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## **ACCESS DISPUTES COMMITTEE**

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### **MINUTES of MEETING No. 25** held in London on 21 July 2010

#### **Present:**

Sir Anthony Holland, Chairman  
John Beer (First Capital Connect)  
Bill Davidson (Network Rail)  
Richard Dean (London & South Eastern Railway)  
Lindsay Durham (Freightliner)  
Nigel Oatway (DB Schenker Rail (UK))  
Gabrielle Ormandy (Network Rail)  
Mike Price (First ScotRail) - by continuous conference telephone

#### **In attendance:**

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

#### **25/1 Approval of Minutes of Meeting no.24**

The Minutes of Meeting no.24, held on 18 March 2010, were approved. The Chairman signed a copy of the Minutes as a true record of the proceedings.

#### **25/2 Matters arising from the Minutes of the previous Meeting**

There were no matters arising from the Minutes.

#### **25/3 Changes in committee and Pool membership**

The Committee noted that Tony Deighan had left the Committee upon leaving full time employment with Eurostar. The Committee asked the Secretary to write expressing appreciation of his considerable work for the Committee since its inception.

The Secretary reported that the Class Representative Committee Secretary was seeking nominations for a replacement from the Non-Franchise Passenger Class to fill the casual vacancy until 31 March 2011.

#### **25/4 Matters determined in correspondence**

Appointments of the Allocation Chair, Hearing Chairs and Industry Advisors for effect upon forthcoming introduction of the new ADR Rules had been determined in 5 items of correspondence since Meeting no. 24.

#### **25/5 Financial matters**

The auditors had indicated satisfaction with the accounts for 2009/10 and the Committee accordingly gave approval to the Chairman formally signing the Income & Expenditure Statement.

#### **25/6 Position on references**

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

#### **25/7 Update on the website**

It was reported that information regarding Committee and Pool membership was up to date, as was information regarding references except for 3 received shortly prior to this meeting.

Regarding the Directory, a comprehensive update covering all relevant precedent was about to be uploaded; this included a new section covering charter passenger train access to stations.

#### **25/8 Banking arrangements**

The Committee considered a paper concerning the current banking arrangements and decided that in addition to removing Tony Deighan as a signatory to the account, Sir Anthony Holland and Bryan Driver should also be removed forthwith in anticipation of their roles being withdrawn from 31 July, leaving Nigel Oatway and Tony Skilton as the only signatories until completion of necessary mandates to add Gabrielle Ormandy and Lindsay Durham as previously agreed. This reduced number of signatories would facilitate the application process for the desirable move to single signature operation of the account and online banking for unlimited amounts.

To enable implementation of its decisions, the Committee accordingly resolved that the signing rules in the current mandate to NatWest for the Committee's account be replaced such that the bank may act on the instructions of one authorised signatory for unlimited amounts.

Additionally, the Committee authorised acceptance on behalf of the Committee by Nigel Oatway and Tony Skilton of the bank's "Partners and Officials Agreement" relating to online and telephone banking, which had been presented to the meeting and noted.

Whilst it was recognised as appropriate that the Committee should update its banking arrangements to facilitate conduction of transactions in the modern world, there was appreciation that single signatory operations would remove an existing control over the handling of cash. The Committee accordingly adopted a procedure for operation of the bank account which included an internal check arrangement, which it was agreed would be applied on a temporary basis to enable assessment of its fitness for purpose.

It was decided that internal check should be conducted at intervals of no longer than 4 weeks from introduction of single signature account operation and that John Beer, as an experienced practitioner in internal control, would undertake the initial period of checking and make recommendations regarding any desirable adjustments to the procedure. Thereafter,

Committee members would take turns at checking, being designated at one Committee meeting and reporting back to the next.

Suggestion was made that once online banking was introduced, the possibility should be explored of "read only" access to enable independent checking of balances and statements by Committee members who are not account signatories.

## **25/9 Implementation of the new Access Disputes Resolution Rules**

The Committee noted that, subject to satisfactory references and negotiation of terms, the Allocation Chair and an adequate number of Hearing Chairs and Industry Advisors would be appointed to enable the new ADR Rules to be implemented with effect from 1 August 2010. A number of actions - such as preparation of template documents - were in hand to support the new arrangements but resource availability precluded all being completed by 1 August. Nevertheless, the Committee decided that ORR should be advised that the new ADR Rules could be implemented, enabling Network Rail to publish the new Rules along with the previously approved changes to the Network Code and other documents.

The Committee expressed appreciation to John Beer for leading the exercise of resourcing the new arrangements, to the Secretary for co-ordinating the various workstreams and to three non-members – Paul Gold (DB Schenker), Dan Kayne (Network Rail) and John Czyrko (London & Birmingham Railway) – for their participation in the interview process.

The Committee members gave consideration to the desirability of electing one of their number to be Committee Chair upon introduction of the new Rules and concluded that such action was appropriate rather than wait until the first meeting after 1 April 2011. On the proposition of Richard Dean, seconded by Mike Price, John Beer was elected to become Committee Chair.

Consideration was given to the arrangements which ought to be made for any routine provision of industry documents to the Chairs and Industry Advisors. It was concluded that the Allocation Chair should receive the Network Code and updates routinely but that all other documentation requirements of Chairs and Industry Advisors should be downloaded by them from websites or provided by Dispute Parties or the Secretary as required. It was agreed that this decision should be reviewed in the light of experience and also recognised that challenge could arise for the less conversant when needing to consult one or more versions of a document.

To facilitate the continued availability of precedent to inform determinations, the Committee decided that the Directory on the website should be retained and arrangements made for it to be kept up to date.

The Committee members deferred consideration of how appreciation might be shown to individuals who have given service to the industry under the outgoing Rules, some for considerable periods of time.

Finally at this time of transition to another version of ADR Rules, the Committee noted a paper from the Clerk to the Panels, Martin Shrubsole, which reflected upon Access disputes and associated administrative arrangements since 1994. A particular point emerging from analysis was the predominance of timetabling disputes which had been determined, a

considerable number of which had been handled other than by a Timetabling Committee or Panel: it was recognised that under the procedures in the new Rules, a greater balance of the future workload was likely to be allocated to Access Disputes Adjudication rather than a Timetabling Panel.

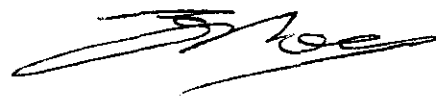
**25/10 VAT matters and formation of a Company limited by Guarantee**

The Committee noted that discussions had taken place with the Committee's accountants and its solicitors regarding any change in the VAT position upon implementation of the new Rules, also regarding the anticipated formation of a Company Limited by Guarantee to which the lease for the Committee's premises would be assigned. The Chairman advocated that any courses of action which might in due course be decided upon should be supported by formal resolutions drafted by the Committee's solicitors.

**25/11 HS1 Ltd Access dispute arrangements**

The Committee noted developments in the approach from HS1 Ltd for provision of a service for hearing its Access disputes and agreed that an arrangement could now be put in place, subject to appropriate commercial terms.

The Committee delegated power to John Beer, upon taking up the role of Committee Chair, to appoint a Committee member (who might be himself) to take forward negotiations with HS1 Ltd in association with the Secretary and to finalise contractual terms.

  
Chair 22/9/10