



# The new Access Dispute Resolution Rules (ADRR)

## Rules are made

On 22 December 2009, the Class Representative Committee approved new Access Dispute Resolution Rules (ADRR) to take effect during early 2010. These rules will replace the current system of Access Disputes Panels,

revise the constitution of the Access Disputes Committee and provide greater flexibility in the dispute resolution processes available to industry parties.

## Replacing the current system

The ADRR apply when industry parties have access disputes. Although they are part of the Network Code they are applied to depots and stations as well as track access. They also accommodate various dispute or appeal obligations deriving from European law.

industry parties and determine cases by applying specialist industry knowledge. In turn there is then a (near) automatic right of appeal to ORR.

The current system is based around references from contracts to specific types of resolution forum. The most common are the Access Disputes Panel (ADP) and Timetabling Panel (TTP) which are made up of nominees of

Although the TTP is generally regarded as fit for purpose criticism has been levelled at the existing ADP for a number of reasons and the ADRR has been considered inflexible in some circumstances. The box sets out some principle concerns with the existing ADRR and the aims of the new rules:

Concerns with existing ADRR	Aims of new Rules
<ul style="list-style-type: none"> <li>■ A lack of flexibility where different types of dispute derive from one contract;</li> <li>■ In some cases where an appeal from ADP to ORR is inevitable the first stage reference to ADP is a duplication of process;</li> <li>■ Employees of some companies spend significant (unpaid) periods sitting on ADPs;</li> <li>■ The ADP does not comply with Human Rights obligations for fair trials; and;</li> <li>■ The quality of ADP determinations has been challenged.</li> </ul>	<ul style="list-style-type: none"> <li>■ To create a process in the control of the parties with assistance from a dispute resolution service;</li> <li>■ To provide a flexible system which can resolve cases of different types and sizes efficiently (without duplication of process);</li> <li>■ To retain access to the ORR and industry specialist knowledge as part of the determination process;</li> <li>■ To provide fair trial compliant processes which will not require automatic appeal.</li> </ul>

## The new Rules

The new rules will operate by providing a central resolution service led by the Access Disputes Secretary and a retained (legally qualified) Allocation Chair. All disputes will be referred to the rules as a whole (rather than a specific process) and will then be allocated by agreement to different processes according to the nature of the dispute.

The ORR will retain a role in determining discrete issues of wider industry significance which relate to any dispute and which are referred out of the dispute to it. By using the ORR in this way it is hoped that a number of disputes which turn on specific industry issues could be settled without requiring a long dispute process.

## The menu of processes

Each process will be updated with a new set of rules. This is intended to provide a bespoke drafted menu of options to be fitted to each dispute.

The options will include

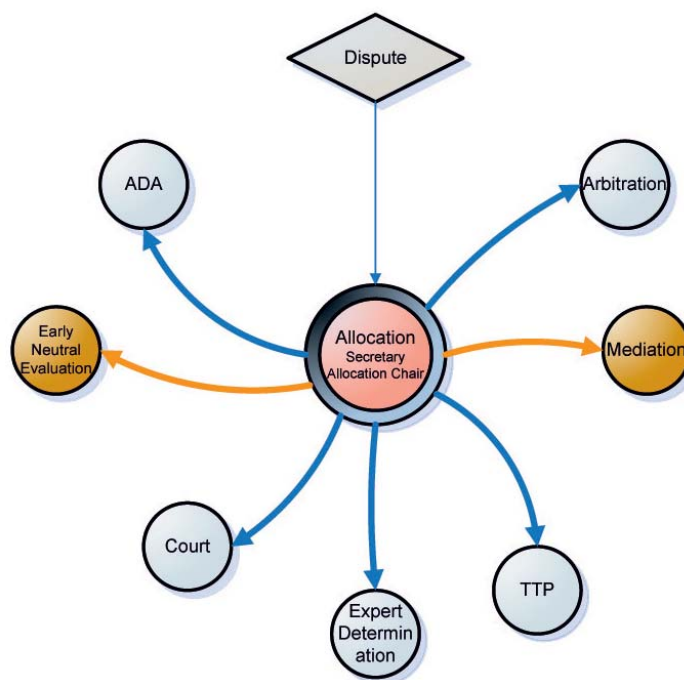
- structured negotiation processes (mediation and early neutral evaluation) which do not provide a binding determination of the dispute; as well as
- determinative processes which will finally resolve the dispute.

The range of options is intended to accommodate all types of dispute and is set out in the diagram below.

The options will include one new process – Access Disputes Adjudication (ADA) which will replace the ADP. This new process will be a flexible system which can be adjusted to accommodate disputes of different sizes and characteristics.

It has been designed to resolve industry issues with significant industry specific background or evidence and by drawing upon expert advice from advisers with a background in the industry and personal knowledge and experience of how it operates. These advisers will sit on a panel with a legally qualified chair to advise him or her on the relevant factual and procedural background for the dispute.

## Allocation



## Contact



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