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## **ACCESS DISPUTES COMMITTEE**

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### **MINUTES of MEETING No. 22** held in London on 30 September 2009

#### **Present:**

Sir Anthony Holland, Chairman  
John Beer (First Capital Connect)  
Bill Davidson (Network Rail)  
Tony Deighan (Eurostar (U.K.))  
Lindsay Durham (Freightliner)  
Nigel Oatway (DB Schenker Rail (UK))  
Gabrielle Ormandy (Network Rail)

#### **In attendance:**

Martin Shrubsole (Clerk to the Panels)  
Tony Skilton (Secretary)

#### **Apologies:**

Mike Price (First ScotRail)  
Wallace Weatherill (Southeastern)

#### **22/1 Approval of Minutes of Meeting no.21**

The Minutes of Meeting no.21, held on 17 June 2009, were approved. The Chairman signed a copy of the Minutes as a true record of the proceedings. There were no matters arising.

#### **22/2 Matters determined in correspondence**

No matters had been determined in correspondence since Meeting no. 21.

#### **22/3 Accommodation**

The Committee received a report regarding the change of premises from Central House, 14 Upper Woburn Place to part of Floor 8, 1 Eversholt Street, during July/August, particularly noting that the dilapidations charge for the Central House premises remained in negotiation and this was delaying return of Rent Deposit Bond funds.

The Secretariat team was complimented on a successful relocation to very satisfactory new offices.

#### **22/4 Financial matters**

The Committee noted a report setting out the current financial position: cashflow difficulties would possibly be encountered in November if outstanding 2009/10 levy payments were not received from five parties and the Central House Rent Deposit Bond funds were not recovered. The Secretary was encouraged to keep pressing for the unpaid levies.

#### **22/5 Position on references**

The Committee noted a report on the current position regarding references on hand.

#### **22/6 Update on the website**

The website was reported as being up to date in all aspects except for directory incorporation of ORR's two determinations for reference TTP244 and Panel's determinations following the more recent hearings.

It was noted that whilst the outcome of reference TTP244 did not materially alter existing interpretation of contractual provisions, it did provide pointers to Network Rail regarding the behaviours required of Train Planners; whilst therefore largely identifying an internal matter for Network Rail, ORR's deliberations had delivered some criteria by which Panels could in future judge conformity with the Network Code Part D process.

The Panel's determination of reference ADP39 had identified an important principle regarding responsibility resting with Access Beneficiaries as to how their staff are trained to comply with Railway Group Standards, Rules, etc.

In view of changes which revision of the ADR Rules were expected to bring to future requirements for publication of dispute-related information on the website, the Committee considered it appropriate to explore the possibility of hit monitoring in order to know what use is made of the site and whether it is a worthwhile reference source for the industry. Additionally, it was desirable to be able to take an informed view as to what areas of the site should be retained in the future, over and above any specific requirements of the revised Rules, with the Directory being a particular area for attention as this was currently maintained by the Clerk (a role which would disappear under the revised Rules). The Secretary was asked to examine feasibility and costs.

#### **22/7 ORR's consultation on proposed Model Clauses for freight customer Access contracts**

It was noted that the Committee had been invited by ORR to be a consultee to its recently released consultation on proposed Model Clauses for Freight Customer Access contracts.

Initial reaction of the committee was that the proposed regime might seriously disturb the equilibrium of contractual relationships and associated processes which currently served the industry reasonably well, especially those in relation to matters embraced by Part D of the Network Code.

The Committee anticipated that hearings for dispute references brought by Freight Customers would be attended by senior advocates for the disputing party rather than rail managers and that this would make quite a difference to the nature of the hearings in respect

of the persons representing other parties and legal assessor support for the Panel. The Committee felt that it would not be a good thing to introduce change if it would lead to increased costs, whether those costs fell to the Committee or elsewhere within the industry.

The Secretary was asked to review the consultation document fully and circulate a draft response to ORR for endorsement by Committee Members in correspondence.

## **22/8 Review of the Access Disputes Resolution Rules ("ADR Rules")**

The Committee was informed that since endorsement of the final proposals of the Access Dispute Resolution Rules Reform Working Group by Industry Steering Group on 2 June, activity of the Working Group had concentrated on drafting a final form of the revised ADR Rules with a view to progressing them through the formal approval procedure of the Class Representative Committee and ORR, ready for implementation on 1 April 2010. Some further cost/benefit analysis was being undertaken, however, in order to fully confirm the appropriateness of the proposed new arrangements to industry stakeholders.

The Committee was reminded of the indication given in the original consultation paper that the new process would not be introduced without first having completed induction/training of the new people who would be involved. Legally qualified individuals would be taking up roles as Chairs in an industry with which they might have only little familiarity, whilst Industry Experts would need some training regarding dispute hearing procedure: some transitional arrangements were therefore to be expected to be approved for a period beyond 31 March 2010.

The Chairman confirmed, from personal experience, that there would be a long learning curve for the future Chairs as it is a very technical industry.

The Committee recognised the implications of the proposed implementation date upon the renewal of consultancy contracts with the Chairmen and the Clerk to the Panels, which all fell to terminate in the latter part of the 2009/10 financial year. It was agreed that, for the time being, the Committee should plan to maintain its existing capability to hold hearings of Access Dispute Panels and Timetabling Panel until 31 March 2010. As more would be known regarding the situation at the next meeting on 2 December, no immediate action was regarded as necessary in relation to the majority of the contracts but as that with G Renwick would terminate on 30 November, the Secretary was authorised to seek extension with Mr Renwick for a period of 4 months.

Bearing in mind that the revised ADR Rules would place responsibility upon the Committee to appoint the Chairs and Industry Experts, the Committee decided that preparations should be made to be in a position to place appropriate advertisements as soon as the revised ADR Rules are approved and not necessarily to wait until the December meeting to initiate this workstream. The Secretary was asked to circulate proposals for draft advertisements for consideration by the Committee in correspondence, to identify how the recruitment process might be conducted, whether it might be necessary to engage head-hunters, also the potential costs of the recruitment exercise.

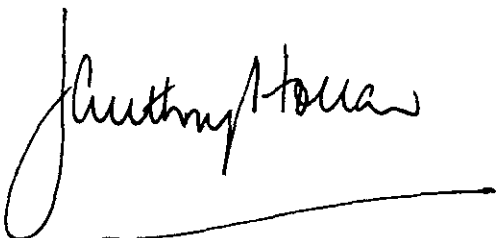
The fee arrangements to be offered to future Chairs and Industry Experts were clearly fundamental information for in recruitment; it was noted that the Working Group was

exploring potential financial arrangements and this workstream would doubtless inform the recruitment process and the relevant aspects of the Committee's budget for 20010/11.

Finally in relation to resourcing the new structure, the Committee members noted that it would be necessary for them to decide amongst themselves regarding which of them would participate in carrying out interviews and how these would be conducted.

T Deighan mentioned that it was quite possible that request would be received for the new Access Disputes Resolution Rules processes to be applied as the Access disputes process for the HS1 route; the matter was likely to become clearer by December but it could be envisaged that HS1 Ltd would need to use the TTP and the ADA (Access Disputes Adjudication) processes. If the Committee was minded to provide the disputes service for HS1, technical considerations were likely to arise regarding representation; there would also be need to review practical issues of providing the service and to take a position concerning its costs, with implications for the levy arrangements. HS1 was known to require an Access dispute process in place for 1 December 2009 and it required the approval of the Secretary of State.

The Committee was agreeable in principle to providing an Access disputes service to HS1 upon implementation of the new ADR Rules; HS1 would therefore have a transition issue from 1 December with which the Committee was unable to assist.

  
2.12.2009.