
ACCESS DISPUTES COMMITTEE

Annual Report for 2022

- Over 74% of registered disputes in 2022 related to engineering access items. Continuing the theme from 2021, an unusually high number of TTP references (14) required a scheduled hearing, all of which were later cancelled.
- A steady year-on-year fall in the number of disputes registered against the Working Timetable offer continues.
- 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 premises near Paddington station may be found to offer a cost free alternative to booking meeting rooms and hot desking in Central London
- After careful consideration, and in light of the current economic climate and inflationary pressures within the industry, the Committee has decided to waive levy charging arrangements for financial year 2023/24. During this period the Committee will be funded using its financial reserves, accumulated due to lower spend against budget in the past few years, particularly in relation to hearings, for which there has been a significantly lower demand since 2020.

REPORT FOR 2022

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 2022.

Communications

Our report for 2022 follows the format adopted for the past twelve 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; some correspondence is still going astray.**

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 2022.

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

Andrew Danson and Nigel Oatway left the Committee for a new role outside the industry, and (temporary) retirement, respectively. John Czyrko and Chris Matthews were, respectively, elected to fill the vacancies. The Committee records its appreciation of the contribution that Andrew, and particularly Nigel, made to its work.

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

The Committee met three times in 2022.

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 2022 can be summarised as follows:-

For a Timetabling Panel

Unheard references on hand at 31 December 2021	140	
New references received in 2022	173	
References withdrawn in 2022	213	
Hearings held in 2022	0	15 listed, including one from 2021, all cancelled prior to hearing
Determinations issued in 2022	0	
Determinations appealed in 2022	0	
Pending hearing at 31 December 2022	100	
Hearings arranged for 2023	1	Cancelled prior to report publication

For an Access Dispute Adjudication ("ADA")

Unheard references on hand at 31 December 2021	1	
New references received in 2022	3	
References withdrawn in 2022	4	
Hearings held in 2022	0	All four listed for a hearing, all four withdrawn prior to the hearing taking place.
Determinations issued in 2022	0	
Appeals submitted in 2022	0	
Pending hearing at 31 December 2022	0	
Hearings arranged for 2023	0	

No allocation hearings took place this year.

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.

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

	<u>2022</u>	<u>2021</u>	<u>2020</u>	<u>2019</u>	<u>2018</u>	<u>2017</u>	<u>2016</u>	<u>2015</u>	<u>2014</u>
New disputes registered	173	175	183	169	242	159	138	141	115
Disputes determined	0	1	5	2	6	9	6	4	5

As can be seen, determined disputes have fallen again following earlier peaks in 2017/18 and 2020 as a result of industry uncertainty (both with major projects and coronavirus). This is a good indicator that the industry is working hard to resolve disputes without the need for a hearing (please see below). Dispute references however remain high compared to historical figures, albeit in a more stable position than the peaks in 2018 and 2020.

No National Timetabling Panel hearings were held during 2022, but fourteen Timetabling Dispute references in total were listed (plus one 2021 reference scheduled for early January 2022). All were stood down due to late discussions between the parties achieving resolution, including some very late notice (less than 24 hour) cancellations, this being a more recent and unwelcome change in behaviour.

The unusually high number of escalated references and late notice cancellations is likely due to departure from compliance with Part D timescales leaving little opportunity for Parties to resolve matters - including by finding a suitable timetabling solution - before requiring a hearing date. Although the significant majority of dispute references concerned engineering access matters, the majority (two thirds) of hearings scheduled related to timing matters. The vast majority of escalated disputes were settled either by Network Rail withdrawing the disputed decision, or by the Parties finding a suitable timetabling solution.

The Secretary is undertaking work with industry members to see if there are any pieces of pre-emptive work that can be undertaken to reduce abortive hearing costs, albeit these remain extremely small in the context of industry funding.

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.

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 2022.

Dispute references – Heathrow Airport Ltd (“HAL”)

No disputes have been registered under the HAL Access Dispute Resolution Rules during 2022. The two disputes registered in 2021 and scheduled for hearing early in 2022 were ultimately settled and withdrawn without the need for a hearing. During 2022 ORR issued its determination regarding HAL/TTP003, on 20.01.2022.

Dispute references – Core Valley Lines (“CVL”)

Two disputes have been registered under the CVL Access Dispute Resolution Rules during 2022, with one still open from 2021. Two disputes have since been withdrawn, leaving one open on 31 December.

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

No disputes have been registered under the CCOS Access Dispute Resolution Rules during 2022.

Dispute references – Nexus Metro network (“Metro”)

No disputes have been registered under the Metro Access Dispute Resolution Rules during 2022

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

29 levy payments, all in relation to new Resolution Service Parties remained outstanding on 31 March 2022. Prior to release of provisions, net audited expenditure in the Financial Year to 31 March 2022 was £401,408 against routine income of £389,897. Reserves were used for making 2022/23 pre-payments, to meet cashflow requirements pending receipt of levies for the new 2022/23 Financial Year and to facilitate a reduced call upon Resolution Service Parties for funding in 2022/23. 14 levy payments were outstanding for the 2022/23 Financial Year on 31 December 2022.

After careful consideration, and in light of the current economic climate and inflationary pressures within the industry, the Committee has decided to waive levy charging arrangements for financial year 2023/24. During this period the Committee will be funded using its financial reserves, accumulated due to lower spend against budget in the past few years, particularly in relation to hearings, for which there has been a significantly lower demand since 2020. Formal confirmation letters will be sent to Resolution Service Parties in early 2023.

On behalf of the Committee

[SIGNATURE REDACTED]

Andy Wylie
Committee Chair

27 January 2023

Committee members (as at 31 December 2022)

<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	John Czyrko	First Greater Western	07771 831001
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	Ian Kapur	GB Railfreight	07818 421220
Non-Passenger Class, Band 2	Chris Matthews	Freightliner	07866 152753
Network Rail	Chris Meadows	Network Rail	07740 225280
Network Rail	Matt Allen*	Network Rail	07917 857937

*appointed on 30.12.22, previous postholder was Richard Parsons

Operators by Class and Band (as at December 2022)

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; Transport for Wales Rail; 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; Hanson and Hall Rail Service Solutions; Loam UK Ltd; Varamis Ltd; Rail Express Systems; Volker Rail; Victa Railfreight; Rail Operations Group; SLC Operations