
ACCESS DISPUTES COMMITTEE

MINUTES of MEETING No. 61 held in London on 13 December 2021

Present:

Andy Wylie (Committee Chair)
Richard Parsons
Jonathan James
Andrew Danson
Raj Patel
Ian Kapur
Nigel Oatway (via video link)

Apologies:

None

In attendance:

Tamzin Cloke (Secretary) - via video link
Richard Butler (Allocation Chair) - via video link

It was noted that the meeting was quorate.

61/1 Approval of the minutes of meeting 60

These were approved and a signed copy will be made available on the Committee's website.

61/2 Matters arising from meeting 60

The following matters arising were noted: (60/3) RfL had now paid its levy, on 24.09.2021; (60/6(c)) noted that this matter had been closed, with a final invoice from RSTL.

61/3 Matters determined in correspondence

It was noted that approval for expenditure on a new video conferencing system had been determined in correspondence, and the system had now been installed and was running.

61/4 Position on references

The Committee noted a report from the Secretary setting out the current position regarding dispute references. Timetabling references had been slightly less busy than expected, albeit it was noted that one determination was subject to an ORR appeal, which potentially would be expedited. It was noted that there were some stale TTP references, which had been left open due to the disputed issues reoccurring in later publications and Ian Kapur took an action to chase them again and see if they could be closed out (**Action 61-01**).

61/5 Update on website

The Secretary provided an update on the website, which is up to date. The project to overhaul the Directory of Precedents has finally been completed and gone live.

61/6 Financial matters

a) Review of levy charging and Resolution Service Parties

The Committee noted a report from the Secretary on this topic, and approved the levy charging structure for 2021/22.

b) Outturn for 2021/22 and preliminary budget for 2022/23

The Committee noted a report from the Secretary providing an outturn projection against the current year budget, together with the draft budget proposal for 2022/23. It was anticipated that 2021/22 income would result in a small surplus by Year End.

A query was raised regarding Nexus and its future status as a Service Provider upon its expected takeover of the Jarrow branch line. It was agreed, after discussion, that it should be charged as a Service Provider, but that the levy would be kept under review via the usual processes.

The preliminary expenditure budget proposal for 2022/23 was approved. It was agreed that the 2022/23 finances could be constructed to produce a reduced levy requirement for 2021/22, drawing on reserves as required.

c) Financial check

An internal check took place on 06 October 2021, undertaken by Richard Parsons who provided a report. No financial or numerical discrepancies were uncovered. A query was raised regarding the status of the Committee, which the Chair and Secretary undertook to provide an update on for the March meeting (**Action 61-02**).

Volunteer for next financial check - Ian Kapur (**Action 61-03**).

61/7 Employment matters

The Secretary provided an update on employment matters. Everything was up to date. The voluntary disclosure process had commenced, and the accountants were waiting for a response from HMRC. The only outstanding item was the Allocation Chair's contract, which was in the process of being finalised.

61/8 Allocation Chair Report 2021 - 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. The Committee noted comments from one Chair that a TTP had begun to shade into commercial litigation (vice TTP) due to significant legal representation, albeit nothing that ended up with failure to comply with the Principles.

It was agreed that the Committee would schedule the next Chairs' meeting in Spring 2022, and see afterwards whether there was appetite for a second Chairs' meeting later on in the year, potentially for half a day (**Action 61-04**).

Further items discussed were: making it more explicit to industry that determinations are the decision of the relevant Chair *not* the Panel collectively; that appendices to submissions should be relevant and not excessive (**Action 61-05**).

Topics suggested for the next meeting of the Hearing Chairs were: disclosure (and inferences which may be drawn from a failure to disclose); application of the Decision Criteria including the approach which an infrastructure manager should take and how the panel should assess their exercise of discretion; what constitutes exceptional circumstances for the purpose of remedy; Chapter C of the ADRR; Part D update.

61/9 Recommendations arising from determinations

A separate spreadsheet refers. Two were able to be closed with no further action. One (a suggestion to close a loophole in the ADRR allowing a Party to withdraw and reinstate Notices of Dispute at will for the same topic) was the subject of a paper. The Committee supported the proposal, and Richard Parsons agreed to take it forward via the Proposal for Change ("PfC") process (**Action 61-06**).

Extensive discussion took place regarding the composition and operation of Timetabling Panels. It was agreed that Andy Wylie would take forward proposals to: allow a Chair to hear a matter on their own; reduce the composition of a Timetabling Panel to one operator, the Chair and a Network Rail representative; introduce a Rule precluding an owning group and/or operator from having one of its employees act as an advisor on one of its own disputes (**Action 61-07**).

One new item had arisen regarding excessive use of appendices (see also item 61/8). It was agreed that suggestions for amending the ADRR should be sent to the Secretary and the matter discussed at the next meeting (**Action 61-08**).

61/10 Industry reform and ADC

The Committee heard a brief update from the Chair regarding meetings with DfT and ORR. As yet there were no concrete proposals to discuss, but a public consultation was expected in the early part of 2022.

61/11 Draft Annual Report for 2021

The Committee considered the preliminary draft for the 2021 Annual Report and noted that small adjustments would be necessary to reflect factual changes arising in the remainder of the month. Additional comments were requested by 31.12.2021 to enable the report to be issued in the New Year (**Action 61-09**).

61/12 Membership of the Committee and the Timetabling Pool

The Committee noted the results of recent elections which would take effect from 1 April 2022. It was noted that there was currently a Network Rail vacancy on the Committee and two Network Rail vacancies in the Timetabling Pool, which had been vacant for several months; Richard Parsons undertook an action to provide an update on the Committee vacancy (**Action 61-10**).

Post meeting note - Richard Parsons advised that Chris Meadows has now been appointed to the Committee.

61/13 Meetings in 2022

The Committee agreed dates for routine meetings in 2022. It was noted that the Secretary should seek to arrange a date in 2022 for a gathering of the Chairs and that she would ask the CAHA Registrar to attend the March 2022 meeting (**Action 61-11**).

A handwritten signature in brown ink, appearing to be 'R. Parsons', written over a horizontal line.

Minutes approved at Meeting #62, signed via email.