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## **ACCESS DISPUTES COMMITTEE**

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### **MINUTES of MEETING No. 32** held in London on 22 March 2012

#### **Present:**

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

#### **In attendance:**

Tony Skilton (Secretary)  
Kathy Couldridge (Assistant Secretary)  
Robin Nelson (Freightliner Heavy Haul)

#### **Apologies for absence:**

Lindsay Durham (Freightliner Heavy Haul)  
Gabrielle Ormandy (Network Rail)

#### **32/1 Committee membership**

Robin Nelson was welcomed to the meeting as an observer preparatory to replacing Lindsay Durham as a Committee Member on 1 April.

The Secretary was asked to write to Lindsay expressing the Committee's appreciation of her contribution to its work and as a participant in the former Access Dispute Panels.

#### **32/2 Approval of Minutes of Meeting no.31**

The Minutes of Meeting no.31, held on 14 December 2011, were approved. The Chair signed a copy of the Minutes as a true record of the proceedings.

#### **32/3 Matters arising from the Minutes of the previous Meeting**

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

31/2 (previous 30/2, 29/2 and 28/2 Implementation of the new Access Disputes Resolution Rules – Contract changes

It was understood that ORR was continuing its progression of amendments to Access contracts to align with the choice of dispute resolution forums offered by the new (August 2010) Rules.

#### 31/6 Determination of dispute ADA07

A comprehensive response had very recently been provided by the Hearing Chair in relation to points put to the Committee by Network Rail regarding the determination of ADA07 and this now required careful consideration within the exercise of the Committee's governance responsibility for the management of the dispute resolution process. Rather than await discussion at the Committee's July 2012 meeting, the Secretary anticipated pursuing the matter with the Committee Members under the written decision procedure permitted by ADR Rule J12.

#### 31/9 Annual Report for 2011

The Annual Report had been issued in January; although limited in volume, response indicated that the Committee's financial stewardship was well received.

#### 31/10 Management of the Committee's property interests

The proposed amendments to the ADR Rules were to be considered by a meeting of the Class Representative Committee on 29 March. If adopted, the amended Rules would enable the Committee to progress formalisation of the intended agency agreement with Access Disputes Resolution (GB) Ltd and assignment of the office premises lease to the company.

### **32/4 Matters determined in correspondence**

Guidance to the Allocation Chair and Hearing Chairs had been approved in correspondence since Meeting no. 31. One Timetabling Dispute hearing had taken place since and time within the drafting process had permitted allowing the Dispute Parties sight of the draft determination; no suggestions were received regarding possible adjustments to the text.

### **32/5 Position on references**

The Committee noted a report from the Secretary setting out the current position regarding dispute references.

The Committee noted that a timetabling dispute lodged in July 2010 regarding the Rules of the Plan for 2011 was still waiting resolution and felt that such procrastination could serve to bring the dispute resolution process into disrepute. The Secretary explained that the operator concerned was not pressing for a Panel hearing as progress was being made in discussions with Network Rail, albeit at slow pace. Noting that the issues did not appear manifest in any ongoing Timetable Planning Rules disputes for subsequent years, the Committee asked the Secretary to make the operator aware of its concern.

### **32/6 Update on the website**

The Secretary reported that the website was up to date subject to the active considerations regarding the determination of dispute ADA07.

### **32/7 Internal check arrangements**

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

The report contained three recommendations which the Committee recognised as being sensible and practical, all covering the administrative process for settlement of disbursements. The Secretary undertook to implement the recommendations in early course.

It was agreed that John Beer would undertake internal check until the next meeting.

### **32/8 Outturn for 2011/12 and budget and levy for 2012/13**

The Committee noted a report setting out the final outturn projections against the current year budget and the final budget proposal for 2012/13, which was approved after agreement of minor adjustments reflecting pricing changes which had occurred since the preliminary budget discussion on 14 December 2011. In view of the surplus expected to be available out of the 2011/12 income, the Committee was pleased to be able to realise its previously declared aspiration to deliver a reduction of some 25% in the overall 2012/13 levy demand upon Resolution Service Parties.

Three Resolution Service Parties had yet to pay their levy for the current Year; two had been invoiced relatively recently but one – West Coast Railway Co Ltd – had been invoiced at the commencement of the Year. The Committee noted the authority in ADR Rule J47 for an action to be brought against a Resolution Service Party in pursuit of payment and asked the Secretary to follow this course in the event of the combined sum covering the 2011/12 and 2012/13 levies along with interest not being paid within 30 days of the 2012/13 levy being invoiced.

The levy charges for 2012/13 were discussed in the context of the arrangements set out in the ADR Rules and, together with other funding aspects, determined.

### **32/9 Management of funds**

At its meeting on 14 December 2011, the Committee had decided that it would be appropriate to introduce a dual signatory arrangement to improve control of such proportion of held funds that was not reasonably required to meet immediate expenditures.

The Secretary had now explored what arrangements might be available, having regard for the desired levels of practicality and convenience. After considering the research undertaken, the Committee RESOLVED that an Instant Access Deposit account be opened with The Loughborough Building Society and that Nigel Oatway, John Beer, Gabrielle Ormandy and Tony Skilton be the named signatories to the account, with withdrawals to be permitted upon the signature of any two of the named signatories.

The Committee noted “Key Product Information” and the current “General Terms and Conditions” relating to the proposed account.

### 32/10 Appointments

The Committee recognised that the initial appointments to the roles of Allocation Chair, Hearing Chair and Industry Advisor were made in connection with the implementation of the revised ADR Rules in August 2010, with the successful individuals being appointed on 2 year consultancy contracts. In order to ensure adequacy and continuity of resources going forward, the Committee decided that invitations should be extended to each of those individuals to accept re-appointment for a further 2 years at the end of his/her current contract period, viz:

Allocation Chair: Professor Richard Butler;

Hearing Chairs: Suzanne Lloyd Holt, Tony Askham, Peter Barber, Clive Fletcher-Wood, John Hewitt, Andrew Long and Stephen Murfitt;

Industry Advisors: Andrew Cope, Christopher Geldard, Robert Howes, Mark Leving, Bill McGregor, Ian Mylroi, Michael Robson, Martin Shrubsole, Niel Wilson, Andy Woodcock and Richard Woosnam.

Additionally, the Committee agreed to invite Kathy Couldridge to accept re-appointment as Assistant Secretary for 2 years at the conclusion of her current contract period.

The Committee Chair and the Secretary were authorised together to determine the terms of the new contracts.

With each Hearing Chair having now chaired at least one hearing, had sight of the determinations produced by colleagues and been provided with Guidance issued by the Committee, it was agreed that a suitably structured development session could now usefully review the experience of operating the new ADR Rules (potential topics being made evident in the report from the Allocation Chair to the 14 December 2011 meeting of the Committee) whilst also enabling discussion of the implications of recent changes to the Network Code. The Secretary was asked to arrange accordingly, with the structure of the session to be approved by the Committee Chair.

A handwritten signature in black ink, appearing to be 'J. Long', with a long horizontal line extending from the end.

12th July 2012