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# Delay Attribution Board

## Guidance No. DAB-4

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### **1. Introduction.**

- 1.1 The Board received a request for guidance from The Chiltern Railway Company Ltd (Chiltern Railways) in a letter dated March 24<sup>th</sup>, 2005 concerning a principle of attribution as applied by Network Rail Infrastructure Ltd (Network Rail) involving possession overruns.

### **2. Information Received**

- 2.1 The request for guidance specifically related to a principle of attribution to where incidents had been attributed to English Welsh and Scottish Railway Ltd (EWS) whilst working under contract to Network Rail as “engineering trains”. Chiltern Railways referred to incidents 089529 and 214737 specifically.

### **3. Chiltern Trains Position**

- 3.1 Chiltern Railways presented a view that trains employed by Network Rail to work in possessions by being sub-contracted to Network Rail and therefore the attribution of any train related issues should be coded to Network Rail on the basis that the Delay Attribution Guide in para. 3.1.2 specifically precludes attribution to a sub-contractor. Currently such delays are attributed to EWS.

### **4. Locus of the Board**

- 4.1 The Board reviewed its locus in respect of providing guidance on this issue. The Board’s locus to provide guidance was defined in the Network Code B2.4.3 and B6.1.3.
- 4.2 The Board noted that the incidents referred to were not attributed to Chiltern Railways but were in relation to delays to train services operated by EWS and the associated incidents were attributed to EWS.
- 4.3 The Board noted that while it could offer guidance to Chiltern Railways as to how incidents of this nature should be attributed, this guidance was not binding on any party. If one or more parties were dissatisfied with the guidance provided they could refer the matter to Access Disputes Committee (ADC) but could only do so by submitting a specific incident that was in dispute. Any incident that was to be put before ADC would also need to pass through the DAB so that the facts specific to that incident could be considered.
- 4.4 If an incident were referred to ADC, then ADC would consider the guidance provided by the Board but were not bound by it. ADC 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 ADC.
- 4.5 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”

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

## **5. Consideration of the Issues**

- 5.1 The Delay Attribution Board considered the matter raised by Chiltern Railways at the Board meeting on April 19<sup>th</sup>, 2005. In discussion the Board felt it appropriate to invite comment from EWS and Network Rail on the points made by Chiltern Railways. EWS and Network Rail agreed to provide a joint response to the next meeting on May 17<sup>th</sup>, 2005.
- 5.2 At the Board meeting on May 17<sup>th</sup>, 2005 EWS and Network Rail presented their response to the points raised.
- 5.3 Both EWS and Network Rail agreed that the attribution principle as currently applied is correct.
- 5.4 EWS / Network Rail stated that it was necessary to consider the nature of the relationship between Freight Operators and Network Rail in this respect, which differs from the normal “subcontractor” relationship. In a normal subcontractor relationship there would be no Track Access Agreement, and the delay would therefore fall to Network Rail. In these cases however, FOCs have Track Access Agreements covering access on the network for infrastructure trains (separate both to their contracts to provide the service to Network Rail and to their access agreements covering their other non-infrastructure freight services) and are therefore a party to the Network Code including the Delay Attribution Guide.
- 5.5 The DAG supports the role of the FOC as operating under its Track Access Agreement in this respect, by specifically indicating FOC attribution in DAG 4.9(e):
- *Engineers’ train [is] late coming out of possession site due to waiting traincrew, vehicle fault or other train operator problem*
- 5.6 As a general policy issue, Network Rail believes that DAG 4.1.6 is also a significant reference in this context:
- *Engineering trains and on track machinery... are now subject to a live incentivised performance scheme. It is therefore vital that delays to these trains are attributed delay codes and responsible manager codes, subject to the full provision of this guide. Section 4.9 refers.*
- 5.7 EWS / Network Rail consider that the above principles apply where the only reason for the overrun is that the infrastructure train(s) is awaiting train crew or the train is unable to move due to a mechanical failure which prevents the train(s) from moving from the site so that the possession can be given up. Delay code used would be (F\*). If the possession is overrunning because there is work still to be completed, the overrun would use delay code I5.

**6. Board Guidance**

- 6.1 After consideration the Board unanimously agreed that attribution in relation to these two incidents and the principle of attribution in these instances was being applied correctly.
  
- 6.2 The Board accepted that the proposal for amendment to paragraph 3.1.2 should be put to the industry for acceptance once other proposals for amendment, in association with the review of delay attribution, were also ready. The Board remitted the Secretary to do this.

This guidance was approved by the Delay Attribution Board on June 22 <sup>nd</sup> , 2005	John Rhodes (Chairman)
Signature:	