
ACCESS DISPUTES COMMITTEE

Annual Report for 2023

- 87% of registered disputes in 2023 related to engineering access items, a significant rise from 76% last year and due to both a drop in timing disputes and a rise in access disputes, particularly for HS2 construction and amended access in Wales. An unusually high number of TTP references (20) required a scheduled hearing, of which 11 were later cancelled. This is comparable with years when there has been significant timetable disruption due to a single underlying cause (e.g. May 2018), but there was no single underlying cause in 2023.
- Parties are strongly reminded to check the Committee's Directory of Precedents, on the Committee's website, which contains key points from previous determinations, indexed by Network Code Part and Track Access Contract sections. For any assistance using this helpful tool, please contact the Secretary.
- A steady year-on-year fall in the number of disputes registered against the Working Timetable offer continues, as well as a welcome fall in the number of 'live' Timetable Dispute references.
- 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 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 again decided to waive levy charging arrangements for financial year 2024/25. During this period the Committee will be funded using its financial reserves, accumulated due to lower spend against budget in the past few years. Levy charging will resume in financial year 2025/26.

REPORT FOR 2023

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 2023.

Communications

Our report for 2023 follows the format adopted for the past thirteen 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 (email: 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 2023.

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

Richard Parsons and John Czryko left the Committee for a new role within Network Rail, and retirement, respectively. Matt Allen and Kate Oldroyd were, respectively, appointed and elected to fill the vacancies. The Committee records its appreciation of the contribution that Richard and John made to its work, over a number of years.

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 2023.

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 2023 can be summarised as follows:-

For a Timetabling Panel

Unheard references on hand at 31 December 2022	100
New references received in 2023	207
References withdrawn in 2023	203
Hearings held in 2023	9
References determined in 2023	9
Determinations appealed in 2023	0
Pending hearing at 31 December 2023	95
Hearings arranged for 2024	1

For an Access Dispute Adjudication ("ADA")

Unheard references on hand at 31 December 2022	1
New references received in 2023	2
References withdrawn in 2023	0
Hearings held in 2023	1
References determined in 2023	1
Appeals submitted in 2023	0
Pending hearing at 31 December 2023	1
Hearings arranged for 2024	1

One allocation hearing took place this year, for the matter that went on to become ENE01.

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:-

	2023	2022	2021	2020	2019	2018	2017	2016	2015
New disputes registered	207	173	175	183	169	242	159	138	141
Disputes determined	9	0	1	5	2	6	9	6	4

New disputes and determined disputes have started to increase again (year-on-year), following a recent drop. The number of disputes where a hearing has been requested has not been this high since a peak in 2017, most of which related to the TRIP programme.

This is concerning and seems to be driven by a large amount of late notice churn in the engineering access plan, as well as disruptive work for HS2 starting in earnest on the Great Western Mainline. There were several disputes following NR issuing late notice engineering access decisions, to coincide with DfT-run passenger operators being on strike, by operators who were not striking and to whom the access was disruptive. Quality and timeliness of capacity studies, issued in relation to engineering access blockades, remain a notable issue.

All Parties are reminded that they need to adhere to the processes and timescales outlined in Part D of the Network Code; failure to do so may result in adverse consequences at TTP Hearings, given the provisions of ADR Rule A5: *Each and every Forum shall reach its determination on the basis of the legal entitlements of the Dispute Parties and upon no other basis.*

Nine National Timetabling Panel hearings were held during 2023, and twenty Timetabling Dispute references in total were listed.

The unusually high number of escalated references and late notice cancellations is likely due to the churn in the engineering access plan, as well as the continued departure from compliance with Part D timescales leaving little opportunity for Parties to resolve matters before requiring a hearing date. Although the significant majority of disputes and hearings requested concerned engineering access matters, nearly half of the hearings requested (seven of 20 references) related to timing matters. Of these seven, six related to Informed Traveller timetable offers. Two of those (TTP2318 and TTP2320) are in the process of being determined, the remainder were withdrawn when Network Rail found paths for the rejected services.

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 2023.

Dispute references – Heathrow Airport Ltd (“HAL”)

One dispute has been registered under the HAL Access Dispute Resolution Rules during 2023, and has since been withdrawn.

Dispute references – Core Valley Lines (“CVL”)

Two disputes have been registered under the CVL Access Dispute Resolution Rules during 2023, and one has since been withdrawn.

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

No disputes have been registered under the CCOS Access Dispute Resolution Rules during 2023.

Dispute references – Nexus Metro network (“Metro”)

No disputes have been registered under the Metro Access Dispute Resolution Rules during 2023.

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

Prior to release of provisions, net audited expenditure in the Financial Year to 31 March 2023 was £377,562 against routine income of £341,369. Reserves were used for making 2023/24 pre-payments, to meet cashflow requirements for the new 2023/24 Financial Year and to facilitate a reduced call upon Resolution Service Parties for funding in 2023/24.

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 2024/25. During this period the Committee will be funded using its financial reserves, accumulated due to lower spend against budget in the past few years. Formal confirmation letters will be sent to Resolution Service Parties in early 2024.

On behalf of the Committee

[SIGNATURE REDACTED]

Andy Wylie
Committee Chair

18 January 2024

Committee members (as at 31 December 2023)

<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	Kate Oldroyd	Northern Trains	07342 066142
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	07734 282514

Operators by Class and Band (as at December 2023)

Franchised Passenger Class, Band 1:- ScotRail Trains; 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; SE Trains Ltd.

Franchised Passenger Class, Band 3; Transport for Wales; XC Trains; Abellio East Midlands; Arriva Rail London; Trenitalia c2c; Chiltern Railway Company; Merseyrail Electrics; Transpennine Trains; MTR Crossrail; 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; Loram UK Ltd; Varamis Ltd; Rail Express Systems; Volker Rail; Victa Railfreight; Rail Operations Group; RailAdventure Ltd.