
ACCESS DISPUTES COMMITTEE

MINUTES of MEETING No. 28 held in London on 17 March 2011

Present:

John Beer (First Capital Connect) (Committee Chair)
Bill Davidson (Network Rail)
Richard Dean (London & South Eastern Railway)
Nigel Oatway (DB Schenker Rail (UK))
Mike Price (First ScotRail)
Andy Wylie (Hull Trains)

In attendance:

Tony Skilton (Secretary)

Apologies:

Gabrielle Ormandy (Network Rail)

28/1 Approval of Minutes of Meeting no.27

The Minutes of Meeting no.27, held on 15 December 2010, were approved. The Chair signed a copy of the Minutes as a true record of the proceedings.

28/2 Matters arising from the Minutes of the previous Meeting

All matters arising from the Minutes were listed as agenda items except:-

27/8.3 Implementation of the new Access Disputes Resolution Rules – Contract changes

The industry is still waiting for action by ORR to amend Access contracts which prescribe the forum for the hearing of any dispute instead of providing for the parties to choose from the range offered in the new ADR Rules. The Secretary reported that in a number of recent matters, parties had pursued the "Change of Forum" process with ORR in order to have disputes heard by an Access Dispute Adjudication and this, along with delays in finalising the necessary Procedure Agreements, was resulting in lengthy lead times to the hearing of the cases concerned.

27/8.4 Implementation of the new Access Disputes Resolution Rules – Appointment of Assistant Secretary

The Committee Chair and Secretary continue to seek a suitably knowledgeable person to perform the role of Assistant Secretary.

27/10 Annual Report for 2010

No feedback had been received regarding the content of the Annual Report for 2010 except that it had been found of interest within ATOC.

28/3 Matters determined in correspondence

No matters had been determined in correspondence since Meeting no. 27.

28/4 HS1 Ltd Access dispute arrangements

The Secretary reported that arrangements had been implemented by which the Committee would provide a service for the hearing of Access disputes on the High Speed 1 route with effect from 1 January 2011.

28/5 Position on references

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

28/6 Update on the website

The Secretary reported that, as previously discussed, some restructuring of the website had been undertaken to accommodate the HS1 route material and attention had also been given to the general areas of guidance; the website was up to date as at 11 March 2011.

It was anticipated that the task of annotating the previous Network Code Part D material to the new Part D (issued 1 October 2010) would be completed soon.

The Secretary reported that following discussion at the previous meeting, some initial exploration had been made of how the appearance and operation of the website might be updated whilst avoiding significant outlay. The Committee noted that recent experience of another industry body indicated that any updating project might take several months: in the interests of ensuring that any replacement site would be fully tested – involving parallel running – before implementation, the Committee thought that 1 April 2012 might be a suitable date for which to aim.

28/7 Internal check arrangements

Richard Dean tabled a report regarding internal check activity which he had carried out since the last meeting and this was noted.

It was agreed that Bill Davidson would undertake internal check until the next meeting.

28/8 Outturn for 2010/11, budget for 2011/12 and 2011/12 levy

The Committee noted a report setting out the final outturn projections against the current year budget and the final budget proposal for 2011/12, which was approved.

One Resolution Service Party had yet to pay its levy for the current year.

Levy charges for 2011/12 were discussed in the context of the arrangements set out in the new ADR Rules. The potential participation of Freight Customers in future Access disputes was particularly recognised; the Committee decided upon a nominal charge for 2011/12 and considered that its meeting in December 2011 should review any experience gained with these parties and establish a basis for charging their levies in future years with a view to securing fair contributions to the Committee's costs in a non-discriminatory way.

28/9 Committee and Pool membership for 2011/12

Recent elections had not changed the composition of the Committee for 2011/12.

The Committee noted changes taking effect within the membership of the Timetabling Pool.

28/10 VAT matters and formation of a Company limited by Guarantee (CLG")

Further exploration had taken place with professional advisors regarding the Committee's administrative arrangements following implementation of the new ADR Rules and it had been concluded that the only worthwhile step would be to pursue the formation of a CLG to act as an agent of the Committee to manage its property interests and to which the lease of the Committee's premises would be assigned, along with the associated rent deposit bond. The Committee agreed that this should now be the objective.

On the basis of previous discussions which had included consideration of draft constitution documents for the CLG – to be known as Access Disputes (GB) Limited, the Committee Chair and Committee Secretary were now pursuing the formation of the new company and it was expected that it would be incorporated by the end of the current month. As previously discussed, only individuals who were members of the Committee would be permitted to be members of the CLG and only Committee members would be permitted to become directors of the company (along with the Committee Secretary ex-officio).

The Committee noted the present position and authorised John Beer and Tony Skilton to take such action as was necessary to achieve the objective.

28/11 Promoting the ADR Rules and the role of the Committee

The Secretary reported that an approach had been received from a passenger operator for him to deliver a seminar aimed at improving knowledge of the procedures for progressing Access disputes. The Committee considered that such training interfaces with the relevant management teams in the operating companies would usefully be seen to provide added value for the levy contributions and supported wider involvement with the Resolution Service Parties if the initial event proved successful.

The Committee Chair now anticipated using the available channel of communication to ATOC for when the Committee has messages to impart and not as a matter of routine.



Chair

14th July 2011