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## **ACCESS DISPUTES COMMITTEE**

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### **MINUTES of MEETING No. 27** held in London on 15 December 2010

#### **Present:**

John Beer (First Capital Connect) (Committee Chair)  
Bill Davidson (Network Rail)  
Richard Dean (London & South Eastern Railway)  
Nigel Oatway (DB Schenker Rail (UK))  
Gabrielle Ormandy (Network Rail)  
Andy Wylie (Hull Trains)

#### **In attendance:**

Prof. Richard Butler (Allocation Chair)  
Tony Skilton (Secretary)

#### **Apologies:**

Lindsay Durham (Freightliner)  
Mike Price (First ScotRail)

#### **27/1 Approval of Minutes of Meeting no.26**

The Minutes of Meeting no.26, held on 22 September 2010, were approved. The Chair signed a copy of the Minutes as a true record of the proceedings.

#### **27/2 Matters arising from the Minutes of the previous Meeting**

All matters arising from the Minutes were listed as agenda items except:-

##### 26/12 Promoting the new ADR Rules and the role of the Access Disputes Committee to the industry

The Chair had provided a short initial item to ATOC; it had evidently been found of interest and was being incorporated into the next industry update to ATOC Council members, which would probably be distributed in January 2011.

#### **27/3 Matters determined in correspondence**

Appointments of further Industry Advisors had been determined in one item of correspondence since Meeting no. 26.

#### **27/4 HS1 Ltd Access dispute arrangements**

Agreement had been made with HS1 Ltd regarding the terms on which the Committee would provide a service for hearing its Access disputes; it remained for HS1 Ltd to formally confirm by 31 December 2010 that it wishes to proceed.

The Secretary explained that the arrangements would include adding a section of HS1-specific material to the Committee's website.

#### **27/5 Position on references**

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

#### **27/6 Update on the website**

The Secretary reported that the information and template documentation as required by the ADR Rules was up to date.

Some restructuring of the site would be necessary to accommodate the HS1 route material and it was intended to give attention to the general areas of guidance at this time; some draft material was issued to Committee members by way of example and for feedback.

The Committee agreed that several of the general documents linked to the Welcome page were no longer necessary as the new ADR Rules contained appropriate explanatory information.

Pending a decision regarding the future of the Directory, the existing Directory material had yet to be reviewed to annotate the few items of precedent which remained relevant to the new Rules, to reflect recent determinations and to annotate previous Network Code Part D material to the new Part D which was issued on 1 October 2010. Gabrielle Ormandy had previously undertaken to review the entire website and provide recommendations. From enquiries, she had found that the Directory was regarded as a useful tool for managers within the industry; as the Hearing Chairs had also expressed benefit in having this resource available, it was decided that the Directory should be updated to reflect recent changes and maintained thereafter.

Observation was made that whilst the website fulfilled its purpose, it now looked rather outdated. The Committee recognised that this was an increasingly frequent observation but appreciated that the current format was adopted on the basis of cost following a tendering exercise in 2005.

#### **27/7 Internal check arrangements**

John Beer tabled a report regarding internal check activity which he had carried out since the last meeting.

It was agreed that Richard Dean would undertake internal check until the next meeting.

## **27/8 Implementation of the new Access Disputes Resolution Rules**

27/8.1 Contractual arrangements had not yet been concluded with all of the individuals who had most recently been offered terms to undertake the Industry Advisor role.

27/8.2 The Secretary briefed the Committee regarding process matters which had arisen in connection with dispute hearings which had taken place or been arranged since introduction of the new Rules and also regarding measures which had been taken to maintain communication with the pool of Hearing Chairs.

Professor Butler reported feedback from the Hearing Chairs who had to date handled hearings. The Committee Secretary was perceived as having a critical role in helping non-railway people to understand industry arrangements and the Committee was encouraged to keep the desirability of such knowledge in mind when considering succession.

As solicitors, the Hearing Chairs had been a little surprised at the relatively inadequate material put before them to support the positions being taken and it had been necessary to ask parties to provide additional supporting material. The Hearing Chairs would clearly discover over time whether standards would improve and meanwhile they would possibly need to take the step of making clear their expectations ahead of the hearing day.

A matter for concern was the situation of a party wishing to provide material for the eyes of the Hearing Chair only. As such situations were not contemplated in the Rules, it seemed sensible for the Hearing Chair to deal with the matter as considered appropriate for the case but it was nevertheless unsatisfactory that other parties, Industry Advisors or TTP Panel members could be excluded from expressing an opinion on such "evidence".

The Committee appreciated the early feedback from Hearing Chairs and was satisfied that dispute resolution activities were proceeding acceptably.

27/8.3 A number of disputes were being progressed through the "Change of Forum" process with ORR because the relevant Access contracts continued to prescribe the forum for any hearing instead of providing for the parties to choose from the range offered in the new Rules. It had been understood that ORR would facilitate contractual changes contemporaneously with introduction of the new Rules but this had not happened, leading to delays in disputes being settled.

Having been leader of the Working Group which developed the new Rules, Gabrielle Ormandy undertook to discuss the issue with ORR.

27/8.4 The Committee considered the requirements for administrative support and absence cover for the Secretary, taking into account the potential increase in workload which would be associated with handling HS1 disputes and also the decision to maintain the Directory area of the website. It was also recognised that administration of the intended Company Limited by Guarantee and maintenance of its accounts would be a further commitment.

Following discussion, it was decided to seek the support of RIDR Committee resources for future book-keeping activities but the Chair and Secretary were authorised the progress the appointment of a suitably knowledgeable Assistant Secretary as permitted by the ADR Rules.

**27/9 Outturn for 2010/11, cashflow position and preliminary budget for 2011/12**

The Committee noted a report setting out the outturn projections against the current year budget and the associated cashflow position.

Noting that Fastline Freight Ltd had entered administration, the Committee decided not to pursue 2010/11 levy which had been invoiced but not paid.

In considering the preliminary budget for 2011/12, the Committee took the view that the uncertain costs elements regarding fees payable in connection with dispute hearings should be based on continuing assumption of a reasonably high level of complex cases and that the budget should reflect - with uplift as appropriate - the associated figures which were indicated to industry members in stakeholder briefing regarding the new ADR Rules. The Committee considered, however, that every effort should be made to limit the overall expenditure budget increase to the July 2010 RPI figure of 4.8% and required the Secretary to adjust contingency provisions accordingly when the final budget proposition came to be tabled in March 2011.

**27/10 Annual Report for 2010**

Subject to any appropriate adjustments to reflect factual changes arising in the remainder of the month, the Committee approved the draft for the 2010 Annual Report for issue early in January 2011.

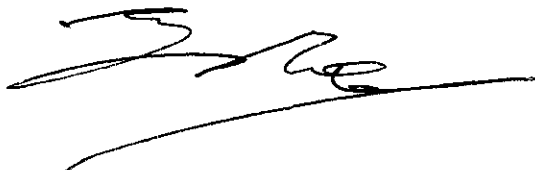
The Chair observed that during 2010 the Committee, strongly supported by the Secretary, had embraced the new ADR Rules and implemented the associated fundamental changes in a seamless way; he regarded this as a significant achievement and one of which all involved could take considerable pride.

**27/11 VAT matters and formation of a Company limited by Guarantee ("CLG")**

It was reported that activity with the Committee's professional advisors had now resumed following the transition to the new ADR Rules.

**27/12 Meetings in 2011**

The Committee agreed the dates and times for business meetings to be held during 2011.



17/3/11