
ACCESS DISPUTES COMMITTEE

Annual Report for 2021

- Over 70% of registered disputes in 2021 related to engineering access items. An unusually high number of TTP disputes (11) required a scheduled hearing, the majority of which (10) were later cancelled.
- Particular emphasis is laid on Parties appropriately registering their disputes, in accordance with ADR Rule B3 (templates available on our website, or by contacting the Secretary) and in particular providing a brief summary of the basis of the claim, including a list of issues, i.e. not registering a 'holding dispute'
- Subject to availability, the Committee's new premises near Paddington station may be found to offer an acceptable and less costly alternative to booking meeting rooms and hot desking in Central London
- At this stage, the Committee does not expect to increase its overall funding call when issuing levy invoices for 2022/23

REPORT FOR 2021

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 2021.

Communications

Our report for 2021 follows the format adopted for the past eleven years. In the absence of any adverse feedback regarding the recent reports, we again invite comments regarding the adequacy of the content of this one.

The Committee’s website (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. **It is important to note that, following the office move in 2020, the Committee’s contact details have changed.**

Comments regarding the website and Committee matters in general will always be welcomed and may be passed to the Committee Secretary, Tamzin Cloke (e-mail: secretary@accessdisputesrail.org, tel: 020 8050 3657). 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 2021.

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

Administration

James Carter and Peter Craig left the Committee for a new role with Network Rail, and retirement, respectively. Jonathan James and Chris Meadows were elected, and appointed, respectively to fill the vacancies. The Committee records its appreciation of the contribution that James and Peter made to its work.

The Committee members elect the Committee Chair from amongst their number and in July Andy Wylie was elected to this role.

The Committee met three times in 2021, the first two via videoconference.

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. The current RIDR Rules can be found on this Committee’s website.

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 directly to a nominated person in each operating company. **If you believe that you are missing from this distribution list, please contact the Secretary.**

The position regarding dispute references handled in relation to the national network during 2021 can be summarised as follows:-

For a Timetabling Panel

Unheard references on hand at 31 December 2020	121	
New references received in 2021	175	
References withdrawn in 2021	155	
Hearings held in 2021	1	(11 references were listed but 10 were later withdrawn)
Determinations issued in 2021	1	(covering 1 dispute reference)
Determinations appealed in 2021	0	
Pending hearing at 31 December 2021	140	
Hearings arranged for 2022	1	

For an Access Dispute Adjudication ("ADA")

Unheard references on hand at 31 December 2020	0	
New references received in 2021	4	
References withdrawn in 2021	2	
Hearings held in 2021	1	ADA50
Determinations issued in 2021	1	ADA50
Appeals submitted in 2021	0	
Pending hearing at 31 December 2021	1	
Hearings arranged for 2022	1	ADA53

One allocation hearing took place this year, with one dispute referred for Arbitration.

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.

As shown above, only one National Timetabling Panel hearing was held in the year, but eleven Timetabling Dispute references in total were listed. Ten of these references were stood down due to late discussions between the parties achieving resolution. The unusually high number of references and late

notice cancellations is likely due to departure from compliance with Part D timescales leaving little opportunity for Parties to resolve matters before requiring a hearing date.

The Committee is keen that lessons learned from previous hearings are enacted and, following guidance from the Hearing Chairs, has compiled a list of points of learning or suggestions from recent determinations that might be of assistance to the industry. This is a live document and the Committee expects that it may lead to, for example, Proposals for Change being submitted for industry consideration.

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

	<u>2021</u>	<u>2020</u>	<u>2019</u>	<u>2018</u>	<u>2017</u>	<u>2016</u>	<u>2015</u>	<u>2014</u>	<u>2013</u>
New disputes registered	175	183	169	242	159	138	141	115	107
Disputes determined	1	5	2	6	9	6	4	5	0

As can be seen, new disputes and determined disputes are lower than previous years, but the number of requested hearings has increased.

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 2021.

Dispute references – Heathrow Airport Ltd (“HAL”)

Three disputes were registered under the HAL Access Dispute Resolution Rules during 2021. One (HAL/TTP003) was heard in October and is now the subject of an appeal to ORR. The other two disputes have been scheduled for hearing early in 2022.

Dispute references – Core Valley Lines (“CVL”)

Three disputes have been registered under the CVL Access Dispute Resolution Rules during 2021, two of which have been withdrawn.

Dispute references – Crossrail Central Operating Section (“CCOS”)

No disputes have been registered under the CCOS Access Dispute Resolution Rules during 2021.

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 between Paddington and Edgware Road stations may be found to offer an acceptable alternative to booking meeting rooms in Central London. The Committee will also offers hot desking facilities on a limited basis to rail industry employees on Tuesdays to Thursdays – please contact the Committee Secretary regarding facilities and availability.

Finance

No levy payments remained outstanding on 31 March 2021. Prior to release of provisions, net audited expenditure in the Financial Year to 31 March 2021 was £82,559 against routine income of £403,904. Reserves were used for making 2021/22 pre-payments, to meet cashflow requirements pending receipt of levies for the new 2021/22 Financial Year and to facilitate a reduced call upon Resolution Service Parties for funding in 2021/22. 32 levy payments were outstanding for the 2021/22 Financial Year on 31 December 2021.

The Committee is in a position that it does not expect to increase its overall funding call when issuing the levy invoices for 2022/23.

On behalf of the Committee

A handwritten signature in brown ink, appearing to read 'Andy Wylie', with a long horizontal flourish extending to the right.

Andy Wylie
Committee Chair

20 January 2022

Committee members (as at 31 December 2021)

<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	Andrew Danson	XC Trains Ltd	0121 200 6160
Franchised Passenger Class, Band 3	Jonathan James	MTR (Crossrail)	07901 115202
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	07818 421220
Network Rail	Chris Meadows	Network Rail	07740 225280
Network Rail	Richard Parsons	Network Rail	07917 857937

Operators by Class and Band (as at December 2021)

Franchised Passenger Class, Band 1:- Abellio ScotRail; First Trenitalia West Coast Rail Limited; First MTR South Western Trains; Govia Thameslink Railway

Franchised Passenger Class, Band 2:- First Greater Western Ltd.; London North Eastern Railway; Northern Trains; Abellio East Anglia; West Midlands Trains; London & South Eastern Railway.

Franchised Passenger Class, Band 3; Keolis Amey Operations/Gweithrediadau Keolis Amey; XC 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:- Chinnor & Princes Risborough Railway; Nexus (Tyne and Wear PTE); East Coast Trains; Eurostar International; Ffestiniog Railway; Grand Central Railway Co; Heathrow Express Operating Co; Hull Trains Co; Locomotive Services (TOC) Ltd.; North Yorkshire Moors Railway; Peak Rail; Rail Express Systems; West Coast Railway Co; South Yorkshire Supertram; Vintage Trains Ltd.

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

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