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## ***ACCESS DISPUTES COMMITTEE***

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### **MINUTES of MEETING No. 50** held in London on 21 September 2018

#### **Present:**

Nigel Oatway (DB Cargo (UK)) (Committee Chair)  
Raj Patel (Govia Thameslink Railway)  
Dean Warner (Abellio East Anglia)  
James Carter (West Midlands Trains)  
Andy Wylie (Hull Trains)  
Greg March (Colas Rail) - by conference telephone

#### **In attendance:**

Tony Skilton (Secretary)

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

Peter Craig (Network Rail)  
Richard Parsons (Network Rail)

It was noted that the meeting was quorate. James Carter and Greg March were welcomed to their first meeting since being elected, replacing Helen Cavanagh and Ian Kapur.

#### **50/1 Approval of Minutes of Meeting no.49**

The Minutes of Meeting no.49, held on 22 March 2018, were approved. The Chair signed a copy of the Minutes as a true record of the proceedings.

#### **50/2 Matters arising from the Minutes of the previous Meeting**

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

##### **49/2 Levy charging arrangements**

A review of the charging rules remained to be undertaken as it would be informed by the results of the 2018/19 calculations, which had been delayed by the Railway Safety Levy data being collated later in the Year by ORR.

##### **49/4 Annual Report for 2017**

The Annual Report had been issued on 27 April 2018.

##### **49/7 Checking of bank statements**

Annotation of payment record numbers against items on the bank current account statements had commenced with the new Financial Year.

#### 49/10 Appointments

The Secretary reported on progress with renewal of consultancy contracts for Chairs and Industry Advisors; some enquiries for appointment to the role of Hearing Chair were also now on file for possible interviews.

Advertisements had been published for the role of Committee Secretary, with a closing date of the end of October.

A response was awaited from Network Rail regarding the suggestion that the ADR Rules might usefully be amended to increase its number of members of the Timetabling Pool to, perhaps, six.

#### **50/3 Matters determined in correspondence**

It was noted that a Data Protection Policy had been approved in correspondence, to apply upon implementation of the General Data Protection Regulation on 25 May 2018.

#### **50/4 Meeting held with Chairs on 22 May 2018**

It was generally considered that an excellent gathering had been held on 22 May and it had been greatly appreciated by the Chairs that Juliet Lazarus, ORR's Director of Legal and Competition, had been available to participate. Particular areas of concern had surrounded ADA appeals being settled by "consent awards" at arbitration instead of a fully argued appeal being handed down; tactics being applied by defendants to take non-Timetabling disputes direct to arbitration, seemingly to discourage claimants from pressing their cases due to the associated time, expense and Costs risk; and issues which had emerged concerning the powers of a Timetabling Panel under Network Code Condition D5.3. It had been concluded that possible remedies for these perceived problems should be considered, perhaps inviting the Chairs to contribute to the drafting of any amendments to the Network Code or the ADR Rules.

The arrangements for appeals against Guidance by the Delay Attribution Board had also been discussed by the Chairs and considered worthy of attention. Such appeals tended to require legal consideration of the terms of Schedule 8 of the Track Access Contracts, which the Delay Attribution Board was not constituted to undertake as the first stage of a dispute resolution process. In the light of further experience since May, the Committee considered that a joint discussion between members of the Committee and the Delay Attribution Board under "Chatham House rules", with recently involved Chairs in attendance, might enable roles and responsibilities to be addressed for the future.

#### **50/5 Position on references**

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

32 Timetabling Dispute references relating to Network Rail Variations with insufficient notice to satisfy the "T-14" requirement had been considered at a TTP directions hearing on 27 April 2018, where the Hearing Chair had concluded that the issues raised were not necessarily within the jurisdiction of a Timetabling Panel; the references had accordingly been referred for allocation. The Secretary reported that the allocation hearing opened on 11 June and currently stood adjourned whilst the parties sought to clarify the issues between them and hopefully agree the way forward.

## **50/6 Recommendations arising from determinations**

The Committee noted a paper from the Secretary summarising recommendations contained in the determinations of Access Dispute Adjudications and Timetabling Panels over the past two years. Administrative items capable of attention by the Secretary had been addressed but it now remained for a detailed Working Group initiative to be put in hand to draft proposals for amending the Network Code; this had so far been precluded by a high volume of dispute-related work of greater priority throughout the current year.

## **50/7 Update on the website**

The Secretary reported that the website listing of disputes was up to date. The Directory was also up to date.

Suggestion was made that the website might more clearly indicate that the Secretary does not have a role in making the arrangements for mediations or arbitrations held pursuant to the RIDR Rules. The Secretary agreed to suitably amend the Home Page.

## **50/8 Internal check arrangements**

Andy Wylie had tabled a report regarding internal check activity which he had carried out since the 22 March 2018 meeting and this was noted.

The report noted that the role of Secretary had unlimited delegated financial authority for day to day functions, subject only to budgetary guidance, and recommended that whilst a full Scheme of Delegation would be onerous, an annual Letter of Delegation should be introduced and issued to the Secretary. It was suggested that such a Letter would specify the financial matters upon which the Secretary should consult with and obtain the agreement of the Committee Chair and also those matters where there should be consultation with and agreement obtained from the Committee. It was agreed that the Secretary and Committee Chair should table a draft Letter to the next meeting for its consideration.

It was agreed that Raj Patel would undertake internal check until the next meeting.

## **50/9 Financial matters**

### **50/9.1 Accounts for 2017/18**

The auditors, Mazars LLP, had indicated satisfaction with the accounts for 2017/18 and the Committee accordingly gave approval to the Chair formally signing the Income & Expenditure Statement. The Balance Sheet as at 31 March 2018 was also approved and signed.

In their report, Mazars had commented upon their need to perform additional work in order to deal with non-balancing items in the financial information provide for their fieldwork, noting that this had been the situation in previous years. Andy Wylie informed the meeting that he had taken the opportunity to review the treatment of financial data in the management accounts during a recent internal check visit and he was satisfied that the Committee's established accounting processes were suitable for purpose.

Mazars had additionally recommended that monthly controls should be implemented over the production of the financial information to improve the material provided to the accountants at each Year End. Following discussion, the meeting concluded that monthly

attention would be overly onerous and that there was no issue for the Committee provided that management accounting was maintained at the present standard.

#### 50/9.2 Current financial position

The Committee noted a report from the Secretary regarding the financial position as at 14 September 2018 and the Secretary reported verbally regarding subsequent movements.

Invoicing of the levy for 2018/19 had been delayed due to the ORR's arrangements for compiling Rail Safety Levy information having been put back in the Year (an arrangement which would need to be taken into account for cashflow planning in future Years). 38 Resolution Service Parties were yet to pay their levy for the Year. However, the financial position was satisfactory for the present point in the Financial Year.

#### 50/9.3 CAHA Registrar's Accounts for 2017/18

As required by paragraph 7 of Schedule 2 to the Claims Allocation and Handling Agreement, the Registrar had provided a certificate from its auditors as to the costs and expenses incurred by the Registrar during 2017/18 and properly recoverable through the levy arrangements, together with a statement regarding the expenditures. These documents the Committee noted.

### **50/10 Amendment of Claims Allocation and Handling Agreement**

The Committee had previously been advised that the CAHA Registrar was examining its data protection position and the terms of the Claims Handling and Allocation Agreement in the context of the General Data Protection Regulation. The Secretary reported that it had become necessary for the Registrar to undertake formal consultation regarding proposed consequential changes to the CAHA Agreement and industry parties had then taken the opportunity to raise other matters for consideration at this time. Accordingly, no formal proposal for amending the Agreement was yet before the Committee for approval.

### **50/11 Code of Practice for disputes relating to Confirmed Period Possession Plans**

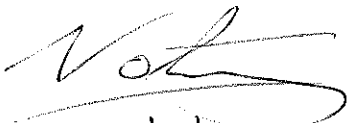
Feedback was awaited regarding trial use of the draft Code of Practice. The Committee recognised that the difficult industry situation applying to operation of Part D of the Network Code in recent months would in all likelihood have prevented meaningful trial of the arrangements.

### **50/12 Membership of the Timetabling Pool**

The Committee noted that a casual vacancy had arisen in Non-Passenger Class Band 2 early in the current industry year and this had been filled through a by-election.

### **50/13 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 Nigel Oatway as Committee Chair for the coming year.

  
13/12/18