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## **ACCESS DISPUTES COMMITTEE**

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### **MINUTES of MEETING No. 26** held in London on 22 September 2010

#### **Present:**

John Beer (First Capital Connect) (Committee Chair)  
Bill Davidson (Network Rail)  
Richard Dean (London & South Eastern Railway)  
Nigel Oatway (DB Schenker Rail (UK))  
Gabrielle Ormandy (Network Rail)

#### **In attendance:**

Tony Skilton (Secretary)

#### **Apologies:**

Lindsay Durham (Freightliner)  
Andy Wylie (Hull Trains)

#### **26/1 Approval of Minutes of Meeting no.25**

The Minutes of Meeting no.25, held on 21 July 2010, were approved. The Chair signed a copy of the Minutes as a true record of the proceedings.

#### **26/2 Matters arising from the Minutes of the previous Meeting**

##### **25/8 Banking arrangements**

The Secretary reported that NatWest had applied the single signature mandate to the bank account with effect from 14 August; online reading capability had been activated with effect from 6 September and online and telephone banking facilities had become fully functional from 14 September. As previously agreed, it was now appropriate for J Beer to commence scrutiny of the initial operation of the account under the single signature arrangements in order to establish the necessary internal check process.

#### **26/3 Changes in Committee and Pool membership**

The Committee noted that Andy Wylie had replaced Tony Deighan as the Committee member from the Non-Franchise Passenger Class until 31 March 2011.

#### **26/4 Matters determined in correspondence**

No matters had been determined in correspondence since Meeting no. 25.

## **26/5 Financial position**

The Committee noted a report setting out the current financial position.

## **26/6 Position on references**

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

## **26/7 Update on the website**

The Secretary reported that the information which the new ADR Rules required to have available on the website was up to date, along with the necessary new template documentation. Some general areas of guidance warranted attention, however, but this work had not been prioritised whilst recent key changes were being effected, nor had the Directory yet been reviewed to annotate the few relevant items to the new Rules. It was noted that the Directory had hitherto been maintained by the Clerk to the Panels and the activity would now need to be undertaken either by the Secretary or sourced separately.

It was reported that during their recent induction session, newly appointed Chairs had remarked most favourably regarding the value of the Directory as a comprehensive guide to all relevant precedent.

The Committee recognised that a new Part D of the Network Code was to be introduced on 1 October 2010 and a significant area of the Directory would need to be reviewed to annotate the previous material to the new Conditions. Recognising the overall workload and associated cost and despite its decision at the preceding meeting, the Committee felt it timely to give more consideration to the benefits of the Directory and to accordingly decide whether the Part D material needed to be re-visited; it was decided that the content of the website (other than those items prescribed in the Rules) should be re-specified – a topic for attention at the next meeting. Gabrielle Ormandy undertook to undertake a review of the entire website and provide recommendations and the Committee asked that if it were recommended that the Directory be discontinued, thought should be given as to how to facilitate future finding of the information currently contained within it.

## **26/8 Implementation of the new Access Disputes Resolution Rules**

It was reported that consultancy contracts were in place to provide the services of the Allocation Chair, Hearing Chairs (a pool of 7 individuals) and Industry Advisors (a pool of 8). Contract negotiations were continuing with one further selected individual for each of Hearing Chair and Industry Advisor roles.

An induction session had taken place for Chairs on 20 September and had been well received by the six able to attend. Brian Kogan from ORR had addressed the session and particularly exhorted Hearing Chairs to be legally rigorous in their conduct of dispute hearings and the writing of determinations.

One Timetabling Panel had been convened since introduction of the new Rules on 1 August, intending to deal with a number of dispute references. In the event, the issues had crystallised into two discrete matters, making it convenient for two separate determinations to be issued, one taking 9 Working Days and the other 16. A further Timetabling Panel had

been convened to consider two references regarding geographically separate engineering possessions which were related in their effects upon train service arrangements; in this case, the Hearing Chair had held a Directions Hearing to ensure that relevant parties were clear regarding the issues and also to address the legal concept of combining the discrete dispute references into one matter.

**26/9 VAT matters and formation of a Company limited by Guarantee ("CLG")**

No further activity had taken place during the summer holiday period and the transition to the new ADR Rules. The Committee asked that the Chair and the Secretary progress matters as practicable.

**26/10 HS1 Ltd Access dispute arrangements**

Discussions were progressing with HS1 Ltd regarding the contractual terms for the Committee to provide a service for hearing its Access disputes.

**26/11 Administrative resources**

With the benefit of growing experience in the operation of the new ADR Rules and in view of the workload likely to be associated with undertaking the HS1 activity and also the CLG initiative, the Committee decided that it should spend time at the next meeting giving consideration to the longer term requirements for administrative support and cover within the Secretariat. In the meantime, it was agreed that the Chair and the Secretary would decide how any short term resourcing requirements should be addressed as considered expedient.

**26/12 Promoting the new ADR Rules and the role of the Access Disputes Committee to the industry**

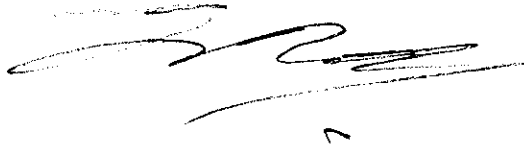
The Chair observed that the new Rules had brought about a fundamental change in the activity of the Committee and from contact with ATOC, he believed it desirable that there be more promotion within the industry of the role and business of the Committee. There was also some potential benefit to be had by reminding train operators of the identities of their elected representatives on the Committee and encouraging the businesses to make contact with them if interested in any Committee matters.

There was regular opportunity to have a short update item included on the agenda of ATOC Council meetings and the same material could be distributed to a wider industry audience within the ATOC weekly update document; it was understood that this document was received by freight operators as well as the passenger businesses. The Committee agreed that the initiative would be worthwhile and asked that the Chair and the Secretary take matters forward with ATOC, additionally placing the items on the Committee's website (where there was likelihood of reaching more of the Access practitioners).

It was noted that Network Rail had a process in place for advising relevant staff of changes associated with the Access disputes process and also had an on-going briefing procedure which dealt with more general matters.

**26/13 December 2010 meeting**

In view of the discussion item identified for the next meeting, it was decided that the meeting on 15 December 2010 would start at 15 00. This meeting would be followed by the customary festive refreshment, for which the Committee determined the guest list, asking the Secretary to make appropriate arrangements.

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15/12/10