Delay Attribution Board
Floor 8
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Guidance No: DAB-45

Attribution of Responsibility for delays caused by overcrowding due to displaced passengers and the use of Delay Code YX

1. Introduction

The Delay Attribution Board (the Board) received a Request for Guidance in connection with the attribution of various TRUST incidents involving delays caused by overcrowding due to displaced passengers from trains affected by incidents that blocked a different line of route.

1.1. The Board received the joint Request for Guidance from Chiltern Railway Company Limited (Chiltern) and Network Rail Infrastructure Ltd (Network Rail) on the 14th December 2017.

1.2. Summary of the submission:

1.2.1. Guidance from the Board is sought for the resolution of an issue which despite discussion at the required levels of escalation a solution has not been agreed.

1.2.2. To provide guidance regarding the responsibility of incidents where passenger overcrowding is occurring as a result of displaced passengers due to an incident on a different line of route.

1.2.3. Whether, in these circumstances, attribution should be to the Operator responsibility in respect of the passenger overcrowding or to the incident causing the displacement of passengers onto a different line of route.

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 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 Board for guidance and have prepared a joint submission accordingly, incorporating their respective interpretations.

2.2 The Delay Attribution Board is asked to provide guidance on:

- Whether attribution should be to the root cause incident or whether these incidents are considered a new prime cause.
- Whether the use of YX code is appropriate to link these delays back to root cause.

2.3 The appropriate use of the YX code is not well understood, with Operators and Network Rail inconsistently applying this reactionary code. The parties would therefore like the Board to provide clear guidance on the appropriate use of this code.

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3. Factual Background to the incident (Various Incidents on 19th April 2017)

3.1. On 19th April 2017, there was a major lineside cable fire in the South Hampstead area (TIN 055019 LINESIDE CABLE FIRE) which resulted in severe damage to the signalling equipment on the West Coast Main Line and a power failure at Euston Station. This caused significant disruption to London Midland, Virgin Trains and London Overground services with trains unable to run in or out of London Euston from 13:50 until 22:25. There was a period of time between 18:45 and 19:59 when some trains did run but lighting issues at the station meant that it was closed from approximately 20:00 until 22:25 until adequate lighting was found.

3.2. Route 'Any Permitted' tickets are between London and West Midlands/North Wales/North West/Scotland and are valid for travel via the Chiltern route.

3.3. As per the LNW South Contingency Plans which are authorised by Network Rail through the requirements of Approved Code of Practice for Customer Information in Disruption, CSL-2, arrangements were made for passengers to use other operators' services and Chiltern accepted 'London Midland Only' and 'Virgin Trains Only' tickets for travel between London and Birmingham (and vice versa). Chiltern Railways receive no financial recompense for this arrangement.

3.4. There were a number of delays due to overcrowding at stations on the Chiltern route as result of passengers opting to use this line of route to travel (these details were provided to the Board but are not included within this Guidance Note). The services affected under normal circumstances do not have delays associated with passengers.

3.5. These delays were initially put into TIN 055019 LINESIDE CABLE FIRE SOH at Level 1 as the Train Delay Attributor was advised by NR Control that the overcrowding was due to the cable fire.

3.6. On Day 2, Network Rail created new incidents and reattributed these delays (and the associated reactionary delays) as a new Prime Cause and therefore attributable to the immediate cause of the delay which was passenger overcrowding.

3.7. Chiltern Railways have disputed these delays stating they should have remained in TIN 0550149 LINESIDE CABLE FIRE SOH due to this being the reason for the overcrowding.

3.8. The attribution of these incidents has been discussed at Level 3 and Level 4 within the Delay Attribution and Resolution hierarchy of both organisations but agreement could not be reached. Both parties however agreed that guidance should be sought from the Delay Attribution Board in order to gain a clear view on (a) whether these overcrowding delays are new prime cause and (b) on the use of the YX code.

3.9. During these discussions and since, there have been several more examples of these types of incidents. (Again these details were provided to the Board but are not included in this Guidance Note).

3.10. The Parties submitted the agreed factual background and their respective views on how the incident should be attributed:

4. Operator's View

4.1 It is Chiltern's view that these incidents should be coded TIN 055019 LINESIDE CABLE FIRE SOH.

4.2 It is Chiltern's belief that the following clause of the DAPR applies
C1.6 "If an operator's service is delayed due to overcrowding as a result of an operator's train either being cancelled, or delayed, any delay or cancellation is to be attributed to the prime cause of why the initial train was delayed, or cancelled. This also applies to a train running late in the path of the following train."

4.3 There is no reference in the DAPR to this clause applying to the same line where the disruption originated which is Network Rail's view.

4.4 The prime cause of the delays in dispute is TIN 055019. This is not a previous incident as the delays occurred whilst TIN 055019 was on going.

4.5 During major incidents such as TIN 055019 it is clear that the increase in passenger volume is resulting from the disruption from the West Coast Main Line. The acceptance of these displaced passengers is required by the Network Rail LNW Contingency plan.

4.6 Network Rail is required through their license from the ORR to apply the Approved Code of Practice for 'Passenger Information During Disruption' (PIDD). As part of PIDD it is not permissible to issue a do not to travel warning as Chiltern services are seen as a valid alternative route. PIDD didn't exist at the time of the ruling of DAB 25.

4.7 Network Rail are misunderstanding the application YX code, as when it was created it was not the intention for it to be used during mass disruption. Under the historical incidents noted in 4.8 Network Rail allocated the delays arising as prime cause code.

4.8 Delay attribution is based upon the balance of probability rather than beyond reasonable doubt. If the YX coding is to be used, the flow of passengers for each service will be related to the transit time between the Euston/Marylebone and New Street/Moor Street. For the former 26 minutes, and the latter 8 minutes. So the YX coding could be applied to the nearest departure for the service suffering delay.

4.9 The example of LUL or tram system incidents are not relevant, since the Prime Cause of these delays would be off network. DAPR D3 defines off network as incidents 'arising on infrastructure not operated by Network Rail'
TIN 055019 occurred on infrastructure operated by Network Rail

4.10 Network Rail LNW Route stance on TIN 055019 is at odds with that of Network Rail Western Route , who attribute delays in line with Chiltern Railways position. In TIN 231136 (06/07/17) HTRWAJN PANEL FLR where delays arising from station over time on Chiltern Railways 1U54 were allocated to the incident on the Great Western Main Line.

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4.11 It is also different to historical incidents on LNW Route, TIN 768143 (04/01/09) Ole Failure Watford Junction, TIN 803599 (16/01/09) 1F24 Fatality Stoke Hammond, TIN 25602 (10/04/09) 4M13 Fatality, TIN 156717 (04/06/09) Loss of Signalling Milton Keynes, TIN 776963 (08/02/10) Berkhamstead Dewirement, TIN 900996 (23/03/10) Power Failure, TIN 877046 OLE Dropper Failure Northchurch, TIN 989895 (10/06/11) Fatality Kenton, TIN 498718 (01/03/13) Dewirement XHN, TIN 371227 (27/02/14) Fatality Kings Langley, TIN 117064 (11/01/15) 1A20 Automatic Dropping Device, TIN 154121 (27/01/15) Power Loss Euston. Where delays arising from station over time on Chiltern Railways, or cancellations to facilitate the passenger volume were allocated to the incidents on the West Coast Main Line.

4.12 A number of the incidents in dispute relate to stations where there are no barriers. Chiltern deployed additional staff, changes to formations of services where possible to mitigate the additional passenger flow from the WCML.

4.13 It is directly in Network Rail's gift to mitigate the incidents that occur on the West Coast Main Line through having a supportive suite of plans that are embedded within their Performance Strategy. Network Rail is not achieving the required Performance outputs.

4.14 In DAB -25 ruling;
6.2.3 That the parties confirmed that at other times during the period of disruption on the day the guidance given in DAG 3.1.5 had been applied to services delayed as a direct result of overcrowding, i.e. Late starts. This indicated to the Board that there were specific circumstances where DAG
Section 3.1.5 was agreed as applicable guidance in circumstances where delay is caused by passengers boarding and alighting.

(DAG clause 3.1.5 has now been renumbered as DAPR clause C1.6)

"If an operator's service is delayed due to overcrowding as a result of an operator's train either being cancelled, or delayed, any delay or cancellation is to be attributed to the prime cause of why the initial train was delayed, or cancelled. This also applies to a train running late in the path of the following train."

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5. Network Rail's View

5.1. It is Network Rail's view that these incidents should be coded RB (Passenger joining/alighting). Whilst accepting that the cable fire was the root cause reason for additional passengers using the Chiltern line of route, the NR view is that these are all new prime cause incidents.

5.2 The complexities of the cable fire which in turn caused a power failure at Euston resulted in the creation of several TRUST incidents during the incident itself due to the joint responsibility element of the power failure at a station. Chiltern's disputes request that the overcrowding delays be merged into TIN 055019 but Network Rail would question how Chiltern have reasoned that the overcrowding delays were due to TIN 055019 and are not as a result of the power failure. Network Rail believes that the overcrowding delays are new prime cause but if the Board does not agree, the fact remains that neither Chiltern nor Network Rail are in a position to distinguish between the incidents and determine which one is the cause of the overcrowding.

5.3 This is further demonstrated in some of the additional incidents. The fatality incident at Milton Keynes Central on 5th November for example resulted in three incidents being created, TIN 542217 coded XC/XQRA (100% Network Rail) and TIN 542213 (VC/DHFA) and TIN 542215 (VC/DEJ6) – incidents attributed to Virgin Trains and London Midland respectively and both split 50/50 as per joint responsibility guidance. Chiltern have requested merges into TIN 542217 – the NR XC incident. Network Rail believes that for the YX reactionary code to be used, the operator must identify the cancelled or delayed train which resulted in the overcrowding. How can Chiltern (or indeed any party) determine which delayed or cancelled train was the definitive reason for each of their affected services to be overcrowded in this situation?

5.4 Network Rail would add that simply adding delay to any incident is not in line with the DAPR Good Statement Practice "(i) accepting that the prime objective of delay attribution is to identify the prime cause of delay to train services for improvement purposes." Network Rail would argue that improvements through a reduction in delay cannot and are not being made if the delay is not attributed to the party best placed to mitigate the delay.

5.5 The definition of prime cause (as per PGD1) states: "Prime Cause is the immediate cause or event that results in delay to a train. Until the Prime Cause event occurs there will be no delay. Without that event, delays would not have occurred. Prime cause is NOT a reaction to a previous incident." It is the NR view that delays due to holding trains to allow additional passengers to board or any other delays as a result of loading/unloading at stations are new prime cause incidents.

5.6 This new prime cause argument is further substantiated by the fact that these delays cannot be directly linked back to a particular train affected by the cable fire. If they are not direct reactionary delays then they must be a new prime cause.

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5.7 NR believes that that YX code was introduced for a specific use where the cancelled or late train could be specifically identified and attributed as reactionary delay. This is not the case when there is major disruption and the delays occur on a different line of route. The suggestion by Chiltern Railways that these delays could be attributed to root cause using the YX reactionary code and linking it to the head code of any train on WCML or as now suggested in section 4.7, the nearest service based on the transit time between stations (Euston/Marylebone or New St/Moor St) Network Rail believes is an inappropriate use of the YX code and wasn't the intention when the YX code was introduced in September 2012 and is not in line with the April 2016 DAG Briefing Note which was issued to try and help clarify the DAG paragraph 3.1.6

5.8 In considering whether attribution to prime cause is correct, Network Rail asked Chiltern Railways to consider what they believed the appropriate attribution would be if the additional passengers were as a result of external transport modes such as a tram system being closed or an incident on the LUL. Where would the Operator expect these passenger loading delays to be attributed if there was no other incident in TRUST for them to be linked to? If the Operator were to agree that that they would have to accept these delays, then NR LNW does not see how this situation is any different.

5.9 NR acknowledge that there were two station overtime delays at Birmingham Moor Street on the day in question that were inadvertently left in TIN 055019 LINESIDE CABLE FIRE SOH and were not removed before Day 7. A 2 minute delay on 1G52 was attributed directly to the incident and another 2 minute delay on 1K45 was attributed to the incident with the reactionary text "YX 1K45" which is clearly incorrect. NR does not believe that this sets any precedent, simply demonstrates that the use of the YX reactionary code is a complex issue that is not well understood.

5.10 Paragraph 4.9 of this paper refers to a difference in the attribution stance between Network Rail LNW and Western Routes. Network Rail would contend that this is not the case. The initial attribution into TIN 231136 was carried out by NR LNW route as it was a station overtime delay on a Chiltern service at High Wycombe. CRCL then requested the merge into the Western Route incident on the basis that passengers used 1U54 to get to Oxford due to the cancellation of 1D34 at Paddington. It is unclear how Chiltern came to the conclusion that it was the cancelled or delayed 1D34 Paddington – Oxford train that caused 1U54's overcrowding. It is unfortunate that the NR Delay Resolution Co-ordinator merged this into the Western incident at Level 2 and that this was not spotted and removed (see point 5.8 above re the use of YX not being well understood) but it does not demonstrate a different stance on the Western Route. TIN 231766 1T52 OVERTIME HWY on the same day which also had a dispute request to be merged to TIN 231136 (06/07/17) HTRWAJN PANEL FLR remains in dispute.

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5.11 NR does not believe that DAPR 1.6 is relevant in this situation:

"If an operator's service is delayed due to overcrowding as a result of an operator's train either being cancelled, or delayed, any delay or cancellation is to be attributed to the prime cause of why the initial train was delayed, or cancelled. This also applies to a train running late in the path of the following train."

NR believes that this refers to trains operating on the same line of route and requires the cancelled or delayed train to be identified and justified whether this be the preceding train or the train itself being delayed as per the guidance given by DAB in Process and Guidance Document 3: Y Code Application which outlines on Page 12 the description and examples for the use of the YX code e.g. Train A calls at station X but is 20 minutes late. Train B calls at station X and arrives before A. Train B has overtime at station X loading Train A and Train B Passengers. This becomes particularly significant if delay was to be attributed to another operator's incident as they would expect a full justification for the use of YX and/or any subsequent merge request.

Network Rail does apply DAPR 1.6 (previously DAG 3.1.5) where there is disruption on a specific line of route directly affecting passengers on that line of route and where delays can be linked to specific trains on that line of route. Where attribution may have differed in the past and where trains have apparently been attributed incorrectly or erroneously does not make it right going forward.

5.12 Paragraph 4.11 above refers to DAB 25 and the guidance given to the parties following an ill passenger on an overcrowded train. Network Rail believes that point 6.2.3 of that paper should be taken in context with the previous statement 6.2.2 which states:

That CRCL had offered to accommodate the displaced passengers if London Midland and Virgin on its services to Birmingham and remained in control of the passenger flows. The Board considered this indicated that CRCL had the opportunity to avoid undue overcrowding on its services.

5.13 As part of the other incident examples there is an incident which whilst similar in that the use of the YX code and a merge has been requested, it is slightly different to the others as the delay has occurred off network.

TIN 434018 (2B44 4 LOST HOH AMR) occurred on 29th September. The Chiltern dispute states that the delay was due to passenger overcrowding as a result of CRCL cancelling their 2G43 service which would have run from Marylebone to Gerrards Cross (on Chiltern mainline) but was cancelled as a result of 6Z56 failing at Denham Golf Club. The merge request has been requested on the basis that passengers who would have travelled on 2G43 used 2B44 (Marylebone to Aylesbury via the Met) to get to "similar geographical locations."

Network Rail has declined to do this as the LUL Met Line is off network and the train was on a different line of route when the delays occurred. DAB guidance on this particular incident is requested also.

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This particular merge request was into a Freight Operator incident. Network Rail would ask the Board to consider how a FOC could be held responsible for a delay that does not appear to be adequately explained through the use of the YX code but also whether they should be held responsible for a delay which will have a financial impact on them but which that they had no involvement in and cannot mitigate.

5.14 Network Rail would like to understand how, when the ORR is looking to make Network Rail more responsible for reactionary delays/codes, how Network Rail could have mitigated these incidents. London Marylebone and Birmingham Moor Street and Snow Hill Stations are all barrier operated so there was an opportunity for CRCL to mitigate any overcrowding by controlling the number of passengers boarding their trains at these stations. Network Rail has no involvement in this or any control on how many passengers are allowed to board train services.

5.15 In addition, Network Rail would like the Board to give consideration to the use of YL and YM reactionary codes which can only be used when a specific train serving that station/running on that line of route is identified as causal and agreement is made between TOC and NR Controls. If this agreement is not gained, then these delays are attributed to RI/RJ/RK/RL as per DAPR Section R (Station Operating Causes). Whilst general agreement of passengers using different lines of route is generally agreed, the specific causal trains cannot be identified in these cases. Why should passenger delays allocated under the YX code be any different as all are linked to service recovery and the provision of services for passengers? Network Rail believes YX should be applied with the same two requirements being met as with YL and YM.

5.16 Chiltern state in Paragraph 4.5 above that “the acceptance of these displaced passengers is required by the Network Rail LNW Contingency plan.” Network Rail would point out that the contingency plan is not a Network Rail plan but an “industry plan” which is agreed with operators. Network Rail has no jurisdiction over operators and cannot force them to take other operators passengers. Throughout the contingency plan it states that “rail replacement services are to be provided” in certain scenarios. As with ticket acceptance, Network Rail is not responsible for organising these services nor is Network Rail responsible for any costs incurred by operators for the provision of these services.

5.17 In Paragraph 4.6 Chiltern refer to Network Rail’s requirement to apply the Approved Code of Practice for ‘Passenger Information During Disruption’ (PIDD). Network Rail would like to point out that they follow the requirement to advise passengers of the alternative travel arrangements but are not responsible for their delivery.

5.18 In response to Chiltern’s statement in Paragraph 4.13 which refers to Network Rail’s ability to mitigate incidents, Network Rail would state that while it may be in Network Rail’s gift to manage and mitigate the operation of the network and train services, it is not their role to manage passenger numbers and/or passenger flows and Network Rail believes that this mitigation rests with the Operators. It is the old ATOC directive that stipulates the carriage of other TOC passengers in times of disruption. Network Rail does not necessarily ‘agree’ that policy, just advises of it through the PIDD process.

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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 regarding how incidents of this nature should be attributed, this guidance was not binding on either Party. If either 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 was referred to ADA, then an Access Dispute Adjudication Panel (ADA 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 would not be 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.

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7 Consideration of the Issues

7.1 The Board at its meeting on 16th January 2018 and subsequently on the 13th February 2018, considered the Request for Guidance and took account of the following:

7.1.1 The facts provided by both Chiltern and Network Rail in connection with the incidents disputed between the Parties and their Request for Guidance.

7.1.2 The information provided by the Parties in response to questions raised by the Board prior to the Hearing (Set out in Appendix A).

7.1.3 Additional information provided by the representatives of Chiltern and Network Rail at the Board Meeting (Set out in Appendix B).

7.1.4 The guidance provided within the Delay Attribution Guide (that was in place at the time of the incidents occurring, prior to the name change in this case) and any prior related DAB Guidance.

7.2 The Board regarded the following points as particularly relevant during discussion of the incidents:

7.2.1 The wording in DAG 3.1.5 (now DAPR C1.6), intention and interpretation thereof.

7.2.2 The wording in Section 2.7 Definitions (now DAPR B7.3) and interpretation thereof

7.2.3 DAG Section 3.1.1 (now DAPR C1.1) contractual responsibility.

7.2.4 Delay Code YX description and intended application.

7.2.5 Reactionary Y* attribution principles (Responsible Train identification) - does the ACTUAL Responsible Train have to be identified?

7.2.6 The suggested methodology of Chiltern to ascertain the Responsible Train (which proposes a set ‘walking time’ between London Euston and Marylebone stations) was not agreed with Network Rail.

7.2.7 The additional passengers on any given Chiltern train could therefore have come from one or more Virgin WC or London Midland trains depending on the transit time of each relevant passenger between stations and therefore only a Likely Responsible Train could be identified using the proposed methodology.

7.2.8 The requirements on Parties in relation to PIDD arrangements

7.2.9 The requirements on Parties through Commercial Agreements in place in relation to carriage of passengers in times of severe perturbation

7.2.10 Mitigation opportunities taken and available to the Parties

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8 Guidance of the Board

8.1 The Board was divided at the Board Meeting on 16th January 2018 and was therefore unable to provide the Parties with the requested guidance at that time. However the Board reconvened on the 13th February 2018 and, following further debate, and then by a majority vote (9 in favour, 2 against) concluded the following:-

8.1.1 Where the actual Responsible Train cannot be clearly identified then the incident should be attributed to Chiltern Railways utilising Delay Code RB

8.1.2 Where the actual Responsible Train can be identified (through clear and agreed methodology) then the incident should be attributed in line with prescribed Reactionary Delay attribution rules (accepting that allocation to an Operator cannot now occur due to Contractual Timescales being passed).

8.2 In reaching its conclusion the Board noted the following:

8.2.1 That attribution of delays relating to displacement of passengers needs a fundamental review in line with the base principles and rules of attribution.

8.2.2 That DAPR C1.6 (DAG 3.1.5) and subsequent application of Delay Code YX requires reviewing by the Board to improve clarity and understanding as to application in line with the aforementioned review.

8.2.3 That DAPR Section B7, Definitions, also needs to be considered for further review and clarification.

This guidance was approved by the Delay Attribution Board on 13th March 2018	Richard Morris (Chairman)
Signature:	

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APPENDIX A

Questions submitted by Board members and the respective responses from CRCL and Network Rail in advance of the meeting.

FOR CHILTERN ONLY

Question 1

In DAB25 (which is referred to in the submission) Section 6.2.5 the guidance stated: -
That, certainly with regards to TDI 575635, the passenger fainting had been alleged as being due to overcrowding as a consequence of the WCML closure but that this could not be verified and that CRCL had confirmed that at no point were DfT 'capacity standards' exceeded on the train services.

Can Chiltern confirm that in the new cases submitted that the capacity standards had not been exceeded, and also what evidence exists that the overcrowding was purely down to the WCML incident and that no other factors where in play.

Chiltern Response: Chiltern can confirm that the capacity standards (Pixi) were not breached.

There were no special events occurring on the dates in question (for example Wembley Stadium usage), that would have generated additional traffic flow. The services remained overcrowded throughout their journeys' between London and Birmingham (and vice versa) would indicate the passenger flow relates to the closure of the WCML.

Of the services (in appendix 1) only one was not the specified length (1K54 on 07/11), which was one vehicle shorter than normal.

Question 2

Chiltern quote Section 6.2.2 of DAB25 that states: -
That CRCLhad offered to accommodate the displaced passengers of London Midland and Virgin on its services to Birmingham and remained in control of the passenger flows. The Board considered this indicated that CRCL had the opportunity to avoid undue overcrowding on its services.

Do Chiltern still agree with the concept that they had the opportunity to avoid overcrowding on its services?

Chiltern Response: When DAB 25 ruling was made there concept of PIDD did not exist, as detailed in the offer statement section 6.2.2 of DAB25. It is no longer possible to refuse carriage of those holding route or TOC specific tickets which previously was the case. In some of the instances (listed in appendix 1) services were lengthened to accommodate the additional passenger volume.

FOR NR ONLY

No questions were submitted solely directed to Network Rail.

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QUESTIONS FOR **BOTH** PARTIES

Question 3

In DAB25 ruling section 6.2.7 it states: -
"The assertion that the West Coast incident contributed directly to the disputed incidents was speculative and attempted to identify a 'root cause' that was somewhat removed from the delay itself".

Can the parties confirm that they still agree with the DAB statements above (the original DAB ruling was un-challenged by the parties) in that linking the delays was attempting to attribute to root cause events that where occurring in an area removed from the original incident.
If the parties do not agree with the statement can they state why they do not believe that it is attribution to root cause?

Chiltern Response: Chiltern did not agree with the ruling. The ruling was not challenged further due to a desire not to damage the relationship with Network Rail, and the expense of taking a claim further. The impact of the decision was relatively minor at that point in time, due to the lower passenger numbers on both routes, available capacity, the fewer instances of route closure, and related to delays arising from fainting on an overcrowded service. Further to this Network Rail attributed overcrowding delays (where there was no fainting passenger) to the instances on other lines of route as detailed in the paper section 4.11. This attribution consistent with DAPR and DAB25

> *6.2.3 That the parties confirmed that at other times during the period of disruption on the day the guidance given in DAG 3.1.5 had been applied to services delayed as a direct result of overcrowding, i.e. Late starts. This indicated to the Board that there were specific circumstances where DAG*
> *Section 3.1.5 was agreed as applicable guidance in circumstances where delay is caused by passengers boarding and alighting.*

Section 3.1.5 (now being renumbered as C1.6)

> *"If an operator's service is delayed due to overcrowding as a result of an operator's train either being cancelled, or delayed, any delay or cancellation is to be attributed to the prime cause of why the initial train was delayed, or cancelled. This also applies to a train running late in the path of the following train."*

NR Response: Network Rail agrees with the statement.

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Question 4

Section 4.13 of the Chiltern submission states: -

> *"4.13 It is directly in Network Rail's gift to mitigate the incidents that occur on the West Coast Main Line through having a supportive suite of plans that are embedded within their Performance Strategy. Network Rail are not achieving the required Performance outputs".*

Do the parties believe that it is directly in NR's gift to mitigate all aspects of all incidents that occur? Who do the parties believe can directly mitigate the impact of overcrowding?

Chiltern Response: Network Rail are required to provide the contracted access to the network. It is unfortunate that there an instances such as fatalities, fires arising beyond the boundary fence, are hard to mitigate, but remain the responsibility of Network Rail.

Everything that could be done was carried out. Consideration is given to holding a train to strengthen it, balanced against the risk of delays arising from doing so. Once a service is underway it is not reasonable to enact further mitigation

NR Response: Network Rail does not believe that it is able to directly mitigate *all* aspects of *all* incidents. Network Rail is able to ask Operators to implement recovery and contingency plans but is not able to enforce this. (Note that this is done via a contingency plan in Control and not by a Performance Strategy as suggested above). Whilst responsible for the operation of the infrastructure, Network Rail is not responsible for the rolling stock or train crew or indeed management of passengers at franchised stations so are reliant on the Operators to put the relevant mitigations in place around this.

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Question 5

In the Chiltern submission section 4.7 it states; -

> *"4.7 Network Rail are misunderstanding the application YX code, as when it was created it was not the intention for it to be used during mass disruption".*

Can the parties confirm they agree that the delay code should not be used for mass disruption? And also state what they would categorise as mass disruption?

Chiltern Response: The use of YX is identification of the flow of displaced passengers from one service to another. The original routing of the passengers and level of disruption is not relevant.

NR Response: Network Rail's view is that the YX code should only be used where the cancelled or late train can be specifically identified and attributed as reactionary delay. NR believe that the guidance for its usage states that YX should apply when a cancelled or late running train is either preceding or following the train that is delayed due to overcrowding, and is also running in a similar calling pattern. Network Rail does not believe this is possible to do during mass disruption and certainly not when the delays are occurring on a different line of route.

Mass disruption from a Network Rail perspective might be when an incident occurs at a large station or blocks a main line to and from a large city for a long period, and one consequence could be that passengers seek diversionary routes to continue their journeys. Certainly mass disruption would be when one line of route is closed and passengers are being directed to another line of route – where agreements between the operators allow passengers to use their tickets on another operator's service. As noted in the paper, Network Rail is not responsible for organising these services nor is Network Rail responsible for any costs incurred by operators for the provision of these services.

Question 6

The paper suggests that the responsible train ID can be ascertained from using a basic time calculation to represent the travel time between 2 locations. In the example provided the walking time of 8 minutes is suggested between New Street and Moor St. looking at the basic timetable for trains between Birmingham and London the 2 London services depart 3 minute apart.

If the trains had been cancelled due to separate incidents (as with a fatality) what defined attribution process do the parties believe should be applied to correctly identify which incident should be used?

Chiltern Response: The allocation of reactionary delays due to multiple incidents should not be for Chiltern to decide. The DAPR guidance should be applied, if there is a gap within the guidance then the DAB should provide guidance applicable to the circumstance.

NR Response: This question seems to be asking about the allocation of cancellations as opposed to the attribution of delay minutes. In terms of a fatality where there is more than one incident (a 100% NR and a 50/50 (NR/TOC) incident) the attribution of the cancellation would be based on whether the train was booked to call at the affected platform, whether the platform was available at the booked time and whether the infrastructure was available at the booked time. This is as per guidance issued by the DAB in Process Guide 13.

In terms of then attributing any delay minutes due to overcrowding, Network Rail would not be looking to link these to either fatality incident so the allocation of the cancellations is irrelevant. Network Rail would attribute to a new prime cause to the operator of the train with the overcrowding delays.

Question 7

In 3.1.8 the parties have asked the board to give guidance on whether the overcrowding is a new prime cause, the parties seem to agree that establishing if the delays are Prime delay or not would resolve the attribution issue.

Using defined /agreed attribution principals: -
Can NR state why they believe the delays are new Prime Causes?
Can Chiltern state why they believe the delays are not new Prime Causes?

Chiltern Response: Chiltern believe that the delays should be attributed to DAPR C1.6 [DAG 3.1.5]:-

> *"If an operator's service is delayed due to overcrowding as a result of an operator's train either being cancelled, or delayed, any delay or cancellation is to be attributed to the prime cause of why the initial train was delayed, or cancelled. This also applies to a train running late in the path of the following train."*

NR Response:- Network Rail believes that these are new Prime Causes on the basis that Prime Cause is defined as the immediate cause or event that results in delay to the train. Until the Prime Cause event occurs there will be no delay. In these cases, the overcrowding of the services has resulted in the delay at stations. Network Rail believes that there was an opportunity to mitigate these delays and therefore they should be considered as a new prime cause.

Question 8

For the purpose of managing passenger numbers being allowed to board train services, who do the parties believe are best placed to mitigate delay?
How would Network Rail mitigate the delay when the incident is caused by a train operator?

Chiltern Response: Not all delays are mitigatable, and therefore are reactionary delays.

NR Response: Network Rail believes that the operator is best placed to manage passengers boarding their trains and is therefore best placed to mitigate delays as a result of overcrowding. This is regardless of whether the incident was caused by a train operator or was an infrastructure issue.

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Some scenario based questions were submitted to ascertain both Parties' respective views on wider application of their attribution stance.

Scenario 1- It is reported that there is an incident causing major disruption at on the Western Route due to all lines being blocked as a result of a freight responsibility incident in the Acton area. Passenger train operators have agreed to direct passengers to London Waterloo for journeys to Reading and the west of England. There is potential for trains to be delayed between London Waterloo and Reading due to overcrowding.

Question 9 (relating to scenario 1)

If trains are delayed due to overcrowding, how do the parties believe the delays between London Waterloo and Reading should be attributed? If it is the freight incident on the Western Route, how would YX be used?

Also, considering the principles of the DAPR, specifically, accepting that the prime objective of delay attribution is to identify the prime cause of delay to train services for improvement purposes" and the fact that the freight operator have not had no part in how the passengers are managed, why do the parties believe the incident should be the responsibility of the freight operator?

Chiltern Response: The delays should be attributed as per DAPR C1.6. The use of YX is identification of the flow of displaced passengers from one service to another. The original routing of the passengers and level of disruption is not relevant.

It is the freight operator who has caused the disruption, which resulted in the closure of the line, and the displacement of passengers. This then sees DAPR C.1.6 applied. The use of YX is identification of the flow of displaced passengers from one service to another. The original routing of the passengers and level of disruption is not relevant.

NR Response: Network Rail does not believe YX should be used but that each overcrowding incident is attributed as a new prime cause. It would be extremely difficult if not impossible to determine which cancelled or late running trains were responsible for causing the overcrowding so how can the YX code be used? A freight operator has no influence or ability to mitigate the overcrowding delays as a result and believe at present they would be disputed as such.

As per the above and the view expressed in the paper, Network Rail does not believe any resulting overcrowding delays should be linked to the original incident but attributed as new prime cause(s) to the operator whose service has the delays as a result of overcrowding.

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Scenario 2 - Following on from the previous scenario, during the time that the Western Route is blocked, an incident occurs on the Waterloo to the Basingstoke and Salisbury line resulting in the train service being suspended. Passengers are advised that their tickets will be valid on any reasonable Route. This results in passengers to for Salisbury also travelling via Reading on the Waterloo to Reading line.

Question 10 (relating to scenario 2)

There are now two incidents causing passengers to be displaced. How would the parties attribute any delay on the Waterloo to Reading line as a result of over-crowding?

Chiltern Response: The delays should be attributed as per DAPR C1.6. The use of YX is identification of the flow of displaced passengers from one service to another. The original routing of the passengers and level of disruption is not relevant.

NR Response: As per previous response and view in the paper, Network Rail would not try and link these delays back to either of the incidents. They should be attributed as new prime cause(s) to the operator whose train suffers the overcrowding. Network Rail believes it would be almost impossible to determine which incident was the cause and determining the “responsible” train ID even more so. Attributing delays due to overcrowding to either of the incidents does not help the industry understand where the passenger management issues occurred and how best to try and mitigate these in the future.

Scenario 3 - It is reported that that there is major disruption at King's Cross and that all lines are blocked between London and Peterborough due to a derailment. Trains are being cancelled to the single event of the derailment. At the same time London Euston is closed due to a security alert. An incident per operator has been created for each of the operators affected as per the DAPR. In total, four incidents have been created – one for the derailment on the East Coast Mainline and three for the incident on the West Coast Mainline. As a result of both the West Coast Mainline and East Coast Mainline being closed, passengers for the north and midlands are being advised to travel out of St Pancras and there is potential for delays to be incurred due to overcrowding.

Question 11 (relating to scenario 3)

If services are delayed due to overcrowded trains, could the parties advise what event the delay should be attributed to? If the YX code is to be used, how would the responsible event and train be identified? Also, how would the parties expect the Train Delay Attributors to identify the correct cause and train real time?

Chiltern Response: The delays should be attributed as per DAPR C1.6. The use of YX is identification of the flow of displaced passengers from one service to another. The original routing of the passengers and level of disruption is not relevant.

NR Response: Network Rail's view is that these delays (as a result of overcrowding) are new prime cause incidents attributable to the operator of the train on which they occur. As previously stated the use of the YX code requires a responsible train ID and in these cases, we believe it is impossible to determine this. It is unreasonable to expect the Train Delay Attributors to identify the correct cause and responsible train in real time when in reality it is unlikely the train operators themselves will know this real time or even be able to determine this after the event.

The above questions clearly relate to industry incidents. Network Rail believes that delay attribution should be to what is known and not what is assumed. In Scenario 3 above, Leicester could also have been playing Chelsea at home (Leicester v Chelsea football match) and there could have been the aftermath of a hen party travelling back to Wellingborough both causing additional overcrowding. And whilst no incident is likely to have been created for these, they would both have contributed to any late start hence trying to link the overcrowding back to an incident in London using YX is an assumption.

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APPENDIX B

Additional information provided by Network Rail and Chiltern during further questioning by Board members at the meeting.

Q – To both Parties – is the ask of the Board whether attribution should be to Root Cause or Prime Cause or is the question about the most appropriate Prime Cause?

Chiltern and NR – to which is the most appropriate Prime Cause.

Q – PIDD clearly states that conveyance of passengers is for Operators to agree with other Operators and the requirement of NR is only to provide advice to the passengers. Is that Chiltern's understanding?

Chiltern – The Operator can't issue a 'not to travel' and apply the Industry requirements and therefore accept other passengers.

Q – Presumably this issue only applies to specific TOC tickets and not 'opens'?

Chiltern – That is correct, although most will purchase TOC specific tickets as they are generally cheaper.

Q – So you couldn't tell who had what tickets?

Chiltern – No, however, when the passengers turn up to Marylebone the 'open' tickets would go through the ticket barriers whereas the specific TOC tickets would not let them through.

Q – Do Chiltern usually suffer overcrowding on the trains or locations involved in these incidents?

Chiltern - No

Q – Chiltern state that the passenger levels did not breach DfT capacity standards (PIXIE). Therefore, if the trains were under capacity should Chiltern have been able to manage the passenger numbers?

Chiltern – The trains were under the PIXIE loadings but that does not prevent overcrowding delays occurring at one location, such as Marylebone, where all passengers are trying to board the train.

Q – It was stated that delays of similar nature have been historically allocated to the causal incident by Network Rail, so why was this?

Network Rail – Whether historic incidents have or haven't been attributed to the incidents is not relevant as this is about gaining consistency. The fact the DAPR is causing confusion is the reason why some delays are attributed, or not, is as a result of misinterpretation. This is why NR and Chiltern have asked the Board to clarify the correct interpretation.

Q – Does Network Rail agree that the incidents have caused the overcrowding?

Network Rail – The cause of the overcrowding is not in dispute in most cases such as at Birmingham and Marylebone but delays at intermediate stations could be any other cause. Also, the dispute is about identifying Prime Cause of the passenger delays not what incident caused the displaced passengers.

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Q – Can both Parties advise who they believe can mitigate delays occurring at Marylebone, being a gated concourse

Network Rail – Network Rail cannot mitigate overcrowding delays, that is entirely a TOC responsibility

Chiltern – There are many issues in attribution that are unfair where Parties take delays they could consider not being responsible for. All Parties are responsible for mitigation in the prevention of the incidents occurring tin the first place

Q – Should Performance Plans not deal with mitigation and managing recovery of incidents and not just the incident itself?

Chiltern – Chiltern do have mitigation plans and will implement them as best they can in any given circumstance.

Q – So can a TOC prevent overcrowding delays or only minimise?

Chiltern – Can't prevent, only minimise.