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## **ACCESS DISPUTES COMMITTEE**

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### **MINUTES of MEETING No. 37** held in London on 12 December 2013

#### **Present:**

John Beer (First Capital Connect) (Committee Chair)  
John Czyrko (First Greater Western)  
Richard Dean (London & South Eastern Railway)  
Robin Nelson (Freightliner Heavy Haul)  
Nigel Oatway (DB Schenker Rail (UK))  
Andy Wylie (Hull Trains)

#### **In attendance:**

Professor Richard Butler (Allocation Chair)  
Tony Skilton (Secretary)  
Kathy Couldridge (Assistant Secretary)

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

Bill Davidson (Network Rail)  
Paul Thomas (Network Rail)

#### **37/1 Committee membership**

It was noted that Network Rail had appointed Paul Thomas to the Committee, replacing Gavin Panter.

#### **37/2 Approval of Minutes of Meeting no.36**

The Minutes of Meeting no.36, held on 25 July 2013, were approved. The Chair signed a copy of the Minutes as a true record of the proceedings.

#### **37/3 Matters arising from the Minutes of the previous Meeting**

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

##### 36/2 (previous 35/2, 34/3, 33/2 and 32/9) Management of funds

The Secretary reported whilst awaiting convenient opportunity for formal certification of signatories' identification documents to enable opening of the intended account with The Loughborough Building Society, access to the product had been withdrawn. The Secretary was asked to explore the availability of suitable alternative accounts.

### 36/2 (previous 35/2 and 34/7) Dispute resolution process and associated matters

A seminar had been held with the Hearing Chairs on 3 October 2013 to share the learning arising out of the handling of recent dispute cases. ORR representation had been greatly appreciated.

### 36/2 (previous 35/8) Office lease

Assignment of the lease and rent deposit bond to Access Disputes Resolution (GB) Ltd (the "Company") had been effected on 26 July 2013, whereupon the Company had commenced trading. The Committee was reminded of its entitlement to appoint further directors to the Company.

### 36/9 Timetable development process

The Committee had deferred its deliberations on aspects surrounding Access Rights in the determination of disputes TTP493-495 pending the outcome of a similar case (TTP610) in order to identify any commonality as regards process issues. In the event, TTP610 had been settled between the parties and the hearing arrangements had been stood down. A Committee meeting specially arranged for September to further explore issues arising from TTP493-495 with senior Network Rail practitioners in attendance had not been quorate but practical issues relating to timetable development had nevertheless been discussed and accepted by Network Rail as warranting attention within the organisation.

### 36/10 Proposed abolition of the Rail Industry Dispute Resolution Committee ("RIDRC")

There was no progress to report regarding this matter.

## **37/4 Matters determined in correspondence**

No matters had been determined in correspondence since Meeting no. 36.

## **37/5 Position on references**

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

Regarding previous Minutes 35/4 and 36/6 concerning Timetabling Dispute TTP371 and subsequent related dispute references, the Committee was advised that progress being made in discussions between the operators and Network Rail continued to be monitored by the Hearing Chair and it was the intention that a decision would be taken very soon as to the requirement for a Timetabling Panel hearing.

Dispute ADP48, concerning the interpretation of "repair" and "maintenance" in relation to Retail Telecomms at Franchised Stations, had been submitted for hearing by the Access Dispute Panel in December 2009 but - despite preliminary case management activity - had not been heard before the Panel was disbanded in 2010. The Committee understood that the issue was in constructive dialogue between the Dispute Parties with a view to settlement; they recognised that they would otherwise need to agree the way forward under the revised ADR Rules.



### **37/6 Update on the website**

The Secretary reported that the website (including the Directory) was up to date.

### **37/7 Internal check arrangements**

No internal check activity had taken place since the last meeting due to the nominated member, Gavin Panter, leaving the Committee.

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

### **37/8 Outturn for 2013/14 and preliminary budget for 2014/15**

The Committee noted a report setting out the outturn projections against the current year budget; it anticipated that income would comfortably exceed expenditure. Only one Resolution Service Party had yet to pay its 2013/14 levy and that Party's 2012/13 levy was also outstanding.

To facilitate settlement of financial arrangements in connection with the anticipated abolition of RIDRC during the coming year, the Committee authorised use of surplus for buying out RIDRC's interest in the rent deposit bond associated with the office lease.

In considering the preliminary budget for 2014/15, the Committee considered as a principle that existing reserves together with surplus expected to be available out of 2013/14 income should enable the 2014/15 finances to be constructed to produce the same overall levy requirement as for 2013/14. The view was taken, however, that the contributions requested for sharing of the meeting facilities should be uplifted to reflect increased costs of accommodation overheads.

### **37/9 Review of dispute resolution process**

ADR Rule J3(h) requires the Committee to satisfy itself that the Principles (as set out in Rules A5 to A10) are being observed in the way in which disputes are being managed and determined.

Various relevant issues had been discussed at the seminar held with the Hearing Chairs on 3 October 2013. Based on those discussions and material which he had seen during the course of the past year, Prof Butler was content to advise from a professional perspective that the Principles were being observed. The Committee noted this advice.

### **37/10 Reasons for determinations in Timetabling Disputes**

During discussion at the seminar held with Hearing Chairs on 3 October 2013 there was feeling that some form of guidance might usefully be provided by the Committee to the Hearing Chairs regarding what might constitute a "reasoned determination" in the context of ADR Rule H52.

Prof Butler had given thought to the content to recommend for a potential guidance note but had concluded that such a device would not address the real issue because, as legal professionals, Hearing Chairs would know what needs to go into a fully reasoned determination: the essential requirement with Timetabling Disputes was seen as to establish appreciation of what a "just reasoned enough" determination should look like, mindful of the

timescale within which determinations are expected to be produced. Such appreciation could not realistically be delivered through issue of a set of guidelines but through the development of a collegiate approach by the Hearing Chairs as a body. A way forward was proposed.

It was recognised that there is a wealth of tribunal experience amongst the current Hearing Chairs and it would be sensible to harness it. The Committee gave approval to initiating a workstream aimed at reaching consensus among the Hearing Chairs as to what constitutes an acceptable level of reasoning in a TTP determination; once a view has been developed which appears satisfactory to the Committee members as representatives of the recipients of TTP outputs, liaison with ORR would be appropriate to check that the appellate body is content with the general approach.

### **37/11 Annual Report for 2013**

Subject to any appropriate adjustments to reflect discussions at this meeting and factual changes arising in the remainder of the month, the Committee approved the draft for the 2013 Annual Report for issue early in January 2013.

### **37/12 Committee and Timetabling Pool membership**

It was noted that as the result of recent elections, Richard Dean would be replaced as a member of the Committee by Dean Warner of Abellio Greater Anglia with effect from 1 April 2014. It was also noted that changes would take effect within the membership of the Timetabling Pool and that a casual vacancy would arise; the Secretary was encouraging early attention to the matter in order to avoid entering the summer period with a depleted Timetabling Pool.

### **37/13 Meetings in 2014**

The Committee agreed the schedule of routine business meetings to be held during 2014.

A handwritten signature in blue ink, appearing to be 'J. Dean', written over a horizontal line.

20/3/14