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## ***ACCESS DISPUTES COMMITTEE***

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### **Annual Report for 2016**

- No transitional problems following abolition of the Rail Industry Disputes Resolution Committee
- Continuing high number of Timetabling Disputes registered
- 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
- Despite the anticipated rise in business rates, the Committee does not expect to increase its overall funding call when issuing levy invoices for 2017/18

## REPORT FOR 2016

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 2016.

### Communications

Our report for 2016 follows the format adopted for the past eight 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 as at December 2016.

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

John Beer did not stand for re-election to the Committee for the term commencing on 1 April 2016 due to his impending retirement and Robin Nelson also left the Committee at that time. The Committee records its appreciation of the contributions which John and Robin have made to its work and also for their participation in the former Access Dispute Panels.

The Committee additionally recognises John's significant involvement in the introduction of the revised ADR Rules in 2010 and his period of office as Committee Chair since that time. We will continue to benefit from John's experience as since leaving employment he has accepted appointment as an Industry Advisor for Access Dispute Adjudications.

Robin continues as a member of the Timetabling Pool.

Following elections, Helen Cavanagh and Ian Kapur were welcomed onto the Committee with effect from 1 April 2016.

The Committee members elect the Committee Chair from amongst their number and Nigel Oatway now occupies the role.

The Committee met 3 times in 2016.

Following abolition of the Rail Industry Disputes Resolution Committee and Council effective from 1 November 2015, the Committee became responsible for oversight of the CAHA Registrar and the Committee Secretary is deemed to act also as RIDR Secretary in any circumstances where that may become necessary. No transitional problems have arisen. The new RIDR Rules can now be found on this Committee's website.

## 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 2016 can be summarised as follows:-

### For a Timetabling Panel

Unheard references on hand at 31 December 2015	80	
New references received in 2016	138	
References withdrawn in 2016	145	
Hearings held in 2016	3	
Determinations issued in 2016	3	(covering 6 dispute references)
Determinations appealed in 2016	1	(No ORR appeal decisions awaited)
Pending hearing at 31 December 2016	67	
Hearings arranged for 2017	0	

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

Unheard references on hand at 31 December 2015	2
New references received in 2016	2
References withdrawn in 2016	0
Hearings held in 2016	3
Determinations issued in 2016	2
Determinations pending at 31 December 2016	1
Appeals submitted in 2016	0
Pending hearing at 31 December 2016	1
Hearings arranged for 2017	1

One allocation hearing took place during the year and one is planned for early in 2017. Three disputes have been referred for Arbitration and one for Mediation. No other matters have been submitted to any other dispute resolution forum covered by the ADR Rules.

Of the ADA determinations published during 2016, ADA27 explored the obligation of good faith contained in the Track Access Contract whilst ADA29 considered how rights relating to the Track Access Contract transfer from one franchised passenger operator to another under a Transfer Scheme; both determinations can be found on the Committee's website.

One planned ADA hearing was stood down due to late discussions between the parties achieving resolution.

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.

Three Timetabling Panel hearings were held in the year, covering six Timetabling Disputes. Seven other hearings were arranged for Timetabling Disputes but stood down due to late discussions between the parties achieving resolution; the 7 cancelled dates covered 8 disputes.

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

	<u>2016</u>	<u>2015</u>	<u>2014</u>	<u>2013</u>	<u>2012</u>	<u>2011</u>	<u>2010</u>	<u>2009</u>	<u>2008</u>
New disputes registered	138	141	115	107	96	60	70	64	65
Disputes determined by Panel	6	4	5	0	5	6	8	3	11

As can be seen, there is a continuing high number of timetabling disputes being registered although the trend reversed very slightly in 2016.

We have previously reported that in its stewardship role for the dispute resolution process the Committee has engaged with Network Rail to seek to address reasons for the escalation in the number of Timetabling Disputes being notified by operators; that liaison continues and the focus seems to have brought about improvement in collaborative working to address disputed issues - but as yet, no impact on the number of disputes.

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 individual experiences under the Rules, the Committee is suitably satisfied.

### Dispute references - HS1

Two Timetabling Disputes have been registered under the HS1 Access Dispute Resolution Rules during 2016.

### Accommodation

In common with all business premises in London, it is expected that the Committee's premises on Floor 8 of 1 Eversholt Street will be subject to a significant increase in business rates from 1 April 2017. With no break opportunity remaining in the leasing arrangements until 2019, the Committee is anxious to maximise use of its meeting facilities for the benefit of the industry and readers are reminded that the Committee's offices by Euston station may be found to offer an acceptable alternative to booking meeting rooms in Central London – contact the Committee Secretary regarding facilities and availability.

### Finance

Prior to release of provisions, audited expenditure in the Financial Year to 31 March 2016 was £234,695 against routine income of £359,988. The underspend against budget largely reflected the reduced number of dispute hearings held during 2015/16 and a reduced requirement for legal services. The balance was used for 2016/17 pre-payments, to meet cashflow requirements pending receipt of levies for the new 2016/17 Financial Year and to facilitate a reduced call upon Resolution Service Parties for funding in 2016/17.

As anticipated for the 2016/17 Financial Year, the Committee was again able to make a lowered call for funding. Seven levy payments remained outstanding at 31 December 2016.

Having progressively reduced the overall funding requirement since 2012/13, the Committee now finds itself in a position that - despite the anticipated rise in business rates - it does not expect to increase its overall funding call when issuing the levy invoices for 2017/18. The decision will be made towards 2016/17 Year End and the resultant invoices will be issued in April 2017.

On behalf of the Committee

Nigel Oatway  
Committee Chair

[SIGNATURE REDACTED]

17 January 2017

### Committee members (as at 31 December 2016)

<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 East Anglia	07920 878739
Franchised Passenger Class, Band 3	Helen Cavanagh	Arriva Rail North	01904 568447
Non-Franchised Passenger Class	Andy Wylie	Hull Trains	07881 510021
Non-Passenger Class, Band 1	Nigel Oatway	DB Cargo (UK)	0130 257 7010
Non-Passenger Class, Band 2	Ian Kapur	GB Railfreight	020 7983 5174
Network Rail	Peter Craig	Network Rail	07917 577940
	Paul Thomas	Network Rail	07919 128231

### Operators by Class and Band (as at 31 December 2016)

Franchised Passenger Class, Band 1:- Abellio ScotRail; West Coast Trains; Govia Thameslink Railway

Franchised Passenger Class, Band 2:- First Greater Western; East Coast Main Line Co; Stagecoach South Western Trains; Abellio East Anglia; XC Trains; London & Birmingham Railway

Franchised Passenger Class, Band 3:- London & South Eastern Railway; Arriva Trains Wales; East Midlands Trains; Arriva Rail London; NXET Trains; Chiltern Railway Company; Merseyrail Electrics; First Transpennine Express; Arriva Rail North; MTR Crossrail; Serco Caledonian Sleepers

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

Non-Passenger Class, Band 1:- DB Cargo (UK); Freightliner

Non-Passenger Class, Band 2:- GBRf; Freightliner Heavy Haul; Direct Rail Services; Babcock Rail; COLAS Rail; Amey Railways; Balfour Beatty Plant & Fleet Services; Volker Rail; Devon & Cornwall Railways; Harsco Rail; Rail Operations Group; Victa Railfreight; RVEL