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**Guidance No: DAB-38**

**Attribution of delays caused by domestic animals on the line**

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**1. Introduction**

- 1.1. The Delay Attribution Board (the Board) received a request for guidance in connection with the Attribution of TRUST incidents 135869/185484/234253
- 1.2. The Board received the joint request for guidance from Arriva Trains Wales and Network Rail Infrastructure Ltd, Wales Route, (Network Rail) on the Monday 29<sup>th</sup> June 2015.
- 1.3. The Board was asked the following:
- 1.4. Specific guidance requested:
  - 1.4.1. Should responsibility sit with Network Rail for animal incursion, regardless of animal type, given the Driver has prevented a strike?
  - 1.4.2. Should responsibility sit with Arriva Trains Wales for the actions of the Driver?
  - 1.4.3. Should DAG 4.4.3 be taken to include incursion as well as animal strikes or does the DAG require a new defining section to distinguish the difference (if there is deemed to be a difference)?

**2. Information Received**

- 2.1. The parties have discussed the issues relevant to this matter, in accordance with the agreed procedures for obtaining agreement in relation to a disputed attribution as set out in Part B of the Network Code. However, they have been unable to reach a common position. The parties are, therefore both agreed that the issues raised should be referred to the DAB for guidance and have prepared a joint submission accordingly, incorporating their respective interpretations.

**3. Factual Background to the incident**

- 3.1. The parties provided the following agreed facts:
- 3.2. The three incidents (135869; 185484; 234253) each relate to delays caused by animals present on the line and the subsequent action of a driver to either slow down, stop, or not take the train forward.
- 3.3. In the instances previously mentioned, the respective drivers of the trains in each incident have stopped the train to remove a dog from the four foot (135869); refused to proceed further until a dog ahead of the train moved out the way (185484) and cautioned himself due to there being two sheep on the line (234253).
- 3.4. In each of these incidents, the Signallers responsible for each respective section did not issue instructions to any of the drivers to stop, or to deviate from the authorised line speed.
- 3.5. Rule Book Section TW1 - 43.1 states:-

You must carry out the instructions in this section if you see:

- an obstruction on the line which could cause danger to other trains
- a cow, bull or other large animal within the boundary fence, even if it is not an immediate danger to trains.

- any other animal on or near the line which might be a danger to trains
- something wrong with another train.

You must use the emergency call facility on the train radio equipment.  
You must warn the driver of any approaching train, if possible, by:

- sounding the horn
- showing a red light to the driver of the other train
- switching on the hazard warning indication, if provided. You must:
- place a track-circuit operating clip and three detonators 20 metres (approximately 20 yards) apart on each affected line, at least 2 km (1¼ miles) from the obstruction
- tell the Signaller in the quickest way possible.

3.6. If you see something wrong which could put another train in danger, you must, if possible, alert the driver of the other train by the most appropriate means. When other trains are put in danger.

The National Operating Instructions, a supplemental document which is to be used in conjunction with, and carries the same requirement and responsibilities as the Rule Book states that:-

General Signalling Regulation Clause 18.2.1

- There is no need to caution trains because of animals on the line if the animals are.
- Domestic, for example dogs
- Deer
- Not more than six sheep.

(DAB-18, referred to in the respective cases below is attached for reference)  
In addition to the information above the Board no further questions were asked in advance of the 14<sup>th</sup> July meeting.

#### 4. Operator's View

- 4.1. It is the view of Arriva Trains Wales that the Delay Attribution Guide is clear that in the case of animal incursion on the railway line, suitable delay codes are already in place in the Delay Attribution Guide for delay caused by such scenarios i.e. I8 (Animal strike or incursion within the control of Network Rail) or X8 (Animal strike or incursion not within the control of Network Rail).
- 4.2. It is the view of Arriva Trains Wales that I8 or X8 are the appropriate codes to be used for the incidents listed in section 3, and for any future incidents of a similar nature, in that they highlight instances of animals being able to gain access to railway infrastructure. Given that one of the objectives of attribution is to identify cause of delay for improvement purposes it is the view of Arriva Trains Wales that the I8 and X8 codes are appropriate for delay caused by animal incursion in that they alert Network Rail of the possible requirement to inspect or repair the fencing or boundaries that protect the infrastructure following animals gaining access to the railway line.
- 4.3. Arriva Trains Wales accepts that they are responsible for the actions of their drivers, but would stress that it is the driver who is in the best position to make a judgement as to whether slowing or stopping the train to avoid an animal strike will mitigate the overall impact of industry delay. In the event of an animal strike the potential damage to the train is likely to have a greater impact on the overall delay caused by the incident, than if the driver were to slow or stop the train to avoid a strike (ATW have been able to gather evidence from our Fleet Team of damage caused to train units as a result of striking sheep or dogs. Two examples of which are – 1J07, unit 52836 struck sheep, sander pipe replaced as broken in two & 2J80, unit 52839, long sander hosepipe replaced and moving pin on coupler replaced).
- 4.4. Arriva Trains Wales' view is that in order to ensure that the guidelines set out in the DAG in relation to the appropriate coding for such scenarios are as clear as possible, codes I8 or X8 should be the appropriate codes irrespective of whether the cause of delay is an animal strike, or animal incursion. Arriva Trains Wales' view is that should an animal incursion take place when a train is travelling at 90mph there is less opportunity for the driver to slow or stop the train and an animal strike is therefore more likely to occur, with any resulting delay being correctly attributed to an I8 or X8 coding. The same coding should therefore apply if there is an animal incursion and a driver does have opportunity to slow or stop the train to avoid a strike, if for example they are travelling at a much slower speed.
- 4.5. Arriva Trains Wales' view is that when attributing delay caused by animal incursion there should be consistency with the attribution for any other form of obstruction or debris on the railway line, which could cause damage to the train, should the train proceed and strike that object. At present Network Rail codes (XB or XO) are used should a train slow down to avoid striking obstructions or debris on the railway line.
- 4.6. Whilst Network Rail refers to DAB 18 in their points below, critically from an Operator view the guidance did stipulate key considerations around there being no reports of severe weather or any allegation against the infrastructure / sighting of signals at the time of occurrence. In the cases cited in this paper of animal incursion

impeding the progress of the train the driver has specified the reason for delay to the Signaller at the time of occurrence.

- 4.7. Arriva Trains Wales believes that section 4.4.3 covers both Strike and Incursion by nature of the Section 4.4 Heading. It would seem perverse that attribution should change responsibility because the driver has in essence prevented a potential strike. Take an example of say a driver travelling at 50mph and sees a small flock of sheep ahead. Natural reaction (human nature and operational safety) is to bring the train to a stand. If that flock comprises 7 sheep any delay would go to I8 / X8 but if it only comprises 5 sheep the delay would go to TG / TW. Ultimately the fact there are sheep on the line has to be a deciding factor for attribution purposes.
- 4.8. Arriva Trains Wales believes that in these cases the driver is acting in accordance with Rule Book TW1 – 43.1 (bullet 3) – in that it covers ‘any other animal on or near the line which might be a danger to trains’. Signalling Regulation 18.2 (also quoted above and by Network Rail) is the guidance for Signallers on receipt of a report from train crew (and thus is not specific to train crew in terms of their action unless told by the Signaller)

## 5. Network Rail View

- 5.1. Currently, the Delay Attribution Guide does not specify the responsibility for delay in the scenarios presented above; the flowchart governing the usage of I8/X8 as per the argument of Arriva Trains Wales is currently predicated on animal having been struck by a train. However, Network Rail believes that incursion should be as stipulated by the Rule Book in terms of animals such as cows, bulls, more than 6 sheep.
- 5.2. As Network Rail does not have direct responsibility for the driving of the trains on the network, there is nothing it can do with regards to mitigating delay caused by driving decisions and in the aforementioned delay incidents, the prime cause of all delays was due to the actions of the respective drivers of each train; i.e. slowing/stopping the train in response to an animal being present on the line.
- 5.3. As such, Network Rail believes that responsibility for the delay lies with Arriva Trains Wales as the direct Operator of the train services, it being the responsible party for the actions of its drivers. Therefore, Network Rail maintains attributing the responsibility to the driver, code TG is the correct attribution of the prime cause of delay (or TW in line with a driving policy).
- 5.4. The supplement to the rulebook as mentioned above, clarifies the responsibility of a Signaller in relation to animals on the line and section 18.2.1 specifically states that a Signaller need not caution for domestic animals, including dogs, and not more than six sheep, therefore there was no requirement for the driver(s) to reduce the speed/stop their train. This is deemed to cover the appropriateness of size of animal and the safety of the operational railway. What would be the consensus if the driver had stopped for a smaller animal such as a rabbit?
- 5.5. Should the Signaller(s) responsible for the respective sections of line involved had issued cautionary advice to any of the drivers, Network Rail would have attributed the prime cause of delay to the responsibility of the Signaller, coded OC, in line with the rulebook, which is being used in all these cases as supporting/influencing documentation for the attribution of the respective delays.
- 5.6. It is worth noting that not all animal incursions are as a result of poor or broken fencing. Many incursions, particularly dogs can come from various avenues onto the railway, be it stations or crossings. Additionally, in response to Arriva Trains Wales 5th bullet, Network Rail would accept responsibility for 'items' that have been placed, left on the infrastructure but in the case of animals, particularly in the case of dogs, no reasonable mitigations can be taken to prevent incursion.
- 5.7. Network Rail refers to the DAB guidance (guidance number: DAB-18, particularly para 7.1) whereby it was ruled that, whilst a driver is the only person in a position to judge whether to reduce his/her speed with regards to the safe running of his/her train, the aim of the delay attribution process is to identify the prime cause of delay (which in this instance, is the driver deviating from authorised line speed) not to alter the regime under which the safe operation of the railway is managed.
- 5.8. Network Rail believes DAG 4.4.3 specifically stipulates animal 'strikes' and does not cover incursion events. It is worth noting that even under 'strikes' that birds are split into two categories (above / below a pheasants average weight) which is due

to the expected train specification and likelihood of impact damage. Network Rail believes the Rule Book highlighting certain animals (dogs, deer, sheep) is of the same nature - i.e. trains should be able to withstand a certain level of impact (noting that 3rd rail areas of operation are different)

- 5.9. In contrast to the aforementioned point Arriva Trains Wales has raised with respect to a driver slowing or stopping to prevent a larger delay due to an animal strike, Network Rail reaffirms that all delays are attributed as per the facts of an incident. As such, the supposition that slowing, or stopping, to prevent a larger delay is purely speculative and Network Rail believes, therefore, the point ought to be treated as such.
- 5.10. Finally, under the terms of the Track Access Contract between Network Rail and Arriva Trains Wales, Schedule 8 Paragraphs 5.3 (ii) and 5.3 (iii), the Train Operator (Arriva Trains Wales) is responsible for an incident (other than a planned incident) if that incident is caused wholly or mainly (ii) (whether or not the Train Operator is at fault) by circumstances within the control of the Train Operator in its capacity of Operator of trains; or (iii) (whether or not the Train Operator is at fault) by any act, omission or circumstance originating from or affecting rolling stock operated by or on behalf of the Train Operator (including its operation)
- 5.11. As such, Network Rail posits that, in accordance with the above contractual stipulation, Arriva Trains Wales, as Operator of the trains in question, and responsible for the operation of those trains with respect to the actions of its drivers, is responsible for the delays caused by the aforementioned incidents this paper relates to.

## 6. Locus of the Board

- 6.1. The Board reviewed its locus in respect of providing guidance on this issue. The Board's locus to provide guidance is set out in the Network Code Conditions B2.4.3 and B6.1.3.
- 6.2. The Board noted that while it could offer guidance to the parties as to how incidents of this nature should be attributed, this guidance was not binding on any party. If any of the Access Parties were dissatisfied with the guidance provided they could refer the matter to Access Dispute Adjudication (ADA).
- 6.3. If the issue were referred to ADA, then an Access Dispute Adjudication Panel would be formed to consider the dispute. In doing so, the ADA Panel would take account of the guidance provided by the Board but was not bound by it. The ADA Panel would then make a determination that was binding on the parties concerned. This document is therefore being prepared as the vehicle for providing the guidance and the reasons for how the Board arrived at its position both to the parties and, if necessary, to the relevant ADA Panel.
- 6.4. The Board agreed that it should seek to provide guidance that meets with the delay attribution vision:

“For all parties to work together to achieve the prime objective of delay attribution – to accurately identify the prime cause of delay to train services for improvement purposes”.
- 6.5. The Board would need to consider if, in providing guidance, an amendment to the Delay Attribution Guide should be proposed, to improve clarity.

## 7. Consideration of the Issues

- 7.1. The Board at its meeting on 14th July 2015, considered the request for guidance and took account of the following:
- 7.2. The facts provided by both Network Rail and Arriva Trains Wales in connection with the incident disputed between the parties and their requests for guidance.
- 7.3. The representative of Network Rail and Arriva Train Wales at this Board meeting were asked the following questions:

Q – Does ATW have a specific Driver policy?

A – ATW's Driver policy is to allow Driver's to establish whether they consider it safe to proceed and to try and reduce overall Industry delay.

Q – Were these incidents near level crossings?

A – There are many level crossings on this line of route and it is unclear as to whether the animals came via that access point.

Q – Are you aware of whether the boundary fencing had been broken?

NR/A – There had been no allegation of the boundary fencing being broken and therefore, it was not checked.

Q – Where did the sheep come from and disperse to?

ATW/A – Unknown.

NR/A - It is known that Network Rail is powerless to insist that farmers inform them of a change of land use. This failure to inform, puts Network Rail at risk as, different boundary fencing is placed in line with the use of the land it borders.

Q – What were the underlying reasons for the Driver’s action?

ATW/A – The Driver informed, that he stopped to avoid damaging the train and creating a greater delay had the train hit the animal(s)

Q – Did a Mobile Operations Manager go to the sites?

NR/A – No, the MOM was following the Rule Book, it was reported that the flock of sheep was fewer than 5 and that the train had stopped for domestic animals.

Q – Were any of the incidents reported as a Safety of the Line incident?

ATW/A – We would have to check the logs to ascertain whether the incidents had indeed been reported as safety of the line incidents.

7.4. The guidance provided by the Delay Attribution Guide.

7.5. Previous Guidance given in DAB18 – driver reducing speed in fog conditions.

7.6. In coming to its conclusion the Board regarded the following points as particularly relevant:

- Whether the incidents had been reported as Safety of the Line incidents
- The incidents would have to be dealt separately depending on whether it had been reported as a Safety of the Line incident.
- There was a need to provide guidance in the DAG for incidents where delay is caused by animal incursions and when a Driver stops for domestic animals.
- Guidance given in DAB18 whereby responsibility was deemed to be the driver slowing his train when no allegation was made against the infrastructure or safety of the line being reported.

## 8. Guidance of the Board

8.1. Based on the information presented the Board agreed the following:

8.2. It unanimously agreed that based on the information that they had to hand, the responsibility for the delays caused by the driver stopping the train for animals would be that of two outcomes:-

8.3. Where the Driver had reported the incursion as a Safety of the Line incident, then attribution would be to **Network Rail** as a Safety of the Line report against the network.

8.4. Where the Driver had not reported the incursion as a Safety of the Line incident then attribution should be to **Arriva Trains Wales** as it was the Driver who had decided to bring the train to a stand.

8.5. The DAB conceded that the DAG did not cover animal incursion effectively, despite the fact section 4.4 does contain it within the title and will form a sub group to consider appropriate changes to the DAG.





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This guidance was approved by the Delay Attribution Board on August 4 <sup>th</sup> 2015	Richard Morris - Chairman
Signature:	