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## **ACCESS DISPUTES COMMITTEE**

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### **MINUTES of MEETING No. 15** held in London on 19 December 2007

#### **Present:**

Sir Anthony Holland, Chairman  
George Renwick, Vice-Chairman  
Bryan Driver, Vice-Chairman  
John Beer (First Capital Connect)  
John Czyrko (London & Birmingham Railway)  
Bill Davidson (Network Rail)  
Tony Deighan (Eurostar (U.K.))  
Lindsay Durham (Freightliner)

#### **In attendance:**

Tony Skilton (Secretary)  
Martin Shrubsole (Member of Secretariat – “Clerk”)

#### **Apologies:**

Nigel Oatway (English Welsh & Scottish Railway)  
Gabrielle Ormandy (Network Rail)  
Mike Price (First ScotRail)

#### **15/1 Approval of Minutes of Meeting no.14**

The Minutes of Meeting no.14, held on 20 September 2007, were approved. The Chairman signed a copy of the Minutes as a true record of the proceedings.

#### **15/2 Matters arising from the Minutes of the previous Meeting**

##### **14/2 Process of appointing a new Secretary**

The Secretary reported that transfer of all powers, authorities and assignments from his predecessor had now been finalised.

##### **14/7 & 14/8 Review of the Committee's contracts with the Chairman, Vice-Chairmen and “Clerk”**

The Secretary reported that all contracts had been renewed.

##### **14/9 Formation of a Company Limited by Guarantee (“CLG”)**

The Secretary reported that the drafting of constitution documents for the proposed CLG was now well advanced.

## 14/10 Refranchising

The Secretary confirmed that recent structural changes associated with the refranchising of a number of passenger operations had resulted in movements of some TOCs between the Bands of the Franchise Passenger Class. Advice of the effect of the refranchisings and the routine rotations upon membership of the Committee, the Access Disputes Pool and the Timetabling Pool was awaited from Network Rail following the Annual Class Elections on 12 December.

### **15/3 The Access Disputes process**

Following upon discussions at the previous meeting (Minutes 14/4 and 14/6), the Chairman reported that the evolving legal environment within which the Committee and its Panels operated had been discussed with representatives of the Office of Rail Regulation ("ORR") on 27 November and it had been pleasing to hear that ORR, as the appeal body, continued to have confidence in the process as being managed by the Committee. ORR believed there to be continuing consensus regarding an industry-based dispute mechanism being the preferred way for dealing with Access disputes (with ORR remaining the appeal body) but ORR did agree that the current arrangements were no longer entirely suitable for dealing effectively with all the types of dispute that could arise. In the circumstances, ORR proposed that a review should be undertaken to establish what amendments would be necessary to the existing Access Dispute Resolution Rules to ensure that they provide clear, transparent and effective procedures which enable the proper application of public law and determination of legal rights of dispute parties. Specifically, ORR agreed that opportunity should be taken to review the constitution of the Panels.

ORR considered that a review of the Rules would be timely and accord with the commitment given by ORR to monitor the effectiveness of the new Rules when giving formal approval in 2005.

It was envisaged that ORR would co-ordinate and facilitate the review activity through a working party and then conduct an industry-wide consultation when proposals for any Rule changes had been formulated. To start the process, ORR had invited the Chairman to prepare a note setting out the issues as he perceived them, together with suggestions regarding possible solutions.

The Committee noted developments and supported the proposal for a review of the Rules. Various issues worthy of consideration were identified in associated discussion.

### **15/4 Update on references**

Members noted the current position regarding the references on hand.

A considerable number of the references on hand for the Timetabling Panel related to extensive engineering work programmes which Network Rail proposed to carry out over the coming 2 years. In order to address issues within the relevant timescales for the purposes of industry planners and for provision of customer information, the Secretary was seeking to be pro-active by working with dispute parties to bring the soonest elements within the references before a Panel whilst leaving later items for a hearing, if still necessary, at a later

date. The Committee endorsed this "elastic" approach to the handling of complex references as being sensible and of broad benefit.

#### **15/5 Procedural issues arising out of the appeal of reference ADP20**

The Committee noted a paper summarising procedural issues for the Access Disputes process which had emerged from ORR's hearing of the appeal of reference ADP20.

There were concerns that aspects of ORR's determination in relation to the correct operation of Condition D4.8 (Timetable Change) of the Network Code might not be satisfactorily based in law, whilst issues of principle also arose with regard to the practicalities of managing the operational railway in a timely and effective manner. The Committee decided that it would be appropriate to commission the Committee's solicitors to review the issues with a view to identifying matters upon which the Committee might sensibly engage with ORR and also to inform the preparation of a paper to Industry Steering Group regarding the practical implications for the application of the Network Code. The Clerk and J Czyrko were asked to provide a briefing to the solicitors to ensure their appreciation of the practical railway management issues before embarking upon their review of legal aspects.

The whole issue also had relevance as a background to Minute 15/3 above.

#### **15/6 Update on the website**

It was reported that the website was up to date at close of business on 17 December except that some updating of the directory had become appropriate and this was expected to be undertaken in the coming month.

#### **15/7 Financial matters**

##### (a) Stewardship of the Committee's funding

Members noted a report from the Secretary which provided a high level review covering the past 4/5 years. The recent implementation of "Treasury Reserve" arrangements, giving access to improved interest rates on the Money Market whilst maintaining security through the Committee's banking arrangements, was specifically endorsed.

##### (b) Budget outturn for 2007/08 and preliminary budget for 2008/09

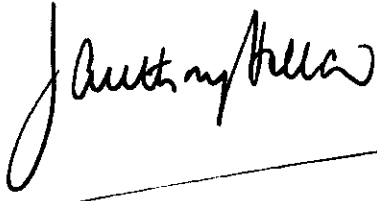
Members noted a paper from the Secretary and indicated that they were content with the forecast outturn position for 2007/08 and with the methodology and the figures in the preliminary budget for 2008/09.

#### **15/8 Annual report for 2007**

The Committee considered a draft for the Annual Report for the calendar year 2007. Following discussion, the Report was approved for issue subject to any statistical adjustments arising in the remainder of the month and with a frontispiece to be provided in which attention is drawn to the issue of the continuing fitness for purpose of the Access Dispute Resolution Rules.

**15/9 Dates of meetings in 2008**

Members agreed the dates for the quarterly Committee meetings in 2008 and also the list of dates proposed to be earmarked for hearings by an Access Dispute Panel in the coming year.

  
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