
ACCESS DISPUTES COMMITTEE

REPORT FOR 2013

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 2013.

Communications

Our report for 2013 follows the format adopted for the past five 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) provides a ready source of reference material whilst also containing downloadable templates for use in connection with dispute procedures. The website is updated promptly following a change in any area of information.

Under the ADR Rules, the use of some of the templates is mandatory. Responding to feedback from Hearing Chairs regarding the quality of submissions to hearings, the relevant templates were amended in January to give improved guidance to users regarding their provision of supporting evidence and extracts from contractual documents. The amendments were alerted to our routine contacts within companies.

Comments regarding the website and Committee matters in general will always be welcomed and may be passed to the Committee 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; the current Committee members are listed at the back of this report along with details of the operators in the respective voting Classes/Bands.

The Committee is happy to provide briefing sessions to enhance familiarity of Resolution Service Party staff with the ADR Rules and associated processes. Request should be made to the Committee Secretary.

Administration

Only one change has taken place in Committee membership during 2013; towards the end of the year, Paul Thomas replaced Gavin Panter as an appointed representative of Network Rail.

The Committee members elect the Committee Chair from amongst their number and John Beer remains the Chair.

A seminar was held for the Hearing Chairs in October to discuss matters of dispute administration and legal process which had emerged since the last such gathering in May 2012 and it was again appreciated that representatives from ORR were able to join the event. The organising of such gatherings from time to time is considered important for maintaining the uniformity and effectiveness of the dispute resolution service.

The 2012 Report informed you that a Company Limited by Guarantee – Access Disputes Resolution (GB) Ltd – had 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. The necessary contractual arrangements were finalised on 26 July 2013, whereupon Access Disputes Resolution (GB) Ltd started trading. Under the company's Articles, the eight members of the Access Disputes Committee are the only members of the company and they are also, along with the Committee Secretary, the only people eligible to be directors of the company. The new legal structure removes the complications surrounding the Access Disputes Committee – an unincorporated body – holding a property lease whilst your duly elected/appointed members of the Committee nevertheless continue to hold full control.

Dispute references - national network

The position regarding dispute references handled in relation to the national network during 2013 can be summarised as follows:-

For a Timetabling Panel

Unheard references on hand at 31 December 2012	62	
New references received in 2013	110	
References withdrawn in 2013	109	
Hearings held in 2013	1	(reference withdrawn before determination issued)
Determinations issued in 2013	3	(all from references heard in late 2012)
Pending hearing at 31 December 2013	63	
Appeals submitted to ORR in 2013	0	

For an Access Dispute Adjudication ("ADA")

Unheard references on hand at 31 December 2012	0	
New references received in 2013	2	
References withdrawn in 2013	0	
Hearings held in 2013	2	
Determinations issued in 2013	1	
Determinations to be finalised at 31 December 2013	1	(issued on 3 January 2014)
Pending hearing at 31 December 2013	0	
Appeals submitted in 2013	0	

Additionally, on 31 December 2013 there remained 1 reference on hand which had been submitted for hearing by the Access Dispute Panel but which had not been heard before the Panel was disbanded in 2010. The Committee understands that constructive dialogue is taking place between the parties involved with a view to settling their issues; alternatively they recognise that they will need to agree the way forward under the revised ADR Rules.

No allocation hearings took place during the year and 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 (subject to the confidentiality provisions) ADA determination and any ORR appeal decision. In accordance with the ADR Rules, Timetabling Panel determinations are also issued direct to a nominated person in each operating company.

Both of the ADA references arising in 2013 related to Network Change.

The process of preparing to participate in a hearing concentrates minds on the issue concerned and can often lead to a satisfactory solution being identified. For those disputes where a hearing has been arranged, the Hearing Chairs are committed to combining the application of the ADR Rules with recognised legal practice in order to provide efficient case management; in some cases, directions from the Chair or a request for information to amplify a submission statement has helped parties to recognise a way forward and settle their differences. Hearing arrangements for Timetabling Disputes have been stood down on 8 occasions in 2013 due to late discussions between the parties either achieving resolution or bringing about renewed discussions and hope of settlement without need for the hearing; the 8 cancelled dates covered 16 disputes. Additionally, one dispute was settled between the parties after participating in a hearing but before a determination was delivered.

Regarding the number of Timetabling Dispute references leading to Timetabling Panel hearings, it is of interest to compare relevant statistics for recent years:-

	<u>2013</u>	<u>2012</u>	<u>2011</u>	<u>2010</u>	<u>2009</u>	<u>2008</u>
New disputes registered	110	96	60	70	64	65
Disputes determined by Panel	0	5	6	8	3	11

In its stewardship role for the dispute resolution process, the Committee has engaged with Network Rail to ensure senior level awareness of the recent escalation in the number of Timetabling disputes being notified by operators, in particular an upward trend of late issues emerging at the Confirmed Period Possession Plan ("CPPP") stage of the engineering access planning process. The Committee has also discussed with Network Rail some instances where personnel or organisation change in the company has resulted in deterioration in the attention being given to dispute situations. Network Rail has now put in place a centralized process aimed at ensuring that every Timetabling Dispute has an "owner" within the company and that progression of the dispute is tracked from registration with the Committee through to settlement or Panel determination.

2013 saw publication of a complex determination covering 3 timetabling disputes which were heard over three days late in 2012. The determination identified issues of interpretation of Part D of the Network Code and of the ADR Rules, also regarding application of the ADR Rules in the context of accepted legal practice. The Committee has explored the issues with Network Rail and with the Hearing Chairs as a body; appropriate workstreams have been put in hand to follow up aspects raised by the determination.

ADR Rule J3(h) requires the Committee to satisfy itself that the Principles (as set out in Rules A5 – A10) 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 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 alternative to booking meeting rooms in Central London – contact the Committee Secretary regarding facilities and availability.

Finance

Expenditure in the Financial Year to 31 March 2013 was £266,927 against income of £429,483. The balance was used for 2013/14 pre-payments, to meet cashflow requirements pending receipt of levies for the new 2013/14 Financial Year and to facilitate a reduced call on Resolution Service Parties for funding in 2013/14.

With increasing experience in managing the new dispute resolution arrangements and with some surplus cash in hand, the Committee reduced the overall funding call for 2013/14 by 8% against 2012/13. The 2013/14 expenditure forecast is emerging below income so despite certain increases in overheads the Committee is minded to hold the overall 2014/15 levy requirement at the same level as applied for 2013/14. The decision will be made towards 2013/14 Year End and the resultant levy invoices will be issued in April 2014.

One company has yet to pay its levy for each of years 2012/13 and 2013/14; the total amount outstanding is not a material concern for the Committee.

On behalf of the Committee



John Beer
Committee Chair

16 January 2014

Committee members (as at 31 December 2013)

<u>Class/Band</u>	<u>Member</u>	<u>Company</u>	<u>Telephone</u>
Franchised Passenger Class, Band 1	John Czyrko	First Greater Western	07771 831001
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	Robin Nelson	Freightliner Heavy Haul	020 7200 3931
Network Rail	Bill Davidson	Network Rail	020 3356 9210
	Paul Thomas	Network Rail	07919 128231

Operators by Class and Band (as at 31 December 2013)

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

Franchised Passenger Class, Band 2:- East Coast Main Line Co; Stagecoach South Western Trains; Abellio Greater Anglia; Northern Rail; XC Trains; London & South Eastern Railway ("Southeastern"); Arriva Trains Wales

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; Southern Railway

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; Peak Rail

Non-Passenger Class, Band 1:- DB Schenker Rail (UK); Freightliner Heavy Haul

Non-Passenger Class, Band 2:- GBRf; Direct Rail Services; Freightliner Ltd; Rail Express Systems; Babcock Rail; COLAS Rail; Amey Railways; Balfour Beatty Plant & Fleet Services; Volker Rail; Devon & Cornwall Railways; Harsco Rail; Europorte Channel SAS; Crossrail