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## ***ACCESS DISPUTES COMMITTEE***

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### **Annual Report for 2011**

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"Outcomes to date will hopefully give Resolution Service Parties confidence that the new dispute resolution arrangements are working effectively."

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## **ACCESS DISPUTES COMMITTEE**

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### **REPORT FOR 2011**

Access Dispute Resolution Rule J3(g) requires the Committee to "monitor and report at least annually to the Resolution Service Parties upon the work of the Committee". The Committee is pleased to issue its report for the calendar year 2011.

#### **Communications**

The Committee's report for 2011 follows the format adopted for the past four years. In the absence of any adverse feedback regarding the recent reports, we again invite comments regarding the adequacy of content of this one.

The Committee's website ([www.accessdisputesrail.org](http://www.accessdisputesrail.org)) provides a ready source of reference material whilst also containing downloadable templates for use in connection with dispute procedures. Under the new ADR Rules which were introduced on 1 August 2010, 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](mailto: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; the current Committee members are listed at the back of this report along with details of the operators in the respective voting Classes/Bands.

At the request of a Resolution Service Party, a briefing session was delivered to enhance familiarity of relevant staff with the new ADR Rules. The Committee will be happy to receive similar requests (via the Secretary).

#### **Administration**

There have been no changes in Committee membership during 2011. The Committee members elect the Committee Chair from amongst their number and the current Chair is John Beer.

Committee membership no longer involves participation in dispute hearings and has become solely a matter of governance and direction for the work of the dispute resolution service; with knowledge as an "Access practitioner" no longer expected, this will perhaps enable future nominees for Committee membership to come from a wider base within the industry.

Having recognised the potential for increased dispute administration activity and the desirability of having effective cover for the Secretary, the Committee has appointed an Assistant Secretary – Mrs Kathy Couldridge.

The unincorporated status of the Committee complicates matters when it comes to leasing of premises. A Company Limited by Guarantee – Access Disputes Resolution (GB) Ltd – has this year been incorporated for the purpose of managing the Committee's property interests at 1 Eversholt Street as nominee and managing agent for the Committee and also to hold the Committee's interests in the associated Rent Deposit. Under the Company's Articles of Association, only members of the Committee may become members of the Company; only members of the Committee, along with the Committee Secretary ex officio, may be directors of the Company and the Committee Secretary is, ex officio, the Company Secretary. The necessary contractual arrangements remain to be finalised between the Committee and the Company before progressing matters with the landlord.

## **Dispute references - national network**

The position regarding dispute references handled in relation to the national network during 2011 can be summarised as follows:-

### **For a Timetabling Panel**

References on hand at 31.12.10	29	
New references received in 2011	60	
References withdrawn in 2011	56	
Hearings held in 2011	3	
Determinations issued in 2011	3	(covering 6 dispute references)
Determinations in drafting at 31.12.11	0	
Pending hearing at 31.12.11	27	
Appeals submitted to ORR in 2011	1	(covering 3 dispute references)

### **For an Access Dispute Adjudication ("ADA")**

References on hand at 31.12.10	3
New references received in 2011	10
References withdrawn in 2011	9
Hearings held in 2011	4
Determinations issued in 2011	4
Determinations in drafting at 31.12.11	0
Pending hearing at 31.12.11	0
Appeals submitted in 2011	1

Additionally, on 31 December 2010 there were 2 references on hand which had been submitted for hearing by the Access Dispute Panel but which had not been heard before the Panel was disbanded. One of these disputes has been settled during 2011 and the parties involved in the other are actively considering the way forward under the revised ADR Rules.

One allocation hearing took place during the year. No disputes have been submitted for attention in any other dispute resolution forum covered by the ADR Rules.

Details of all dispute references received can be found on the Committee's website, together with any associated Timetabling Panel or ADA determination and any ORR appeal decision. In accordance with the ADR Rules, Timetabling Panel determinations are also now issued direct to a nominated person in each operating company.

It is pleasing that the industry has made such good use of the dispute resolution services available since introduction of the new ADR Rules, with 4 of the new ("ADA") hearings having taken place (from a total of 14 references); and 6 Timetabling Panel ("TTP") determinations (covering 11 from a total of 76 references) having been made. The ADA process gives a cost effective alternative to arbitration, with all costs up to and including the first day of a hearing being covered by the parties' annual levy.

Of course, the act of referral often concentrates minds on resolution and the process of actually preparing to attend a hearing can also lead to a solution being found; hearing arrangements have been stood down on 13 occasions in 2011 due to late discussions between the parties achieving successful resolution.

It is particularly pleasing that in contrast with the high level of appeals under the old arrangements, only two determinations, one each of an ADA and a TTP, have been through an appeal process. The Committee believes that this demonstrates the rigour and accepted fairness of the determination process.

The Hearing Chair's determination for the one TTP case was fully upheld by ORR at appeal. ORR's appeal determination for the ADA case (concerning a change to freight access rights) helpfully clarified interpretation of the relevant area of Part J of the Network Code.

Outcomes to date should give Resolution Service Parties confidence that the new dispute resolution arrangements are working effectively. Some possible efficiency improvements have, however, already been identified through use of the new ADR Rules and these were indicated in the Committee's response to ORR's recent consultation on Part J of the Network Code. When responding to consultations, the Committee constrains its observations to matters concerned with the management of relevant Access dispute processes; in this vein, the Committee has also responded to ORR's consultation on Station Access Conditions.

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 the prescribed time in order to protect the interests of the disputing party. The ADR Rules require that a Notice of Dispute be served to initiate dispute proceedings and the template is on the Committee's website.

ADR Rule J3(h) requires the Committee to satisfy itself that the Principles (as set out in Rules A4 - A9) are being observed in the way in which disputes are being managed and determined. Having sought and considered the professional view of the Allocation Chair (Professor Richard Butler) in this regard, together with feedback received by Committee members and their own experiences under the new Rules, the Committee is suitably satisfied.

#### **Dispute references - (HS1)**

No disputes have been handled under the HS1 Access Dispute Resolution Rules.

#### **Accommodation**

Resolution Service Parties are again reminded that the Committee's premises on floor 8 of 1 Eversholt Street may be found to offer an acceptable and less costly alternative to booking meeting rooms in Central London – contact the Secretary regarding facilities and availability.

#### **Finance**

Expenditure in the Financial Year to 31 March 2011 was £321,722 against a budget of £482,300. The balance was used for 2011/12 pre-payments and to meet cashflow/contingency requirements in 2011/12 pending receipt of levies for the new Financial Year.

With various costs (such as VAT) increasing and in order to be confident of holding sufficient funds to meet the potential costs of the revised hearing processes, the Committee's expenditure budget for 2011/12 called for an uplift over 2010/11; in view of the surplus being held, this uplift was contained to 4.8% (the July 2010 RPI figure). The 2011/12 expenditure outturn is currently comfortably within the budget of £505,450. Having now gained experience in managing the new dispute resolution arrangements, the Committee's aspiration is to reduce the overall levy requirement for 2012/13 by 25%; the decision will be made towards 2011/12 Year End.

No levy payments are outstanding for years prior to 2011/12. Four companies have yet to pay their levy for 2011/12, the total amount involved being £431.

On behalf of the Committee



John Beer  
Committee Chair

12 January 2012

## Committee members 2011/12

<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	07771 830416
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	0130 257 7010
Non-Passenger Class, Band 2	Lindsay Durham	Freightliner Heavy Haul	020 7200 3912
Network Rail	Bill Davidson	Network Rail	020 3356 9210
	Gabrielle Ormandy	Network Rail	020 3356 9278

Operators currently in Franchised Passenger Class, Band 1:- First ScotRail; First Greater Western; West Coast Trains ("Virgin Trains"); East Coast Main Line Co

Operators currently in Franchised Passenger Class, Band 2:- Stagecoach South Western Trains; London Eastern Railway ("NXEA"); Southern Railway; XC Trains; London & South Eastern Railway ("Southeastern"); Northern Rail; East Midlands Trains

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

Operators currently in Non-Franchised Passenger Class:- Eurostar International; Hull Trains; Heathrow Express; Grand Central Railway; West Coast Railway Company; North Yorkshire Moors Railway; DB Regio Tyne and Wear

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

Operators currently in Non-Passenger Class, Band 2:- GBRf; Direct Rail Services; Freightliner Heavy Haul; Rail Express Systems; EWS International; Babcock Rail; COLAS Rail; Amey Railways; Grant Rail; Balfour Beatty Plant & Fleet Services; Volker Rail; Devon & Cornwall Railways; Harsco Rail