
ACCESS DISPUTES COMMITTEE

Annual Report for 2019

- Continuing high number of Timetabling Disputes registered
- Particular emphasis is laid on Parties appropriately registering their disputes, in accordance with ADR Rule B3 (templates available on our website, or by contacting the Secretary) and in particular providing a brief summary of the basis of the claim, including a list of issues, i.e. not registering a 'holding dispute'
- Subject to availability, the Committee's premises by Euston station may be found to offer an acceptable and less costly alternative to booking meeting rooms in Central London
- At this stage, the Committee does not expect to increase its overall funding call when issuing levy invoices for 2020/21

REPORT FOR 2019

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 2019.

Communications

Our report for 2019 follows the format adopted for the past ten years. In the absence of any adverse feedback regarding the recent reports, we again invite comments regarding the adequacy of the 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 item of information and has been given an updated look for 2019. Work continues on amending the Directory of Past Precedents and a new section, about the ADC mediation scheme with the Centre for Effective Dispute Resolution, has recently been added.

Comments regarding the website and Committee matters in general will always be welcomed and may be passed to the Committee Secretary, Tamzin Cloke (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 as at December 2019.

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

Administration

Tony Skilton retired on 30 August 2019 following twelve years as Committee Secretary and Tamzin Cloke is his successor. The Committee records its appreciation of the significant contribution that Tony made to its work. Additionally, Suzanne Lloyd-Holt and Stephen Murfitt retired as Hearing Chairs during 2019. The Committee thanks them for their work and will be actively recruiting their replacements in early 2020.

The Committee members elect the Committee Chair from amongst their number and Nigel Oatway continues in the role.

The Committee met three times in 2019.

Following abolition of the Rail Industry Disputes Resolution Committee and Council effective from 1 November 2015, the Committee became responsible for oversight of the CAHA Registrar and the Committee Secretary is deemed to act also as RIDR Secretary in any circumstances where that may become necessary. The current RIDR Rules can be found on this Committee's website.

Dispute references - national network

Details of dispute references received can be found on the Committee's website, together with any associated Timetabling Panel or (subject to the confidentiality provisions) Access Dispute Adjudication ("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.

The position regarding dispute references handled in relation to the national network during 2019 can be summarised as follows:-

For a Timetabling Panel

Unheard references on hand at 31 December 2018	157	
New references received in 2019	169	
References withdrawn in 2019	228	
Hearings held in 2019	2	
Determinations issued in 2019	2	(covering 2 dispute references)
Determinations appealed in 2019	1	(ORR appeal decision awaited)
Pending hearing at 31 December 2019	96	
Hearings arranged for 2020	0	

For an Access Dispute Adjudication ("ADA")

Unheard references on hand at 31 December 2018	10
New references received in 2019	3
References withdrawn in 2019	11
Hearings held in 2019	0
Determinations issued in 2019	0
Appeals submitted in 2019	0
Pending hearing at 31 December 2019	2
Hearings arranged for 2020	1

One allocation hearing took place this year. Two disputes have been referred for Arbitration. Three new disputes were proposed for determination by Access Dispute Adjudication by the 'claimant' but two were subsequently settled before a hearing took place; the remaining new item is scheduled for a hearing in early 2020. Two other notified disputes on hand await a proposal regarding allocation to a Forum, with an allocation hearing for one scheduled in January.

Preparing for a hearing concentrates minds and can often lead to a solution being identified without needing to have the case heard. 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 further information have helped parties to recognise a way forward and settle their differences. The occasional Directions Hearing has taken place in past years and it is considered that there can be real benefit in Hearing Chairs meeting with the parties involved as a preliminary to a hearing, thus enabling focussed directions to be issued.

As shown above, two Timetabling Panel hearings were held in the year, covering two Timetabling Disputes. Additionally, hearings were arranged for thirteen Timetabling Disputes on eight dates but stood down due to late discussions between the parties achieving resolution.

The Committee is keen that lessons learned from previous hearings are enacted and, following guidance from the Hearing Chairs, has compiled a list of points of learning or suggestions from recent determinations that might be of assistance to the industry. This is a work in progress, but the Committee expects that it may lead to, for example, Proposals for Change being submitted for industry consideration.

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

	<u>2019</u>	<u>2018</u>	<u>2017</u>	<u>2016</u>	<u>2015</u>	<u>2014</u>	<u>2013</u>	<u>2012</u>	<u>2011</u>	<u>2010</u>	<u>2009</u>
New disputes registered	169	242	159	138	141	115	107	96	60	70	64
Disputes determined	2	6	9	6	4	5	0	5	6	8	3

As can be seen, there is a continuing high number of Timetabling Disputes being registered over time, albeit the number dropped in 2019 compared to 2018. The number in 2018 was significantly inflated by issues associated with short notice access and timetabling decisions being made by Network Rail whilst trying to recover an unfortunate industry situation brought about (in the main) by slippage in the delivery of both infrastructure and rolling stock projects across the Network.

We have previously reported that a working group has developed a non-contractual Code of Practice for the future management of CPPP (Confirmed Period Possession Plan) disputes which was being trialled with a view to eventually being endorsed by the Committee for application on a "best practice" (but non-contractual) basis. Trialling has been delayed due to the difficult industry situation during 2018 and 2019, but it is hoped it can be picked up again during the course of 2020.

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 individual experiences under the Rules, the Committee is suitably satisfied.

Dispute references - HS1

No disputes have been registered under the HS1 Access Dispute Resolution Rules during 2019.

Dispute references – Heathrow Airport Ltd ("HAL")

No disputes have been registered under the HS1 Access Dispute Resolution Rules during 2019.

Accommodation

The Committee is happy to make its meeting facilities available for the benefit of the industry and readers are reminded that its offices conveniently situated by Euston station may be found to offer an acceptable alternative to booking meeting rooms in Central London – contact the Committee Secretary regarding facilities and availability.

Finance

Three 2018/19 levy payments remained outstanding on 31 March 2019, but have subsequently been paid. Prior to release of provisions, net audited expenditure in the Financial Year to 31 March 2019 was £331,347 against routine income of £414,125. Reserves were used, as planned, to compensate for the shortfall. They were also used for making 2019/20 pre-payments, to meet cashflow requirements pending receipt of levies for the new 2019/20 Financial Year and to facilitate a reduced call upon Resolution Service Parties for funding in 2019/20.

Two 2019/20 levy payments remained outstanding on 31 December 2019.

The Committee is in a position that it does not currently expect to increase its overall funding call when issuing the levy invoices for 2020/21.

On behalf of the Committee



Nigel Oatway
Committee Chair

14 January 2020

Committee members (as at 31 December 2019)

<u>Class/Band</u>	<u>Member</u>	<u>Company</u>	<u>Telephone</u>
Franchised Passenger Class, Band 1	Raj Patel	Govia Thameslink Railway	07975 603552
Franchised Passenger Class, Band 2	Dean Warner	Abellio East Anglia	07920 878739
Franchised Passenger Class, Band 3	James Carter	West Midlands Trains	07772 886852
Non-Franchised Passenger Class	Andy Wylie	Hull Trains	07881 510021
Non-Passenger Class, Band 1	Nigel Oatway	DB Cargo (UK)	0130 257 7010
Non-Passenger Class, Band 2	Greg March	Colas Rail	07764 228905
Network Rail	Peter Craig	Network Rail	020 3356 9316
	Richard Parsons	Network Rail	07917 857937

Operators by Class and Band (as at December 2019)

Franchised Passenger Class, Band 1:- Abellio ScotRail; First Great Western Ltd.; Govia Thameslink Railway

Franchised Passenger Class, Band 2:- West Coast Trains Ltd.; London North Eastern Railway; First MTR South Western Trains; Arriva Rail North; Abellio East Anglia; XC Trains; London & South Eastern Railway

Franchised Passenger Class, Band 3:- Keolis Amey Operations/Gweithrediadau Keolis Amey; West Midlands Trains; East Midlands Trains; Arriva Rail London; Trenitalia c2c; Chiltern Railway Company; Merseyrail Electrics; First Transpennine Express; MTR Crossrail; Serco Caledonian Sleepers

Non-Franchised Passenger Class:- Eurostar International; Hull Trains Co; Heathrow Express Operating Co; Grand Central Railway Co; West Coast Railway Co; North Yorkshire Moors Railway; Nexus (Tyne and Wear PTE); Peak Rail; East Coast Trains; Ffestiniog Railway; Chinnor & Princes Risborough Railway; Locomotive Services (TOC) Ltd.; Rail Express Systems; South Yorkshire Supertram; Vintage Trains Ltd.

Non-Passenger Class, Band 1:- DB Cargo (UK); Freightliner

Non-Passenger Class, Band 2:- GB Railfreight; Freightliner Heavy Haul; Direct Rail Services; Babcock Rail; COLAS Rail; Amey Rail Ltd.; Balfour Beatty Plant & Fleet Services; Volker Rail; Devon & Cornwall Railways; Crossrail; Europorte Channel SAS; Harsco Rail; Rail Operations Group; Victa Railfreight; Rail Express Systems