
ACCESS DISPUTES COMMITTEE

MINUTES of MEETING No. 54 held in London on 12 December 2019

Present:

Nigel Oatway (DB Cargo (UK)) (Committee Chair)
Raj Patel (Govia Thameslink Railway)
Andy Wylie (Hull Trains)
Peter Craig (Network Rail)
Richard Parsons (Network Rail)
Dean Warner (Abellio East Anglia)
James Carter (West Midlands Trains)

In attendance:

Professor Richard Butler (Allocation Chair)
Tamzin Cloke (Secretary)

Apologies for absence:

Greg March (Rail Operations Group)

It was noted that the meeting was quorate.

54/1 Approval of Minutes of Meeting no.53

The Minutes of Meeting no.53, held on 1 August 2019, were approved. The Chair signed a copy of the Minutes as a true record of the proceedings.

54/2 Matters arising from the Minutes of the previous Meeting

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

Item 53.8, item (c) - the Committee noted the position re: swapping over access to the bank accounts between Secretaries and enquired as to progress. The Secretary provided an update. The Committee confirmed with the Secretary that a new delegation of authority letter had been issued to the Secretary.

Item 53.10 - CPPP Code of Practice. It was noted a further pilot of the scheme would commence during 2020 now that the timetable issues had abated. Richard Parsons remained the Committee's point of contact for updates on this scheme. No changes to the existing pilot documentation were proposed at present.

Item 53.11 - the Secretary provided an update on the contract with the Core Valley Lines infrastructure manager. The contract is expected to be signed in the New Year.

54/3 Matters determined in correspondence

Two matters had been determined in correspondence since the last meeting, namely delegating authority to the Secretary to appoint a new auditor for the 2019/20 financial year and appointing an agent to work on extending the lease for the Committee's premises, or finding new premises if needed.

The Secretary provided a verbal update on the premises issue and the Committee asked for further updates to be provided via email as the matter progressed. It was noted that should an extraordinary meeting of the Committee be needed then one would be arranged before the next meeting on 19 March.

54/4 Position on references

The Committee noted a report from the Secretary setting out the current position regarding dispute references. The high number of CPPP disputes was noted, as well as these mostly being from the same operators. It was hoped the CPPP Code of Practice would begin to address the reasons for this, at least in part.

It was noted there was one item that still awaited allocation, but that this was being dealt with by the Secretary with a plan for resolution.

54/5 Update on the website

The Secretary reported that the website listing of disputes was up to date.

A new section had been added to the website since the last meeting, explaining the enhanced mediation scheme now set up with the Centre for Effective Dispute Resolution. The Secretary had also attended a Network Rail CRE meeting to advertise the scheme and had asked to attend RDG's track access manager forum to do the same with TOCs.

The Committee noted the number of invitations the Secretary had recently received to talk about the disputes process and agreed this was of benefit to the industry. It was further agreed, following discussion under point 54/9, that the Secretary would amend the template notices section to draw more attention to the correct format of a notice and use the sessions with operators to emphasise the requirement to explain the reasons for lodging a Notice of Dispute.

54/6 Financial matters

a) Outturn for 2019/20 and preliminary budget for 2020/21

The Committee noted a report from the Secretary providing an outturn projection against the current year budget, together with the final budget proposal for 2020/21. It was anticipated that 2019/20 income would balance with expenditure once a small contribution had been used from the Committee's reserves, as intended.

The Committee agreed an amendment to the proposed budget, namely increasing the meeting room hire fee by £2 to make £110 for a full day and £55 for a half day.

Five levy contributions for 2019/20 had yet to be received. The Secretary advised how the matter was being escalated for recovery.

The preliminary expenditure budget proposal for 2020/21, as amended above, was approved. The uncertainties noted, particularly regarding rent, were all noted.

The position on rent would need to be clearer before the Committee could agree whether the 2020/21 finances could be constructed to produce the same overall levy requirement as for 2019/20, drawing on reserves as required.

b) Account with Lambert Smith Hampton

The Committee noted a report from the Secretary about an outstanding balance on the Lambert Smith Hampton account and resolved that the account should be settled in full.

c) Financial check - 26.11.2019

An internal check took place on 26th November 2019, undertaken by James Carter who provided a report. It was agreed that the Secretary would draw up a list of track access practitioners for each Resolution Service Party to aid in swifter levy payments. The Committee agreed to help fill in any blanks.

Volunteer for next financial check - Richard Parsons.

54/7 Review of dispute resolution process - ADR Rule J3(h)

ADR Rule J3(h) requires the Committee to satisfy itself that the Principles (as set out in Rules A5 to A10) are being observed in the way in which disputes are being managed and determined.

The Allocation Chair, Prof Butler, provided a report based on personal observation during the past year together with feedback canvassed from the Hearing Chairs and advised the Committee that he was content from a professional perspective that the Principles were being observed in the management and determination of disputes. The Committee noted this advice.

Topics suggested for next meeting of the Hearing Chairs were: amendments to Part D; handling of expedited hearings; any experience of the new default to ADA on allocation and whether that is being used tactically; the template Notices of Dispute (whether these are practical or too legalistic).

54/8 Recommendations arising from determinations - update

The associated tracking spreadsheet was discussed, and all updates are contained within it, save for:

A paper was submitted to discuss the issues of conflict between wording in Schedule 8 and the DAG (as was). The Committee considered the paper, which suggested that although a conflict exists the subsequent disputes are not numerous enough to warrant rewording the DAPR (as a useful practical tool) or Schedule 8 (with potential ensuing political and economic repercussions). The Committee agreed that, given the helpfulness of the paper, it should be hosted on the website alongside the Determination of ADA33, suitably anonymised.

54/9 Draft Annual Report for 2019

The Committee considered the preliminary draft for the 2019 Annual Report and noted that small adjustments would be necessary to reflect factual changes arising in the remainder of the month. Some minor changes were suggested, including adding a sentence to the front page about continued lack of explanation in Notices of Dispute. Additional comments were requested by 24.12.2019 to enable the report to be issued in the New Year.

54/10 Membership of the Committee and Timetabling Pool

The Committee noted the results of recent elections which would take effect from 1 April 2020. There would be two new members of the Committee and two changes in the Timetabling Pool.

The Committee discussed the increasing membership of the non-franchised passenger class, which is predominantly split into two types of operator, the heritage/charter sector and non-franchised daily passenger services. Andy Wylie undertook to put a paper before the August 2020 meeting of the Committee to enable a discussion about splitting this Class into Band 1 and Band 2.

54/11 Advert for hearing chairs

The Committee considered the proposal and delegated the matter to the Chair, Allocation Chair and Secretary to finalise and advertise. It was agreed to advertise in the Law Society Gazette, Counsel and send the finalised advert to Chambers that have previously supplied people to the Committee or have indicated an interest in doing so.

54/12 Meetings in 2020

The Committee agreed dates for routine meetings in 2020 whilst noting that additional business would likely arise in connection with the lease renewal prior to the March 2020 meeting.

It was agreed that the Secretary should seek to arrange a date in May 2020 for a gathering of the Chairs and that she would ask the CAHA Registrar to attend the March 2020 meeting. The Committee requested that in advance of the meeting, the CAHA Registrar provide a one-page report on the year's activities and trends in recent years, in addition to the CAHA budget for 2020/21.



Approved via email 23rd April 2020