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## **ACCESS DISPUTES COMMITTEE**

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### **MINUTES of MEETING No. 53** held in London on 1 August 2019

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

#### **In attendance:**

Tony Skilton (Secretary)  
Tamzin Cloke (Secretary designate)

#### **Not present:**

Greg March (Rail Operations Group)

It was noted that the meeting was quorate.

#### **53/1 Introductions and personnel changes**

Tamzin Cloke was introduced to the Committee as Secretary designate. The Chair, on behalf of the Committee, thanked Tony Skilton for his dedicated and excellent service over the past twelve years as Secretary. The handover arrangements between Secretary and Secretary designate were discussed.

Since Meeting no. 51 two Hearing Chairs (Suzanne Lloyd Holt and Stephen Murfitt) had retired. The Committee asked the Secretary to write and thank them both for their service.

The Committee decided that open recruitment for at least two new Hearing Chairs should be put in hand, subject to the new Secretary's training first being completed.

#### **53/2 Matters determined in correspondence**

As Meeting no. 52 had not been quorate, the following matters were determined in correspondence:

- 1) The Minutes of Meeting no. 51 were approved;
- 2) The Committee authorised the Committee Chair to seek to negotiate renewal of the current Secretary's contract on a short term basis;
- 3) The Matters determined in correspondence since Meeting no. 51 were noted;
- 4) The outcome of the internal check was noted, with Peter Craig and Nigel Oatway nominated to conduct the next internal check in advance of Meeting no. 53;

- 5) The final outturn for 2018/19 was noted and the Budget and Levy Proposals for 2019/20 were approved;
- 6) The CAHA Registrar's budget for 2019/20 was approved;
- 7) Tamzin Cloke was appointed to become Committee Secretary, with the Committee Chair authorised to negotiate the terms of the consultancy contract to be offered.

### **53/3 Matters arising from the Minutes of the previous Meeting**

As Meeting no. 52 was not quorate there were no Minutes for Matters to arise from. All Matters arising from Meeting no. 51 that had not been dealt with in correspondence were included as Matters for Meeting no. 53.

### **53/4 Meeting held with Chairs**

The annual meeting of available Committee Members with the Chairs had taken place on 17 May 2019 and, as customary, representation had been welcomed from ORR.

Matters discussed had included, in the context of Condition D5.3.1, the need for clarification regarding the ability of a Timetable Panel to interpret contractual arrangements between operators and Network Rail. Some preliminary drafting had been undertaken and the discussion informed further development.

Other items of discussion included: the enforceability of an ADA determination, which could lead to circularity within the resolution process; that additional guidance should be provided to parties relating to content of Notices of Dispute, specifically the summary of issues for dispute [since revised].

The Chairs welcomed: proposals under progression for the default forum in non-Timetabling disputes to become an ADA, instead of arbitration; that Delay Attribution disputes regarding interpretation of Schedule 8 of the Track Access Contracts, rather than attribution principles, should not be considered by the Delay Attribution Board before an ADA; a current initiative for a dedicated panel of Centre for Effective Dispute Resolution (CEDR) mediators for Access and other railway disputes. On the latter point, the Allocation Chair had expressed interest in helping with initial industry familiarisation of the mediators.

### **53/5 Position on references**

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

### **53/6 Recommendations arising from determinations**

The Committee noted a paper prepared by the Secretary following concern that recommendations arising from determinations were not being tracked for consideration by any part of the industry and agreed that this should become a standing agenda item, with a separate tracker to be created to monitor progress on a regular basis. The paper captured both recommendations from determinations (including ORR appeal decisions) and recommendations from other workstreams.

It was agreed that pursuit of the recommendations would be sponsored by individual Committee members and volunteers found.

Recommendations arising from TTP625 and others regarding hearing of Timetable Planning Rules disputes and concerns regarding the default forum in the event of disagreement over allocation were considered to have been appropriately pursued.

### **53/7 Internal check arrangements**

An internal check was conducted on 24 July 2019 by Nigel Oatway and Peter Craig, who reported that the outcome was satisfactory with no issues noted. They advised that recommendations adopted following the Committee Meeting on 22 March 2018 had made the internal check process more efficient.

The Committee noted this report and it was agreed that James Carter would undertake internal check in advance of the next meeting.

### **53/8 Financial matters**

#### **a) Approval of accounts for 2018/19**

These were approved.

#### **b) Financial position**

The current financial position of the Committee was noted.

Some levy charges for 2019/20 had yet to be received. It was noted that non-payment of levy charges could mean that a party is precluded from availing itself of the Committee's dispute resolution services.

#### **c) Banking arrangements**

In connection with the forthcoming change of Committee Secretary, it was necessary to amend the Committee's various banking signatories and bank mandates.

53.8(c)1 Regarding the accounts held with National Westminster Bank plc, it was resolved that:

- (a) Tamzin Cloke should become an Authorised Signatory with immediate effect and also an Authorised User of NatWest Digital banking and Direct banking (the "Service").
- (b) It was resolved that a banking relationship will be maintained with National Westminster Bank Plc (the "Bank") in accordance with this mandate and that:
  - the individuals identified as Authorised Signatories may, in accordance with the Signing Rules:
    - sign cheques and give instructions for Standing Orders, Direct Debits, electronic payments, banker's drafts and other payments on the accounts even if it causes an account to be overdrawn or exceed any limit;
    - sign, accept or endorse bills of exchange;
    - request and give counter-indemnities for the issue of letters of credit or Guarantees (including bonds, indemnities and undertakings).
  - Authorised Signatories identified in the Signing Rules for unlimited amounts may, in accordance with the Signing Rules:

- Sign agreements for electronic products, including payment systems, and appoint or remove administrators and operators of those electronic products. The Committee authorises the administrators and operators to exercise the powers detailed in the terms of each electronic product. These powers may be extensive and include the power to make payments and access information on behalf of the Committee, and in the case of administrators, the power to appoint and remove other administrators (with the same powers) and operators.
  - any Authorised Signatory may give other instructions or requests for information to the Bank in relation to the accounts; opening accounts with the same Signing Rules and Authorised Signatories; closing accounts; or other banking services or products;
  - the Bank may accept instructions that do not have an original written signature provided the Bank is satisfied that the instruction is genuine and subject to any other agreement the Bank may require for those instructions;
  - The mandate will continue until the Customer completes a new mandate/passes a new Authority advising the changes in authority on the account(s).
- (c) Tamzin Cloke (being an Authorised Signatory to the bank account with National Westminster Bank plc) is authorised to request and be issued with a Debit card and/or Debit card details (including replacement cards, card details and security details) for use in relation to the operation and the giving instructions in relation to the bank account.

Also, that:

the Signing Rules contained in the mandate provided to operate the bank account be supplemented (but not replaced) by the additional Card Transaction Authorisation Rules which will apply to the operation of the bank account using a Debit card or Debit card details. The current mandate to operate the bank account shall accordingly continue as supplemented and amended;

the Committee (the "Customer") agrees to be bound by the Debit card Terms contained in the Application Form and any amendments made to them from time to time. These terms apply in addition to the terms and conditions for the bank account, which shall not be prejudiced or affected by the Debit card Terms;

the Customer agrees that all transactions authorised by a duly authorised Debit card should be debited to the bank account and that the Customer accepts liability for any unarranged overdraft resulting from any such transactions;

Cardholders may use their Debit card to order cheque books and statements and to obtain details of the balance on an account; and

the Bank may continue to rely upon this Resolution until it is revoked in writing by a suitably authorised notice to the Bank.

- 53.8(c).2 Regarding the accounts held with National Westminster Bank plc, the Meeting noted the bank's Business Online and Telephone Banking Application form and authorised the Committee Chair and the Committee Secretary to make the Charity/Club/Society/Association/Trust (Unincorporated body)/Partnership Declaration set out in the Application form.

53.8(c)3 Regarding the two accounts held with Cambridge & Counties Bank Ltd, it was agreed that Tamzin Cloke should become an authorised signatory, replacing Tony Skilton.

It was noted that these accounts with Cambridge & Counties Bank are operated on a single signature basis, the other signatories currently being Nigel Oatway and Andy Wylie, also that the Committee had previously directed that as a management control over withdrawal of funds, the Secretary should not sign applications to make withdrawals from these accounts, disregard of this direction being a matter of contractual misconduct. The Committee decided that this direction should remain in place and be reflected in the Delegated Authority Letter to be issued to the new Secretary.

**d) CAHA Registrar's accounts for 2018/19**

These were noted.

**53/9 Update on the website**

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

The Secretary advised that a new version of the website was nearly ready to go live and a meeting had been arranged between the website developer and the Secretary designate for the following week. Once familiarisation with the updating procedure had been completed and the domain name had transferred to the ownership of the Committee, it was expected that the new site could go live. It was suggested that the developer should be kept on a retainer to assist with any problems or significant changes which might become necessary: the Committee authorised the Committee Chair to negotiate said retainer, which should include a Service Level Agreement regarding response timescales.

**53/10 Code of Practice for disputes relating to CPPPs**

The history of this item was discussed, including its suspension during the timetabling crisis in 2018. As timetabling processes were now more stable, the Committee agreed that it might now be suitable to trial the Code of Practice again, as when previously tested – albeit for only a short time – it had showed encouraging results. Those members of the Committee who had been part of the original trial agreed to do so again.

Accordingly, it was agreed that the Secretary would re-circulate the final proposed Code of Practice to the involved parties and that Richard Parsons would approach Network Rail's National Access Planning Manager with a view toward gaining her support for the new trial.

**53/11 Core Valley Lines**

The Committee considered and approved a proposal to delegate to the Committee Chair authority for the Committee to enter into an agreement for the provision of Access Dispute Resolution support for Amey Keolis Infrastructure Limited (AKIL) in respect of the Core Valley Lines in Wales, subject to being satisfied regarding ability to meet the resolution service delivery requirements of AKIL and agreement on the levy contribution.

**53/12 Mediation scheme**

The Committee reviewed an outline proposal for CEDR, of which the Committee is a member, to provide a pool of mediators who would train to specialise in railway matters; this was in the context noting that Access parties had become more willing of late to consider mediation as a way towards resolving their issues. Whilst industry members would enjoy discounted rates, the scheme would come at a small additional cost to the Committee. The scheme was endorsed for a year, to then be reviewed by the Committee.

#### **53/13 Levy charging arrangements**

The Committee reviewed a summary of the existing levy charging arrangements under Chapter J of the ADR Rules and concluded that no changes should be proposed to the industry at the present time.

#### **53/14 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.

*Nigel Oatway*  
12/12/19