

# Appendix A – Marked up copy of extracts from Part B and Part R the Network Code

## Part B

### CONDITION B2 - DIAGNOSIS OF DELAYS OR CANCELLATIONS

#### 2.1 *Determination of causes of delays or cancellations*

Network Rail shall, in relation to any train delay or cancellation (subject to any thresholds agreed between Network Rail and each Train Operator), determine and record the persons and causes which are responsible for the delay or cancellation and where more than one, so far as practicable, the extent to which each person or cause is so responsible.

#### 2.2 *Information relating to causes of delays or cancellations*

Network Rail shall, when determining and recording the persons and causes which are responsible for train delays and cancellations, have due regard to all information which is relevant in the circumstances, including the following:

- (a) information from any computerised or other recording system which Network Rail may, for the time being, be permitted to use for the purposes of a particular Access Agreement;
- (b) information supplied by signallers and other persons duly authorised to participate in the signalling of trains;
- (c) information supplied by any operator of trains, whether such information is within its knowledge or based on information supplied by other operators of railway assets;
- (d) information supplied by Network Rail, whether such information is within Network Rail's knowledge or based on information supplied by persons engaged or acting on behalf of, or otherwise in accordance with or subject to the instructions of, Network Rail or other operators of railway assets; and
- (e) information and guidance set out in the Delay Attribution Principles and Rules.

#### 2.3 *Notification and agreement of delays or cancellations*

##### 2.3.1 *Notification of delays or cancellations*

Network Rail shall, as soon as reasonably practicable following the occurrence of any train delay or cancellation affecting a Train Operator's train, notify that operator of the occurrence of that delay or cancellation and the responsibility, if any, for that delay or cancellation attributed by Network Rail to that operator. Any such notification shall be sent using the Performance Monitoring System (and/or any such others means of notification that has been agreed for this purpose between that Train Operator and Network Rail) and at the same time provide its reasons for doing so.

### 2.3.2 *Consideration by a Train Operator*

A Train Operator shall consider each delay or cancellation attributed ~~by to it~~ by Network Rail and, if that Train Operator wishes to refer the attribution for further investigation it shall do so within two Working Days of receipt of that notice utilising the Performance Monitoring System (or any other means of notification that has been agreed for this purpose between that Train Operator and Network Rail), and at the same time provide its reasons for doing so. The name & contact details of the designated representative appointed by the Train Operator for the purposes of Condition B2.4.2 must also be made available within the same timeframe to Network Rail. ~~and.~~

### 2.3.3 *Agreement of delay attribution*

Any attribution shall, unless referred for further investigation by that Train Operator within two Working Days of receipt of that notice in accordance with Condition B2.3.2, be deemed to be agreed by that Train Operator.

## 2.4 ***Matters referred for further investigation***

### 2.4.1 *Procedure for conducting further investigation*

Within the next two Working Days after receipt of a notification from a Train Operator in accordance with Condition B2.3.2, Network Rail and that Train Operator shall attempt to resolve the matter referred for further investigation. Such  ~~further~~ investigation shall take into account all relevant circumstances of the case and any relevant information set out in the Delay Attribution Principles and Rules.

### 2.4.2 *Referral for review*

If agreement has not been reached within:

- (a) the two Working Days referred to in Condition B2.4.1; or
- (b) such longer period as Network Rail and the Train Operator have agreed in order to continue and conclude their investigations,

the matter shall then, notwithstanding Condition B2.4.3 (b) become subject to a ~~referred for~~ period of review, of no more than 20 working days, by the designated senior  ~~manager~~ appointed by the Train Operator and the designated senior  ~~manager~~ appointed by Network Rail for the purposes of this Condition B2.4.2.

### 2.4.3 *Referral to The Delay Attribution Board (DAB) for further guidance or resolution*

If Network Rail and the Train Operator are unable to agree on the attribution within:

- (a) the further 20 Working Days of the matter being referred for review by the designated senior managers in accordance with Condition B.2.4.2; or
- (b) such longer period as Network Rail and the Train Operator have agreed within the same further 20 Working Days as in order to continue and conclude the designated senior reviewing managers' review,
- ~~(c) then either or both parties involved in a dispute may, notify the DAB Board Secretary (by any electronic communication method made available by the Board Secretary for such purposes) of their wish to seek Guidance; they shall seek guidance from the Board on the appropriate application of the Delay Attribution Principles and Rules or on any other relevant matter;~~
- ~~(d) Any notification made under this Condition 2.4.3 shall at least include the incident number under dispute, and the contact details of the designated senior manager appointed by the Train Operator and the designated senior manager appointed by Network Rail for the purposes of Condition B2.4.2. If the notification is not made on a joint basis the other party to the dispute should be copied into the notification.~~

#### 2.4.4 Provision of information

- (a) Both Network Rail and the Train Operator (or, in the case of a single request, the party requesting guidance from the Board) shall provide copies of completed Request for Guidance forms in connection with their dispute to the DAB-Board Secretary in order for their views to be considered **56 days** after the DAB-Board Secretary confirms to both parties acknowledgement of a request for guidance.
- (b) Both parties shall make reasonable efforts to attend, or be represented at, the DAB-Board meeting where the guidance request will be considered, providing such meeting is no less than **35 days** after date in 2.4.4(a).

#### 2.4.54 Guidance from the Board

- (a) When submitting a Request for Guidance, parties should be aware that the DAB-Board can:
  - i. Provide clarification on attribution principles that are not explicitly documented in the DAPR-Delay Attribution Principles and Rules or associated Guidance documents and/or have potentially been misinterpreted.
  - ii. Provide guidance on the correct Delay Code and/or Responsible Manager Code (terms defined in the Delay Attribution Principles and Rules Sections B5 and B6) -to use in connection with an incident based on the above.

- (b) When submitting a Request for Guidance, parties should be aware that the DAB Board cannot:
- i. Carry out investigations into the facts of an incident on behalf of the disputing parties.
  - ii. Provide technical insight into the causes behind a fleet or infrastructure asset failure.
- (c) In the event that the Board cannot, will not, or does not provide Guidance on all matters submitted for its consideration in relation to a specific enquiry, it will provide enquiring parties with a written explanation on the reasons for this.
- (d) If, within 10 working days of guidance, or a written explanation in accordance with this Condition 2.4.5 (c), being received from the DAB Board or any designated sub-committee pursuant to Condition B2.4.3, Network Rail and the Train Operator are unable to agree on the attribution, either or both they shall refer the matter for determination in accordance with the ADRR.

#### 2.4.65 *Precedence*

For the purposes of operating the procedures set out in this Condition B2.4, in any Access Agreement Network Rail and the Train Operator may substitute for any timescale prescribed in this Condition B2.4 a corresponding timescale in Schedule 8 or its equivalent (Performance Regime) of that Access Agreement.

## Consequential change in Part R

### Rule B6

- 6 \_\_\_\_\_ All disputes referred to resolution in accordance with these Rules under Condition B2.4.54 of the Network Code shall be referred to an ADA in accordance with Chapter G as a single stage dispute resolution process with no appeal. Following service of a Notice of Dispute relating to such a dispute an ADA shall commence and the Secretary shall appoint a Hearing Chair for the dispute in accordance with Rule G8. If either party raises any objection then the Hearing Chair shall consider the best way to proceed.