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## **ACCESS DISPUTES COMMITTEE**

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### **MINUTES of MEETING No. 33** held in London on 12 July 2012

#### **Present:**

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

#### **In attendance:**

Tony Skilton (Secretary)

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

Mike Price (First ScotRail)

#### **33/1 Approval of Minutes of Meeting no.32**

The Minutes of Meeting no.32, held on 22 March 2012, were approved. The Chair signed a copy of the Minutes as a true record of the proceedings.

#### **33/2 Matters arising from the Minutes of the previous Meeting**

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

##### 32/3 (previous 31/2, 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.

##### 32/3 (previous 31/10) Management of the Committee's property interests

Amended Access Disputes Resolution Rules, enabling the Committee to now progress formalisation of the intended agency agreement with Access Disputes Resolution (GB) Ltd and assignment of the office premises lease to the company, had been issued on 29 June 2012.

### 32/9 Management of funds

In the interests of convenience, the Secretary was intending to arrange for the certification of identity documents of intended signatories to the new building society account to be carried out when all concerned would be gathered at the Committee's December 2012 meeting.

### 32/10 Appointments

The Secretary reported that 2 year re-appointment terms had been agreed with the existing holders of the roles of Allocation Chair, Hearing Chair and Assistant Secretary, whilst progression of re-appointment of all the existing Industry Advisors was well in hand.

A development session had been held for the contracted Chairs on 16 May and was attended by the Allocation Chair and all the Hearing Chairs. The Committee Chair and Secretary were present throughout; it was pleasing that ORR representatives had joined for part of the proceedings and some of the Committee members had also managed to drop in. Feedback from Hearing Chairs indicated that the session had been found of use in developing their knowledge applicable to Access issues. Discussion had identified legal considerations associated with the application of the recently amended Decision Criteria and these had been noted for reflection at ORR. It had subsequently emerged that Network Rail was arranging an industry workshop for 11 September to discuss the application of the Decision Criteria: the Committee was agreeable to the Secretary attending, perhaps accompanied by some of the Chairs, in order to share points from the May session.

### **33/3 Matters determined in correspondence**

Following discussion at the meeting on 22 March 2012 (Min. 32/3), Committee members had agreed in correspondence regarding how matters should be finalised with Network Rail in respect of points raised in relation to the determination of dispute ADA07.

### **33/4 Financial matters**

#### 33/4.1 Accounts for 2011/12

The auditors had indicated satisfaction with the accounts for 2011/12 and the Committee accordingly gave approval to the Chairman formally signing the Income & Expenditure Statement. The Balance Sheet as at 31 March 2012 was also approved.

It was noted that comment within the auditors' report referred to a Resolution Service Party and its turnover as used to calculate levy payable for 2011/12. The Committee considered that such identifying information should be redacted in the event of the report being released in accordance with ADR Rule J57.

#### 33/4.2 Current financial position

The Committee noted report from the Secretary regarding the current financial position. Two 2011/12 levy payments remained outstanding (involving a total sum of £170) and five Resolution Service Parties were yet to pay their levy for 2012/13, the combined total being £21,110. The financial position was, however, satisfactory for the present point in the Year.

### **33/5 Internal check arrangements**

John Beer reported verbally that on 19 June he had carried out internal check upon processes and documentation relating to contracts held by the Committee and miscellaneous cash payments, with no matters emerging for concern; a written report had been delayed by pressures of work but would be produced for the record.

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

### **33/6 Position on references**

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

As requested by the previous meeting, the Secretary had written to the operator concerned regarding a timetabling dispute lodged in July 2010 which was still waiting resolution and had been informed that fresh impetus had been injected into discussions with Network Rail and it was hoped that an outcome would be achieved imminently.

### **33/7 Update on the website**

The Secretary reported that the website was up to date as at 29 June; some updating material was about to be uploaded and the Directory content then needed to be reviewed to recognise recently issued amendments to the Network Code and the ADR Rules.

### **33/8 Management of the Committee's property interests**

The meeting was reminded that the lease of the Committee's leasehold premises at Floor 8, 1 Eversholt Street, Camden, London NW1 2DN (the "Premises") was currently held by Tony Skilton as the Committee's nominee; and that it was proposed that that lease (the "Lease") (and the benefit of the associated rent deposit) be assigned to Access Disputes Resolution (GB) Limited (the "Company") to be held by it as the Committee's nominee and managing agent pursuant to a Property Management Agreement expressed to be made between the Committee (1) and the Company (2) (the "Property Management Agreement").

Consideration of the Property Management Agreement had been deferred by the meeting of the Committee on 14 July 2011 to enable the Secretary to obtain clarification regarding certain aspects of the drafting, in particular the following points:

- (a) it was required to be executed by every Committee Member in order to ensure that it was binding on the Committee (as an unincorporated association);
- (b) each current Committee Member was required to become a member of the Company; and
- (c) each new Committee Member would be required to become a member of the Company and to agree to be bound by the provisions of the Property Management Agreement and by all contracts entered into by the Company as agent for the Committee prior to the date of his admission.

A slightly revised draft of the Property Management Agreement was produced to the meeting.

It was noted that the provisions of the Property Management Agreement were consistent with the Access Dispute Resolution Rules, as recently amended, since under the Rules, each Committee Member was required to be a member of the Company; and to agree to be bound by the provisions of agreements and arrangements made prior to the date of his admission pursuant to which the Company acts as agent and/or nominee of the Committee and of all contracts entered into by the Company prior to his date of admission pursuant to those agreements and arrangements.

In discussion, it was identified that the previously suggested insertion of the word "negligent" after the word "dishonest" in clause 7.2(b) had not been made in the revised draft of the Property Management Agreement; the Secretary was asked to clarify with the Committee's solicitors whether there was some legal reason for the omission. It was agreed that the decision whether to make the insertion should then be progressed in correspondence as permitted by ADR Rule J12.

The Secretary reported that he had been advised by the Committee's solicitors that, since the coming into force of the relevant provisions of the Companies Act 2006, market practice had moved to favour the inclusion in Articles of Association of provisions permitting potential conflict situations that would otherwise have to be avoided or authorised. It was accordingly proposed that the Company's Articles be amended to include a provision permitting a director to have a conflict situation by reason of being a Committee Member or the Committee Secretary. This would avoid the necessity of authorising such a conflict situation on an individual basis.

**IT WAS RESOLVED** that:

- (a) subject to a decision regarding minor amendment of clause 7.2(b), the arrangements and terms set out in the Property Management Agreement be approved;
- (b) Tony Skilton be directed to execute and deliver such lease assignment, deposit assignment and licence to assign in relation to the Premises which he, in his absolute discretion, considers necessary to facilitate the establishment of the Company as the Committee's nominee and managing agent in relation to the Premises;
- (c) each Committee Member be requested:
  - (i) to execute the Property Management Agreement; and
  - (ii) if not already a member, to apply to be admitted as a member of the Company;
- (d) each of the Committee Chair and the Committee Secretary be authorised to do, or procure the doing, of any act or deed, or to execute or procure the execution of any documents on behalf of the Committee which he, in his absolute discretion, considers to be necessary or desirable in connection with:-
  - (i) the arrangements provided for in any lease assignment, deposit assignment or licence to assign in relation to the Premises; and
  - (ii) the arrangements provided for in the Property Management Agreement, including (without limitation) transfer of funds to the Company to enable it to discharge liabilities in connection with the Premises on behalf of the Committee;

- (e) the Committee Secretary be authorised to discharge, or to authorise the discharge of, all financial obligations of the Company incurred by the Company as specified in clause 9 of the Property Management Agreement; and
- (f) Tony Skilton be authorised to agree amendments to the Company's Articles of Association to include a provision permitting a director to have a conflict situation by reason of being a Committee Member or the Committee Secretary.

**33/9 Election of Committee Chair**

ADR Rule J19 required election of a Committee Chair at the first meeting after 1 April in each year. The members present decided unanimously to elect John Beer as Committee Chair for the coming year.



Committee Chair

12 Dec. 2012