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## **ACCESS DISPUTES COMMITTEE**

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### **MINUTES of MEETING No. 49** held in London on 22 March 2018

#### **Present:**

Nigel Oatway (DB Cargo (UK)) (Committee Chair)  
Raj Patel (Govia Thameslink Railway)  
Helen Cavanagh (Arriva Rail North) - by conference telephone  
Andy Wylie (Hull Trains)  
Ian Kapur (GB Railfreight)  
Peter Craig (Network Rail)

#### **In attendance:**

Greg March (Colas Rail)  
Tony Skilton (Secretary)

#### **Apologies for absence:**

Dean Warner (Abellio East Anglia)  
Richard Parsons (Network Rail)

It was noted that the meeting was quorate.

Greg March was welcomed as an observer preparatory to replacing Ian Kapur in April. This being the last meeting whilst Ian and Helen Cavanagh would be serving on the Committee, they were thanked for their contributions in support of its work.

#### **49/1 Approval of Minutes of Meeting no.48**

The Minutes of Meeting no.48, held on 14 December 2017, were approved. The Chair signed a copy of the Minutes as a true record of the proceedings.

#### **49/2 Matters arising from the Minutes of the previous Meeting**

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

##### 48/2, 47/8 Levy charging arrangements

A review of the charging rules remained to be undertaken.

##### 48/3 General Data Protection Regulation ("GDPR")

The Secretary reported that it was appropriate for the Committee – and Access Disputes Resolution (GB) Ltd – to have data protection policies in place to recognise obligations under GDPR; the necessary drafting was being put in hand.

#### 48/6 Recommendations arising from determinations

The Working Group initiative had yet to be commenced.

#### 48/11 Code of Practice ("CoP") for disputes relating to Confirmed Period Possession Plans

Feedback was awaited regarding trial use of the draft CoP. It was decided that this topic should remain as an agenda item pending a conclusion being reached regarding suitability of the suggested CoP for general adoption.

#### **49/3 Matters determined in correspondence**

No matters had been determined in correspondence since Meeting no. 48.

#### **49/4 Annual Report for 2017**

The Committee considered a revised draft for the 2017 Annual Report which reflected discussions at the its meeting held on 14 December 2017 along with adjustments for factual changes arising in the latter part of December. Further revision was agreed upon.

#### **49/5 Position on references**

The Committee noted a report from the Secretary setting out the current position regarding dispute references.

A high number of Timetabling Disputes continued to be registered but few proceeded to a Timetabling Panel hearing. However, a difficult national situation had recently arisen in relation to the planning of engineering access and timetables, with the effective management of dispute hearings now being considered.

The increased propensity for non-timetabling issues to be referred direct to arbitration rather than to first be considered by an Access Dispute Adjudication remained disappointing, whilst recent arbitration awards by consent – one of which was an appeal against an ADA determination – gave cause for concern because of the absence of independent legal rigour. It was agreed that the situation was appropriate for discussion at the forthcoming meeting of the Hearing Chairs with a view to possibly proposing revisions to the ADR Rules.

#### **49/6 Update on the website**

The Secretary reported that the website listing of disputes was up to date. The Directory was also up to date except for elements reflecting determinations which had been appealed.

#### **49/7 Internal check arrangements**

Peter Craig and Richard Parsons had tabled a report regarding internal check activity which they had carried out since the 14 December 2017 meeting and this was noted.

During the course of the checking it had been recognised that notwithstanding the satisfactory reconciliation of expenditure transactions between hard copy bank statements and electronic spreadsheets in the Committee's financial records, there remained the

possibility that the electronic record could be amended after the internal check date and this would not be apparent from cross-reference to the bank statements alone; it was recommended that in future, checkers should manually enter the spreadsheet payment record number against the corresponding item on the bank statement. Following discussion in which it was noted that the mechanics of carrying out the recommendation could be unduly burdensome upon checkers, it was agreed that the Secretary should enter payment record numbers against entries on the bank statements to make the checking more straightforward.

It was agreed that Andy Wylie would undertake internal check until the next meeting and that this might usefully include GDPR compliance. Subject to availability, Andy agreed to take the opportunity to give some introduction to internal check processes to Raj Patel, who had not previously had experience in the activity.

#### **49/8 Final outturn for 2017/18 and budget and levy proposals for 2018/19**

The Committee noted a report from the Secretary setting out the final outturn projections against the current year budget, together with the final budget proposal for 2018/19.

No 2017/18 levy contributions were outstanding.

The budget proposal for 2018/19 was approved, noting costs sharing contributions to be requested from the Delay Attribution Board and the CAHA Registrar towards office expenses which together with application of accumulated surplus would enable the overall levy demand upon Resolution Service Parties for 2018/19 to be slightly lower than the overall 2017/18 demand. In adopting this strategy, the Committee was satisfied that its position as an ongoing concern would nevertheless remain protected.

The levy charges for 2018/19 were discussed in the context of the arrangements set out in the ADR Rules and, together with other funding aspects, decided.

#### **49/9 CAHA Registrar's budget for 2018/19**

The Claims Allocation and Handling Agreement requires the Registrar to obtain the approval of the Access Disputes Committee for its costs and expenses for each financial year. The Registrar's proposed budget for 2018/19 was considered and approved.

#### **49/10 Appointments**

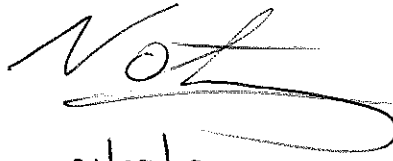
The Committee agreed that the current Allocation Chair, Hearing Chairs and Industry Advisors should all be invited to renew their consultancy contracts with the Committee when existing contracts fall to terminate over the course of the summer, with authority delegated to the Committee Chair and the Secretary to determine the terms to be applied.

With a view to ensuring adequacy of resources for potential future hearing requirements, it was considered appropriate to seek to secure the services of perhaps four further Hearing Chairs, with the interview panel to be nominated by the Committee in due course.

It had previously been noted that the current Secretary would not be seeking re-appointment in June 2019 and it was now noted that advertising of the role was being planned for late Summer 2018; the proposition was that a suitable candidate would begin training in advance

of June 2019 and could take over the role early if practicable, with the current Secretary remaining contracted as Assistant Secretary to facilitate the transition. Again, the interview panel was to be nominated by the Committee in due course.

Regarding adequacy of resources to meet hearing requirements, non-availability of Network Rail members of the Timetabling Pool for Timetabling Panel hearings continued to create the occasional difficulty. It was agreed that Network Rail should be approached to see if a change to the ADR Rules to increase its number of members in the Timetabling Pool to, perhaps, six, might be a sensible measure.

  
21/09/18