signatories and asked the Secretary to make the necessary arrangements in sufficient time to provide for an orderly transition to the new regime.

23/9 Financial matters

The Committee noted a report setting out the current financial position.

Noting that Advenza Freight Ltd had been placed in compulsory liquidation whilst its 2009/10 levy remained outstanding and that the liquidator's initial report indicated little prospect of any distribution to creditors, the Committee decided not to pursue the debt with the liquidator.

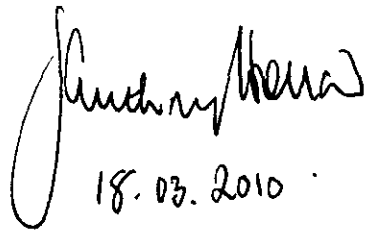
In considering the preliminary budget for 2010/11, the Committee took the view that on the assumption that the new ADR Rules would be approved for implementation during the year, a reasonably high level of complex cases should be allowed for, with the budget to reflect the figures indicated to industry members in stakeholder briefing. It was recognised, however, that any delay to implementation of the new arrangements beyond 1 April 2010 would be favourable to the Committee's funding requirements and the Secretary was asked to reflect the emerging implementation position when compiling the final budget proposition for approval in March 2010.

23/10 Annual Report for 2009

Subject to any appropriate adjustments to reflect factual changes arising in the remainder of the month, the Committee approved the draft for the Annual Report for issue early in January 2010.

23/11 Dates of meetings in 2010

The Committee agreed the dates for business meetings to be held during 2010.


18.03.2010