
ACCESS DISPUTES COMMITTEE

Annual Report for 2010

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ACCESS DISPUTES COMMITTEE

REPORT FOR 2010

The Committee is pleased to issue its report for the calendar year 2010.

Communications

The Committee's report for 2010 follows the same simplified format as has been adopted for the past three years. In the absence of any adverse feedback regarding the recent reports, we again invite comments regarding the adequacy of content of this one.

Industry discussions which started in 2008 regarding the process for resolving Access disputes and the associated role of the Committee reached a conclusion early in 2010 when ORR approved new Access Dispute Resolution Rules and consequential amendments to the Network Code. The revised ADR Rules were introduced on 1 August 2010. Many people within and associated with the industry contributed their thoughts to the development of the new arrangements – for which, our thanks – and it is hoped that the outcome will be judged to be better fit for purpose.

The Committee's website (www.accessdisputesrail.org) is a ready source of reference whilst also containing downloadable templates for use in connection with dispute procedures. Under the new ADR Rules, the use of some of these templates is mandatory. The website is updated promptly following a change in any area of information.

Comments regarding the website and Committee matters in general will always be welcomed and may be passed to the Secretary, Tony Skilton (e-mail: sec.adc@btconnect.com, tel: 020 7554 0601). Alternatively, a channel of communication is available through the Committee members who have been elected or appointed on behalf of areas of the industry, currently:-

<u>Class/Band</u>	<u>Member</u>	<u>Company</u>	<u>Telephone</u>
Franchised Passenger Class, Band 1	Mike Price	First ScotRail	07880 503148
Franchised Passenger Class, Band 2	Richard Dean	Southeastern	020 7234 1288
Franchised Passenger Class, Band 3	John Beer	First Capital Connect	020 7427 2927
Non-Franchised Passenger Class	Andy Wylie	Hull Trains	07881 510021
Non-Passenger Class, Band 1	Nigel Oatway	DB Schenker	0870 140 7010
Non-Passenger Class, Band 2	Lindsay Durham	Freightliner	020 7200 3912
Network Rail	Bill Davidson	Network Rail	020 3356 9210
	Gabrielle Ormandy	Network Rail	020 3356 9278

Companies currently in Franchised Passenger Class, Band 1:- First ScotRail; First Greater Western; Northern Rail; West Coast Trains ("Virgin Trains")

Companies currently in Franchised Passenger Class, Band 2:- Arriva Trains Wales; East Coast Main Line Co; Stagecoach South Western Trains; London Eastern Railway ("NXEA"); Southern Railway; XC Trains; London & South Eastern Railway ("Southeastern")

Companies currently in Franchised Passenger Class, Band 3:- East Midlands Trains; First Capital Connect; LOROL; c2c Rail; London & Birmingham Railway ("London Midland"); Chiltern Railway Company; Merseyrail Electrics; First/Keolis TransPennine

Companies currently in Non-Franchised Passenger Class:- Eurostar International; Hull Trains; Heathrow Express; Grand Central Railway; Wrexham, Shropshire & Marylebone Railway; Rail Express Systems; West Coast Railway Company; North Yorkshire Moors Railway; DB Regio Tyne and Wear

Companies currently in Non-Passenger Class, Band 1:- DB Schenker Rail (UK); Freightliner Ltd

Companies currently in Non-Passenger Class, Band 2:- EWS International; GBRf; Direct Rail Services; Freightliner Heavy Haul; Babcock Rail; COLAS Rail; Amey Railways; Grant Rail; Carillion Rail (2004); Balfour Beatty Plant & Fleet Services

The new arrangements

ORR's approval of the new ADR Rules was subject to the Committee securing adequate resources; this requirement was fulfilled sufficiently to enable implementation on 1 August.

The Committee member role no longer includes participation in dispute hearings and has become solely a matter of governance and direction for the work of the dispute resolution service; there is not now an expectation of being an "Access practitioner" or similar. The changed role of Committee members now offers opportunity to gain experience in the governance of what is effectively a small business and this will perhaps encourage future nominations from a wider base within the industry.

The Committee members now elect the Committee Chair from amongst their number and the current Chair is John Beer. The former role of Disputes Chairman – which was ex-officio Committee Chairman – has disappeared and we have said farewell to Sir Anthony Holland, who held the position from 2002.

In view of the changes, Bryan Driver also ended his long association with the Access disputes process, having been appointed as Chairman of the Committee in 1996 and since 2002 being a frequent Chairman of Timetabling Panels. George Renwick also ended his role as a Panel Chairman (but, for the avoidance of doubt, he continues to be Chairman of the RIDR Committee).

The Committee extends its appreciation to these retiring Chairmen for their services over the years and also wishes to place on record its thanks to Tony Deighan (Eurostar), who ceased Committee membership in July, having been a member since 1998, and to Martin Shrubsole, who was a member of the Committee's Secretariat from the time of rail disaggregation and privatisation and whose most recent role as Clerk to the Panels has also come to an end.

The new role of Allocation Chair has been created to facilitate the decision of disputing parties regarding the route by which their particular dispute might most suitably be resolved. The Committee is delighted to have been able to appoint Professor Richard Butler to this role; Professor Butler is a solicitor, a Chartered Arbitrator, a commercial mediator and Visiting Professor of Dispute Resolution at Nottingham Law School.

Disputes heard by Timetabling Panels or by a new Access Dispute Adjudication ("ADA") are now determined by the legally qualified Hearing Chair appointed for the particular case; there is currently a pool of 7 Hearing Chairs (see the website). In the case of ADAs, the Hearing Chair is assisted in reaching a determination by independent Industry Advisors and the pool currently numbers 10 (see the website). The new ADR Rules did not change the arrangements for appointing a pool of Timetabling Panel members from within the industry because of the perceived requirement for current knowledge of timetabling matters.

Dispute references

The position regarding dispute references handled during 2010 can be summarised as follows:-

For an Access Disputes Panel

References on hand at 31.12.09	3
New references received in 2010	5
References withdrawn in 2010	3
Determinations issued in 2010	3
Pending at 31.07.10	2
Appeals submitted in 2010	0

For an Access Dispute Adjudication ("ADA")

New references received in 2010	4
References withdrawn in 2010	1
Determinations issued in 2010	0
Pending at 31.12.10	3
Appeals submitted in 2010	0

(All 3 pending ADA cases are waiting completion of "Change of Forum" formalities, arbitration being the resolution process specified in the relevant contracts)

For a Timetabling Panel

References on hand at 31.12.09	27	
New references received in 2010	70	
References withdrawn in 2010	60	
Determinations issued in 2010	5	(covering 8 dispute references)
Pending at 31.12.10	29	
Appeals submitted to ORR in 2010	1	(covering 2 dispute references; since withdrawn)

Details of all references received can be found on the Committee's website, together with any associated Panel determination and any ORR appeal decision.

For the purpose of clarifying precedent to be applied in any future similar situations, the Committee continues to await ORR's decision in respect of Network Rail's appeals against the Timetabling Panel's interim determination and final determination of references from 6 operators in relation to Network Rail's Final West Coast Route Modernisation decision document (NAUM-30): the Panel issued its determinations (TTP210) in May 2008 and ORR deferred hearing the appeals.

The timescales for notifying disputes are stringently prescribed so even where there is anticipation that an issue between parties will be resolved through discussions, it is important for the dispute to be registered with the Committee Secretary within time in order to protect the interests of the disputing party. The new ADR Rules require that a Notice of Dispute be served to initiate dispute proceedings and the template is on the website.

Channel Tunnel Rail Link

The Committee has agreed to provide dispute resolution services to HS1 Ltd in respect of Access disputes which might arise on the CTRL infrastructure.

Accommodation

The Committee has been in its new premises on floor 8 of 1 Eversholt Street for over a year and the improved environment continues to draw appreciative comments from visitors attending for hearings and meetings. Industry members are reminded that the new premises may be found to offer an acceptable and less costly alternative to booking meeting rooms in Central London – contact the Secretary (020 7554 0601) regarding facilities and availability.

Finance

Expenditure in the financial year to 31 March 2010 was £365,604 against a budget of £318,000 but it was not necessary to raise an additional levy as the shortfall was (as had been predicted) met by return of the rent deposit on the Central House premises. Expenditure in the year was higher than usual due to the enforced move of premises for which full costings were not available at the time of 2009/10 budget compilation.

The Committee's expenditure budget for 2010/11 called for an uplifted levy to cover the set-up costs of changes associated with the new ADR Rules and (as had been made clear during Stakeholder briefing) to ensure that the Committee holds sufficient funds to meet the potential fees of Chairs and Industry Advisors who are engaged for the revised hearing processes. The expenditure outturn is currently within the budget of £482,300. Expenditure in 2011/12 will be affected by various cost uplifts (including the rise in VAT) but the Committee's aspiration is to limit the overall increase in levy requirement to 4.8%, the July 2010 RPI figure.

No levy payments are outstanding for years prior to 2010/11. Only one company has yet to pay its levy for 2010/11, the amount involved being £1,002.

On behalf of the Committee



John Beer
Committee Chair

4 January 2011

