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# Delay Attribution Board

## Guidance No. DAB-8

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### 1. Introduction

- 1.1 The Delay Attribution Board (Board) received a request for guidance in relation to the incident at Darlington station on January 8<sup>th</sup>, 2005, from Great North Eastern Railway (GNER) and Network Rail Infrastructure Ltd (Network Rail) on September 5<sup>th</sup>, 2005.
- 1.2 The Board considered this request for guidance at its meeting on October 12<sup>th</sup>, 2005.
- 1.3 This paper summarises the request for guidance received from GNER and Network Rail and the guidance provided by the Board.

### 2. Information Received

- 2.1 The incident arose on January 8<sup>th</sup>, 2005 during a day of particularly adverse weather throughout the U.K., in particular high winds and heavy rain.
- 2.2 The most significant incident affecting GNER services on this day, involved damage to the overhead electrification (OHL) at Darlington station. A section of lead flashing on the station roof had become partially detached and was fouling the OHL just outside the station. Electric services were unable to access the station whilst the OHL was isolated in order for staff to make safe the lead flashing.
- 2.3 Simultaneously Platform 1 at Darlington station was closed to the public due to glass falling from the station roof. The glass was being 'caught' in safety netting but operations staff felt that it was dangerous to allow passengers to use the platform whilst glass was still falling. Therefore all stopping trains in both directions were using platform 4, as this was the only through platform remaining in use. Platform 1 was closed throughout the day.
- 2.4 Network Rail and GNER both agreed as to the events that occurred and the Board was not therefore being asked to adjudicate between differing versions of the facts. The parties are primarily unable to agree because, in their view, there is no clear guidance in the DAG relating to incidents at stations caused by weather or by the station buildings/infrastructure interacting with the operation of the Network.
- 2.5 Both parties have therefore agreed that it should be referred to the Board for guidance. The parties requested the Board to consider the following
  - a) What is the most appropriate cause code to use in respect of delays that are the result of weather affecting station infrastructure? If the Board agree with the parties that there is no suitable cause code currently defined in the DAG the parties request that the Board makes an appropriate amendment to the DAG.
  - b) Can Network Rail, in its role as station maintenance provider, be held responsible for delays caused by station infrastructure impacting on

the operation of the Network, and if so, then the parties request that the Board make an appropriate amendment to the DAG.

**3. GNER's Position**

The general rule on incidents at stations that are caused by 'external' factors e.g. fires (DAG 4.11.1.f) and fatalities (DAG4.10.2.a), is that if the station is closed to traffic and passengers cannot gain access to the platforms the delays are attributed to each Toc whose trains are booked to stop at that station. If the incident does not prevent passengers or trains from gaining access to the station then the incident should be attributed against Network Rail. During the incident at Darlington, passengers were at no point prevented from gaining access to the station.

GNER would like the Board to propose a new Cause Code into the DAG in respect of weather-related delays affecting the operation of the Network in/at a station that, in circumstances where passengers are still able to access the station, attributes the delay 100% to Network Rail.

GNER would also like the Board to consider, in principle, whether Network Rail, in its role as station maintenance provider, can be held responsible for delays caused as a result of part of the station infrastructure affecting the operation of the Network.

**4. Network Rail's Position**

Network Rail believes the root cause of this incident is the extreme weather conditions that were prevalent on the day in question. Part of the station infrastructure became dislodged and this fouled the OHL. The Network Rail position is that, as this constitutes an act of god no company can be held 100% responsible for the mitigation of such an incident.

As this incident principally occurred outside the station the general rule on fatalities etc, does not apply and that the clause 4.39.1 in DAG referring to passenger depot operation is the most relevant interpretation.

The incident was initially coded to I1 as the first indication that Network rail had was of a problem with the OHL. It then became clear that it was wind blown debris that caused the delay. When it was confirmed the debris had come from the station roof the incident was coded to VW as per DAG 4.39.1 – severe weather affecting all modes of transport. The code VW is also defined in the DAG as being severe weather affecting passenger depot operation as it was felt this was the closest interpretation within the DAG.

Network Rail believes that neither party could have mitigated against the exceptional weather on the day and has agreed to split the incident 50/50. This has been agreed with all the other operators that were directly delayed by the incidents at Darlington and Wakefield. The 50/50 split was offered to all operators as Network Rail believed that even though the interpretation in DAG that was used did point 100% responsibility to the TOC it did seem unreasonable for the TOC's to carry the full liability as neither party can mitigate against an "act of god".

**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 was defined 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.

### **3. Consideration of the Issues**

- 3.1 The Board at its meeting on October 12<sup>th</sup>, 2005 considered the request for guidance and took account of the following
- i). The paper submitted by GNER and Network Rail setting out the issues and their respective positions;
  - ii). The responses provided by both parties on October 6<sup>th</sup>, 2005 in answer to questions raised by the Board.
  - iii). The wording in the Delay Attribution Guide;
  - iv). The wording in the Franchised Passenger Template Track Access Agreement relating to allocation of delay between Network Rail and the Train Operator;

### **4. Guidance of the Board**

- 4.1 Taking the factors detailed above into account the Board unanimously agreed that in answer to specific question a), regarding the most appropriate cause code to use in the respect of delays arising from the events described, this incident should have been recorded as two separate incidents.
- i). The fouling of the OHL just outside the station; as 100% Network Rail responsibility and, as laid out in section 4.40.1 of the Delay Attribution Guide, it should have initially been coded I1 and then, after further investigation revealed lead flashing on the OHL, coded I3 as specified in section 4.40.2.
  - ii). The closure of Darlington Station Platform 1 to passengers; as joint responsibility 50:50 split incident between Network Rail and the Operator as laid out in paragraph 4.1.16 of the Delay Attribution Guide describing prevention of access for passengers through the station specifically to or from a train. Although this section of the guide refers

In reaching the above determination the Board noted that the Delay Attribution Guide did not include an example of the use of VW as weather affecting operations at stations and also that paragraph 4.1.16 did not currently present a second category as implied in the second sentence. Therefore the Board agreed that amendments to the Delay Attribution Guide in both paragraph 4.1.16 and 4.39.2 would improve clarity.

In response to question b) asking whether Network Rail, in its role as station maintenance provider, should be held responsible for delays caused by the maintenance of station infrastructure impacting on the operation of the Network, the Board unanimously agreed that the commercial impact of such incidents should be resolved through the station lease agreement and not through the terms of the access contract to which Network rail is not a party. Therefore the Question of amending the Delay Attribution Guide does not arise.

- 4.2 The Board therefore concluded the guidance to be that the parties should aim to identify how much of the total delay in dispute is attributable to the first type of delay incident and how much to the second, and allocate responsibility accordingly.
- 4.3 In providing this guidance The Board also notes that amendments to the Guide will be required which it will take into account when the Guide is next amended.

This guidance was approved by the Delay Attribution Board on	John Rhodes (Chairman)
Signature:	