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# Delay Attribution Board

## Guidance No. DAB-13

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### 1. Introduction

- 1.1 The Delay Attribution Board (Board) received a request for guidance in relation to the Attribution of Delay to an incident (TRUST reference 980334). The incident occurred on 26 September 2005 involving a low adhesion delay incident at Croy resulting in 588 delay minutes and 2 cancellations. This joint paper was received from First ScotRail Limited (First) and Network Rail Infrastructure Ltd (Network Rail) on June 8<sup>th</sup>, 2006.
- 1.2 The Board considered this request for guidance at its meeting on June 13<sup>th</sup>, 2006.
- 1.3 This paper summarises the request for guidance received from First and Network Rail and the guidance provided by the Board.

### 2. Information Received

- 2.1 On 26 September 2005 the driver of the 1548 Queen Street to Dunblane with headcode 2N47 reported poor rail conditions on approach to Croy station. The Network Rail MOM attended the site and confirmed that there was no rail contamination, only wet rails.
- 2.2 There are currently circa 7,000 minutes of delay in dispute between the parties associated with delays outwith Autumn. The parties have selected incident TDA 908334 as representative of the incidents in dispute.
- 2.3 The Guidance sought from the Board is that in the case of delays occurring outside the Autumn Period where no contamination is found on the railhead only wet or ice, the delays should be the responsibility of
  - a) The train operator as per DAG Clause 4.3.8 – 3 (c)

**OR**

- b) Split according to a lapsed commercial agreement made following ADRC 11 during the ScotRail franchise managed by National Express Group.

### 3. Summary of the position of First

- 3.1 First ScotRail believes that the delays should be not apportioned in accordance with DAG 4.3.8 – 3 (c) as the parties had previously entered into separate agreed procedures for dealing with such delays, in line with ADRC Determination 11
- 3.2 In August 2000 ScotRail Railways Limited and Railtrack PLC entered into a Supplemental Agreement to Schedule 5 of the Track Access Agreement relating to the fitment of sanding equipment. Whilst this supplemental primarily detailed the split of costs associated with the leasing of the equipment to reflect the shared performance benefit, it also set out a percentage allocation for delays caused by adhesion problems. When the Track Access Agreement was renewed in December 2004 these various conditions were dropped from the agreement. The reasons for this were

- 3.3 The new contract was negotiated by ScotRail Railways Limited, on behalf of SRA, SPT and Scottish Executive, but entered into by First ScotRail Limited after the Franchise change. First ScotRail had no reason to dispute the dropping of the supplemental conditions relating to funding of the sander leases as new leases were entered into at refranchising, It should also be noted that the August 2000 supplemental arrangements for delay allocation were more beneficial to Network Rail than a previously signed side agreement between ScotRail and Railtrack. This agreement also gave a 50/50 split outwith the leaf fall season, but was considerably more punitive of Railtrack during the leaf fall season. The change in the allocation of delays was the consideration Network Rail received for its contribution to the costs of the Sanders. In the meantime this benefit had been removed from Network Rail by the rebasing of the benchmarks by the ORR review. Thus the clause in the Track Access agreement was no longer relevant. At no point was the removal discussed and there was no specific or, First contend, implied agreement that this was because there was an intention to alter the allocation of delays.
- 3.4 It should be noted that the allocation of adhesion delays on a 50:50 basis was incorporated into the Benchmarks via the ORR review of Schedule 8 and therefore any change would invalidate the current Benchmarks.
- 3.5 This is the only example so far of the DAG contradicting an agreement between Network Rail and First ScotRail and First would contend that such agreements have precedence over a guide, unless the parties agree otherwise.

#### **4. Summary of the position of Network Rail**

- 4.1 Network Rail believes that the delays associated with the incident should be apportioned in accordance with the DAG 4.3.8 – 3 (c) ie: where water or ice is found upon the running railhead outside Autumn period, it should be attributed to the train operator. No commercial agreement exists between First ScotRail and Network Rail to override this arrangement. The commercial agreement which did exist in the past has not been perpetuated and pre-dated the incorporation of the DAG into Part B of the Network Code. Therefore it is consistent with principle and with recent working practice between the parties to follow the guidelines within the DAG for managing delay attribution.
- 4.2 Network Rail's stance is that it cannot be made to uphold any commercial agreement with a previous franchisee. Furthermore all parties were consulted on changes to the DAG and as a result, the content of the DAG should be upheld, the DAG having been created to attribute responsibility for delay with the party most able to mitigate.

#### **5. Locus of the Board**

- 5.1 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 B2.4.3 and B6.1.3.
- 5.2 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 one or both parties were dissatisfied with the guidance provided they could refer the matter to Access Disputes Committee (ADC).

- 5.3 If the issue were referred to ADC, then an ADC Panel would be formed to consider the dispute. In doing so, the ADC Panel would take account of the guidance provided by the Board but were not bound by it. The ADC 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 ADC Panel.
- 5.4 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”

- 5.5 The Board would need to consider if, in providing guidance, an amendment to the Delay Attribution Guide should be proposed, to improve clarity.

**6. Consideration of the Issues**

- 6.1 The Board at it’s meeting on June 13<sup>th</sup>, 2006 considered the request for guidance and took account of the following
- i). The paper submitted by First and Network Rail setting out the issue and their respective positions;
  - ii). Appendix A: Network Rail Control Log
  - iii). Appendix B: First ScotRail Control Log
  - iv). Appendix C: ADRC Determination 11
  - v). Appendix D: Supplemental Agreement 59 to Track Access Agreement
  - vi). The wording in the Delay Attribution Guide;

**7. Guidance of the Board**

- 7.1 The Board agreed unanimously that neither of the parties - ScotRail Railways Limited and Railtrack PLC - who entered into a Supplemental Agreement to Schedule 5 are still in existence and that the Commercial agreement between them was not carried over into First’s Track Access Agreement. The Board would have expected this agreement to be explicitly carried over if that had been the wish of the parties. The Delay Attribution Guide is now a contractual document as part of the Network Code. and therefore paragraph 4.8.3 item c of the Delay Attribution Guide applies to this incident. However it is open to the parties to enter into a new commercial agreement or for either party to propose and sponsor an amendment to the Guide.
- 7.2 The Board concluded that the guidance above is consistent with the wording of the Delay Attribution Guide and that in the case of delays occurring outside the Autumn Period where no contamination is found on the railhead only wet or ice, the delays should be the responsibility of the train operator as per DAG Clause 4.3.8 – 3 (c).

This guidance was approved by the Delay Attribution Board on 31 <sup>st</sup> July 2006	John Rhodes (Chairman)
Signature:	