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## **ACCESS DISPUTES COMMITTEE**

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### **Annual Report for 2014**

- In connection with the proposed abolition of the Rail Industry Disputes Resolution Committee, the Committee is preparing to undertake the element of residual work associated with oversight of the CAHA Registrar.
- An Opinion compiled by a specialist legal Assessor relating to responsibility for the Maintenance and Repair of "Retail Telecoms" at franchise stations is considered to provide useful guidance which will be of benefit to the wider industry and can be found on the Committee's website at Access Disputes Panel reference ADP48.
- Dispute ADA20 arose in relation to the manner of Network Rail's use of contractual terms in the Track Access Agreement in dealings with a Train Operator following a Safety of the Line incident. The determination explored the application of the Railways and Other Guided Transport Systems (Safety) Regulations 2006 ("ROGS") to the situation and we commend it for reading by Company Directors and their senior managers involved in any aspect of operational safety.
- Escalation in the number of Timetabling Disputes - disappointing trend of late issues emerging at the CPPP stage of engineering access planning.
- The Committee's premises on floor 8 of 1 Eversholt Street may be found to offer an acceptable and less costly alternative to booking meeting rooms in Central London.
- The Committee does not expect to increase its overall funding requirement for 2015/16.

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# **ACCESS DISPUTES COMMITTEE**

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## **REPORT FOR 2014**

Access Dispute Resolution Rule J3(g) requires the Committee to “monitor and report at least annually to the Resolution Service Parties upon the work of the Committee”. The Committee is pleased to issue its report for the calendar year 2014.

### **Communications**

Our report for 2014 follows the format adopted for the past six years. In the absence of any adverse feedback regarding the recent reports, we again invite comments regarding the adequacy of content of this one.

The Committee's website ([www.accessdisputesrail.org](http://www.accessdisputesrail.org)) provides a ready source of reference material whilst also containing downloadable templates for use in connection with dispute procedures. The use of some of the templates is mandatory under the ADR Rules. The website is updated promptly following a change in any item of information.

Comments regarding the website and Committee matters in general will always be welcomed and may be passed to the Committee Secretary, Tony Skilton (e-mail: [sec.adc@btconnect.com](mailto:sec.adc@btconnect.com), tel: 020 7554 0601). Alternatively, a channel of communication is available through the Committee members who have been elected or appointed on behalf of areas of the industry; the current Committee members are listed at the back of this report along with details of the operators in the respective voting Classes/Bands.

The Committee is happy to provide briefing sessions to enhance familiarity of Resolution Service Party staff with the ADR Rules and associated processes. Request should be made to the Committee Secretary.

### **Administration**

Two changes have taken place in Committee membership during 2014; in April, Dean Warner replaced Richard Dean as the elected member for Franchised Passenger Class, Band 2 and later in the year Peter Craig replaced Bill Davidson as an appointed representative of Network Rail. The Committee thanks Richard and Bill for their contributions to its business, both over several years.

The Committee met 3 times in 2014.

The Committee members elect the Committee Chair from amongst their number and John Beer remains the Chair.

The Committee has been kept informed of developments associated with the proposed abolition of the Rail Industry Disputes Resolution Committee and Council and is preparing to undertake the element of residual work associated with oversight of the CAHA Registrar (which has been identified to the industry in related consultation). Appropriate amendments to the ADR Rules will be proposed to the industry in due course. The enhanced role, together with anticipated additional scope for disputes arising in connection with proposals to introduce “Access Rights Re-opener” provisions in the Network Code, is not considered to be a risk to the efficiency of the Committee or its finances. In anticipation of the new arrangements, supplier arrangements hitherto looked after by RIDRC have been transferred to the Access Disputes Committee or its company limited by guarantee - Access Disputes Resolution (GB) Ltd - during the course of 2014.

## Dispute references - national network

Details of all dispute references received can be found on the Committee's website, together with any associated Timetabling Panel or (subject to the confidentiality provisions) Access Dispute Adjudication ("ADA") determination and any ORR appeal decision. In accordance with the ADR Rules, Timetabling Panel determinations are also issued direct to a nominated person in each operating company.

The position regarding dispute references handled in relation to the national network during 2014 can be summarised as follows:-

### For a Timetabling Panel

Unheard references on hand at 31 December 2013	63	
New references received in 2014	115	
References withdrawn in 2014	100	
Hearings held in 2014	0	
Determinations issued in 2014	1	(covering 5 dispute references, determined without oral hearing)
Appeals submitted in 2014	1	(ORR decision awaited)
Pending hearing at 31 December 2014	73	
Hearings arranged for 2015	1	(covering 3 dispute references)

### For an Access Dispute Adjudication ("ADA")

Unheard references on hand at 31 December 2013	0	
New references received in 2014	5	
References withdrawn in 2014	2	
Hearings held in 2014	0	
Determinations issued in 2014	2	(1 heard in 2013, 1 determined without oral hearing)
Pending hearing at 31 December 2014	2	
Appeals submitted in 2014	0	

On 31 December 2013 there remained one reference on hand which had been submitted for hearing by the Access Dispute Panel but which had not been heard before the Panel was disbanded in 2010. The dispute related to responsibility for the Maintenance and Repair of "Retail Telecoms" at franchise stations. This reference was eventually withdrawn during 2014 but with the parties agreeing to the exceptional publication of an Opinion compiled by a specialist legal Assessor as its content is considered to provide useful guidance which will be of benefit to the wider industry. The matter can be found on the Committee's website at Access Disputes Panel reference ADP48.

No allocation hearings took place during the year. One dispute has been referred for Expert Determination. No other matters have been submitted to any other dispute resolution forum covered by the ADR Rules.

Access Dispute Adjudication ADA20 was unusual in that the comprehensive material presented enabled it to be determined on the basis of the written submissions, without an oral hearing (as permitted by the ADR Rules). Whilst the dispute arose in relation to the manner of Network Rail's use of contractual terms in the Track Access Agreement in dealings with a Train Operator following a Safety of the Line incident, it was necessary for the determination to explore the application of the Railways and Other Guided Transport Systems (Safety) Regulations 2006 ("ROGS") to the situation. The determination is on the Committee's website and we commend it for reading by Company Directors and their senior managers involved in any aspect of operational safety.

The process of preparing to participate in a hearing concentrates minds and can often lead to a satisfactory solution being identified without needing to have the case heard. For those disputes where a hearing has been arranged, the Hearing Chairs are committed to combining the application of the ADR Rules with recognised legal practice in order to provide efficient case management; in some cases, directions from the Chair or a request for information to amplify a submission document have helped parties to recognise a way forward and

settle their differences. No Timetabling Panel hearings were actually held in the year but - exceptionally - a Timetabling Panel determination covering 5 registrations was issued without an oral hearing following extensive case management (including a Directions Hearing with the Parties). Hearing arrangements have been stood down on 6 occasions in 2014 due to late discussions between the parties achieving resolution; the 4 cancelled dates covered 7 disputes.

Regarding the number of Timetabling Dispute references, it is of interest to compare statistics for recent years:-

	<u>2014</u>	<u>2013</u>	<u>2012</u>	<u>2011</u>	<u>2010</u>	<u>2009</u>	<u>2008</u>
New disputes registered	115	107	96	60	70	64	65
Disputes determined by Panel	5	0	5	6	8	3	11

We have previously reported that in its stewardship role for the dispute resolution process, the Committee has engaged with Network Rail to ensure senior level awareness of the escalation in the number of Timetabling Disputes being notified by operators, in particular a trend of late issues emerging at the Confirmed Period Possession Plan ("CPPP") stage of the engineering access planning process. It is disappointing that the trend has not abated.

ADR Rule J3(h) requires the Committee to satisfy itself that the Principles (as set out in Rules A5 – A10) are being observed in the way in which disputes are being managed and determined. Having sought and considered the professional view of the Allocation Chair (Professor Richard Butler) in this regard, together with feedback received by Committee members and their own experiences under the Rules, the Committee is suitably satisfied.

### **Dispute references - HS1**

No disputes have been handled under the HS1 Access Dispute Resolution Rules in 2014.

### **Accommodation**

Resolution Service Parties are again reminded that the Committee's premises on Floor 8 of 1 Eversholt Street may be found to offer an acceptable alternative to booking meeting rooms in Central London – contact the Committee Secretary regarding facilities and availability.

### **Finance**

Audited expenditure in the Financial Year to 31 March 2014 was £254,008 against income of £359,538. The balance was used for 2014/15 pre-payments, to meet cashflow requirements pending receipt of levies for the new 2014/15 Financial Year and to facilitate a reduced call on Resolution Service Parties for funding in 2014/15.

All levies for 2014/15 have been paid.

Having reduced the overall funding requirement for 2013/14 by 8% against 2012/13 and then experienced a further reduction in workload on dispute hearings, the Committee retained the overall 2014/15 expenditure requirement at the 2013/14 level despite increases known to be forthcoming in some areas of expenditure. The Committee now finds itself in a similar position and does not expect to increase its overall funding call when issuing invoices for 2015/16. The decision will be made towards 2014/15 Year End and the resultant invoices will be issued in April 2015.

On behalf of the Committee

[SIGNATURE REDACTED]

19 January 2015

**Committee members (as at 31 December 2014)**

<u>Class/Band</u>	<u>Member</u>	<u>Company</u>	<u>Telephone</u>
Franchised Passenger Class, Band 1	John Czyrko	First Greater Western	07771 831001
Franchised Passenger Class, Band 2	Dean Warner	Abellio Greater Anglia	07920 878739
Franchised Passenger Class, Band 3	John Beer	Govia Thameslink Rly	020 7427 2927
Non-Franchised Passenger Class	Andy Wylie	Hull Trains	07881 510021
Non-Passenger Class, Band 1	Nigel Oatway	DB Schenker	0130 257 7010
Non-Passenger Class, Band 2	Robin Nelson	Freightliner Heavy Haul	020 7200 3931
Network Rail	Peter Craig Paul Thomas	Network Rail Network Rail	020 3356 9316 07919 128231

**Operators by Class and Band (as at 31 December 2014)**

Franchised Passenger Class, Band 1:- First ScotRail; First Greater Western; West Coast Trains ("Virgin Trains"); Northern Rail

Franchised Passenger Class, Band 2:- East Coast Main Line Co; Stagecoach South Western Trains; Abellio Greater Anglia; XC Trains; London & South Eastern Railway ("Southeastern"); Arriva Trains Wales; Southern Railway

Franchised Passenger Class, Band 3:- East Midlands Trains; LOROL; c2c Rail; London & Birmingham Railway ("London Midland"); Chiltern Railway Company; Merseyrail Electrics; First/Keolis TransPennine; Govia Thameslink Railway

Non-Franchised Passenger Class:- Eurostar International; Hull Trains; Heathrow Express; Grand Central Railway; West Coast Railway Company; North Yorkshire Moors Railway; DB Regio Tyne and Wear; Peak Rail

Non-Passenger Class, Band 1:- DB Schenker Rail (UK); Freightliner; Freightliner Heavy Haul

Non-Passenger Class, Band 2:- GBRf; Direct Rail Services; Rail Express Systems; Babcock Rail; COLAS Rail; Amey Railways; Balfour Beatty Plant & Fleet Services; Volker Rail; Devon & Cornwall Railways; Crossrail; Europorte Channel SAS; Harsco Rail