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## **ACCESS DISPUTES COMMITTEE**

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### **MINUTES of MEETING No. 4** held in London on 18 October 2005

#### **Present:**

Tony Holland, Chairman  
Bryan Driver, Vice-Chairman  
Bill Davidson (Network Rail)  
Tony Deighan (Eurostar (U.K.))  
Lindsay Durham (Freightliner)  
Julia Glenn (Network Rail)  
Nigel Oatway (English Welsh & Scottish Railway)  
John Thompson (South Eastern Trains)

#### **In attendance:**

Chris Blackman (Secretary)  
Martin Shrubsole (Clerk)  
Samantha Holland (Wragge & Co)

#### **Apologies:**

Mike Price (First ScotRail)  
Alan Wilson (Wessex Trains)

#### **4/1 Approval of Minutes of meeting no.3**

The Draft minutes of meeting no.3 were approved subject to minor modification. The Chairman signed a copy of the minutes, as modified, as a true record of the proceedings.

#### **4/2 Matters arising from the minutes of the previous meeting**

##### ***3/4 Annual Report***

Members noted that this will be finalised shortly. The Committee agreed that the Chairman's Report and the Annual Review should be circulated to the Industry with a cover note to say that the full report was available on the Committee's website.

##### ***3/7 Department of Transport's Consultation Document***

Nigel Oatway advised the Committee that his company had responded to the consultation document on how many days should be allowed to issue and file a capacity allocation dispute. The Department had responded to say that they had taken due note of the views, and had further indicated that there was no intention to change Part D of the Network Code in this respect.

Nigel Oatway also advised members of the Committee that the requirement in Condition D5 for a reference to be made to the Committee within 7 days was likely to be changed in the near future to 28 days.

#### **4/3 Appointment of a (legally qualified) Vice-Chairman**

The Committee confirmed that it wished to appoint Mr George Renwick as a Vice-Chairman.

#### **4/4 Process for handling reference ADP09**

The Chairman referred to the papers that had so far been received in respect of a dispute referred by Midland Main Line alleging a Network Change. These papers indicated that more information was required, and details of this had been set out under 19 headings.

The Chairman explained the implications of the legal process of "discovery". It was already clear that the matter may have to be dealt with in a different manner from that in which the Committee has previously handled cases.

The issues centre on whether the method of approach to a hearing by an Access Disputes Panel should be adversarial in principle or inquisitorial. The parties were not agreed as to the process they wish to be adopted.

The Chairman indicated that he was minded to ask for responses to the directions, and to ask for more detailed reasons why one or other of the parties was seeking the adoption of an adversarial approach rather than an inquisitorial one.

Tony Deighan, who had been Chairman of the ADR Rules review group in 2004, explained that it was not the intention of the Working Party to change the process in this respect, nor indeed did the former Rail Regulator advocate such a change

At the conclusion of the discussion the Chairman said that he would adopt the following procedures:

1. He will ask that the parties respond fully to the directions he had previously given;
2. He wished to remind the parties and the industry that the principle set out in Rule A1.23 is mandatory - in other words it sets out what a Panel shall do, not may do;
3. He will ascertain the facts;
4. He will in principle establish a methodology to be adopted which is quick and easy to use (and therefore in line with the general principle); in other words the control will be exercised by the Panel.

The Chairman added he would only be shifted from his view if Midland Main Line's lawyers were able to convince him regarding paragraphs a), b), c) and d) of Rule A1.3.

The Committee observed that if the adversarial approach were adopted, a Panel would be expected to close its mind to all knowledge it had about an issue. This is at variance with the principle laid out in the ADR Rules, that the Panel is designed to be a body of knowledgeable expertise.

It was agreed that that Panel would keep to the principles as set out in Rule A1.3(a)-(d). A formal letter from the Chairman to the parties would be prepared.

**Action:** Secretariat

**4/5 Approval of documents:**

Members noted the final drafts of documents for reference by parties to a dispute and agreed, subject to one minor modification, the text of:

- (a) Template Format for a joint reference; and
- (b) "FAQ" - Frequently Answered Questions.

These documents, as modified, will be placed on the Committee's website.

**4/6 Update on references**

Members noted the paper from the Secretary setting out the position on all references received since April 2005. It was agreed that this document would be more useful to members in a summary, tabular format. The Secretary undertook to provide this with effect from the provision of papers for the next meeting.

**4/7 Review of Committee's contracts with Officers**

The Chairman, Vice-Chairman and Clerk withdrew. Tony Deighan was unanimously elected by the members of the Committee as Deputy Chairman to deal with this item.

After a brief discussion the Committee agreed that it wished to roll forward its contracts with each of the Chairman, Vice-Chairman and Clerk for a further two-year period from the respective date of expiry in 2006.

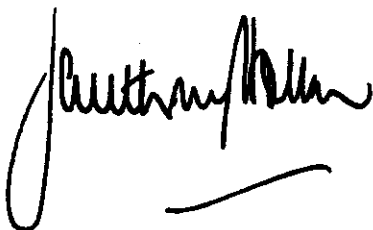
The Secretary was given the authority, within prescribed parameters, to negotiate any minor amendments to the contracts.

**4/8 Any Other Business**

There was no other business.

**4/9 Date of next Meeting**

The Quarterly meeting is on Wednesday 7 December commencing at 15.00.

A handwritten signature in black ink, appearing to read 'Tony Deighan', with a long horizontal flourish underneath.