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## *ACCESS DISPUTES COMMITTEE*

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### **Annual Report for 2018**

- Continuing high number of Timetabling Disputes registered
- Continued disappointment regarding increased use of external legal advisors
- Subject to availability, the Committee's premises by Euston station 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 call when issuing levy invoices for 2019/20

## REPORT FOR 2018

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 2018.

### Communications

Our report for 2018 follows the format adopted for the past ten 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 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: [tony.skilton@accessdisputesrail.org](mailto:tony.skilton@accessdisputesrail.org)), 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 2018.

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

Helen Cavanagh and Ian Kapur left the Committee following completion of their elected terms ending on 31 March 2018 and were replaced by James Carter and Greg March. The Committee records its appreciation of the contribution which Helen and Ian made to its work.

The Committee members elect the Committee Chair from amongst their number and Nigel Oatway continues in the role.

The Committee met three times in 2018.

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 whilst the Committee Secretary is deemed to act also as RIDR Secretary in any circumstances where that may become necessary. The current RIDR Rules can be found on this Committee's website.

To deal with an uncertainty which arose during the year, it is appropriate that we make clear that the role of the Secretary does not extend to arranging mediations or arbitrations proposed pursuant to the RIDR Rules; the parties to the dispute should progress such arrangements themselves.

### Dispute references - national network

Details of 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 2018 can be summarised as follows:-

For a Timetabling Panel

Unheard references on hand at 31 December 2017	85	
New references received in 2018	242	
References withdrawn in 2018	165	
Hearings held in 2018	3	
Determinations issued in 2018	3	(covering 6 dispute references, 1 partially)
Determinations appealed in 2018	1	(ORR appeal decision awaited)
Pending hearing at 31 December 2018	157	
Hearings arranged for 2019	1	

For an Access Dispute Adjudication ("ADA")

Unheard references on hand at 31 December 2017	1	
New references received in 2018	13	(9 waiting confirmation of Forum)
References withdrawn in 2018	1	
Hearings held in 2018	3	
Determinations issued in 2018	3	
Appeals submitted in 2018	1	(waiting confirmation of appeal forum)
Pending hearing at 31 December 2018	10	(9 waiting confirmation of Forum)
Hearings arranged for 2019	0	

One Allocation Hearing took place during the year, commencing in June and resuming in November having adjourned whilst the parties considered their positions. Three disputes have been referred for Arbitration. Nine new disputes were proposed for determination by Access Dispute Adjudication by the 'claimant' but await agreement regarding allocation to one of the Forums provided under the ADR Rules; three other notified disputes on hand await a proposal regarding allocation to a Forum.

Preparing for a hearing concentrates minds and can often lead to a 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 further information have helped parties to recognise a way forward and settle their differences. The occasional Directions Hearing has taken place in past years and it is considered that there can be real benefit in Hearing Chairs meeting with the parties involved as a preliminary to a hearing, thus enabling focussed directions to be issued. One Directions Hearing held in 2018 related to 32 cases submitted as Timetabling Disputes but consideration of legal issues which would be put to the Panel and a challenge to its jurisdiction resulted in the cases being referred to allocation.

Two of the ADA determinations which were published during 2018 (ADA33 and ADA35) came about through appeals being made against Guidance issued by the Delay Attribution Board. Points of contract interpretation arising where there is divergence between the Delay Attribution Principles and Rules (successor to the Delay Attribution Guide) have been noted and the Committee is liaising with the Delay Attribution Board to seek to develop proposals for improving the associated dispute resolution arrangements.

As shown above, three Timetabling Panel hearings were held in the year, covering six Timetabling Disputes. Additionally, hearings were arranged for ten Timetabling Disputes on eight dates but stood down due to late discussions between the parties achieving resolution.

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

	<u>2018</u>	<u>2017</u>	<u>2016</u>	<u>2015</u>	<u>2014</u>	<u>2013</u>	<u>2012</u>	<u>2011</u>	<u>2010</u>	<u>2009</u>
New disputes registered	242	159	138	141	115	107	96	60	70	64
Disputes determined	6	9	6	4	5	0	5	6	8	3

As can be seen, there is a continuing high number of Timetabling Disputes being registered. Whereas the number in 2017 was inflated by issues associated with (or resulting from) new Timetable Planning Rules following Network Rail's TRIP (Timetable Rules Improvement Programme) initiative, very many of the 2018 Disputes arise out of short notice decisions being made by Network Rail whilst trying to recover an unfortunate industry situation brought about (in the main) by slippage in the delivery of both infrastructure and rolling stock projects across the network.

As in 2017, legal issues have continued to be to the fore in some 2018 Timetabling Panel references, with parties (particularly Network Rail) making heavy use of external legal advisors. The Committee remains disappointed that a process designed to resolve disputes as efficiently and effectively as possible is becoming beset with arguments concerning legal entitlements.

We have previously reported that a working group has developed a non-contractual Code of Practice for the future management of CPPP (Confirmed Period Possession Plan) disputes which was being trialled with a view to eventually being endorsed by the Committee for application on a "best practice" (but non-contractual) basis. Trialling has been delayed due to the difficult industry situation during the year.

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

No disputes have been registered under the HS1 Access Dispute Resolution Rules during 2018.

### Dispute references – Heathrow Airport Ltd ("HAL")

During 2018 the Committee agreed that it would provide the support for the dispute resolution arrangements put in place for HAL. No disputes have yet been registered under the HAL Access Dispute Resolution Rules.

### Accommodation

The Committee is happy to make its meeting facilities available for the benefit of the industry and readers are reminded that its offices conveniently situated 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

No 2017/18 levy payments remained outstanding on 31 March 2018. Prior to release of provisions, net audited expenditure in the Financial Year to 31 March 2018 was £372,943 against routine income of £378,150. The balance was used along with reserves for making 2018/19 pre-payments, to meet cashflow requirements pending receipt of levies for the new 2018/19 Financial Year and to facilitate a reduced call upon Resolution Service Parties for funding in 2018/19.

Eight 2018/19 levy payments remained outstanding on 31 December 2018.

The Committee is in a position that it does not expect to increase its overall funding call when issuing the levy invoices for 2019/20.

On behalf of the Committee

[SIGNATURE REDACTED]

28 March 2019

### **Committee members (as at 31 December 2018)**

<u>Class/Band</u>	<u>Member</u>	<u>Company</u>	<u>Telephone</u>
Franchised Passenger Class, Band 1	Raj Patel	Govia Thameslink Railway	07975 603552
Franchised Passenger Class, Band 2	Dean Warner	Abellio East Anglia	07920 878739
Franchised Passenger Class, Band 3	James Carter	West Midlands Trains	07772 886852
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	Greg March	Colas Rail	07764 228905
Network Rail	Peter Craig	Network Rail	020 3356 9316
	Richard Parsons	Network Rail	07917 857937

### Operators by Class and Band (as at December 2018)

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

Franchised Passenger Class, Band 2:- First Greater Western; London North Eastern Railway; First MTR South Western Trains; Arriva Rail North; Abellio East Anglia; XC Trains; London & South Eastern Railway

Franchised Passenger Class, Band 3; Keolis Amey Operations/Gweithrediadau Keolis Amey; West Midlands Trains; East Midlands Trains; Arriva Rail London; Trenitalia c2c; Chiltern Railway Company; Merseyrail Electrics; First Transpennine Express; MTR Crossrail; Serco Caledonian Sleepers

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

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

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