
ACCESS DISPUTES COMMITTEE

MINUTES of MEETING No. 5 held in London on 7 December 2005

Present:

Tony Holland, Chairman
Bryan Driver, Vice-Chairman
Bill Davidson (Network Rail)
Tony Deighan (Eurostar (U.K.))
Julia Glenn (Network Rail)
Nigel Oatway (English Welsh & Scottish Railway)
Mike Price (First ScotRail)

In attendance:

Chris Blackman (Secretary)
Martin Shrubsole (Clerk)

Apologies:

Lindsay Durham (Freightliner)
John Thompson (South Eastern Trains)
Alan Wilson (Wessex Trains)

5/1 Approval of Minutes of meeting no.4

The Draft minutes of meeting no.4 were approved without modification. The Chairman signed a copy of the minutes as a true record of the proceedings.

5/2 Matters arising from the minutes of the previous meeting

4/7 Review of Committee's contracts with Officers

The Secretary advised that Deeds of Variation had been prepared to reflect minor amendments to the contracts; these require to be signed by a deputy chairman as well as the officer concerned. Members agreed, pursuant to ADR Rule E1.13, to appoint Bill Davidson as deputy chairman for this purpose.

5/3 Budget outturn for 2005/06 and Preliminary budget for 2006/07

Members noted the paper prepared by the Secretariat and expressed satisfaction that projected costs to the end of the financial year were expected to be within overall budget. The preliminary budget proposals for 2006/7 were also noted, and members resolved to consider finalisation at the next quarterly meeting in March 2006, when emerging predicted costs, including costs of accommodation and likely hearings, could be more accurately assessed.

5/4 European legislation

Nigel Oatway presented a paper concerning the Railways Infrastructure (Access and Management) Regulations 2005. Following consultation, the timescales for handling appeals over the allocation of infrastructure capacity now need to comply with the following:

"The infrastructure manager must facilitate the establishment and operation of a dispute resolution system to resolve disputes about the allocation of infrastructure capacity and, where that system is applied, a decision on the matters in dispute must be reached no later than ten working days after the final submission of all relevant information in accordance with that system."

Members considered that the amended wording in the Department for Transport's draft regulations was an acceptable and pragmatic solution.

5/5 ORR consultation on licence fees

Nigel Oatway presented a paper concerning the ORR's recent consultation on proposals to change the structure of licence fees once it takes on the responsibility for railway safety from the HSE.

Members agreed that, if the entire costs of economic regulation were charged to Network Rail, it would be inappropriate for the Committee's levy to be based on a licence fee relating solely to this. Another set of parameters is required to ensure that the levy is raised in the proportions equivalent to those currently existing, and, if necessary, a change should be needed to ADR Rule E1.44.

The Secretary was asked to follow up with the ORR on this matter so that any necessary changes required can be implemented before the levy for 2006/07 is raised on Industry Parties.

5/6 Update on references

Members noted the paper from the Secretary summarising progress since the previous meeting in respect of references submitted for hearing by an Access Dispute Panel or a Timetabling Panel.

The Committee agreed that it wished to continue to receive updates in this format.

5/7 Dates of meetings in 2006

Members agreed dates (and starting times) for Quarterly meetings in 2006 as follows:

Wednesday 8 March (15.00)	Wednesday 7 June (15.00)
Wednesday 13 September (10.00)	Wednesday 13 December (15.00)

Members also agreed that the following dates, for the first 6 months of 2006, would be 'earmarked' for any hearing by an Access Disputes Panel commencing at 10.00 unless otherwise shown:

Thursday 5 January
Wednesday 15 February (commencing at 14.30)
Monday 20 February (commencing at 11.00)
Monday 13 March (commencing at 11.00)
Wednesday 29 March
Thursday 30 March
Wednesday 12 April

Thursday 13 April
Monday 24 April (commencing at 11.00)
Thursday 27 April
Wednesday 24 May
Wednesday 7 June
Thursday 8 June
Wednesday 28 June

5/8 Change of premises

The Secretary advised members concerning prospective new premises from 1 January 2006. Members expressed a preference for the Euston area, and asked the Secretary to ascertain whether suitable premises were available there.

5/9 Any Other Business

Members noted that the ORR had now published its decision in respect of an appeal against the determination AD40 of the Access Disputes Resolution Committee (ADRC). Although the ORR, in its decision, found on the same lines as that of the ADRC it had raised three issues of process, including, in paragraph 46, the relative merit of two elements of the LOC criteria. The ORR commented that the ADRC had said, in paragraph 11.8 of its determination that *"it had not been presented with sufficient arguments to make a judgement as to what effect an equivalence between (d)(i) and (d)(ii) might have, and how that equivalence might translate into a different LOC offer"*. The ORR considered that it was wrong of the ADRC *"not to explore this issue further (e.g. by adjourning the hearing and requiring the parties to present supplementary arguments and evidence)"*. *The ADRC should have made a determination in respect of the weight to be given to criterion (d)."*

Members commented that the ADRC had, in accordance with the general principles of Dispute Resolution set out in the Network Code, made its decision quickly, whereas the ORR had taken no less than nine months to formulate its response, and had then not commented on the ADRC's assertion concerning the indifferent quality of the criteria laid out in Condition L.

Members noted that the ORR and Silverlink had also commented that the ADRC was only entitled to say an argument was "wrong" rather than "weak". The Committee considered this was a matter of semantics and declared that it would comment no further.

5/10 Date of next Meeting

The next Quarterly meeting is on Wednesday 8 March commencing at 15.00.

