Delay attribution review - Scoping stage consultation - Responses published July 2019

https://orr.gov.uk/rail/consultations/policy-consultations-by-topic/economic-regulation/delay-attribution-review

Abellio UK

Arriva UK Trains

Chartered Institute for Logistics and Transport

DfT

First Group

Freightliner Limited

GB Railfreight

GTR

Heathrow Airport

Individual responses

London TravelWatch

MTR Corporation Limited

MTR Crossrail Limited

Network Rail

Nexus

RDG

Stagecoach

Transport Scotland

Virgin Trains

West Coast Railway Company

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Introduction

This provides a response on behalf of Abellio UK and its Operating Companies; Greater Anglia, Merseyrail, ScotRail and West Midlands Trains.
Abellio UK have engaged with ORR, RDG and our own Operating Companies and have highlighted key areas for consideration below.

General considerations

Delay Attribution is a business critical activity that is required for root cause analysis, comprehension and driving performance improvement within a TOC and Network Rail.

We have previously raised concerns about ORR's proposal to move to a TOC-on-TOC regime, rather than the current TOC-on-Self methodology used. We believe that this would add in an additional layer of complexity, make the process more challenging and may require a fundamental re-write of the Delay Attribution Principles and Rules; due to the 'Star' model no longer being fit for purpose.
Our position on this remains unchanged and we are against such proposals.

Delay attribution and the Schedule 8 performance regime are fundamentally intertwined; we believe that delay attribution cannot be reviewed in isolation, without also considering the implications on Schedule 8. Therefore we believe that Schedule 8 should not be out of scope for this review.

Governance structures

We support the recommendations made within the RDG submission for consideration in stage 2 of this review and would additionally like for the ORR to consider the following:

Network Rail overall accountability – As the System Operator and owner, if a problem lies within Network Rail, there is no authority figure to enforce improvement. Recognising the audit/assurance work undertaken by the Programme Controls team in Network Rail Centre, aside from this, there is no final escalation point or ultimately accountable person for ongoing issues related to Delay Attribution.

As an Owning Group, we experience inconsistencies across Network Rail Routes with our Operators. We see this in terms of:

- Organisational structures – internally within the attribution teams
- Culture and behaviours – depending on the reporting structure of the Delay Attribution team
- Methods of working
- Escalation procedures
- Quality assurance undertaken within the Routes.

Delay Attribution Board (DAB) – As an advisory body, rather than an authoritative enforcer of rules, leaves a void in which there is no one clear 'owner' accountable for delay attribution.
We also believe that the constitution of DAB should be reviewed; the differing views and interests within parties sat on the DAB can mean that the interests of an Operator are not fulfilled.

Principles and Rules

We support the recommendations made within the RDG submission for consideration in stage 2 of this review.

Processes, systems and ways of working

Whilst we support that consideration may be given to 'joint' attribution teams, as per the RDG submission; our experience in Scotland suggests that this is not an optimum way of working. Depending on the maturity of the organisations involved, merging the teams often means that the process becomes less efficient, less accurate and the commercial implications of this are unpalatable.

We support the remaining recommendations made within the RDG submission for consideration in stage 2 of this review and would additionally like for ORR to consider the following:

The TRUST system is out of date and needs to be replaced, this is revisited later in this response.

Specific areas to note

Based on the questions provided by the ORR, the below forms opinions and responses from the wider Abellio Group.

Decision-making and value added

- *What are the benefits of delay attribution to your organisation?*

Delay attribution enables timely, accurate information to be allocated to an individual within our businesses that can control, mitigate and prevent future reoccurrences.
This granular level of detail drives analysis, performance improvement and provides a starting point for business case development.
Without delay attribution, Network Rail and an Operator would not have the evidence and understanding to hold each other to account.

We consider delay attribution to be a necessary part of industry processes.

- *How do the outputs of the delay attribution process inform decisions in your organisation?*

Having the correct root cause information ensures that we are focusing effort and energy on the right areas to improve. They are also used to make decisions on investment by identifying areas for improvement and building business cases.

- *To what extent does delay attribution help support improved performance?*

Delay attribution ensures that a responsible and accountable manager can be identified and held accountable for their/their team's performance. Performance improvement plans are then designed based on these outputs.

- *What requirements should an effective delay attribution framework meet?*

An effective delay attribution framework should fulfil the following requirements:

- Simple – to understand and deliver
- Include clear accountabilities for all involved
- Accurate
- Robust
- Promote root cause
- Effective dispute resolution process
- Effective escalation process
- Ensures appropriate levels of resource are assigned
- Defined pre-requisite knowledge for staff undertaking delay attribution roles
- Ensures appropriate level of resource to workload
- A review mechanism with appropriate KPIs/measures of success.

Resources

- *How much resource (staff time, consultancy spend etc.) does your organisation spend on delay attribution?*

The model has subtle differences in each of our Operating Companies, to reflect the different structures within corresponding Network Rail Routes and varying degrees of involvement of other functions internally within the TOC.

Merseryail – There are 2 members of staff who are responsible for attribution, amongst other activities.

Greater Anglia - There are 3 full time members of staff who are responsible for attribution. There are approximately 100 employees who participate in internal attribution for up to 90 minutes per day, including investigatory work.

ScotRail – There are 14 members of staff who have a responsibility for a part of attribution – the majority of whom are based within traincrew depots and chase reports from drivers/conductors.
This is currently being streamlined.

West Midlands Trains - There are 6 full time members of staff who are responsible for attribution.

- *How many delay attribution events (roughly) does your organisation deal with each year?*

Merseyrail – circa 10.5k incidents.
Greater Anglia – circa 20k incidents.
ScotRail – circa 35k incidents; on average 100 incidents to review per day.
West Midlands Trains – circa 16.5k incidents.

Dispute Resolution

- *What proportion of delay attribution events lead to disputes (by disputes, we mean incidents where the cause and/or the responsible body are not agreed at the first stage of the process)?*

Merseyrail – 20% of incidents.
Greater Anglia – 80% on day one, the majority of which are not disputes on cause, but on awaiting reports, reactionary delay chains or individual trains within an incident.
ScotRail – circa 30% of incidents; post dispute process circa 21% of all incidents have been accepted by ScotRail.
West Midlands Trains - 75% on day one, the majority of which are not disputes on cause, but on awaiting reports, reactionary delay chains or individual trains within an incident - reducing to circa 25%.

- *What is the typical time taken to resolve disputes?*

Merseyrail - The majority of disputes are resolved within 7 days.
Greater Anglia - The majority of disputes are resolved within 10 days.
ScotRail – The majority of disputes are resolved within 7 days.
West Midlands Trains - The majority of disputes are resolved within 7 days.

- *What proportion of disputes require independent adjudication?*

Very few incidents in our TOCs require independent adjudication.

- *How satisfied are you with the existing dispute resolution procedures?*

The process is clear, yet not always executed satisfactorily.

- *What proportion of your overall resources devoted to delay attribution go towards dealing with disputes?*

Merseyrail – 50%
Greater Anglia – circa 66%
ScotRail – circa 30%
West Midlands Trains – circa 40%.

- *Are there particular types of incident or specific delay attribution rules that cause a disproportionate amount of disputes or time to settle disputes?*

Whilst complex incidents or incidents with significant commercial implications can take a large amount of time to resolve, this is expected and planned for accordingly. Incidents with small primary delay minutes and subthreshold delays, in which the root cause is often extremely difficult to ascertain take a disproportionate amount of time to investigate and resolve. A potential solution to this would be to utilise technology to assist.

- *Do you have any delay attribution agreements with other industry parties that follow rules other than those set out in the Delay Attribution Principles and Rules (DAPR)?*

There are various local agreements within our Operating Companies that complement the DAPR, to assist with treatment of small delays (ScotRail and Merseyrail) and, also to facilitate an efficient dispute resolution process.

Accuracy

- *Are delay attribution systems sufficiently accurate to meet the needs of your organisation?*

Current systems including TRUST, are no longer fit for purpose and as an industry we need to be exploring ways to improve the tools available for root cause attribution and analysis. Technology is not fully utilised in this area to assist with delay attribution.

- *Are there any areas in need of improvement?*

Granularity of data is often not sufficient to make informed decisions for improvement. Data capture by whole minute does not provide an accurate picture of network performance.

Attribution of reactionary delay - we would ask that potential automation or technology solutions be explored.

- *Do you use any systems to support delay attribution beyond those that are standard to the industry?*

GPS is used to understand time lost to the second, which means more targeted improvements can be made.
BUGLE and BUGLE Day One are used to drill down to root cause rather than prime cause, to provide greater understanding.

Effectiveness

- *What aspects of the delay attribution framework work well?*

The delay attribution process, if managed correctly, with appropriate governance, works well. There have been occasions in our Operating companies when this has fallen down, predominantly due to a lack of focus and/or engagement from a Network Rail Route.

- *Are there are any aspects of the delay attribution framework that create perverse incentives?*

'Failure to Mitigate' incidents raised by Network Rail or an Operator - these are difficult to prove, create animosity and a disproportionate amount of time is spent attempting to resolve these, for little value.

Commercial implications of Schedule 8 and managing employees by 'budget' can lead to perverse behaviours, however, if an appropriate performance improvement culture is in place, this is not the case.

We thank the ORR for allowing us to respond to this review and look forward to participating in future stages.

ORR: Delay Attribution

Arriva UK Trains response

Arriva is one of the leading providers of passenger transport in Europe, employing more than 60,000 people and delivering over 2 billion passenger journeys across 14 European countries each year. Arriva runs a range of transport services including trains, buses, trams, coaches, waterbuses and non-emergency passenger transport. It is part of Deutsche Bahn (DB) and is responsible for DB's regional passenger transport services outside Germany.

Arriva is a major train operator in the UK, operating 363 million passenger journeys across 9.7 million passenger kilometres per year, utilising rural commuter lines through to long distance and inter-urban services. Arriva's rail companies include Northern, CrossCountry, Chiltern, Arriva Rail London ("the Overground") and open access operator Grand Central. Arriva also provides rail maintenance services via our Arriva TrainCare business. Arriva's UK Bus division provides regional services across the north east, north west and south east of England, Yorkshire, the Midlands and Wales, offering a wide range of rural, urban and inter-urban bus services with one of the industry leading bus satisfaction scores.

Arriva UK Trains welcomes the opportunity to respond to this consultation. We would strongly welcome the opportunity to further engage with the ORR as you explore potential options. Furthermore, should you require more evidence in specific areas, we would be happy to provide this.

Executive Summary

Despite delay attribution being an intrinsic part of many industry processes that improve performance or direct asset management strategies, the current system fails to deliver data of an adequate accuracy, consistency and resolution to drive the right behaviours consistently. In addition, we believe that many of the problems with the delivery of effective delay attribution appear to be driven by parties focusing on the downstream financial outcomes of the Schedule 8 regime. As a result, we are concerned about the omission of Schedule 8 from the review as the two are intrinsically linked.

To support the development of ORR's review into delay attribution, we have identified five key areas for attention:

- Decision making and adding value
  - That delay attribution underpins decision making, and is a key part of the "Plan, do, check, review" cycle
  - For the data to be useful, it must meet a certain level of accuracy, consistency and resolution
- Resources
  - While the resources required to manage delay attribution differ widely depending on the number of services operated and the complexity of operations, work needs to be done to make the process more cost effective
- Dispute resolution
  - The current dispute resolution process is becoming increasingly ineffective and inefficient
  - Mandated timescales force too many delays to be brought into dispute
  - A continued lack of clarity around whether the aim is to attribute majority root or immediate cause
  - Differences between the Delay Allocation Principles and Rules (DAPR) and the arrangements set out in Track Access Contracts
- Accuracy of data
  - The current system does not provide the resolution of data needed to underpin performance improvement measures
  - TRUST is outdated and the industry has been slow to embrace new technology
- Effectiveness and proposals for reform
  - Changes to Schedule 8 payment mechanism are needed if the right joint behaviours are to be achieved

Throughout this document, we have provided evidence wherever possible to support our views.

Introduction

Arriva UK Trains welcomes the opportunity to provide our response to the ORR's consultation on Delay Attribution. We agree that there is benefit in reviewing the industry's delay attribution processes, given that these underpin so many key industry processes, including:

- operational performance improvement strategies

- asset management strategies (both rolling stock and infrastructure)
- mechanisms to enable Franchise Operators to bid revenue budgets in line with Regulated Operational Performance trajectories.
- measuring delivery of performance outcomes included in public service contracts
- provision of operational information to support the delivery of information to passengers when disruption occurs.

We also commend its timeliness in the light of our increasing level of concern with regard to:

- the accuracy and resolution of the data provided by the delay attribution process
- the quality and age of the systems that underpin the process
- the levels of resource tied up with undertaking and overseeing delay attribution
- the number of disputes arising from delay attribution
- contrasting and conflicting expectations of stakeholders and specifiers.

We are, however, very concerned around the omission of the Schedule 8 regime from the scope of the review. Through our consideration of the questions that ORR have posed in this consultation, a repeated theme that emerges in our response is that many of the issues encountered with the delivery of effective delay attribution appear to be driven by parties focusing on the downstream outcomes in the operation of the Schedule 8 regime. Without consideration of this, the Review risks prejudicing responses from operators more concerned around the potential financial risk on their business than on collectively addressing the issues with the delay attribution process itself. While the PR18 process did highlight problems with regard to the delay attribution process, these were not central to the concerns raised with regard to the proposal to change the TOC on TOC element of Schedule 8, which we do not believe would be conducive to creating the right behaviours. We would note the strong opposition raised across the industry during ORR's 2017 previous consultation into this.

We are also unclear how the later phases (particularly the development/problem solving stage) of this programme will be carried out. While delay attribution is carried out by the industry, the role of ORR in determining key interfaces between Network Rail and its dependant customers remains essential. We would therefore expect ORR's role to be the establishment of clear objectives for future work in this area to be undertaken by the industry, to endorse conclusions reached by the industry, and address areas where the industry may not be able to reach agreed conclusions. Establishing an industry working group to support the ORR's work therefore has merit but it does not seem appropriate that

such a working group would solely "lead the development, assessment and implementation of detailed options". We would wish to discuss this area more with ORR and RDG.

1. Decision making and value added

As highlighted above, the delay attribution process underpins the generation of data as to the causation of delay to inform the performance improvement process. This feeds into the key "check" phase of the "Plan, Do, Check, Review" cycle that underpins the industry's Performance Strategy. The same data directly inputs to the development and review of asset management strategies for both infrastructure and rolling stock.

The ancillary output is that delay attribution underpins the Schedule 8 performance incentive and revenue loss regime. Under the current franchise system this enables Franchise Operators to bid revenue budgets in line with Regulated Operational Performance trajectories.

On this basis, delay attribution is vital industry process which must be delivered cost effectively to an appropriate degree of:

- accuracy
- consistency
- resolution.

2. Resources

Data from each of Arriva's Operators are provided in the attached appendix. Please note that these are commercially sensitive and must not be published in any form without prior written agreement.

3. Dispute resolution

Again, data from each of Arriva's Operators are provided in the attached appendix. Please note, as above, these are commercially sensitive and must not be published in any form without prior written agreement.

The current delay attribution dispute resolution processes are increasingly ineffective and inefficient as a result of:

- too many disputes being unnecessarily generated by the mandated timescales to allocate delay and to then accept that allocation. In incidents with technical or complex causes it can often take longer than allowed to determine the likely cause and it will certainly take longer to investigate matters sufficiently. For example, the engineering investigation of a rolling stock/infrastructure interface incident such as a de-wirement may take months to complete and may never be conclusive. However, such incidents are often allocated and disputed before even the first reports arrive from site
- A lack of clarity as to whether the focus is on establishing the majority root or immediate causes of delays – these different attribution criteria provide information about different aspects of an incident and both are valuable
- A lack of clarity as to the interaction between the Delay Allocation Principles and Rules (DAPR) and the arrangements set out in Track Access Contracts.

Phase 1 of the review should allow these issues to be examined in more detail while the later phases should allow solutions to be established. For the most part, Arriva would anticipate that relatively simple changes to process and the DAPR should be sufficient.

4. Accuracy

The accuracy of delay attribution undertaken today does not provide the resolution needed to underpin the asset management and performance improvement processes. Given the degree of operating precision needed to deliver good performance on today's busier railway which is requiring "on time", a 3 minute attribution threshold is inadequate. In addition, with precision timetabling being identified as a key enabler, better resolution of delay data will be essential.

Associated with this is "sub-threshold" delay, making up over 35% of delays across the industry. Given the lack of resolution in the systems that underpin the delay attribution process (particularly the TRUST system), it is not currently possible to determine whether all of the observed "delay" is real or whether it reflects inaccuracy in the timetable and industry monitoring standard.

Arriva operators use several downstream systems to process delay attribution data such as:

- Bugle – used to analyse delay data
- AEGIS – provides delay data derived from on train GPS systems
- Driver Advisory System (DAS) – allows Drivers to report small delays in real-time.

In addition, we are also investing in delay identification using on-train GPS systems. These operate at much higher resolution than TRUST, as well as pinpointing the locations that delay actually occurs more accurately than is currently reported. These train-based systems are still hampered somewhat by the lack of accuracy in the timetable but this effect can be filtered out as datasets are built up. Whilst these GPS based systems are currently used at an industry level to drive passenger information systems as they are recognisably more accurate than TRUST, they are not yet being used to assist in the design of more accurate timetables or enable more accurate delay attribution. As the technology becomes available more widely, we would strongly advocate its use to enable more accurate delay attribution.

5. Effectiveness and proposals for improvement

The current delay attribution process, notwithstanding the issues highlighted here, has produced a very significant database of historical delay data. It has also underpinned a significant number of improved asset management and performance improvement plans and has supported many business cases for investment which have delivered material benefit to passengers.

In order to enable the delay attribution process to become more objective and thereby address many of the perverse behaviours currently observed, it is necessary to find a means by which the financial aspects of Schedule 8 could be decoupled from the delay attribution process itself.

Previously considered approaches, such as independent 3rd party attribution or joint attribution, have been found to be ineffective in this aim as the underpinning behaviours generated by the significant financial flows in Schedule 8 have been unchanged. However, mechanisms by which delay attribution could be automated (perhaps coupled with the introduction of higher resolution delay identification) might not fall at the same hurdles. While not “automated”, it is common in the industry that some categories of delay are split by pre-agreed rules – in particular delays in the autumn associated with low railhead adhesion. This encourages both parties to seek innovative solutions to a problem affecting both organisations.

More benefit may be unlocked by linking the financial aspects of Schedule 8 to longer term performance trends or to gross deviations from the agreed trajectory rather than using a mechanism that sums the effect of every incident over a relatively short four week window. Such arrangements were in place with several operators before ORR templated the

structure of Schedule 8. This was to standardise arrangements across all operators but, in our view, came at the cost of losing the opportunity to align the incentives to the specific needs of different operators.

As per ORR's previous consultation, it has been suggested that the current structure of Schedule 8 does not provide operators with incentives to mitigate delays caused by other operators and that operators therefore fail to act appropriately. It remains unclear what data underpins this suggestion or why this only applies to operators affected by other operator incidents, and not to Network Rail in the case of operator incidents.

Regardless, mechanisms do need to be found to enable more effective "joint venture" behaviours from all involved parties to managing reactionary delay. However, it seems unlikely that a "blunt instrument" such as Schedule 8 with its relatively narrow revenue rebalancing objectives will be the sole area where answers are to be found.

Related to this are a range of delay attribution "rules" that do not necessarily align with the operating environment such as:

- An operating day that runs 02.00 to 01.59 and a planning cut off of 22.00
- An expectation that all consequences on Day B operations from a Day A incident can be forecast and fully mitigated.

Next Steps

We would strongly welcome further opportunities to engage with the ORR as you develop potential options, either bilaterally or through written submissions, to give you the opportunity to explore your thinking against our operational expertise.

Delay Attribution Review

Response to the Office for Rail and Road by the Chartered Institute for Logistics and Transport

March 2019

The Chartered Institute of Logistics and Transport is a professional institution embracing all transport modes whose members are engaged in the provision of transport services for both passengers and freight, the management of logistics and the supply chain, transport planning, government and administration. Our principal concern is that transport policies and procedures should be effective and efficient, based on objective analysis of the issues and practical experience, and that good practice should be widely disseminated and adopted. The Institute has a number of specialist policy groups, a nationwide structure of locally based groups and a Public Policies Committee which considers the broad canvass of transport policy. This submission draws on contributions from all these sources.

Introduction

CILT(UK) believes that a clear distinction should be drawn between the Delay Attribution Process and the workings of Schedule 8 of the Track Access Agreements. Delay Attribution relates to delays and has a "currency" calibrated in minutes, whilst Schedule 8, although derived from delays, is calibrated in money.

Delay Attribution

CILT(UK) is a strong advocate of a professional approach to management using data to drive management actions. It is therefore vital to maintaining and improving the performance of the railway that data continues to be gathered that identifies delays and their root cause. The Delay Attribution process achieves this by identifying delays to trains, investigating them at a high level and then allocating the responsibility for that delay to a responsible manager who is then expected to establish the root cause and to put in place appropriate measures to prevent a recurrence. In all of this the measures are minutes of delay and the objective is to reduce the number of minutes. A common method is for senior management to give each responsible manager a 'budget' for the number of minutes of delay that they should seek to better each year, upon which management incentive schemes can be based.

It follows from the above that the performance improvement process requires a resource to do the initial allocation of each delay and that each responsible manager requires a resource to investigate the root cause of each delay. CILT(UK) does not believe that there is scope for any substantial reduction in the total industry resource involved in this process.

It should be noted that the desire to 'burrow down' to establish root cause at component level has led to a significant expansion in the variety of codes that are available. It is questionable whether this is effective as it complicates the task of those carrying out the initial allocation of responsibility and thereby introduces opportunities for error and subsequent challenge. It might be preferable to restrict the initial attribution process to the level of responsible manager and let that manager introduce his own, more granular, allocations. The resource time released by this could then be used to reduce the threshold of delays to be attributed to 2 minutes plus rather than the (generally) current 3 minutes plus. This extra granularity should substantially enhance the understanding and management of 'small' delays, currently seen as the big gap in our ability to achieve improved performance.

Financial implications

In our non-vertically integrated railway there has been a desire to incentivise one party to minimise the delays they cause to the other party. This has led to various performance regimes in which minutes of delay are converted to a financial value. These do not exist just between Network Rail and train operators but also, in a number of instances, between train operators and their rolling stock maintainers. The fact that a delay thus has a financial implication has focused managements' minds on minimizing the financial impact. Whilst the intent of the regimes has been to incentivise a reduction in delay minutes, it has also incentivised dispute between the parties as to the 'truth' of the allocation. It is this activity that is often cited as being resource intensive and not productive in the search for industry delay minimisation. CILT(UK) agrees that this financial minimisation activity is 'unhelpful' (though understandable).

CILT(UK) suggests that it would be worthwhile for the ORR to consider the approaches adopted in other transport modes. In air transport for instance, while ground handling contractors do have delay-avoidance incentives it is not believed to be the case for air traffic control delays. In the bus industry, licence revocation and fines by their regulator (traffic commissioners) are available for continued poor performance. Elsewhere (eg road freight) the incentive is built around retention of business.

The origins of financial regimes

It is worth reflecting on how and why financial values were overlaid on delay minute values. At the heart of this is the creation of contractual, rather than within-one-company, relationships and a lack of trust between contracting parties that each would act in the best interests of both parties. It was believed that having a financial consequence to causing delays would help to address this. However, there are a number of limitations to this approach:

- The financial consequences are at the contract management level of the contracting parties and not upon those people who actually can directly affect delays (eg NR commercial managers, not signallers). Direct impact upon those able to influence delays relies upon internal management processes and these are often based upon delay minutes and delay minute budgets
- To minimize financial risk, most regimes use a benchmarking arrangement allowing bonuses to be earned if delays are fewer than anticipated. This can result in high levels of delay nevertheless being rewarded
- The regimes are often calibrated on the modelled impact upon the train operator of the future reduction in revenue that arises from previous poor performance. These relationships are not straightforward to model and substantial industry resource (mainly financial through employing consultants) is expended every five years to do a recalibration exercise.

- Train operators have often expressed concern that the financial consequence does not reflect the impact and/or does not achieve the improvements expected and this has led to various expansions of the regimes which has the effect of further complicating the regimes which again moves their understanding further away from front line staff who can influence performance
- In any situation where a re-calibration is to take place there is the possibility of 'gaming' the system to obtain an 'easy' target that can easily be bettered. Having a financial consequence make this much more likely than just a delay minutes consequence.

Passenger Performance regime

The ORR, at their Stakeholder Workshop, indicated a willingness to include their previous proposal to alter the TOC-on-Self element of Schedule 8 within this consultation. CILT(UK) offers the following observations.

- ORR suggests the current regime offers perverse incentives around cancelling trains (ie train not cancelled when to do so would have reduced delays to other operators because the impact is currently hidden by using proxy values for such delays (ie pro-rata to delays to the TOC's own train). We believe this reflects a misunderstanding of real railway operation. As indicated above front-line staff's decisions are not driven by the 'downstream' contractual consequences: rather a train is cancelled or not dependent upon a desire to return the railway to 'right-time' (because of the impact on crew disposition - and thus the extent of future 'own' delays) of continued late running, mitigated by a concern for customer inconvenience arising from being asked to vacate a train that terminates short of destination.
- Attribution of responsibility for actual delays to others will dramatically increase the extent of review/challenge involved by the TOCs in their performance teams. For instance, a CrossCountry Trains responsible delay at Edinburgh could, due to missing its path throughout its journey, result in a delay to a Truro-Falmouth branch train. It is not adding value to expect the CrossCountry performance manager to have to investigate and accept this delay, nor would it influence the pressure on him/her to investigate and address the cause of the delay at Edinburgh.

Moving forward

CILT(UK) believes that performance management should revert to one based upon delay minutes and delay minute budgets. Improving performance requires active and professional management of delay minutes and this should be by having accurate and comprehensive delay causation data. Addressing issues then requires good management which involves taking actions either by management of personnel (including in other organisations) or equipment or process modifications. The interactions necessary can apply at all levels of all organisations. Thus, for instance, if a train operator is dissatisfied with the performance of Network Rail, this should be addressed by person-to-person interactions rather than by moving money between finance departments. Often one hears the cry "we don't want compensation, we want it fixed"!

Removing the money

The current performance regimes are based upon trying to compensate the suffering organisation for the financial consequences. As indicated above for train operators the linkage to revenue loss is imprecise. When a train operator causes a delay to itself it has to stand the revenue loss and is motivated to take action to avoid a recurrence. If a delay is caused by either its contracted train maintainer or by Network Rail, if no financial compensation were to exist, this should increase the motivation of the train operator to manage the other party by personal contacts – the data in terms

of delay minutes would still exist and the removal of a financial aspect to the performance regime should assist in both parties focusing on solving the issue rather than fighting for money.

Many improvements to performance are achieved by spending money on, for instance, equipment modifications. The financial justification for these initiatives is currently derived from the financial value of savings from the performance regimes. If these savings are removed by 'de-financing' the regimes, another way of valuing the forecast improvements would be required. It is suggested that a proxy 'value of a minute's delay' could be used. This could be centrally produced, or be by agreement between, for instance, NR and the train operator, or the current values could simply be rolled forward for these purposes.

It should be noted that if the Williams Review proposes a more vertically integrated arrangement for the industry, many of the current contractual relationships will be internalized and their financial transfers would become irrelevant. Some other mechanism would be required to incentivise impartial behaviour by the vertically integrated operator to protect other users. This is not a reason for perpetuating Schedule 8 as the incentive mechanism.

Implications for Delay Attribution

If the above approach were to be adopted, the current delay minute-based Delay Attribution regime would need to remain. It is not believed there would be any significant saving in resources and the resources needed to allocate, investigate and address delay incidents would still be required. It is arguable that they would become more effective as they could focus on the delay minutes, including addressing 'unexplained' minutes, rather than the financial consequences.

The precise allocation of incidents to a responsible manager should be based upon the manager most able to effect an improvement. The national standard arrangements (the DAPR) should be more readily amendable from time to time. It is suspected that resistance to such changes currently arises, in part, by a nervousness about the financial consequences through the performance regimes (eg if suicides were reallocated as between train operators and Network Rail). By removing the financial consequences, a greater willingness to amend allocations should emerge, which will also encourage more consistent and accurate attributions.

Similarly, the current arrangements for lodging appeals against allocations, involving senior managers and then an industry disputes committee should become much less necessary. It should be noted that one train operator and Railtrack locally agreed a 50/50 split of certain, difficult to allocate, incidents (de-wirements/damage to pantographs), on the understanding that both parties would focus their energies on preventing a recurrence rather than worrying about the financial consequence.

Consultation response

Below are the CILT(UK) responses to the questions posed in Annex 2 of the consultation document. It should be noted that CILT(UK) is not a stakeholder or practitioner of the Delay Attribution processes although this response is informed by those who have been.

Decision-making and value added

- What are the benefits of delay attribution to your organisation? *Not applicable*
- Do you consider delay attribution to be a necessary part of industry processes? *Yes, vital. It is a necessary part of good, professional management that comprehensive, accurate data is available upon which decisions can be made*

- How do the outputs of the delay attribution process inform decisions in your organisation? *Not applicable*
- To what extent does delay attribution help support improved performance? *It is a vital tool in establishing responsible managers for delay incidents, who can then determine and address their root causes*
- What requirements should an effective delay attribution framework meet? *Accurate, timely, cost effective in application and designed to be useful in improving performance*

Resources *The questions in this section are not applicable to CILT*
- How much resource (staff time, consultancy spend etc.) does your organisation spend on delay attribution?
- How many delay attribution events (roughly) does your organisation deal with each year?

Dispute resolution *The questions in this section are not applicable to CILT*
- What proportion of delay attribution events lead to disputes (by disputes, we mean incidents where the cause and/or the responsible body are not agreed at the first stage of the process)?
- What is the typical time taken to resolve disputes?
- What proportion of disputes require independent adjudication?
- How satisfied are you with the existing dispute resolution procedures?
- What proportion of your overall resources devoted to delay attribution go towards dealing with disputes?
- Are there particular types of incident or specific delay attribution rules that cause a disproportionate amount of disputes or time to settle disputes?
- Do you have any delay attribution agreements with other industry parties that follow rules other than those set out in the Delay Attribution Principles and Rules (DAPR)?

Accuracy *The questions in this section are not applicable to CILT*
- Are delay attribution systems sufficiently accurate to meet the needs of your organisation?
- Are there any areas in need of improvement?
- Do you use any systems to support delay attribution beyond those that are standard to the industry?

Effectiveness
- What aspects of the delay attribution framework work well? *We believe the current mechanism for allocating responsible managers to incidents is fit for the purpose of improving performance*
- What aspects of the delay attribution framework would most benefit from improvement? How do you feel improvements could best be achieved? *As indicated above we believe the process should be disconnected from any financial compensation regimes in order that it can focus upon improving performance. We also suggest that a reduction in the threshold for attribution should be reduced to delays of 2 minutes and above to increase knowledge about industry performance. We note that LUL uses such a threshold for a non-multi-user railway. Some automation of eg reactionary delay, should be explored to reduce resource requirements.*
- Are there are any aspects of the delay attribution framework that create perverse incentives? *Not directly, it is the use of the outputs to drive financial compensation/incentive mechanisms that causes the ineffective behaviours.*

- **Proposals for improvement**
- Can you tell us of any specific proposals that you believe would enable delay attribution to better meet the requirements of your organisation and of the wider industry? *As indicated above we believe the delay attribution process should be disconnected from any contractual financial incentive regimes*

Submitted by:
Daniel Parker-Klein
Head of Policy
The Chartered Institute of Logistics and Transport

March 2019

Department for Transport

Robin Marie
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29 March 2019

John Larkinson
Chief Executive
Office of Rail and Road
One Kemble Street
London
WC2B 4AN

Dear John,

ORR's consultation on Delay Attribution Review

The Department's expectation is that any revision to the Delay Attribution process will facilitate an improvement in the rail industry's focus on clarity and ownership of rail delay and improve analysis and resolution. In turn this should drive improvements in day to day operations; promote the learning of operational lessons and enable the industry to mitigate future delays. The focus of performance should be to establish the consistent delivery of the plan, for passengers and goods. In that light our response to this consultation does not necessarily respond in detail to ORR's questions but instead seeks to establish some principles the Department would see as important in assessing whether and how the process should be changed.

The ORR has said that the Delay Attribution Review will be separate from any consideration of the Schedule 8 financial regime. The Department agrees that the operating decisions and attribution purpose is about performance that delivers for the industry's customers. The Department would welcome the establishment of clear blue water between robust performance management and financial influences, to the extent that monetary value is not perversely impacting the resolution of delay. The Department does recognise that a financial element can positively influence action and qualify a case for mitigation. Changing the current context and methodology of the delay attribution process in response to this review would, in our view, have to re-examine the Schedule 8 financial implications before its implementation, with due consideration to the effect upon the Departmental budget.

The current context of delay attribution identified as TOC-on-Self that uses NR as a proxy for delays to other operators, is still considered to provide the significant benefit of keeping NR actively central in its role to manage the UK rail network. The system is binary and reflects the Track Access relationship between NR and operator. The Department understands the concern that the ORR described proposal for Direct TOC-on-TOC attribution becomes less manageable as delays extend out of the service area, as this stretches the ability for the responsible party to influence and effect positive change. A significant departure from existing attribution would need to consider the context of Primary versus Root Cause delay within any revision. The current approach sees that NR maintains a vested interest to arrest delays and effect resolution of the event on the industry's behalf, it also has more effective links to obtain information on local policy and responsibility to manage that agreement properly, including facilitating mitigation plans. Fundamentally NR is the system wide owner for both the infrastructure and the timetable and, unlike operators, has a system wide locus. Their ability to take decisions on a system wide basis should therefore remain a factor in any decisions on how the process functions.

The Department has heard practitioners voice opinion that the simplification of delay attribution could improve the ability to attribute timely and effectively to responsible parties. The Department looks to industry to undertake appropriate review of the delay reason codes and responsible manager codes. In doing so the ability to analyse performance should be the primary consideration (to achieve the end state above of improved understanding of delays to reduce its occurrence). Industry could determine an appropriate rationalisation is to employ the higher-level published industry reporting categories. Outwardly, rationalised codes would appear to relieve pressure on the dispute process for administrative adjustment to codes within the same responsible manager, and is perceivably in the gift of industry to manage through Delay Attribution Board whatever the delay attribution methodology.

Extended dispute resolution impacts the establishment of the true operational performance reporting position of passenger service in the Department's agreements. The outstanding dispute settlement may hold various contractual issues in abeyance including: clarification of disregarded events under either the SR-ACOP or Force Majeure within terms of the agreement; and operational performance enforcement levels and financial triggers (where applicable). Delay attribution should seek to provide valid data for analysis and to that end wherever possible avoid commercial settlement or side agreements that detaches causation reasons from the delay data. The establishment of an independent / devolved authority to manage delay attribution could be considered as an option, although particularly in the context of the ongoing Williams review the Department would wish to understand the implications of setting up such a body.

The Department wishes the review to consider how independent third party works (such as High Speed 2), interacting with the operational rail network (e.g. independent third party works incident leading to a station closure), are addressed within delay attribution. Given that the rail industry's aspiration is to continue a significant programme of rail infrastructure development over the next 10 to 20 years. The operators perceive a high level of risk from third party activities unfairly falling to them

under present delay attribution principles. Such is this perception, operators may seek contingent liability cover, for delay attribution.

In ORR's consideration, the Department asks that the review might explore questions of independent third party works, such as;

1) Should delay attribution be made better able to accommodate independent third party works?
2) Should delay attribution be made more flexible towards independent third party works?
3) Should delay attribution, be more clearly stated in how independent third party works relate within established protocols?

We have been advised that new systems are in development that are expected to improve data accuracy. The Department considers such development to be a benefit, in particular for the new performance industry measures being introduced from April, and to addressing sub-threshold delays, including those that can be generated by the current system structure. The aim should be the production of demonstrable data for meaningful performance analysis by rail industry experts in their respective companies and collective operational bodies.

The purpose of any attribution process and associated systems should be to provide

a) accurate train running information
b) accurate delay information
c) understanding of both the delay and its cause
d) meaningful data for performance analysis

If there are changes to the present attribution processes along with the principles and rules, this could have consequences to the present benchmarking of TOCs within present Department contracts. Clearly, we would wish to understand these implications and the Secretary of State will wish to take a view if any of these proposals have an impact on the public purse.

The Department is clear that the overall ability to analyse and manage delays, formulate mitigation plans and inform positive change, remain a priority within the operating obligations of public Passenger Service contracts. We are ultimately supportive of actions that support an improvement in the performance of the network but are clear that any implications of doing so need to be understand and that there needs to be a demonstrable benefit to changing current processes.

Yours Sincerely

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By email:

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Joel Moffat

Office of Rail & Road

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2nd April 2019

Dear Joel,

Response to ORRs Consultation Delay Attribution

Thank you for the opportunity to respond to this consultation and for granting FirstGroup an extension to 2nd April 2019. This response is made by FirstGroup on behalf of our Rail Division and its train operating companies: Great Western Railway; TransPennine Express; Hull Trains; East Coast Trains Ltd; and South Western Railway (which is a joint venture between FirstGroup and MTR).

Our response consists of this covering letter which identifies the key points that we wish to make in consideration of the consultation and an appendix. The appendix provides collated answers from our operators in response to the specific questions raised.

We welcome the review into delay attribution as proposed by the ORR in terms of determining what the cause was, and who is responsible for, the delay. As you will already be aware FirstGroup has, through the PR18 process, held a number of discussions and submitted specific responses to the ORR in relation to Schedule 8 and Delay Attribution in respect of reactionary delay. In addition to this we have been involved in the development of the Rail Delivery Group's (RDG) response to this consultation. We are broadly supportive of a number of aspects of RDG's response, however, there are some points that we very strongly believe do not fully reflect the incentives placed on operators. These are addressed further in this submission.

We appreciate that the proposed review is specifically in relation to the activity of delay attribution, but would note that without very careful management there could be unintended consequences through alterations to the way the Schedule 8 performance regime works. This is because delay attribution is used within the Schedule 8 regime to apportion responsibility for lateness of train services (and therefore passengers) at key points along the route. Lateness is then compared to a benchmark that reflects an assumed delivery of performance. For Network Rail this reflects the level of performance to be delivered during a Control Period whereas the operator side of the regime reflects the Star Model, given the bilateral nature of each track access contract.

FirstGroup is concerned that the ORR has referenced in the consultation letter its proposal during the PR18 process to move to a measure of passenger performance based on delay caused to other operators. This is not about delay attribution, but instead is a fundamental adjustment of the Schedule 8 regime. As we have already stated we welcome a review of delay attribution, but only where it does not affect the structure of the Schedule 8 regime. As the ORR will be aware FirstGroup, and others, responded to this proposal from the ORR during PR18. Rather than reiterate the points made at that time here, I have attached as an appendix to this response FirstGroup's letter of 10th March 2017 which rejects this proposal along with the reasons why this change in approach is not appropriate and would distort the incentives within Schedule 8 and therefore the the management of the Network.

As the ORR will recall there was extensive industry dialogue during 2017 on these points which culminated in discussions at National Task Force and a paper and covering letter being produced which was provided to ORR. We are supportive of RDG including these documents being re-submitted to ORR as part of this consultation. This is of particular relevance as it proposes a way forward in dealing with the concerns of Network Rail in relation to reactionary delay. We note that Network Rail is supportive of the ORR's proposals in relation to the TOC element of Schedule 8, however, would again reiterate that this is not a delay attribution matter and is one that could have severe unintended consequences for the management of the Network. To be clear it is Network Rail as the manager of the Network who is best placed to manage and mitigate all reactionary delay.

The proposal put forward by NTF of moving an element of reactionary delay into the Franchise Agreement performance regime (Schedule 7.1) provide a further incentive on operators to help to manage reactionary delay. It would also ensure that the structure and incentives of Schedule 8 of the track access contract unaffected. This is of particular importance given the relationships between Schedule 8, the franchising arrangements and the other incentives that exist to manage performance.

Turning to the governance and ways of working aspects of the review. We support the points made by RDG in its response, in particular in reference to the role and structure of the Delay Attribution Board. This Board has an unusual structure and process when compared to other industry bodies that deal with the matters arising in relation to the operation of the Network Code such as the Timetable Committee or Access Disputes. We also support the suggestions put forward by RDG in respect of working towards greater collaboration in respect of delay attribution including determining a new approach that does not immediately require an operator to dispute an incident when it is allocated to them in order to keep the matter live. Many of the behavioural concerns relating to delay attribution stem from the adversarial nature of the process. Consideration could be given to alternative ways of working which could include incidents being open and not allocated until cause is confirmed, although this would require changes in the terminology within Schedule 8 in terms of payments being made on confirmed and agreed allocations of lateness rather than the "disputed" or "undisputed" amounts. We would also advocate that all practitioners of delay attribution whether they are operator or Network Rail should be subject to a common competency process and afforded an appropriate level of status within their organisations given the important nature of their work in improving performance.

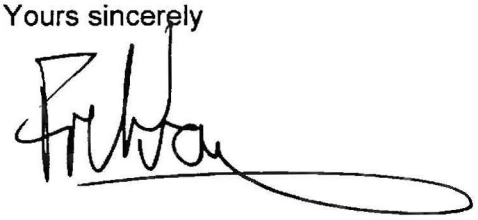
Finally in terms of the principles around delay attribution, we agree that there needs to be greater emphasis on the level of unattributed minutes delay and also in respect of unexplained delay. Delay should be attributed wherever possible as this ensures that corrective actions can be identified and implemented. One area in particular where further investigation would be merited is the treatment of unexplained delay. Under the terms of

Schedule 8 this is allocated as 50% to Network Rail and the remaining 50% split proportionately between NR and the operator based on total delay allocated. This is to incentivise Network Rail to identify the cause of delay. However, with a revised process that is more collaborative, an alternative allocation arrangement could be considered. We note that this would require a recalibration of the benchmarks within Schedule 8, but the benefit would be that a greater understanding of the causes of delay is achieved.

Once again, thank you for the opportunity to respond to this consultation. Should the ORR wish to discuss any aspect of this response in more detail please do not hesitate to contact me.

We are comfortable that this letter is published, however, we would request that the Appendix is redacted and not published due to the nature of the content. We will provide a copy of this response to RDG.

Yours sincerely



Russell Evans

Policy & Planning Director, First Rail

Delay attribution review

Freightliner welcomes the opportunity to respond to the ORR's Delay Attribution Review consultation.

The ORR notes that the consultation is in response to some of the challenges raised in the 2018 periodic review (PR18) process – notably the concern raised by passenger train operators (TOCs) in the proposal to move to a TOC-on-TOC performance regime. Although the specific concerns raised are less relevant to freight operators, as the freight operator (FOC) performance regime is already a TOC-on-TOC regime, Freightliner can provide insight into some of the structural, governance and process challenges of the performance regime and how that aligns with delay attribution. This response provides some observations in this area and discusses some of the wider challenges in delay attribution and its link to the performance regime.

1.0 Scope of the review

The consultation outlines the scope of the review, but notes that the functioning of the Schedule 8 compensation regime is out of scope. Freightliner understands the rationale for this and would not expect any reform of Schedule 8 compensation regime to be implemented outside of the periodic review process. That said it is not realistic to disconnect delay attribution from a financially driven incentive regime (currently Schedule 8) given the interconnection between the two it is not possible to isolate the two elements entirely.

2.0 Timing of review

Freightliner understands that the review is timed to respond to the concerns raised by TOCs in PR18 surrounding the potential move to a TOC-on-TOC performance regime and to ensure that the industry can address these challenges and is better positioned for change in PR23. However, it should be noted that the structure of railway industry could change significantly by CP7. The Williams Review will likely recommend a different way of organising the relationship between train operators and infrastructure manager.

Any move to vertically integrate TOCs with infrastructure managers will change the commercial relationship between these organisations and dull the financial incentives of Schedule 8. Given the intrinsic link between the Schedule 8 performance regime and delay attribution such a change would trigger the need to consider the industry's wider performance framework. In such a scenario delay attribution and the financial incentives created by Schedule 8 become more important to open access operators, including freight operators. In a more vertically integrated structure there is a real risk that the lead operator's services are prioritised over other trains and therefore the balancing incentive and lever created by Schedule 8 becomes more important. This will become clearer over the forthcoming months, but given the timing of this review it is worth being cognisant over how changes in structure could impact delay attribution and Schedule 8.

3.0 Link between delay attribution and Schedule 8 regime

The key purpose of delay attribution is to accurately identify the root cause of delays caused to train services on the network. Delay attribution enables granular data to be collected, trends to be analysed and performance improvement plans to be developed to improve performance on the network. The wealth of granular data collected by delay attribution acts as a crucial diagnostics tool for the industry.

To analyse all delays impacting Freightliner services takes time and requires dedicated and specialist resources and systems. Freightliner Heavy Haul and Freightliner Limited have a joint Performance Team although each of the businesses has two team members that are dedicated to auditing the attribution of incidents at "Level 1" (Day 1 – 8) and "Level 2" (Day 8 – 42), within each

operation. There is one Level 3 representative that has overall responsibility for performance across both businesses.

Freightliner considers five full-time individuals within the performance function to be an appropriate and proportionate level of resource. These individuals are able to ensure that delays to any of our services are investigated, the root cause is diagnosed and where appropriate the attribution is challenged. Challenging and disputing the attribution of delays is an essential process to accurately identify the root cause. The same individuals also analyse the data used in the attribution process to identify recurring performance issues and lead implementation of corrective actions in conjunction with the relevant areas of the business.

The financial consequences of the Schedule 8 performance regime, both in the up-side and down-side, are the key drivers for Freightliner investing in the internal delay attribution resources. Rail freight margins for the industry are low and as a result the freight companies operate very lean structures. Consequently without the financial upside and downside at play with delay attribution it is difficult to imagine that Freightliner would be able to build the business case to invest in this level of resource.

Without this level of resource, we would not be able to collect such accurate and granular data delay attribution data. Consequently it should not be overlooked that the Schedule 8 performance regime creates incentives and drives positive behaviour with respect to the delay attribution process. The rules that surround the Schedule 8 performance regime provide much of the framework for delay attribution (e.g. dispute timescales) and therefore separating the two aspects is particularly practical.

4.0 Benefits of delay attribution

4.1 Collection of granular data

Delay attribution allows for root cause of delays to be diagnosed, thereby collecting a wealth of industry-wide data, enabling improvement plans to be put in place. It enables trends to be identified and investments to be targeted to drive performance improvements. This has wide benefits for the entire industry.

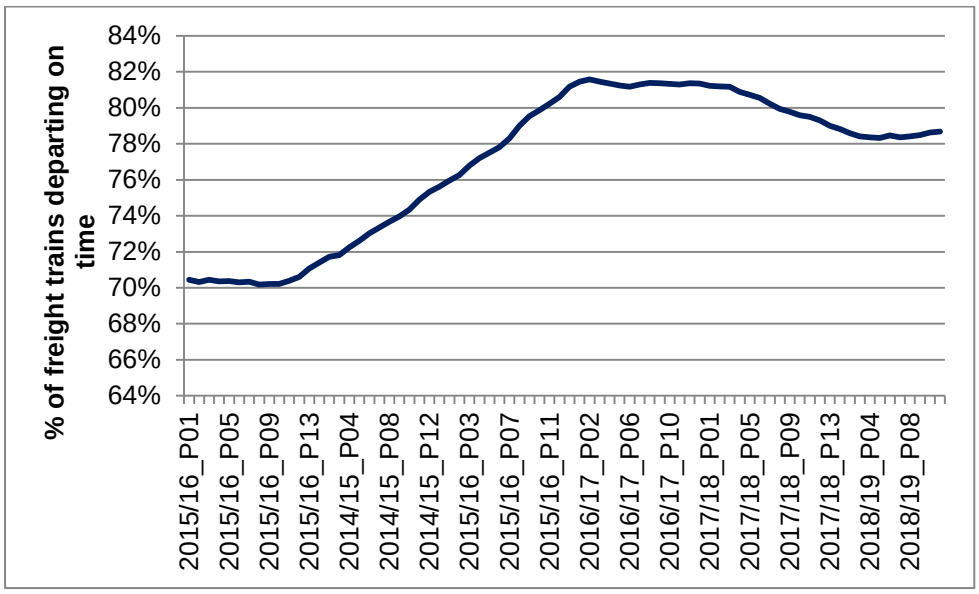
As stated earlier, it should not be overlooked that it is the Schedule 8 performance regime and its associated money flows that drive much of the mechanics of delay attribution. The rules surrounding delay attribution (for example disputing Train Incident Numbers (TINs) within 3 working days) are generally well adhered to, largely because there are possible financial consequences through Schedule 8 of not following the outlined processes. The financial incentives act as the glue to bind the delay attribution process together and to make sure that all parties are incentivised to follow the rules and to investigate delays.

4.2 Driving behaviours

Freight operators face daily dichotomies about whether to leave a terminal on time and leave customer goods in the terminal or wait for all the goods to be loaded and leave late, with the accompanying risk of causing third party delays. This does not result in satisfied customers and is not an issue experienced by customers using road.

The potential penalties that freight operators could face for departing late has driven significant improvements in right-time departures over the last 5 years. Chart 1 shows a circa 10% improvement in right time departures since 2015/16 (although there has been a recent dip in part caused by recent Network Rail timetabling issues).

Chart 1: Percentage of freight trains departing on time

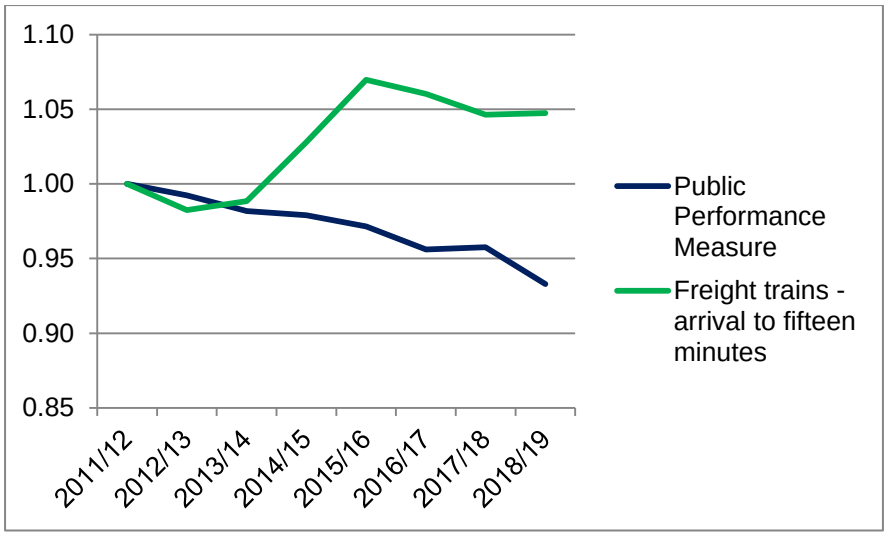


There are clearly a number of factors driving this positive improvement in right time departures, but it should not be overlooked that one of those factors is the financial incentives that are created by the Schedule 8 performance regime.

The benchmarked regime creates incentives to make investments to outperform benchmark. Freightliner is continuing to make investments in people, systems and reliability to further improve performance, with potential Schedule 8 savings often used as the business case to justify capital investment. While the Schedule 8 performance regime is far from the only incentive (customer delivery is far more important), it does incentivise the continual improvement in performance and allows us to build business cases to make investments.

The wider improvements in freight performance over recent years are very evident from the chart below. Chart 2 shows the changes in PPM and A2F rebased to 1 since 2011/12. It shows that while there has been a circa 7% decline in PPM over that time there has been a circa 5% improvement in freight trains arriving within fifteen minutes of booked time. This is particularly impressive noting the recent timetable issues impacting the industry.

Chart 2: Trend in Public Performance Measure (PPM) and Arrival to Fifteen (A2F)



While it is difficult to disaggregate between factors, it should be noted that significant exposure to performance penalties that freight operators face is one of the key drivers.

5.0 Gearing of the regime

The penalty that freight operators pay per delay minute caused to third-parties has increased by over 60% since 2011/12. In 2011/12 the cost of each delay minute was £35.27, this has increased substantially to £56.74 in Year 1 of CP6. Over that timeframe the Network Rail on FOC payment rate has increased just 23% - from £18.18 per minute of delay caused to a freight operator in 2011/12 to £22.45 in the first year of CP6.

This has significantly ramped up the gearing of the Schedule 8 regime, which of course has an impact on the delay attribution process. The significant payments involved drives the need for a very detailed delay attribution process.

6.0 TOC payment rates

The ever increasing cost of a delay minute to freight operators is a real cause of concern for us. We understand that the modelling within the Passenger Demand Forecasting Handbook (PDFH) is driving much of the >60% increase in the FOC payment rate.

We suggest that the accuracy of the PDFH as a modelling tool is reviewed. We are aware that many TOCs do not always believe its outputs and use other tools for franchise bidding purposes. It is of paramount importance that the industry have modelling tools that are as accurate as possible.

We are aware that the passenger payment rates are based on the modelled expected long-run revenue loss caused by delay. Freightliner is not an expert in this area but we do observe that during a period where performance has declined, passenger volumes have continued to steadily increase.

Previously we have provided charts to ORR that suggest that there is little correlation between train performance and passenger growth – we have not been able to identify a statistically significant link between these variables. In that context we requested during PR18 that ORR should consider whether the high TOC payment rates are overstating the long-run implications of performance. This is particularly important in the context of competing modes, which themselves suffer significant reliability and performance issues, so cannot necessarily be considered as being better performing alternatives.

The lack of transparency and confidence in the TOC payment rates is an important issue to the freight operators as this forms the basis of the FOC payment rate.

It is also important to note that while the TOC payment rate is based on long-run costs and losses caused by poor performance the Network Rail on FOC payment rate is based on short-run costs and losses. The freight operators raised concerns in PR18 about the misalignment of the payment rates and the impact that is having on the gearing of the Schedule 8 regime.

7.0 The roulette wheel

Freightliner understands that one of the key concerns raised by the passenger train operators in PR18 surrounding the proposed move to a TOC-on-TOC regime was the inability to manage incidents and control their outcome when they do occur. Freightliner's experience of the TOC-on-TOC performance regime allows us to sympathise with these concerns.

In PR18 Freightliner highlighted how when incidents occur the outcome is largely outside of our control and the final minutes tally often felt like a roulette wheel being spun. We noted that Network Rail does not currently have a system available that will support a freight operator

securing a validated pathway if a train service leaves late. As a result it is very difficult to predict the impact of a late running service. A very minor delay can cause a considerably sized incident, which is totally out of proportion to the original late departure. Please see below examples (more can be provided upon request):

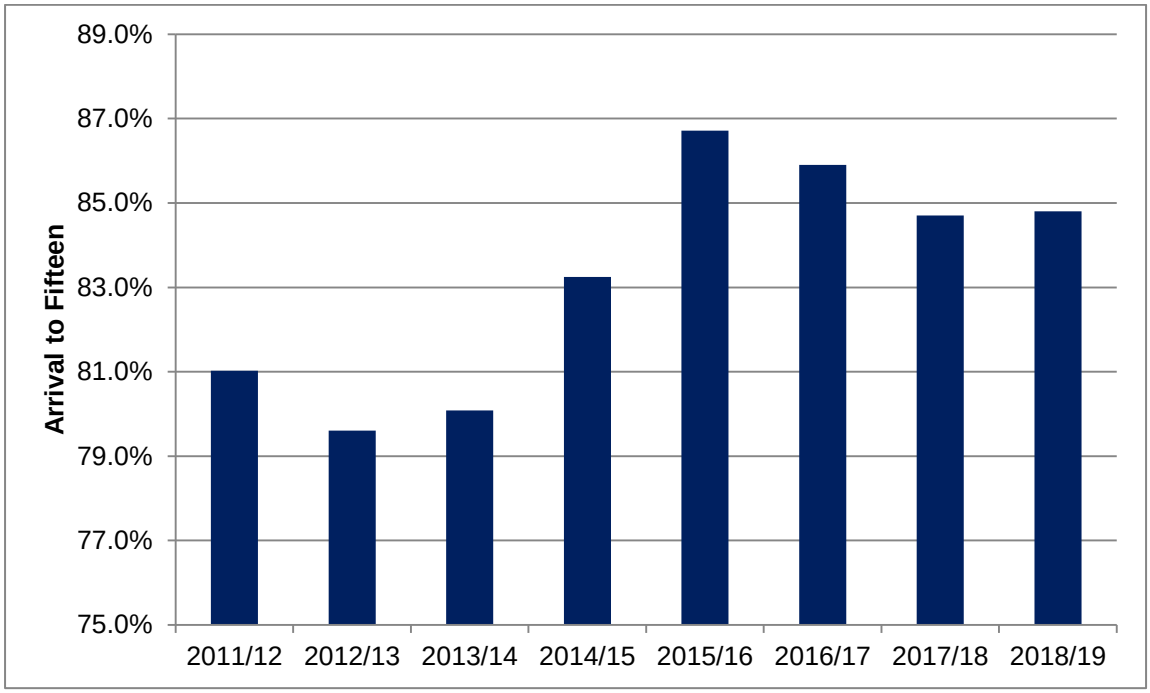
4L46 lost **1 minute** between Harrow and Gospel Oak caused **373 Third Party Minutes** costing **£18,098**.
4L95 lost **8 minutes** of time between Witham and Chelmsford. This caused **279 Third Party minutes**; potentially equal to **£14,025.**.
6E04 Tunstead – Cottam departed 14 minutes late**.** This late start attracted 335**Third Party minutes**; potentially equal to **£16,840** in Schedule 8 payments.
4C95 1400 Aberthaw – Cwmbargoed departed Aberthaw **60 minutes late due** to issues with the Silo. This late start ex Aberthaw has attracted **543 Third Party minutes**; potentially equal to **£25,901** in Schedule 8 payments.
4C42 03:20 Aberthaw – Tower Colliery departed Aberthaw **12 minutes late**. This late start attracted **61 Third Party minutes**; potentially equal to **£2,909** in Schedule 8 payments.

In these cases the freight operator has no, or very little control about the knock on delay caused by a late departure or a small loss in running time. The cost of such incidents to a freight operator is disproportionate to the minor indiscretion that has been caused by them. In many cases the costs of the indiscretion can equate to many months of profit on a flow of traffic.

8.0 Delay per Incident (DPI)

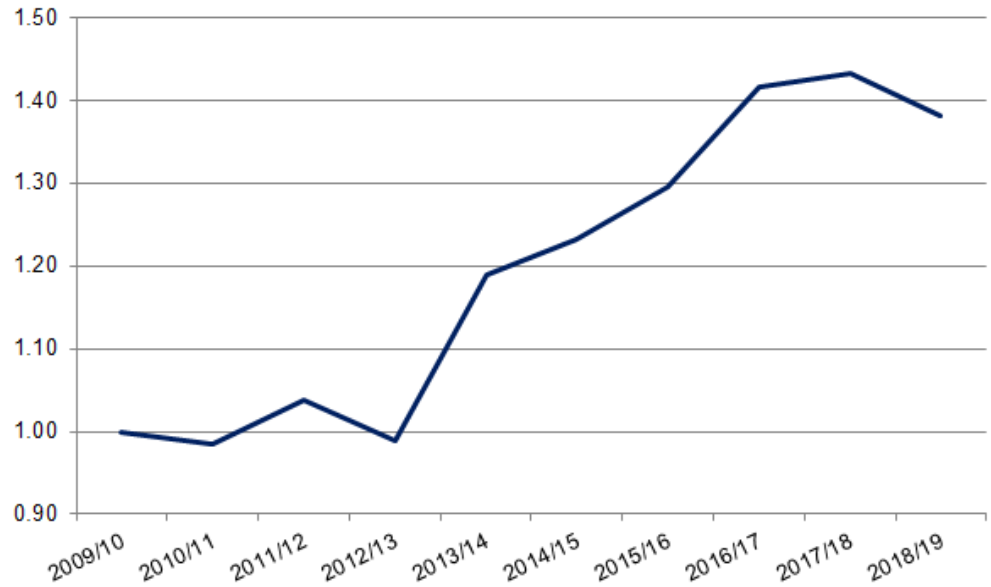
Chart 3 shows the significant improvement in arrival to fifteen minutes over recent years, greater than 5% improvement in the number of freight trains arriving within 15 minutes of booked time compared with 2011/12. This is all the more impressive in light of the timetabling problems that the industry has faced recently.

Chart 3: Freight operators – arrival to fifteen minutes since 2011/12



Despite improvements made to freight operator performance inputs, the impact of rising delay per incident (which is largely not in the control of operators) is a significant issue for freight operators. While primary delays are declining there has been a dramatic increase in reactionary delay over recent years. Over the last two control periods third-party minutes per incident have increased by nearly 40%

Chart 4: Third-Party Minutes per FOC incident – Based to 1



The ORR presented charts at the recent Delay Attribution Review workshop that showed similar trends in reactionary delays across all operators and noted that 75% of all delay alerts are now reactionary delays. While primary delay has overall been quite static, reactionary delay is exponentially increasing. This is an important issue for freight operators, as they have little control over how incidents are managed once they have occurred, particularly as unlike some passenger operators it is not practical to have a co-located control embedded in every route for a

nationwide operator. Given the increasing importance of delay per incident to the overall industry performance going forward it is essential that Network Rail is incentivised to minimise delay per incident caused by operators, as well as caused by them.

In response to this trend Network Rail identified this as one of the 'must wins' in CP6. Delay Per Incident was added to the Freight and National Passenger Operators (FNPO) Scorecard. However, over the last 12 months there has been a marked change in messaging and there has been very little discussion about Delay Per Incident from Network Rail. Furthermore DPI has recently been removed from the Level 1 FNPO Freight Scorecard. Given the impact that DPI has on freight operators, the reduced focus on it is a significant cause for concern.

8.1 Link to Delay Attribution

At the recent ORR workshop, the issues surrounding the attribution of reactionary delays were discussed. Problems with the coding of reactionary delays within TRUST were highlighted. While it seems clear to all stakeholders that improving industry performance requires tackling reactionary delay, there does not seem to be a strategy to address this. Improvements in the delay attribution process and the accurate coding of reactionary delays could help improve the underlying data and enable strategies to be developed.

In PR18, the freight operators put forward a number of options that could help incentivise the management of FOC-coded incidents. One idea the freight operators put forward was to set the FOC payment rate below the full payment rate, so in effect Network Rail pay a percentage of the payment rate. This would clearly incentivise Network Rail to reduce the impact of all incidents. Another similar option was for Network Rail to be exposed to a percentage of FOC-attributed minutes.

Freightliner recognises that such changes to the performance regime cannot now be considered until PR23, but nonetheless this delay attribution review provides a good opportunity to start considering this issue in more detail.

8.2 Network Rail's role in managing incidents

Network Rail's role in managing incidents on the network is critically important to their effective, efficient and prompt resolution. The concerns raised by the passenger operators in response to the proposed move to a TOC-on-TOC performance regime highlight the perceived problems in this area.

This is a very real issue for freight operators. When things go wrong we are reliant on Network Rail to manage the incident effectively and minimise the overall size of the incident. When the incident is not managed there is not an obvious mechanism within the delay attribution process to challenge it as analysis of decisions in hindsight is seen as easy and debating how delay minutes could have been mitigated is a very subjective issue A recent example of a Freightliner incident that was not effectively managed happened on the Great Eastern Main Line at the end of February 2019.

4M73 developed a terminal locomotive fault with a seized axle on the Up Main at Colchester at 23:08 on 26/02/2019. Network Rail has contracted, on-call specialist contractors to support re-railing and recovery and their contractor was contacted to attend the scene and attach a wheel skate. There was a delay in their departure from Didcot and they eventually arrived at the site at 04:37. However, upon arriving it was quickly established that they had insufficient resource numbers or the correct equipment for the job. Another re-railing team was requested, however the closest available was in Wigan. By this time Freightliner staff based 20 miles away attended the site and managed to walk the train into a loop to clear the line. At 07:04 the loco was clear of the main lines.

It took nearly eight hours to clear the main line and there were delays and cancellations throughout the am peak. As the incident happened shortly after 23:00 there was no reason for it to have had the impact that it did on the morning peak. The poor management of the incident, and particularly the failings of the third-party contractor, directly contributed to the overall impact of the incident.

From a delay attribution perspective, Freightliner was allocated all delay minutes in this incident, which was clearly a much larger TIN than it should have been had the incident been managed effectively. In this instance there was no clear means to challenge the management of the incident. Although there is a "failure to mitigate" delay code, this is rarely used as it is next to impossible to be able to prove the extent of the failure – i.e. it is not possible to ascertain the counter-factual had the incident been smoothly managed.

To provide the industry with greater confidence that Network Rail is fully incentivised to manage incidents that are attributed to operators, Freightliner strongly believes that the efficacy of the delay codes needs to be assessed. From a Schedule 8 perspective it would also help if Network Rail was exposed to a portion of the incident, as in the incident above the entire cost of the incident was allocated to Freightliner. It seems clear from its very limited use that the 'failure to mitigate' delay code is not an effective means of challenging the management of incidents. Freightliner hopes that this delay attribution review will consider how the management of incidents can be effectively challenged.

9.0 Dispute resolution

Insufficient resources in some Network Rail Routes is also driving an increase in disputes due to poor initial attribution or no initial attribution at all in some cases with "Management TINS" becoming a daily occurrence on some routes. Lack of resources means that some Routes are outsourcing delay attribution to other Routes. This impacts on the quality of initial attribution and an increase in basic errors, which leads to an increase in disputes.

Freightliner sees significant variation in the quality of initial attribution between the Routes. There is also substantial variation in the responses to disputes in different parts of Network Rail. Some Routes respond the same day to disputes, while other Routes take weeks in some cases to respond – meaning that many TINs do not get resolved prior to Day 8. The only contractual requirement in our Track Access Contract is for Freightliner to accept or dispute an incident within 3 working days of the delay alert being created. Unlike TOCs, there is no contractual timescale for Network Rail to respond to the dispute other than the "good practice" timescales set out in the DAPR. This can lead to a delay in resolving incidents and often result in Network Rail accepting an incident when it is resolved after Day 8 when it should have been coded to another operator had it been resolved within these timescales.

The lack of resources also impacts on the ability of some Routes to investigate and attribute correctly sub-threshold delay. That means that when a sub-threshold incident causes an above-threshold reaction there is a lack of confidence in the attribution. For example Train A is attributed with a 3 minute delay which causes reactionary delay to Train B. Train B then incurs a number of sub threshold further time losses in its journey (greater than initial 3 minute delay) but due to them not being investigated or attributed the reactionary delay is still attributed to Train A. This has the effect of increasing disputes and the industry loses the granular data that is so important to assess trends and develop performance improvement strategies.

Freightliner notes that the review seeks quantitative input in a number of areas, for example the proportion of delay attribution events that lead to disputes, time taken to resolve disputes etc. These figures are routinely collected by Network Rail, and we recommend that ORR seek these directly to ensure consistency in the numbers.

Decision-making and value added

What are the benefits of delay attribution to your organisation?

- It allows GBRf to put a financial figure to poor performance and risk.
- All parts of the organisation understand their effect on other operators.
- All functions are incentivised to reduce delay on other operators on the network
- Drives a culture that focuses on good performance.

Do you consider delay attribution to be a necessary part of industry processes?

- Yes

How do the outputs of the delay attribution process inform decisions in your organisation?

- It directs resources to look at re-occurring and predictable delay and drive these out of the business.
- It ensures we analyse the root cause of incidents.
- It drives improving performance of assets, resources and planning.

To what extent does delay attribution help support improved performance?

- It allows a financial value to be given to performance improvement projects, this leads to many more investment in projects that lead to reducing delay on the network.
- It ensures we are able to hold the relevant areas of our business accountable.

What requirements should an effective delay attribution framework meet?

- Drive performance improvement.
- Be easy to administer.
- Be independent.
- Be easy to predict financial impact under normal performance circumstances.
- Penalise poor and incentivise good performance

Resources

How much resource (staff time, consultancy spend etc.) does your organisation spend on delay attribution?

- Circa £180k per year
- This could be reduced if Network Rail was adequately resourced to effectively analyse delay, as opposed to just code to the operator to sort out.

How many delay attribution events (roughly) does your organisation deal with each year?

- Circa 20,000

Dispute resolution

What proportion of delay attribution events lead to disputes (by disputes, we mean incidents where the cause and/or the responsible body are not agreed at the first stage of the process)?

- 17.5%

What is the typical time taken to resolve disputes?

- 90% are resolved within 8 days
- 98% are resolved within 28 days
- 99.5% are resolved within 3 month

What proportion of disputes require independent adjudication?

- Less than 0.01%

How satisfied are you with the existing dispute resolution procedures?

- In general, it works well but certain routes do take longer to respond to disputes at level 2&3. If NR were to have timescales (in the same way that FOC's do) imposed, this would speed up the resolution process. GBRF feel that we are of ones chasing NR for responses and resolution.

What proportion of your overall resources devoted to delay attribution go towards dealing with disputes?

- 5-10%

Are there particular types of incident or specific delay attribution rules that cause a disproportionate amount of disputes or time to settle disputes?

- No

Do you have any delay attribution agreements with other industry parties that follow rules other than those set out in the Delay Attribution Principles and Rules (DAPR)?

- No

Accuracy

Are delay attribution systems sufficiently accurate to meet the needs of your organisation?

- Yes

Are there any areas in need of improvement?

- Post day 8 resolution could be moved from a Spreadsheet to a database. This process is subject to keying errors.

Do you use any systems to support delay attribution beyond those that are standard to the industry?

- Forward Facing CCTV
- MTISA (Driving reporting tool)

Effectiveness

What aspects of the delay attribution framework work well?

- The fact that FOC's are treated a "one entity" in the framework means that all FOC's have level playing field when it comes to performance. This means that no FOC can gain a competitive advantage when bidding for new or existing contracts.
- Recalibration period are such length that allows FOC's to predict the financial impact of their own good/poor performance when tendering for new work.
- The rates are at such a level that creates significant financial penalties if performance. worsens. This incentivises FOC's to focus on performance improvement.
- The rates being the same, irrelevant of who you delay, make the process easy to administer.

What aspects of the delay attribution framework would most benefit from improvement?

- Accuracy of initial attribution.
- Timeframe for responses from all parties for resolutions.

How do you feel improvements could best be achieved?

- Having an independent body to allocate the initial delay and manage the level 1 & 2 process.
- Having a penalty charge for incorrect attribution. (There is no incentive for NR to get the initial attribution correct)

- Parties should lose their right to challenge if the incidents are not investigated within a set period.
- Better qualitative input into the system, eg, more accuracy on the explanation of the delay and what has/has not been checked.

Are there are any aspects of the delay attribution framework that create perverse incentives?

- NR are financially rewarded if they choose to do nothing, or carry out poor initial investigations and just allocate the delay to FOC's as 'unexplained'.
- Once annual caps are breached, the financial reward/penalties are removed from both NR and FOC's to concentrate on performance.

Can you tell us of any specific proposals that you believe would enable delay attribution to better meet the requirements of your organisation and of the wider industry?

From: Lee Latham
Sent: Friday, June 21, 2019 7:18 AM
To: Moffat, Joel

What is sorely required within delay attribution is governance.

At present the cause of conflict and most time consuming problem within attribution is an inconsistent approach to applying the rules set out within the Network Code and Access Contracts.

The Delay Attribution Board is in place to ensure the rules of application are clear. Guidance documents support the Delay Attribution Principles and Rules in order to rule out misinterpretation. Industry parties are encouraged to take incidents to the Board where there may be a grey area for correct application but, there are many incidents remaining in dispute throughout the Industry whereby requests for guidance are not being made. This begs the question why.

It is GTR's experience that poor application of the rules have been, and continue to be a problem. There are several reasons for this:

- Training
- Competence
- Non practitioner influence into attribution
- No governance
- Targets
- Budgets
- Inconsistency across routes, TOCs and FOCs

There is one way to resolve all of the above.

Governance into correctly applying the rules of attribution would remove the problems. Steering and encouraging the Industry to work towards our main goal of running an on time railway and improving the service for our passengers. This can only be done by providing our businesses with solid information of areas where we can remove delays/cancellations by finding and implementing solutions.

Lee Latham
Head of Delay Attribution
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29 March 2019

Heathrow Airport response to ORR Delay Attribution Review

1. Heathrow Airport (HAL) welcomes the opportunity to respond to ORR's consultation on its review of delay attribution.

2. No part of this response is confidential, and we are content for it to be published in full.

3. As an Infrastructure Manager we have undertaken to follow the requirements of the DAPR in all respects and this has been written in our Track Access and Station Access Agreements.

4. Given the secluded nature of our infrastructure compared to the wider network in general, and the fact that we are treated as off network, we do not get involved in the more complex attribution mechanisms involving other train operators. Our attribution and performance systems have been designed around the present DAPR, and we would seek to assure ourselves that there will be no material changes to the DAPR that might affect our operation as it presently stands.

5. As we are off network, and we use an end to end benchmarking system with one train service group, all our network attributions are absorbed by either Network Rail or the relevant train operator, and do not affect HAL irrespective of the root cause. HAL are only responsible for attributions that commence on our infrastructure and are limited to the impact on our infrastructure.

6. We seek to ensure that this review does not materially affect our performance regime as TOC on TOC delays are only passed through HAL and not absorbed by us.

7. If there is a future change from TOC on Self to TOC on TOC this would trigger a benchmarking and recalibration exercise, and mechanisms exist to allow this to take place. The next programmed recalibration exercise is planned to take place with the opening of the Crossrail Central Operating Section, the date of which is still currently unknown.

8. We note that a secondary objective of this review is to improve industry efficiency. We welcome this objective and support reducing the impact of disputes and the costs of the delay attribution process.

9. We welcome the ORR review of delay attribution and look forward to working with industry partners during the further stages of this review.

Yours sincerely

Kush Desai
Rail Regulation Manager
Heathrow Airport

It's nice to see that after twenty years in the money go round the attribution of delay minutes is being looked into. From my experience, the teams employed under the guise of "performance improvement analysts" actually act purely to limit the financial impact of delays. It is not unusual for delay minutes to be attributed to a large incident completely unrelated in the expectation that the party accountable for it will not audit the minutes thoroughly...

Every lost minute has a reason, the purpose of attribution should be to discover what the reason is and ideally recommend the actions to avoid a repeat. There is a real issue of acceptance of error and a failure to seek continuous improvement. If a TOCs planning results in one of its trains delaying another of its trains every day, someone should be empowered to push for action. From 2016 to 2018 some evening peak services from London to Redhill were delayed every day - they were timed to run through another service. Since May 2018 some trains routinely present in the wrong order at South Croydon - the early train blocking the on time service and breaking the connection. These issues only impact on attribution if another operator is affected. Why not class all minutes as the same? A train that is not in its path is preventing another service from using that slot. We talk about lines being at capacity yet there is recovery time in schedules and recovery gaps between trains.

Attribution really needs to be independent - when money is involved commercial entities will always seek to maximise their income and minimise their costs. They may therefore care about delaying an inter regional freight, but not their own peak, providing the delays are within the delay repay threshold. If TOCs were paying the fines for the 20% of their timetable that is late I suspect that they would quickly adjust the timetable to prevent them.

To give an idea of just how lazy attribution can be, when I was planning class 377/5 commissioning moves, every day started with a look at the previous night's trips. More often than not there would be a few delays attributed to me. It would usually take me longer to write the email to the performance team than it did to look at each incident and recognise that the cause was not my train. A common issue was late starts from the depot impacting on other services - this would be assigned to the train/driver and once he woke from his rest, I'd receive the same email "we were at the starter signal ahead of time, eventually the signaller responded with "who are you and where are you going."" The signalling centres and control rooms all had copies of the plan, the control room even had to activate the paths for that night's running and yet the attributer in the control room assigned the delay incorrectly...

Regarding the ORR Delay Attribution Review.

The review you are undertaking is a rare opportunity to really tackle issues with attribution and how disputes are resolved. When I heard about this review last year, I really want to be part of it. I have worked in the attribution world for nearly 20 years and it never seems to progress with the same inefficient practices and time consuming disputes continuing on a loop.

There are two proposals I would like to make which will both provide simpler, cheaper, less confrontational attribution whilst still maintaining a high level of incentive to the industry and benefit to customers (the travelling public)

I attended the workshop on the 19th February and expressed one of the proposals (1) in the open forum as well as in the group sessions. The same proposal (1) is also in the RPMM group submission.

1, Disputes about reactionary delay take a large proportion of time to resolve. They are often speculative, do not take cognisance of what is actual happening at the time, difficult to prove – leading to further dispute citing lack of investigation and again take up an excessive amount of time to resolve and rarely to prime cause.

In order to remove this laborious task the solution is to attribute reactionary delay to 'pots'. A daily incident per operator for all reactionary delay to that operator. The minutes delay would be split between the operator and Network Rail and that in turn will feed a split in schedule 8.
This type of attribution will still maintain the performance improvement element. The direct delay is attributed to the reason, so the extent of the direct delay will be recorded for performance improvement purposes for that reason/location. Reducing the time until an incident is fixed is the incentive for the owning party, be it asset or train failure. It is relatively easy to establish the reason for a failure so as well as removing the time taken to resolve disputes and the number of disputes that come with reactionary delay both parties with save time. The added benefit, that does not apply currently, is that all reactionary delay will have a penalty to each operator and Network Rail. Having this will incentivise all parties to get together for service recovery and of course getting back to normal working as soon as possible will be a direct benefit to passengers.

There is no negative to the above and systems and schedule 8 are unchanged but with a change of benchmark

2, Attribution of ZU/ZS (unexplained delay).
I have never quite understood the schedule 8 split of unexplained delay whereby Network Rail are liable for 50% and the remaining 50% is split between the operator of the train and Network Rail depending on other performance figures.
Particularly with 2 minute delays. (if the train has clear signals and the schedule is correct) then the only cause can be the operation of the train (how the train is driven or how the train is performing). We can prove the signals and schedule so in these cases why is the attribution not wholly to the operator of the train. At least the other way round than it is now. This is the only way to incentivise

operators to advise of the reason for the delay, thus reducing unexplained delays. I understand the difficulty with 1 minute delay and what TRUST systems can cope with, but a driver will know the reason for a 2 min delay and that known reason can be acted upon for performance improvement.

In both the above proposals I have been questioned by number of people but have yet to find a negative. Working daily and full time with attribution these are the types of things we need to introduce to make a real difference to the cost of attribution and to get the correct incentives to identify causes and reduce impact on passengers.
A plus is there would be no need to change schedule 8, just the benchmarks.

I am happy to discuss further and am interested in putting some time into the review in a practical and impartial way

Railway Markets and Economics
Office of Rail and Road
One Kemble Street,
London, W2B 4AN

Our Ref:
Your Ref:

January 2016

Dear Sir/Madame,

PR18 Reviews of schedules 4 and 8 of track access contracts

Thank you for the opportunity to comment on this.

We would like to see a reform of schedule 8, because at the moment as your paper points out currently this is very focused on the needs of train operators rather than passengers as end users.

As such this is a matter of public concern, particularly as amounts of compensation paid to operators can be in an order of magnitude different to those paid to passengers through schemes such as Delay Repay, in particular because a large proportion of passengers do not claim the compensation that is due to them, either because they are unaware of their entitlement or because the amount of recompense is not large enough to warrant the effort of submitting a claim.

We are aware that in the past some train operators have assumed poor performance on the part of Network Rail in their financial plans, such that it is more valuable to them to be compensated by Network Rail than the revenue that they receive from passengers (e.g. National Express East Coast franchise). This kind of perverse incentive is obviously not in the interests of passengers.

Similarly, we have been concerned about the poor performance of the Thameslink Southern Great Northern franchise (TSGN) since its start in September 2014. This has particularly affected passengers travelling within the London ‘Metro’ area where journeys are shorter and the likelihood of delays of more than 30 minutes is less, but the impact of delays can be proportionately greater.

We have therefore, asked the Department to consider reducing the threshold at which delays become eligible for compensation from 30 minutes to 15 minutes, and to introduce automatic compensation arrangements so that passengers do not need to go through a bureaucratic process to receive their refund. This has been included as a commitment in the Comprehensive Spending Review in 2015.

This is an important and correct decision in favour of passenger interests. However, passengers would rather train services are reliable, and so the need for compensation to them is reduced. Our view is that the schedule 8 payments mechanisms need to be reformed to incentivise operators and Network Rail to improve reliability and reduce the impact of disruption on passengers through a direct relationship with the compensation regime.

Attached is a discussion paper that we have submitted to the DfT on how we think such a system might work. If you have any queries on our response please do not hesitate to contact me.

Yours sincerely,

Tim Bellenger
Director – Policy and Investigation

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Orr.Delayattributionreview@orr.gov.uk

13 March 2019

Position paper on Delay Attribution

MTR welcomes the opportunity to respond to the consultation on the delay attribution review. As noted in the ORR letter introducing the review dated 15 Jan 2019, delay attribution is not a standalone process but a mechanism to feed other industry processes. Our response therefore considers the relationship between delay attribution and those other mechanisms, and their role in the industry. MTR operates railways as a vertically integrated operation in Australia, Hong Kong and China, but also as a Transport Undertaking in Sweden and the UK, under a variety of incentive and performance regimes. It has, in all cases, improved performance and therefore it believes that it is well placed to provide an appraisal of the benefits and disadvantages of differing levels of data capture on the causes of delay.

Introduction

MTR believes that delay attribution is, overall, an industry asset. The maturity of the DA process is something for which the industry should take credit. The purpose, however, for which it was incepted has changed considerably over the years and, along this journey, more is being asked of the process than is practical given the existing limitations of system architecture and available resources.

The journey from it being a means of attributing delays to the 'Operator' or 'Network Rail' for the purposes of Schedule 8 as a liquidated damages regime has become blurred as it has become a performance management system. The move towards identifying the exact causes of each delay, and the ability by the operator (in some cases) to claim additional costs to what is provided by Schedule 8 for performance, have both altered the purpose of Delay Attribution and Schedule 8. As a consequence Delay Attribution has become difficult to manage, not least as the core text of the Track Access Agreement Schedule 8 has not been amended to take account of this change in philosophy.

MTR believes that in order to answer the ORR's question of the value of the Delay Attribution process, it is important to evaluate the benefits of the three main repositories of delay attribution data: Schedule 8, performance management, and bidding. It is our view that the needs of these areas then drive the responses to the consultation.

It should be noted that MTR Crossrail's contract with Rail for London (its client) imparts a different relationship between the Operator and Schedule 8. RfL takes revenue risk, not the Operator, and MTR Crossrail is tasked with protection of RfL's revenue. This is different from a standard franchise.

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Relationship of Delay Attribution to Sch 8

Liquidated damages

It is an axiom of the industry that passenger revenue is linked to system performance. If an operator delays itself it is incentivised to improve its own performance because it will have incurred costs and lost revenue as a consequence. If the infrastructure manager delays an operator then the operator will incur cost and lost revenue, but the infrastructure manager will only incur the direct costs to itself of rectifying the fault. Likewise, if the IM improves performance, and operator (freight and passenger) revenue increases, it is sensible that the IM be rewarded for that improvement. Without this incentive, it is hard for the IM to justify further investment in the network.

The value of 'performance' cannot be directly measured since many of the costs are intangible or sunk costs by the industry. The impact of verbal assaults on staff caused by irate passengers is an example of the former, with the costs of a customer contact centre being in the latter. It is possible to correlate revenue with levels of performance and thus, at an aggregated level, provide a regime between the train operator and IM to incentivise better infrastructure performance and to compensate the operator for poor infrastructure performance.

At this level of over-view, MTR believes that there is little with which to disagree about the overall aims of Schedule 8 as a liquidated damages regime where the Infrastructure Manager and Transport Undertaking are separate bodies. This regime needs relatively simple feeds for it to work since the TAA only requires attribution between Operator and Network Rail. Schedule 8 also does not attach blame to attribution since, provided attribution is consistent with how the performance benchmarks are calibrated, Schedule 8 only needs consistency in attribution in order to work, not accuracy.

Star model

The star model as used by Schedule 8 greatly simplifies the relationship between Transport Undertakings. A freight operator (as an example) can potentially cause delays to any operator in the country; it would be uneconomic and unmanageable for every Transport Undertaking to have a performance contract with every other party. Schedule 8 puts the IM at the centre between all TUs meaning that an operator has only one party to work with when seeking to address wider industry problems.

It is not always clear how important Network Rail sees this role. It is our view that Network Rail tends to be passive in this position unless directed by one operator (normally the 'victim' in TOC on TOC delays). In theory, Network Rail's approach to managing the system through its role as defined in the Network Code (such as the production of the timetable, writing of contingency plans, and leading disruption recovery) should be incentivised by its role in the Schedule 8 star model. In order for Network Rail to take a lead in this role, it must have good performance information as to why one operator is adversely affecting another.

MTR believes that both Schedule 8 and the star model are important to the industry in providing Operators with revenue protection against poor infrastructure performance, an incentive on Network Rail to improve its own and industry performance, and a manageable process for multiple operators to compensate each other. As a liquidated damages regime, it only requires a high-level attribution process provided the attribution is consistent with how the regime has been benchmarked. This should be, as required by

Schedule 8, without allocating responsibility, but be consistent with how the regimes were benchmarked and ensure that all delays have an owner.

Performance management

TRUST and the delay attribution process provide the basis for an industry-wide performance improvement culture. It is to the industry's credit that there exists a process whereby delays can be investigated and used for analysis. Whatever its current weaknesses, the richness of performance data in the UK railway is superior to many other networks and operations.

Rightly or wrongly, part of this has been driven by the blame culture that permeates any performance regime. It is overly simplistic to suggest that Schedule 8 is the cause of tension between Network Rail and other operators; internal attribution inside an operator (such as splitting delays between fleet and drivers) can be harder to resolve than between Network Rail and the operator. This reflects human nature more than the effectiveness of a regime.

Our experience of railways where there is not an equivalent of Schedule 8 is that performance data tends to be less detailed and there is less ownership of performance improvement. The exception to this is in engineering-focussed areas where there are asset management systems that provide information on asset reliability and the causes of failures, even if (by themselves), they do not record the level of corresponding disruption. With assets, however, the cause of a failure is often more easily identifiable and solutions more self-evident. Delay attribution (and the resulting performance regimes) helps focus operations on those areas where it is harder to find an immediate solution to the problem, such as with station dwell times or with train regulation policies.

Consistent industry measures

Delay attribution provides a common metric of performance for the industry but this frames punctuality as a measure of lateness or delay against a timetable. This is not, necessarily, advantageous to the industry as there are users for whom 'delays' are largely meaningless. These include users on high frequency systems where intervals are more important than performance against timetable. While Delay Attribution is important in understanding why trains failed to adhere to a timetable, the resulting delays should not be seen as the only measure of impact on the passenger. The industry would benefit from having passenger-related metrics (that already exist to a degree in Schedule 8) that reflect the true travelling experience, or an equivalent for freight.

Engineers are also not incentivised by delay minutes; reliability is a better metric. How many delay minutes a failure will accrue is largely random depending on the location and time of day but a reliable asset should impact the industry less in the long run than an unreliable one. Again, the focus on delays can drive perverse engineering responses to performance management.

While it is important to have a consistent approach to understanding time loss against schedule, the resulting culture of performance being purely about delays and lateness can distract the industry from other variables that our users consider important.

Measurement of 'delay'

A delay is, for most train operators, defined as being an increase of three or more minutes in lateness between two monitoring points. This threshold of three minutes is too coarse to understand the micro-causes of delay, such as a change in operational practices at a

station when dispatching a train, or slight changes in rail head adhesion on the approach to a station. At the same time, there has to be a practical limit to the size of a delay as otherwise the volume of delays created would be unmanageable. This paradox at the heart of Schedule 8 partly reflects the limitations of the systems (TRUST only working to whole minutes, for example), and the difficulty of balancing a volume of output with the desire to gain more detailed delay data.

'Root cause' attribution

Schedule 8 was, as a liquidated damages regime, designed to high level and this is reflected in the wording of the Track Access Agreement. Delays are, according to the contract, attributed 'whether or not [the party] is at fault'.

Although this could lead to perversities (for example, the operator being responsible for things outside of its control such as bird strikes damaging a windscreen), the simplification to delays being attributed either to Network Rail or the Operator, regardless of fault, allowed delay attribution to be effected quickly. Any injustice was negated by initial benchmarking: it might not be the operator's fault per se, but the benchmarks already assumed the operator was taking those delays.

The resulting sense of iniquity of the Schedule 8 regime has, over the years, led to a shift in the role of Delay Attribution from being a process to administer the Schedule 8 regime to being a performance information system. While this has been agreed at an industry level, it is at the expense of the liquidated damages argument.

Furthermore, the 'root cause' of an incident is highly subjective, despite the efforts of the industry and the Delay Attribution Board. Once an incident has occurred, the cause of reactionary delays in particular is very difficult to ascertain. What is a suitable level of spare industry resource to mitigate delays? How long should a TOC allow for turn-rounds at destination in order to ensure industry robustness? Who is responsible for an interface between wheel and rail? While agreements at DAB might assist with attribution, they are highly subjective and cannot accurately quantify the true level of responsibility of each party.

These questions become more important as the industry moves towards every delay being assigned a responsible owner, and yet were not originally required when delays were attributed regardless of fault. As each delay requires greater investigation, so it becomes harder to unravel large incidents as to what really caused each delay, and attributing delays becomes tenuous.

Value to the industry

The cost of the Delay Attribution Process is disproportionately borne by Network Rail. If the national delay attribution process did not exist, it is likely that most operators would retain the same number of staff in the wider performance management process. The sheer number of staff employed in the attribution process is reflective of the demand we make on delay attribution processes whereby a large amount of effort is required to find or disprove the cause of loss in running. If a train loses three minutes in section and there are no infrastructure incidents, it cannot be automatically assumed that it is a TOC incident if the industry is trying to find the root cause. The dispute process allows a TOC to only accept a delay if NR can prove the TOC is responsible or at fault. This is not how Schedule 8 was designed, and a 'balance of probabilities' would greatly simplify the attribution process, assuming it can be applied consistently.

The high demands on accuracy in the delay attribution process drive the required resources. This reflects the wider shift of the purpose of Schedule 8. Despite the desire to see greater accuracy, the systems have not developed to improve the investigation process. CCF, for example, has not evolved greatly in the past 15 years despite it being the main tool for train movement analysis by the NR DA teams.

It should also be noted that this response covers the needs of both MTR as an operator and an owning group. The value of delay attribution varies depending on the end use of the data; MTR Crossrail's need to improve performance cannot be valued in the same way as the owning group's need to understand the risk of disruption on a future franchise. As a result, MTR Crossrail places a very high level of importance on attributing delays as close to the root cause as possible. Much of this is done internally using its own performance management systems.

Relationship with bidding

Owning groups, when bidding for new franchises, depend on accurate delay attribution information in order to understand the risks of franchise and concession, and to underpin our action plans knowing the areas that require improvement. The resulting level of performance not only drives our performance predictions for the TOC and Network Rail, but provides guidance on operational priorities (i.e. where we should concentrate initiatives) and also the basis of revenue forecasts.

Accurate delay attribution data is vital in improving the quality of bids. In addition, Schedule 8 then becomes a form of risk protection should the infrastructure manager not deliver as forecast. At this point, Sch 8 is fulfilling two objectives; immediate revenue loss and support to the bidding process to ensure that owning groups only have to manage risks that are under control.

It should noted, however, that the performance targets set by the franchising client in the contract are in themselves determined by historical delay information. The link between Delay Attribution and bidding is therefore intrinsic to both the client and potential operators.

When evaluating the quality of a bidder's performance plan, Delay Attribution data is the only realistic means of judging the deliverability of an initiative and the passenger benefits it might bring.

Dispute resolution

MTR has a relatively low demand on dispute resolution processes. This partly reflects the size of the train service, but also the relationship with Network Rail. This relationship is influenced, in part, by the performance regime it has with Rail for London as its client. Under its contract with RfL, MTR Crossrail pays for all delays, regardless of whether they are IM or operator (the rate paid per delay does vary depending on the delay owner). The sums involved in its contract with RfL are designed to influence MTR Crossrail's behaviour in terms of improving industry performance meaning the focus in MTR Crossrail is in preventing and managing incidents, rather than arguing the cause. As RfL takes revenue risk, it is also entitled to all Schedule 8 monies from Network Rail.

Systems

No investment has been made in improving how we can attribute the causes of delay. The Improved Delay Attribution System project that automatically attributed reactionary delay to an incident would have greatly reduced the number of delays manually processed; it is disappointing that there has still be so little progress in automating either the primary cause of delay or in linking reactionary delay to an incident, despite the technology existing.

It is clear that part of the problem arises from deciding how to attribute delays caused by a lack of resources, be they crew or stock. Since the definition of a 'root cause' of a delay is subjective, it is difficult to see how the industry could come to agreement on the automatic attribution of delay. Simplifying Delay Attribution, particularly the rules around reactionary delay, would help allow systems to do more attributing in real time.

The future

It is likely that the trajectories of Schedule 8 and performance management will continue to diverge. Performance management is focussing more on sub-threshold delays that are currently not part of the Delay Attribution process. Investments in the automation of understanding the causes of sub-threshold delay will be important for improving performance but do not fit in the current TRUST landscape. If nothing else, analysis on time loss-in-running needs to be measured at a greater accuracy than one minute.

At the same time, the need to service Schedule 8 will continue as it does now. The move towards understanding very small delays does not assist the Schedule 8 process; for operators dependent on Schedule 8 income there is concern that the allocation of small delays could affect how lateness is apportioned under Schedule 8. This is a perverse position for the industry.

Conclusions

MTR supports the use of compensation regimes that incentivise the Infrastructure Manager to reduce delays on the system. It also supports the use of quality delay attribution that allows any party to understand (as far as is reasonably practical) what is causing lateness or the system to operate sub-optimally. The industry should not assume, however, that the two have to be done by the same system. The first objective should be seen as a high level exercise that is efficient and expedient for the industry to discharge; the second requires much more detailed analysis but, even then, the industry should accept that the quality of attribution is commensurate with the scale of disruption. If it wants a greater level of accuracy, even during severe disruption, investment should be made to support the process such as the automatic attribution of reactionary delay.

Oliver Bratton
Operations Director – European Business
MTR Corporation Limited

Annex 2 – Questions to help guide responses

29. This annex provides a list of questions we would like to have stakeholders' feedback on as part of this consultation. However, note that these questions are only a guide. We are keen for stakeholders to provide any additional information that is considered relevant.

30. The review will be structured around the three themes of: governance structures; principles and rules; and processes, systems and ways of working. When thinking about what works well, what would benefit from improvement, and how this improvement could be achieved (see questions under 'effectiveness' and 'proposals for improvement'), we would find it helpful if you separately addressed each of the three themes (or whichever of the three are relevant to you).

31. In your response it would be useful if you could provide practical examples and any other evidence to support your views.

Decision-making and value added

 What are the benefits of delay attribution to your organisation?

- Ensures that delay incidents sit in the correct 'pot', to drive correct performance improvement behaviour in the areas which are under-performing
- Understanding what delays and cancellations are hurting our business.
- Understanding common themes in delays and cancellations and encouraging solutions from different teams in the organisation.

 Do you consider delay attribution to be a necessary part of industry processes?

- Yes, although it could be improved by better accuracy at Level 1 (Network Rail)
- Absolutely, it helps us understand particular patterns of delay, certain trains, identifying key areas for improvement although sometimes the performance regime money can get in the way of where the delay is attributed.

 How do the outputs of the delay attribution process inform decisions in your organisation?

- Outputs of Delay Attribution, feed MTR Crossrail's internal Performance Improvement Plans (PIPs), which may turn to Joint Improvement Plans (JPIPs), if other stakeholders are involved

 To what extent does delay attribution help support improved performance?

- As per question 1, identifies which areas are under-performing for the performance team to target in order to improve Right Time and delivery for customers

 What requirements should an effective delay attribution framework meet?

- To ensure that the ultimate aim of DA is met: to have good quality data that can be used to drive performance improvement activities

Resources

 How much resource (staff time, consultancy spend etc.) does your organisation spend on delay attribution? Various roles across the business are involved with the outputs of attribution. MTR have 1 and half roles to manage the dispute resolution process.

 How many delay attribution events (roughly) does your organisation deal with each year?
Circa 2,500 per year

Dispute resolution

 What proportion of delay attribution events lead to disputes (by disputes, we mean incidents where the cause and/or the responsible body are not agreed at the first stage of the process)? Around 70% of incidents are accepted at the Level 1 stage.

 What is the typical time taken to resolve disputes? 3 to 5 days

 What proportion of disputes require independent adjudication? Very few, if any, but we do use the support of DAMG and TOC/FOC colleagues and advice from DAB members.

 How satisfied are you with the existing dispute resolution procedures? I have a very good working relationship with the NR routes, which makes the process easier to manage. I suspect a lot of the time it is the relationship rather than the process that falls down.

 What proportion of your overall resources devoted to delay attribution go towards dealing with disputes?

 Are there particular types of incident or specific delay attribution rules that cause a disproportionate amount of disputes or time to settle disputes? Small delays and sub threshold delays can take longer than the larger known causes. There are many differences across the country on how sub threshold delay is treated.

Also, there is often confusion around on/off network and responsibilities for investigating. For example, a lot of Level 1 DA seems to treat 'on network' sidings as if they were 'off network' depots, with limited investigation as a result.

 Do you have any delay attribution agreements with other industry parties that follow rules other than those set out in the Delay Attribution Principles and Rules (DAPR)? No, although as a concession we do have a performance regime with TFL and major changes to DAPR can affect our business. Recent change of the attribution of bird strikes is one example.

Accuracy

 Are delay attribution systems sufficiently accurate to meet the needs of your organisation?

- In some cases yes, but TRUST can only go so far so the industry needs to consider this when OT3 and new metrics are introduced under CP6. With the introduction of new fleets across the network and GPS readily available, there should be work into actual arrivals and departures from train data.

 Are there any areas in need of improvement?

- The industry still spends too much time disputing incidents between Network Rail/Train and Freight operators, due to repeat inaccurate attribution at Level 1 on the day. This time would be better spent formulating performance improvement plans, to further deliver better service for customers

 Do you use any systems to support delay attribution beyond those that are standard to the industry? We use a system called Impact with its primary role to calculate our performance regime with TFL. It has berth to berth data and offsets built in. We have used it for dwell analysis.

Effectiveness

 What aspects of the delay attribution framework work well?

The majority of the DAPR is clear and helps with timely resolution. The flow charts within the DAPR and Process guides are helpful.

 What aspects of the delay attribution framework would most benefit from improvement? How do you feel improvements could best be achieved? Closer working between Operator and NR at level 1 to drive improvements on day 1. Most resources are at the Level 2 process.

 Are there are any aspects of the delay attribution framework that create perverse incentives?

The money in the performance regime can drive perverse behaviours with the larger incidents between NR and the Operator. It can lead to some facts of the incident not coming out. Example incidents: Where there is a failure of the infrastructure and it cannot be determined whether it is a train or Infrastructure issue. The money at stake can drive parties not to resolve the incident and go for a commercial settlement.

Commercial agreements for autumn can drive some inconsistencies in the data. Other delay causes can get overlooked.

Proposals for improvement

 Can you tell us of any specific proposals that you believe would enable delay attribution to better meet the requirements of your organisation and of the wider industry?

I would like to see more consistency across the network with sub threshold delays.

Divorce DA from Schedule 8.

Greater clarity on what is on or off network and the correct process for investigating / resolving each.

Bit of an open question, do we have too many delay codes which water down the data set when looking at historic delays for business cases.

Peter Swattridge
Head of Regulatory Economics, Network Rail

John Larkinson
Chief Executive, Office of Rail and Road

29 March 2019

Dear John

Network Rail response to ORR Delay Attribution Review letter

Delay attribution supports delay causation analysis, which is an important tool for understanding performance issues on the network. It is imperative that it is done well. Therefore, we welcome ORR's review.

We are concerned that delay attribution is not working as well as is needed. Currently, 35% of delays across the network are not attributed and this percentage can be as high as 70% for individual operators. Furthermore, roughly one-in-ten of delays which are attributed are not done so accurately.

Delay attribution is used to identify and understand the prime causes of disruption on the network, as well as being used to calculate some of our scorecard metrics. We therefore consider that delay attribution needs to be both **accurate** and **complete**. These two key outcomes are not currently being fully achieved. We explain these outcomes below, alongside three areas for the industry to improve which we consider are necessary to achieve these outcomes.

What does good look like?	Explanation
Outcomes	
Accurate	Delay attribution should accurately reflect the prime cause of disruption. This helps to improve the industry's understanding of disruption, which in turn could lead to improved network performance.
Complete	The vast majority of delays should be attributed, unless there is a good reason for not doing so. As explained above, this helps the industry's understanding of disruption.
Areas for the industry to improve	
Appropriate industry challenge	Delay attribution should only be disputed when there is a good reason for believing that it has been done incorrectly. Currently over 40% of delay attribution is disputed, yet fewer than a quarter of disputed delays are found to be incorrect.
Shared industry performance data	This would allow for delays to be more accurately attributed and could help responsibility be found for a greater number of delay incidents.
Joint industry working	The industry should work together to use the results from delay attribution to improve performance for passengers and freight users.

Given the importance of delay attribution, we consider that the current costs of administering the process (which we estimate to be around £15m p.a.) are not unreasonable.

ORR initiated its review as a result of train operators' reactions to ORR's PR18 proposal to change the way that Schedule 8 works for passenger train operators. Under ORR's proposal, train operators would have made Schedule 8 payments based on the actual amount of train operator-caused reactionary delay ("TOC-on-TOC"), rather than a fixed estimate of this based on the disruption that they cause to themselves ("TOC-on-Self"), which is how it works currently.

During PR18, many train operators argued against ORR's proposal on the basis that they would be highly likely to dispute the TOC-on-TOC attribution where they felt that another industry party was better placed to mitigate the reactionary delay (i.e. use the "failure to mitigate" rules set out in the Delay Attribution Principles and Rules). Such an increase in delay attribution disputes would significantly increase the administrative cost of delay attribution to all parties and also damage industry relationships. Some train operators also argued that only Network Rail was able to reduce reactionary delay, regardless of the cause. We consider that both Network Rail and train operators can contribute to reducing reactionary delay - it is vital that all parties work to reduce reactionary delay to improve performance for passengers and freight users. We set out our detailed views on ORR's PR18 TOC-on-TOC proposal in **Annex 1**.

The response to ORR's PR18 proposal highlights an important link between delay attribution and Schedule 8. We agree that delay attribution and Schedule 8 are fundamentally linked and should be considered together.

We have carried out a gap analysis of the delay attribution outcomes and areas listed above (see **Annex 2**). This considers Schedule 8 and delay attribution together. The analysis seeks to highlight where the current arrangements fall short of the desired outcomes.

We are mindful that ORR has only just concluded PR18. Therefore, any changes to Schedule 8 may take longer to implement than any changes to delay attribution. However, given the importance of these issues, we believe that ORR should make any changes as soon as possible. We recognise that changes to delay attribution may result in a requirement to recalibrate Schedule 8 during CP6, which could provide an ideal opportunity to address issues with Schedule 8.

In producing our response to ORR's letter, we have gathered route views on delay attribution, particularly focusing on the views of delay attribution users and practitioners. These views are set out in **Annex 3**, but we have also summarised these below. Following this, we discuss improvements that we consider could be made to Schedule 8 to help with delay attribution.

<u>Delay attribution – key benefits and suggested improvements</u>

We set out, below, the key benefits of delay attribution along with the changes that we think should be considered to improve its **accuracy** and **completeness** (see **Annex 3** for further details in response to ORR's specific questions).

The key benefits of delay attribution are:

- It informs delay causation analysis, which provides useful data about the causes and extent of disruption - it is necessary for performance monitoring and management. It allows performance improvement plans to be developed and tracked.

- It provides a dataset of the prime causes of disruption that is relatively simple to understand and analyse.
- It provides data to support Network Rail's business cases for investment in performance improvement.

We consider that all of these benefits of delay attribution would continue to be relevant in a different industry structure, which may come about through the Williams Review. For example, delay attribution would still be valuable in a vertically integrated railway.

The key issues with delay attribution that we have identified are summarised in the table below, alongside suggested improvements:

Issue	Suggest improvement(s)
Sub-threshold delays are not attributed, which results in a significant proportion of delays being classed as 'unexplained' (c.35%).	Attributing a larger number of sub-threshold delays, where these are recorded accurately within the systems. We recognise that this may require an increase in resource. We are implementing new tools to help identify the causes of sub-threshold delays through analysis of, for example, station dwell times and sectional running times against the timetable rules. The key purpose of this is to identify actions to reduce sub-threshold delays, but this data will also inform delay attribution processes, enabling an increase in attribution.
	Assigning unexplained delays as "Joint Responsibility", so that these delays are not just seen as a Network Rail issue.
	Greater sharing of industry performance data, for example train operators' data about passenger boarding times and station/depot dispatch, so that the causes of delays can be identified more easily and more accurately. Schedule 8 currently disincentivises train operators from sharing their data with Network Rail if the data shows that the train operator was responsible for the incident. This is because, if a reason for the delay is not identified, the delay is recorded as unexplained for which Network Rail pays c.80% of the Schedule 8 costs[1].
	New GPS technology is available which could help with delay attribution, but which is not currently being used. We are implementing the Industry Train Event Database later this year which will harness GPS data and should progressively improve the industry's capability to analyse all variances to plan, enabling reduction in delays and improvement in attribution. Train operators should be strongly encouraged to fit this new equipment.

[1] Through Schedule 8, Network Rail automatically pays for 50% of all unexplained delays, and the remaining 50% is split between Network Rail and the train operator based on their share of attributed delay (which results in a rough 80/20 split).

Issue	Suggest improvement(s)
The number of delay alerts has increased by over 700,000 (c.15%) over the last year, resulting in a greater workload for delay attribution teams.	Simplification of the delay codes for delay attribution. Currently there are numerous different delay codes which identify the same underlying cause. A reduction in the number of delay codes would make delay attribution easier without significantly reducing the quality of information available. Most Network Rail analysis focuses on c.40 groupings of the over 250 delay codes, so reducing the number of codes should not prevent useful analysis.
	Automation of the attribution of reactionary delay, by creating hard-coded rules within the system to tackle current workloads and release some resource for the attribution of sub-threshold delays.
A high proportion of delay incidents (over 40%) are disputed by train operators.	There are very high numbers of disputed incidents which rarely change the original attribution. We should seek to reduce the scope for disputes which are not legitimately for the purpose of identifying the right cause of delay. There may be merit in considering penalties for excessive amounts of unsuccessful disputes.
Other	Amendments to the delay attribution rules for suicides, such that it better reflects the industry's joint responsibility in reducing the number of these tragic incidents. These incidents should be attributed as "Joint Responsibility" to reflect that all industry parties can take action to reduce suicides on the network. Under the current regime, Network Rail has funded security staff at TOC-managed stations to prevent suicides, even though train operators are responsible for station staffing.
	Reactionary delay should be shared between Network Rail and train operators, to provide a stronger incentive for all industry parties to reduce delays.
	There are inconsistencies between the Delay Attribution Principles and Rules (DAPR) and the Track Access Contracts which should be resolved. For example, DAPR states that delay should be attributed to the "prime cause", yet the Track Access Contract states that delay should be attributed to the incident that "wholly or mainly" caused the delay (this inconsistency was the cause for the recent attribution dispute, ADA33).
	Amendments to the delay attribution rules for severe weather. Severe weather attribution currently results in a 'standoff' situation whereby neither the train operator nor Network Rail wants to be the first to declare that services cannot run, as they would then become responsible for that delay. Delay attribution for severe weather incidents should better reflect the joint industry responsibility for planning for bad weather. PDFH notes that a well-managed weather incident will have no long-term impact on ticket sales, so this change in approach should not adversely affect train operators, financially.
	We understand that some industry parties may consider that independent delay attribution could help to solve the current problems. This would be worth exploring further.

We are concerned that many of these issues could be affected by commercial pressures (through Schedule 8) and internal targets. This, in turn, could lead to inaccurate or incomplete delay attribution, which is contrary to the outcomes that delay attribution should achieve.

Schedule 8 improvements

We recognise that train operators will always seek to operate the best service possible for their customers, and part of this involves accurately identifying the cause of delays such that action can be taken to reduce them in future. However, we are concerned that the financial incentives created through Schedule 8 may conflict with this. We summarise, below, what we consider needs to change within Schedule 8 to neutralise any financial incentives that could distort **accurate** and **complete** delay attribution.

- Schedule 8 payment rates should be set at a level that better reflects train operators' long-term revenue losses as a result of disruption. There is clear evidence from recent PDFC studies which indicates that the Schedule 8 payment rates are significantly too high. Reducing the payment rates to a more accurate level would reduce the impact of financial incentives on delay attribution, for example the high number of unsuccessful disputes.
- The successful management of reactionary delay relies on the actions of both Network Rail and train operators. This is especially true for external events such as suicides. However, Schedule 8 places the financial liability of reactionary delay with Network Rail (train operators are fully compensated for any reactionary delay they experience and are isolated from the true financial impact of reactionary delay that they cause). This means that only Network Rail has a financial incentive to improve reactionary delay, as a train operator will not receive any financial benefit of action it takes to reduce reactionary delay. To improve this situation, we should create a financial incentive for train operators to help reduce reactionary delay, for example by setting Schedule 8 payment rates below full compensation levels or by sharing responsibility for reactionary delay. An alternative approach could be to recalibrate the TOC-on-TOC element of Schedule 8 (i.e. the star model) annually as opposed to every 5 years, which would capture TOCs' efforts in reducing reactionary delay more frequently.
- Revise compensation payments for severe weather events. PDFH notes that a well-managed weather incident results in no long-term revenue loss for train operators.

Taking forward ORR's Review

Finally, we are concerned about ORR's proposal for the industry to lead on all subsequent stages of the Delay Attribution Review, after the scoping stage. Delay attribution and Schedule 8 currently result in significant industry disagreement. We therefore consider that ORR should remain involved in the review to ensure that this work is taken forward and delivers the necessary reforms. We suggest that ORR facilitates the Delay Attribution Review, and then asks the industry to lead on the implementation of its recommendations.

We also note that we consider that ORR can require changes to delay attribution processes. ORR's powers to require changes to delay attribution are the same as its powers to change the Network Code, provided that the proposed change is (or is likely to be) reasonably required to promote, for example, improvements in performance. There are also other criteria for ORR to be able to change Delay Attribution, as set out in Condition C8 of the Network

Code[2], however we do not consider these to be as relevant for ORR's Delay Attribution Review.

Conclusion

We welcome the opportunity to work with train operators and ORR to address known issues with delay attribution which could help improve performance in the future. We should also be mindful of the opportunity that the Williams Review brings to reform the performance regime more widely.

We would be happy to discuss our response with ORR and are happy for it to be published.

Yours sincerely

Peter Swattridge

Head of Regulatory Economics, Network Rail

[2] Condition B1.2 of the Network Rail provides the Condition C8 also applies to the Delay Attribution Principles and Rules (DAPR).

Annex 1 - response to ORR's request for views on its PR18 TOC-on-TOC proposal

At the delay attribution workshop on 19 February, ORR requested views on its PR18 TOC-on-TOC proposal. ORR's PR18 proposal came about following concerns expressed about how reactionary delay was dealt with in Schedule 8, and the behaviours that this creates. We strongly support ORR exploring ways to improve the current situation, in which train operators have no financial incentive through Schedule 8 to help mitigate any reactionary delay. As noted above, reactionary delay is a problem that affects all parties, and all parties can take action to reduce its impact. For example, train operators can:

- Prioritise other train operators' services over their own, and potentially cancel their own services to reduce disruption on 'high value' trains.
- Take a greater interest in timetable planning to ensure a robust timetable which minimises the impact of delays, rather than focusing on accommodating additional services (i.e. address the trade-off between performance and additional network traffic).
- Put improved operational plans in place, especially for services which frequently cause disruption to the network. For example, train operators could invest in additional train crew, or more reliable trains.
- Improve passenger communication if delays do occur, to ensure quicker passenger boarding and faster despatch.

Network Rail has been working with train operators, through NTF, on a new approach to managing and monitoring performance called the Performance Management System (PMS). PMS should enable improvement in the above areas, by defining what 'good looks like' and identifying opportunities for future improvement. Service recovery has been identified as an early priority. PMS aims to help the industry to agree and implement robust joint contingency plans, and to facilitate post-incident reviews. In so doing, it is hoped that PMS will support the industry in mitigating the impact of incidents on passengers and freight users, and highlight areas for further improvement.

We consider that ORR's PR18 proposal to change Schedule 8 to a TOC-on-TOC regime has merit. However, this proposal would only address TOC-on-TOC reactionary delay and not the lack of financial incentives for train operators to mitigate reactionary delay caused by others. Therefore, other approaches should be explored to address all reactionary delay.

We note that, in May 2017, NTF provided ORR with an alternative proposal. The proposal was for train operators to have a 10% exposure to all reactionary delay, regardless of cause, through their franchise agreements and Schedule 8 would remain unchanged. As noted in the main body of this letter, we support arrangements that create a financial incentive for train operators to help mitigate all reactionary delay. However, we have not yet observed any action taken to change franchise agreements in the way suggested by NTF. We are also not clear why this change could not be made through Schedule 8, since this already provides a financial mechanism through which money changes hands for disruption. Therefore, we consider that a better approach would be to expose train operators to reactionary delay through Schedule 8. This could be achieved by implementing Schedule 8 payment rates that were less than the full value of the train operators' revenue losses. We also note that the NTF proposal had wide industry support, and so we anticipate that similar changes to Schedule 8 will also be supported by the industry.

Annex 2 – Gap analysis of delay attribution outcomes and areas to improve

It is important that delay attribution is **accurate** and **complete** so that it can be used to carry out root-cause analysis to improve performance on the railway. In order for these two outcomes to be achieved we consider that the industry needs to improve in three main areas. We have carried out a 'gap analysis' of how the current delay attribution measures against these outcomes and areas of improvement in the table, below.

	Is this currently achieved?	Explanation / reason	Potential future improvements
Outcomes			
Accurate	To an extent – current accuracy figures show that initial delay attribution is around 90% accurate (for those delays which are attributed).	High Schedule 8 money flows create a financial incentive for industry parties to be more focussed on trying to shift delay minutes to other parties than on accurate attribution. We have evidence which suggests that current Schedule 8 payment rates are too high, through recent PDFC studies, which makes this problem worse. For some types of incidents, there is an excess of very similar delay codes which can result in inconsistent attribution.	Schedule 8 payment rates should be set at a level that reflects train operators' long-term revenue losses as a result of disruption. This would reduce the focus away from money flows and towards accurate delay attribution. The number of delay reason codes should be reduced, to avoid duplication of similar codes which do not provide useful information for performance improvement initiatives. This would allow delay attributors to focus on a smaller number of codes, improving accuracy of the attribution to these codes. This would not prevent delay causation analysis, as most Network Rail analysis actually only focuses on c.40 groupings of the over 250 delay reason codes.
Complete	No - sub-threshold delays (those of less than 3 minutes) are largely not attributed ('unexplained' delays). These delays make up c.35% of all delays on the network, and this figure can be as high as 70% for individual operators.	Network Rail pays for c.80% of the Schedule 8 costs of all unexplained delays. This is because, through Schedule 8, Network Rail automatically pays for 50% of all unexplained delays, and the remaining 50% is split between Network Rail and the train operator based on their share of attributed delay (which results in a rough 80/20 split). This means that train operators have very little financial incentive to help Network Rail understand the true cause of sub-threshold delays, and are positively disincentivised to provide information to Network Rail that would show that the delay was their responsibility.	More attribution of sub-threshold delays, subject to system constraints for collecting this data. The biggest issue currently is that TRUST rounds down delays to the previous full minute, so a 59 second delay would not trigger a 'delay alert' and would therefore not be attributed. Even given this system constraint, the current number of delays that are unattributed is unacceptable.

	Is this currently achieved?	Explanation / reason	Potential future improvements
Areas for the industry to improve			
Appropriate industry challenge	Occasionally - while some disputes are helpful for allocating responsibility for delays correctly, many disputes are made to attempt to lessen the financial burden associated with large delay incidents from Schedule 8. These types of disputes can result in rancour between industry parties and wasted industry resources in dealing with the disputes. Over 40% of all attribution is disputed.	The large Schedule 8 financial flows are likely to increase the number of delay attribution disputes for the purposes of lessening the financial burden of Schedule 8 payments. These disputes use valuable industry resources, which could otherwise be used to understand the true cause of disruption and to try to prevent the disruption in future. The disputes also create industry rancour, which can prevent joint working to improve performance. There is nothing to prevent train operators from disputing delay attribution as, whilst manual, it is not a time-consuming task.	Schedule 8 payment rates should be set at an appropriate level that better reflects train operators' long-term revenue losses as a result of disruption. Lower Schedule 8 payment rates that better reflect actual train operator revenue losses would lower the financial incentive for train operators to dispute delay attribution. There may be merit in considering penalties for excessive amounts of unsuccessful disputes.
Shared industry performance data	No - performance data is not always shared between Network Rail and operators. This makes it difficult for Network Rail to accurately attribute delays, meaning that these delays are either recorded as 'unexplained' or are incorrectly attributed. For example, when there are high levels of disruption, it is helpful for delay attribution staff to have access to train operators' reports to help with accurate delay attribution. However, on occasion, access to these reports has been refused by train operators. We have also found that sometimes train operators do not share control logs and train crew diagrams, which are both useful for delay attribution and resolution.	Train operators may be reluctant to share performance data with Network Rail for the purposes of delay attribution due to the financial consequences from Schedule 8. Schedule 8 positively disincentivises train operators from sharing their data with Network Rail if the data would show that the train operator was responsible for the incident. This is because, if a reason for the delay cannot be identified, the delay is recorded as unexplained for which Network Rail pays c.80% of the Schedule 8 costs (as explained above). This is particularly prevalent because of the very large financial liability through Schedule 8 that could result from being responsible for the incident.	We consider that information that is useful for delay attribution, such as passenger boarding times and station/depot dispatch, should be shared openly between industry parties. However, we do recognise the need to be careful to not create a perverse incentive for parties to stop recording performance data. The increase in collaborative working, for example more co-location of control rooms, should facilitate sharing of information and could be supported by an industry specification of what information should routinely be available. As above, Schedule 8 payment rates should be set at a level that reflects train operators' long-term revenue losses as a result of disruption. There is new GPS technology available which should help with delay attribution, but which is not currently being used. The data produced by this technology should be shared with Network Rail. Train operators should be strongly encouraged to fit this new equipment to enable the industry to better identify causes of delays.

	Is this currently achieved?	Explanation / reason	Potential future improvements
Joint industry working	No - delay attribution does not currently encourage joint industry working to reduce reactionary delays. The “failure to mitigate” provision for reactionary delay is very rarely used.	Delay attribution assigns responsibility for delay to the party that caused the original incident, regardless of whether another party could have acted to mitigate the effects of the disruption. This approach doesn’t recognise that reactionary delay is a whole industry problem i.e. that Network Rail and train operators can both help to reduce it. This issue is made worse by Schedule 8, which is explicitly designed to fully insulate train operators from the financial effects of all delays which they have not caused to themselves (including reactionary delay created by other train operators or Network Rail). This means that train operators have no financial incentive, through Schedule 8, to help to reduce the impact of delays that they experience. Schedule 8 is also calibrated so that there is no financial incentive for train operators to reduce reactionary delays that they cause to others. This is because the regime is calibrated to ‘charge’ train operators for a fixed, assumed amount of reactionary delay for each incident that they have caused, rather than the actual impact of the disruption. We note that ORR’s PR18 “TOC-on-TOC” proposal attempted to address this lack of financial incentive.	Reactionary delay is a growing problem on the network. In recent years, reactionary delay has increased much more quickly than primary delay (an increase of 35% over the past 5 years compared to a 10% increase in primary delay). Network Rail considers that there is more that can be done by all parties to reduce it, regardless of who is responsible for the original incident - joint working is vital to reduce reactionary delay. We would like to see changes to attribution rules so that it captures the extent to which all parties have helped to reduce delays once an incident has occurred. An alternative to this could be to share the responsibility of all reactionary delay between Network Rail and the train operator, so that all parties have a financial incentive to help prevent it. We are also seeking changes in Schedule 8, so that train operators are financially exposed to the actual reactionary delays that they cause. One way to do this, for example, would be to set payment rates below full compensation levels such that train operators are worse off, financially, when reactionary delay occurs regardless of who is responsible for the original incident. Another approach could be to recalibrate the TOC-on-TOC reactionary delay attributable to train operators annually as opposed to every five years. As noted above, we believe that the new approach to managing and monitoring performance (PMS) should help to improve collaborative working to reduce reactionary delays on the network.

Annex 3 – response to ORR's specific consultation questions

This annex summarises Network Rail Routes' responses to ORR's consultation questions. We have provided a brief summary at the end of each response.

1. What are the benefits of delay attribution to your organisation?

Delay attribution is required to identify and analyse the cause of delay for investment and performance improvement purposes. It is also required to facilitate the performance regimes. Route responses noted that delay attribution:

- Provides all industry parties with valuable data to assist in driving performance improvement, by capturing the reasons for delays to enable trends to be identified and action plans developed.
- Enables business cases to be supported for proposed improvements including improving the service provided to passengers.
- Enables measurement of specific categories of delay impacting on passenger and freight services and is a means of measuring how successful our performance improvement plans have been.
- Enables the operation of the performance regimes.
- Focusses the minds of managers on the impact of failures on the train services.
- Supports reviews of significant incidents for improvement purposes.
- Quantifies the approximate costs of planned and unplanned events and incidents.
- Provides data for public open data sources and applications.
- Provides key stakeholders (including ORR, DfT and the general public) with important information on the performance of Network Rail and train operators.

Delay attribution provides useful data about the causes and extent of disruption.

2. Do you consider delay attribution to be a necessary part of industry processes?

Delay attribution is a necessary part of the industry process. Route responses included:

- Yes - essential. It provides a source of data to measure existing delivery, identify areas for improvement and assess benefits delivered. This helps Network Rail to identify if improvement actions have achieved what was intended. Without attribution we would not be able to effectively measure performance delivery.
- Yes. Used correctly it gives responsibility to industry parties and assists in performance improvement.
- Yes. Performance management and continual improvement processes require delay attribution data to track performance progress and progress compared to targets.
- Delay attribution is necessary for Network Rail to be able to fulfil our responsibilities within Track Access Agreements and undertake analysis of areas of concern for future performance improvement plans.
- Yes. If we do not understand the cause of delay, how do we improve?

Delay attribution is necessary for performance monitoring and management. It allows performance improvement plans to be developed and tracked.

3. How do the outputs of the delay attribution process inform decisions in your organisation?

   and

4. To what extent does delay attribution help support improved performance?

Network Rail Routes consider that the outputs from delay attribution are used to influence decision making and investment cases that drive performance improvement and efficiency. Examples of this include:

- Delay attribution data informs decisions on investment, costs, resources and maintenance activity.
- Delay attribution data influences decisions in terms of third-party claims (damage) and other compensation regimes (e.g. HS1).
- Delay attribution data is used to review how well delay incidents are managed, for example incident profiles demonstrate how successfully Network Rail has recovered the service following disruption. This is vital when carrying out a review of lessons learnt to aid continual improvement.
- Delay attribution data is used to inform business cases and support investment as well as enabling recovery of costs to the industry through insurance and criminal proceedings.
- Delay attribution data supports the Route in terms of industry performance improvement. It provides specific areas to focus on, identifies shortfalls and enables performance teams to concentrate efforts to reduce common and recurring incidents. It can also help to justify areas to improve infrastructure or implement mitigation measures.
- Delay attribution data means that incidents can be tracked and monitored in real-time. This enables operational and public communication and real-time decision-making.

Delay attribution data supports Network Rail's business cases for investment in performance improvement. It also supports cost recovery from third-parties e.g. for insurance claims.

5. What requirements should an effective delay attribution framework meet?

The delay attribution framework should meet the requirements of the Network Code, Track Access Contracts and DAPR. It should be simple, accurate, timely, and transparent with fewer disputes / less opportunity to dispute incidents. Route responses note that the delay attribution framework should:

- DAB could have more of a role in developing and monitoring metrics to measure accuracy of delay attribution.
- Ensure delay attribution is carried out in accordance with the Network Code, be contractually compliant and enable performance regimes to operate effectively.

- Provide a distinction between:
    - attribution of incidents causing delay minutes to allow operation of the Schedule 8 performance regime, and
    - identification and attribution of prime cause of an incident to enable management effort to be effectively targeted.
- Achieve the correct balance between the above without being too complex (risking an increased level of disputes) and without being too simple (resulting in the opportunity and authority to drive improvements resting with the wrong party).
- Limit the variation in delay attribution due to interpretation of events and user error.
- Reduce the quantity of disputes that are due to ambiguity in connection with 'who should be the responsible manager'.
- Ensure that the industry collects delay attribution data in the most cost-effective way.
- Not be commercially driven.
- Result in a collaborative, integrated system across the industry that is modernised and more accurate.
- Ensure that the delay attribution data meets the requirements of the industry to drive performance improvement.

The delay attribution framework should allow Network Rail to meet its contractual requirements, while providing useful delay information in a cost-effective way.

6. How much resource (staff time, consultancy spend etc.) does your organisation spend on delay attribution?

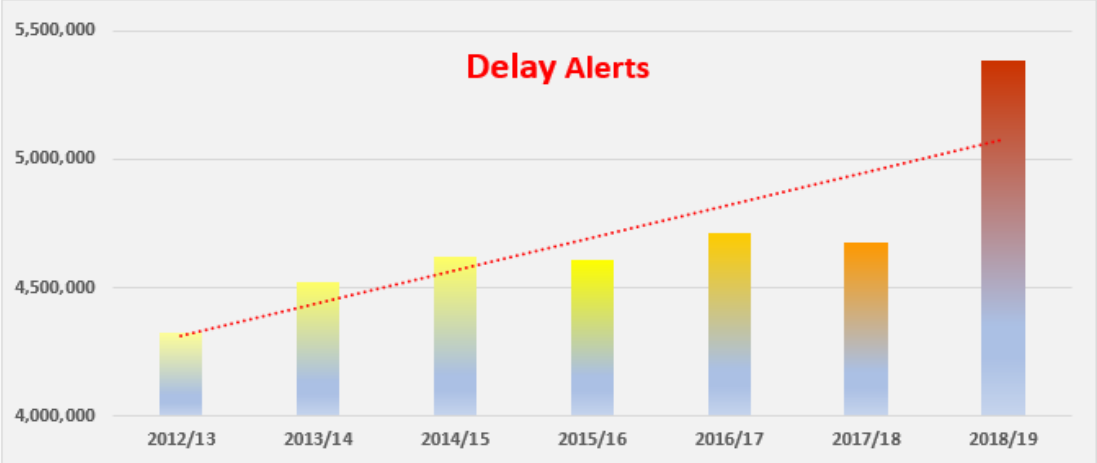
Network Rail employs just under 300 people who are involved in performance measurement. This includes the upkeep, maintenance and data quality of train reporting, delay attribution, and dispute resolution. The majority of these employees (c.75%) are Train Delay Attributors. The overall annual cost of the Route Performance Measurement teams is around £15m.

Network Rail spends around £15m annually on administering delay attribution, across all routes. Given the usefulness of the delay attribution data, we do not consider this to be an unreasonable amount.

7. How many delay attribution events (roughly) does your organisation deal with each year?

In the 13 periods to 2018/19 P10, Network Rail managed 5,384,092 delay events and created 864,125 delay incidents.

	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
National Delay Alerts	4,326,907	4,521,455	4,621,388	4610752	4711514	4676205	5384092



	2012/13	2018/19	Increase	% Change
Incidents Attributed	712,727	864,125	151,398	21%

The number of delay alerts have increased in recent years, resulting in a greater requirement on delay attribution teams.

8. What proportion of delay attribution events lead to disputes (by disputes, we mean incidents where the cause and/or the responsible body are not agreed at the first stage of the process)?

Over the past year, 42.4% of all delay incidents attributed to train operators were disputed. This varies considerably between operators with some disputing under 10% of incidents attributed and others over 80%. 7.9% of all incidents attributed to train operators remain in dispute at Day 42.

A high proportion of delay incidents are disputed by train operators, although this does vary between operators.

9. What proportion of disputes require independent adjudication?

There have been 10 submissions for guidance to the Delay Attribution Board (DAB) in the last three years and two submissions to Access Disputes Adjudication (ADA).

10. How satisfied are you with the existing dispute resolution procedures?

The delay attribution process works on the whole, but there are exceptions to this, as shown by the variance in dispute levels between operators. A number of Routes also noted that commercial pressures of organisations are likely to have an influence on disputes and dispute resolution. Route teams are further frustrated by misalignment, and in some cases, the conflict or inconsistencies in the Network Code, Track Access Contracts, DAPR and franchise agreements. Route responses included:

- The time and resource required to escalate issues to DAB can be too onerous which can prohibit disputes being submitted for guidance. This is reflected by the low number of incidents that are taken to DAB.

- It seems likely that commercial pressures conflict with the principles of the DAPR in terms of parties working together for resolution. These pressures can delay resolution and mean that incidents are less likely to be resolved.
- The dispute resolution procedures are clear, and the majority of incidents are covered by the DAPR. However, inconsistent approaches between operators can make the process difficult.
- It feels as though there is an onus on Network Rail as "owner" of the delay attribution process to prove cause beyond all reasonable doubt before a delay is accepted. Conversely, operators can dispute or challenge delay attribution with very little evidence which can add time and resource into the process.

The way that delay attribution disputes are made and resolved varies significantly between train operators. It is widely felt that the commercial pressures on train operators encourage an excessive number of disputes, which can often require significant Network Rail resource to resolve.

11. What proportion of your overall resources devoted to delay attribution go towards dealing with disputes?

Just under 300 staff are employed in performance measurement in Network Rail - 75% of which are Train Delay Attributors and Attribution Managers devoted to delay attribution of which 15% are Delay Resolution Co-ordinators (DRC's) devoted to dispute resolution.

12. Are there particular types of incident or specific delay attribution rules that cause a disproportionate amount of disputes or time to settle disputes?

Routes provided a number of detailed responses to this question, which included the following:

- We understand that some operators' L1 teams tend to dispute all incidents over a given threshold (for example, any incident over 100 minutes). Some operators dispute incidents with Network Rail for their own internal purposes, rather than to change the responsible party for the delay i.e. for having coded a fleet-related issue to a different fleet code.
- Reactionary delay chains that are then disputed result in an inordinate amount of time to resolve.
- TOC and FOC (TO/FO) loss in running delays account for the highest number of incidents that are disputed, and as such can be time consuming to investigate and resolve. It is often difficult to obtain crew reports with sufficient detail to help establish the facts for many of the loss in running delays. However, it is generally considered that the time and effort involved in fully investigating and debating these types of delays does not add value, as the true cause is often difficult to establish.
- There are issues with delay incidents caused by severe weather events, when information required for attribution can be difficult to obtain.
- Technical incidents where the cause is not clear can be time consuming and costly to the industry, particularly if technical or independent reports are required. There are

cases when independent reports have been obtained but the cause of the delay is still not identified.

- ADA rulings that overturn the principles of the DAPR inevitably result in a disproportionate time to resolve (e.g. ADA33).
- Large incidents often attract the attention of senior management within all organisations, which can then add to the complexity for settlement as more people become involved in the resolution. There have been occasions where those involved in resolution, particularly at a senior level, do not fully appreciate some of the finer details of the delay attribution process and principles.
- Incidents of suspected object strikes, whether that be underframe or electrical contact, cause a large amount of investigation with often no conclusion reached.

Specific delay incidents that cause a disproportionate number of disputes and time taken to resolve the disputes tend to be larger delay incidents, and those with multiple chains of reactionary delay. Delays for which no obvious responsibility is identified also take a long time for the industry to resolve.

13. Do you have any delay attribution agreements with other industry parties that follow rules other than those set out in the Delay Attribution Principles and Rules (DAPR)?

There are a number of alternative delay attribution agreements across the Routes, some of which apply to all operators, whereas other agreements only apply to individual operators. Many of these agreements have been in place for a number of years and are therefore included in the Schedule 8 benchmarks which means they are difficult to change. Examples of these include:

- Freight agreements to “D-code” (i.e. assign as Joint Responsibility) loss in running incidents under 10 minutes.
- TOC loss in running agreements where conflicting reports result in incidents being agreed as Joint Responsibility.
- A number of operators have agreements for MP (adhesion) outside of autumn to be attributed to Joint Responsibility.
- Sub-threshold delay which causes above-threshold reactionary delay is coded to unexplained delay if initial investigation shows no apparent cause. The benefits of this are that the L1 attribution workload is reduced and it prevents incidents being attributed to operators which are then disputed. When disputed both parties are then required to undertake further investigations which often results in no cause being identified and the incidents being re-attributed to unexplained in the following days.

Routes have multiple delay attribution agreements which are different to those set out in the DAPR. Sometimes these apply to all operators on the route, or sometimes to just one operator depending on their requirements.

14. Are delay attribution systems sufficiently accurate to meet the needs of your organisation?

New technology should allow the automation of many aspects of delay attribution, especially for reactionary delay and linking this to the initial event which caused the disruption.

However, the delay attribution system should only be seen as one part of a wider technological approach which captures and stores information to allow better understanding of what influences performance. For example, the use of incident management systems, CCTV and more detailed train movement and signalling data is changing the level of detail at which data can be analysed. More effort is needed to make this data available to delay attributors, or preferably to automatically pre-process and determine the likely cause of each delay for the delay attributors to then verify. Automation of delay attribution and better determination of influencing factors for delays should be key objectives to help improve our understanding of performance and to direct future investment on to those things which have the greatest impact on the passenger.

The understanding of repeating small delays (i.e. multiple small delays caused by the same issue) is important in improving performance. At present these delays are often ignored in delay attribution systems unless they are part of a larger delay incident. It would be helpful to capture these delays within delay attribution systems so that useful data can be gathered regarding the size, location and cause of delays (these delays currently tend to be only investigated outside of the delay attribution systems).

Specific Route responses include:

- The systems enable us to do most of what is required to the level for which the industry has been benchmarked. However, the expectations for greater attribution of sub-threshold delays may require some updates to the current systems, such that they record small delays more accurately.
- GPS should support better attribution of delays on the network. However, due to the lack of deployment of this technology by all train operators, the data generated is currently sporadic, inconsistent and cannot yet be relied upon for train reporting and delay attribution. It would be useful to introduce industry standards for the deployment of this technology to encourage train operators to use GPS in delay attribution. Some operators are also using reports from GPS systems to challenge established industry reporting of train times, and therefore attribution, to reduce their liability in the performance regime.

The delay attribution systems are sufficient for current delay attribution, but a more accurate system for recording small amounts of delay may help with better attribution of sub-threshold delays.

15. Are there any areas in need of improvement?

Route responses included:

- Simplification and automation of reactionary delay with hard coded rules will significantly reduce workload (70% of all alerts are reactionary) both in terms of the time taken to attribute delays, and the time spent resolving reactionary delay-related disputes. With an increase of over 1,000,000 delay alerts in the last 6 years, this is believed to be the only effective way to tackle current workloads and address the issue of unattributed sub-threshold delay.
- There is a need for better communication with shared systems and information to inform the correct attribution of delays.

- There are too many delay codes for different types of failure of the same assets. These should be simplified for delay attribution, with other systems such as the Fault Maintenance System (FMS) holding more detailed information on the exact nature of the failures.
- GPS reporting needs to be reliable, accurate and more widely before it is used in delay attribution.
- Changes to the rules of unexplained delay may help to incentivise the industry to find the cause of these delays i.e. currently Network Rail is responsible for all of the delay minutes in terms of reporting and the majority of the costs of the minutes in Schedule 8.
- Reactionary delay should be put in a single incident for each single day for each affected operator and split 50/50 between Network Rail and the affected operator. That is irrespective of whoever was responsible for the prime cause. The industry is accountable for service recovery and reactionary delay, whether it be the size and effectiveness of our respective controls or the number of traincrew / trains and how tightly those traincrew and rolling stock diagrams are connected. If both parties are responsible for reactionary delay, then it could improve behaviours and there would be less debate about recovery. It would also incentivise parties to improve the train service, diagrams and the contingency plans for recovery.
- Improved industry training which is mandatory for all industry parties involved in delay attribution and dispute resolution.

There are a number of areas of delay attribution that could be improved. The most significant of these are:

Automation of reactionary delay, to tackle current workloads and release some resource for the attribution of sub-threshold delays.

Simplification in terms of the number of delay attribution codes.

Changes to the rules of unexplained delays, so that this delay is not just seen as a Network Rail problem, both in terms of attribution and in terms of Schedule 8 payments.

16. Do you use any systems to support delay attribution beyond those that are standard to the industry?

Systems used by Routes to support delay attribution include:

- Asset View (a version of Graphical Replay) provides clarity on track circuit occupation and signal aspects for loss in running delays.
- On-board TOC systems, such as the Falcon GPS system are used to assist the identification of delay causes but is not, and should not be, used for capturing the times of trains at Recording Points.
- CCTV (used in delay resolution), although Network Rail generally only see the outputs when an operator is disputing attribution.
- The Fault Management System is used to identify final causation of infrastructure incidents. CCIL is used to capture full information for all operational incidents.

- GSM-R and NICE Inform (voice comms) are now forming a large part of our investigation and there are plans in place to have GSM-R as an investigation tool in real-time. This will avoid unnecessary calls to signaller or requests for crew reports as the details will be available from the comms.
- It is often the case the information from train operator systems is only made available by the operators when it changes the attribution in their favour.

Routes use a variety of different systems to support delay attribution.

17. What aspects of the delay attribution framework work well?

Routes consider that the following aspects of the delay attribution framework work well:

- The process is understood if not applied by all, it is well documented and provides structure.
- The dispute process works well (i.e. there are set guidelines and a clear process). This only becomes difficult when disputes fall into grey areas which are not covered by the guidelines and where people become involved who are not familiar with the delay attribution process and attempt to resolve from a commercial / target driven / financial perspective.
- Of the incidents that are attributed to operators, including those which are disputed, over 90% are accepted with no change of responsibility.
- New improvements to the DAPR and the process guides are very useful to help both initial attribution and resolution.
- Most industry parties work well together to establish the details of an incident with the joint aim to improve performance and prevent further incidents.
- Network Rail staff involved in attribution are impartial and, in most cases, only want to focus on the facts even when that results in the delay being attributed to Network Rail.
- The national TDA training programme is effective.
- Delay attribution makes a good contribution to business cases for performance improvements such as infrastructure or rolling stock changes and enhancements.

There are many aspects of delay attribution that work well. For example:

The attribution and dispute guidelines are clear and understood by most parties.

Network Rail staff are impartial and seek to get the right cause of delay (even if this is Network Rail).

Delay attribution is useful for business cases for performance improvements.

18. What aspects of the delay attribution framework would most benefit from improvement? How do you feel improvements could best be achieved?

Routes considered that the following areas of the delay attribution framework would benefit from improvement:

- The existing systems and processes have changed little since privatisation, but technology has moved forward dramatically. There is now train fleet with GPS data, real time data which advises the speed profile of a train, technology which confirms whether a route is set for a train service to proceed - but instead of exploiting this technology we often rely on existing custom and practice such as information ownership and the use of the outputs of delay attribution for Schedule 8. This can stifle the use of technology. An effective delay attribution framework should seek to use technology advances to drive efficiency, transparency, completeness and accuracy
- We should address inconsistencies in the guidance provided by the DAPR compared to the determinations given by the ADA and the Track Access Contracts. With different interpretations of the DAPR and TAA, these industry bodies are using different principles to arbitrate the same incidents.
- The system is too open for misuse and there is evidence to suggest that incidents are being disputed and changed to improve reporting statistics, rather than to understand the cause of the delay.
- There is a need for more joint ownership of many delay categories including reactionary delay so that all parties are correctly incentivised to help with performance improvement.
- Improved communication and sharing of knowledge / information amongst industry parties.
- Investigation into the following types of incident is rarely efficient or timely to meet industry standard timescales:
    - Track/Train interfaces.
    - OHL/3rd Rail Train Interfaces.
    - In-cab signalling systems/GSM-R
- Network Rail Train Delay Attributors and train operator personnel should hold the same competencies for delay attribution and resolution.
- Delay attribution would benefit from a standalone system that could be used by train personnel to allow them to gain experience in a non-live environment.
- Automated delay attribution would assist especially during particularly busy periods.
- Alignment of industry goals where delay attribution is used as part of the measure.

There are many areas of the delay attribution framework that could be improved, for example:

There is new technology available to us which would help with delay attribution, but which is not being used due to commercial concerns.

There are inconsistencies between the DAPR and the Track Access Contracts which should be resolved.

The delay attribution framework is often misused for commercial reasons, for example there are very high numbers of disputed incidents which rarely changes the original attribution.

Joint responsibility should be used more often for certain types of delay to better incentivise industry parties to improve performance.

19. Are there are any aspects of the delay attribution framework that create perverse incentives?

There are many aspects of delay attribution and associated regimes that create perverse incentives, for example:

- We expect that the commercial pressures of Schedule 8 may encourage train operators (financially) to pursue a high number of disputes.
- Delay attribution drives behaviours that are not always conducive to improving industry objectives. For example, train operators and Network Rail may agree changes to the timetable outside of the Train Planning Rules (TPR), or outside of validation timescales, to benefit customers and /or the wider operational situation. These agreed amendments often result in train delays which according to DAPR are the responsibility of Network Rail. This creates the perverse incentive that Network Rail may be reluctant to offer future flexibility if the attribution remains as per DAPR.
- Network Rail is sometimes unable to make changes for performance improvement, for example if this is blocked through the Network Change process. Often, there are no economical alternatives and the resulting delays are attributed to Network Rail as the responsible party, despite being unable to prevent them.
- The attribution framework itself does not create perverse incentives but the targets and incentives that are set by organisations using the outputs of delay attribution may do.
- Train operators are not incentivised to provide information, particularly for sub-threshold delays.
- The influence of senior staff who are not familiar with DAPR, mean that the number of disputes has increased as commercial pressures on train operators increase.
- We recognise that Schedule 8 does provide a financial incentive for all industry parties to care about delay attribution.

Commercial pressures and internal targets often drive behaviours which lead to inaccurate or incomplete delay attribution. Schedule 8 is the largest contributor to these behaviours, and often results in unhelpful delay attribution disputes.

20. Can you tell us of any specific proposals that you believe would enable delay attribution to better meet the requirements of your organisation and of the wider industry?

Network Rail Routes put forward the following proposals in response to this question:

- The actual accuracy of data is far higher than the measure of current disputes would suggest. Removing or reducing the commercial pressure on all parties (e.g. Schedule 8) may enable data to be used for performance improvement, rather than perceived commercial gains.
- A dynamic data link between TRUST and other systems (CCIL, FMS, Fleet engineering systems, etc) would remove duplicate data and reduce inconsistent reporting between outputs from systems.
- Automation of reactionary delay with hard-coded rules.
- Shared responsiblity of reactionary delay would promote industry incentivisation to improve performance.
- Address the current situation where operators are not incentivised to investigate and identify causes for unexplained delay by making the code Joint Responsibility.
- Development of a more streamlined approach and collaborative working in all Controls.
- Provide DAB with the tools to regulate attribution and remove the inconsistencies with to enable better quality data for performance improvement. Also, provide DAB with powers to be more effective in dealing with poor behaviours in relation to disputing incidents.
- Look to improve functionality / reliability of the reattribution of delays from one incident to another using the reattribute reactions ‘button’.
- Combine signalling data and asset data with on-board data in an updated version of CCF (or similar) to enable attribution to be based on known facts and remove the grounds for assumption and challenge.
- Simplification of delay codes incorporate current commercial agreements and apply the attribution rules consistently.

Network Rail Routes provided a number of specific proposals for delay attribution to better meet our requirements. Key themes were:

Removing / reducing the commercial pressure of Schedule 8, so that delay attribution is not used for commercial gains.

Changes to the way we deal with reactionary delay, for example automating delay attribution, and assigning these as Joint Responsibility incidents.

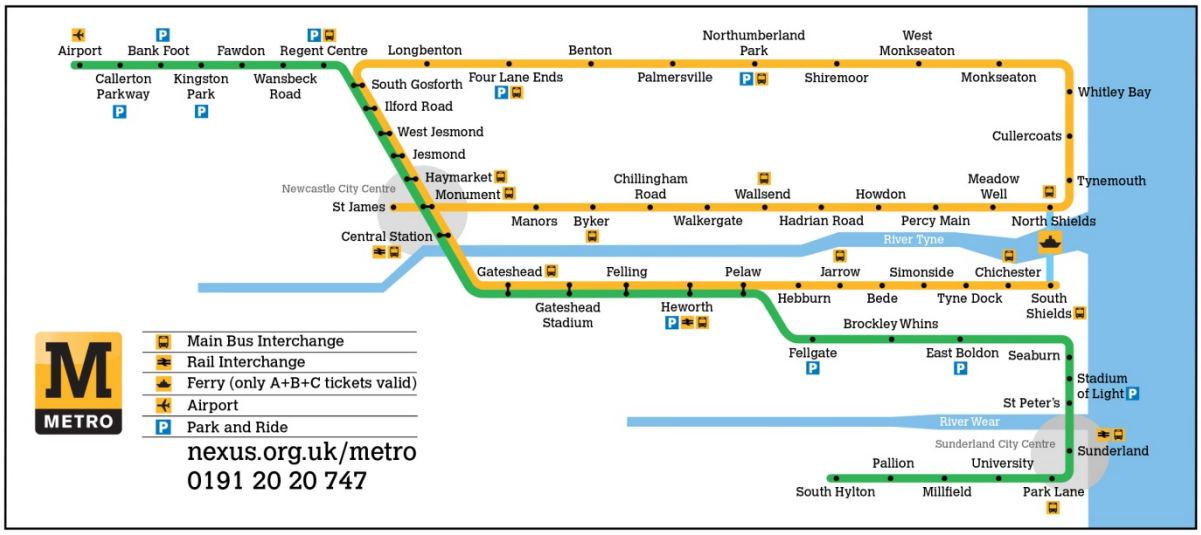
Better sharing of industry data so that the causes of delays can be more easily identified.

ORR delay attribution review

Nexus welcomes the opportunity to respond to the ORR delay attribution review.

The Tyne & Wear Metro system is a light rail system with approximately 36 million passengers per year. The system is owned and operated by Nexus, the Tyne & Wear Passenger Transport Executive. The majority of the system runs on infrastructure owned and maintained by Nexus, with an extension opened in 2002 running on Network Rail infrastructure between Pelaw and South Hylton. The line between Pelaw and Sunderland is shared with other operators, with the section between Sunderland and South Hylton although maintained and run by Network Rail used exclusively by Metro trains.

The map below shows that Network Rail infrastructure comprises 12 of the 60 Metro stations (Fellgate to South Hylton inclusive) , although the relatively large distance between stations on this part of the route compared with the rest of the network means Network Rail infrastructure comprises around 25% of the Metro's route km.



As a result of the extension opening in 2002, Nexus has a bespoke Track Access Agreement with Network Rail which includes a Schedule 8 regime. However, the nature of the Metro network, with the majority being Nexus' own infrastructure, means that the relationship with and focus on the Network Rail delay attribution regime is unique.

The Tyne & Wear Metro has its own operational performance measurement system which covers the whole network, including Network Rail infrastructure. Train movement data between Pelaw and South Hylton is automatically incorporated with train running data for the rest of the Metro network, to facilitate this one system approach. Having a Metro performance measurement system with train running data covering the whole network is reflective of the two separately owned networks being, in effect, one network for the customer. This is reflected in operational performance as disruption on one network will impact on the other.

The inherent link between two separately-owned networks shows itself in the nature of delays experienced under Schedule 8. On a day-to-day basis, the majority of "TOC-on-self" delays are due to late presentation onto Network Rail infrastructure at Pelaw. Whilst there will be a variety of reasons for these – covering both operational and Nexus infrastructure issues – Network Rail has no visibility of train running and reasons for these on the Nexus network, and only sees the result in that the train is presented late, with all these delays incorporated into one general entry for the day.

In the opposite direction, what may be a small disruption on Network Rail infrastructure can cause subsequent delays when the train returns to Nexus infrastructure, meaning that the Schedule 8 delays do not represent the impact of that incident on the Metro system and its passengers.

It is for this reason that relatively little time is spent on the Network Rail delay attribution regime, with most effort focussed on Metro's own operational performance management regime.

Decision-making and value added

Nexus recognises the benefits of delay attribution and uses its own operational performance management system extensively for operational performance measurement and improvement.

However, for the reasons explained above, the Network Rail delay attribution outputs are not widely used by Nexus.

Resources

Nexus has a team of four Performance Analysts who carry out delay attribution, attribution review and performance analysis. The majority of their time is spent carrying out investigation and attribution of incidents under Tyne & Wear Metro's operational performance management system, although they also review delays allocated to Tyne & Wear Metro under Schedule 8.

The Performance Analysts allocate around 6,000 – 7,000 events per year for the Tyne & Wear Metro system. It should be noted that Tyne & Wear Metro Metro's performance measurement system is different to Network Rail's, working on a headway basis.

Dispute resolution

In relation to Schedule 8, as Tyne & Wear Metro's use of the national rail infrastructure is relatively limited and simple, it is mostly straightforward to review delays and confirm when these are down to a Tyne & Wear Metro issue such as rolling stock fault.

The main issues occur when a train presents late back to Nexus infrastructure from Network Rail infrastructure, and is then late returning to Network Rail infrastructure later as a consequence. As Network Rail has no visibility of running on Nexus infrastructure, this link is often not made and the reason for late presentation is allocated to Tyne & Wear Metro, rather than the incident which led the train to be late leaving Network Rail infrastructure.

Accuracy

Whilst there are no concerns regarding the accuracy of the systems, the user interfaces and report arrangements are dated. The interface to review delays on a real-time basis is through a DOS screen with keyboard commands used. Furthermore Tyne & Wear Metro also has no ability to extract reports from the system, relying on daily and periodic reports produced by Network Rail.

Effectiveness

Tyne & Wear Metro generally finds that the delay attribution framework works well.

Proposals for improvement

Nexus is not supportive of a move from "TOC-on-self" to "TOC-on-TOC" delay as Network Rail is the organisation which influences the level of "TOC-on-TOC" delay through its actions. These actions include:

- Timetable planning – Network Rail carries out all timetable planning including sale of capacity and review of timetable planning rules. Therefore in selling more capacity on the network and changing timetable planning rules, there is the potential for the same level of "TOC-on-self" delay to cause greater "TOC-on-TOC" delay.
- Regulation policies – Network Rail facilitates the creation of regulation policies with TOCs. Any change in these regulation policies could result in the same "TOC-on-self" delay causing greater "TOC-on-TOC" delay as a result of the change. Whilst Tyne & Wear Metro has visibility of regulation policies between Pelaw and Sunderland where it runs, changes to regulation policies outside this area could affect the delay of TOCs which also run between Pelaw and Sunderland. For example if a Tyne & Wear Metro train affected a Grand Central service, any change in the regulation policy for the rest of the Grand Central train's journey between Sunderland and London Kings Cross could change the levels of delay incurred.

Furthermore, Tyne & Wear Metro has no visibility of the reactionary delays caused to other trains, so cannot review these to confirm their accuracy.

Rail Delivery Group

Response to

ORR consultation on the Delay Attribution Review - Stage 1

Date: 29 March 2019

Rail Delivery Group response to ORR consultation on the Delay Attribution Review - Stage 1

Organisation: Rail Delivery Group

Address: 200 Aldersgate Street, London EC1A 4HD

Business representative organisation

Introduction: The Rail Delivery Group (RDG) brings together passenger train operators, freight train operators, as well as Network Rail; and together with the rail supply industry, the rail industry – a partnership of the public and private sectors - is working with a plan *In Partnership for Britain's Prosperity*[1] to change, improve and secure prosperity in Britain now and in the future. The RDG provides services to enable its members to succeed in transforming and delivering a successful railway to the benefit of customers, the taxpayer and the UK's economy. In addition, the RDG provides support and gives a voice to passenger and freight operators, as well as delivering important national ticketing, information and reservation services for passengers and staff, taxpayers and the economy. We aim to meet the needs of:

- Our Members, by enabling them to deliver better outcomes for customers and the country;
- Government and regulators, by developing strategy, informing policy and confronting difficult decisions on choices, and
- Rail and non-rail users, by improving customer experience and building public trust

For enquiries regarding this consultation response, please contact:

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[1] *In Partnership for Britain's Prosperity,* RDG (October 2017): http://www.britainrunsonrail.co.uk/files/docs/one-plan.pdf

Introduction and general comments

1. This document outlines the key points from our members in response to ORR's consultation on the Delay Attribution Review - Stage 1. It sets out general comments on the issues raised and then some specific responses from members to the questions included in the consultation document. The Rail Delivery Group (RDG) welcomes the opportunity to contribute to this consultation. We are content for this response to be published on the ORR website.

2. Delay attribution is crucial to root cause analysis and performance improvement. It also provides information that is used in determining performance regime payments under Schedule 8. The performance regime allows train operators to be able to take revenue risk without the need for a significant risk premium being passed on to Government and/or customers. It also gives an important financial incentive which helps drive parties to explore the causes of performance problems through the delay attribution process, without which opportunities to improve performance may be missed. It further supports performance improvement investments.

3. However, the link between delay attribution and Schedule 8 could also have negative effects, for example there is a risk that commercial pressures lead to misallocation of attribution and a distortion of resource allocation.

4. The current delay attribution process is not perfect, but there is no simple fix to replace it with something better. It takes up significant resources, but even without a financial performance regime a significant proportion of these resources would be needed anyway to get to good diagnostics analysis for performance improvement. However, the industry agrees that it is good to consider the extent to which the efficiency and efficacy of the system can be improved.

5. Delay attribution is necessary to provide information for the performance regime and the performance regime may affect delay attribution, therefore they are intrinsically linked and it is difficult to look at delay attribution in isolation of the performance regime. We believe that ORR should therefore also consider how delay attribution and the performance regime impact on each other and changes to the performance regime cannot be out of scope.

6. ORR's consultation letter references its proposal to move from a 'TOC-on-self' regime for passenger operators (where compensation payments are based on how much lateness operators cause to their own trains) to a 'TOC-on-TOC' regime (where compensation payments are based on how much delay operators cause to each other's trains). Given strong opposition to this proposal, NTF sent a counter proposal in a letter to ORR dated 15 May 2017 whereby TOCs would be exposed to a pre-defined proportion of reactionary delay (it was suggested this should be through franchise arrangements but a change to Schedule 8 should also be considered). This letter is annexed to this response and ORR should consider the counter proposal alongside considering potential reforms to delay attribution and other areas of Schedule 8.

7. ORR has proposed to handover leadership of stages 2 (development/problem solving) and 3 (implementation) of this workstream to the industry. We consider it is important that ORR should continue to have a strong involvement and facilitate stage 2 of this review. This would involve as a minimum ORR setting out the nature of the problem, giving clear conclusions on the scope of the review, setting out realistic timescales and being clear on the objectives to be addressed by any reforms.

8. There are a number of other areas that should be considered in stage 2 of the review. These are set out below under the three headings in ORR's Delay Attribution Review letter: governance structures; principles and rules; and processes, systems and ways of working.

Governance structures (including incentivisation)

9. The issues in this area that we believe should be considered in stage 2 are:

    a) whether someone should have overall responsibility for making delay attribution work effectively and ensuring (and potentially enforcing) consistency across the network;
    b) how parties could be "incentivised" to come forward with more evidence and data to improve the accuracy of attribution;
    c) whether delay attribution should be focused on root cause, prime cause or dominant cause;
    d) the extent to which changes to the process/governance of level 1 attribution should be considered;
    e) the role of targets/internal budgets/bonuses in organisations and the extent to which these may inhibit cooperation and even distort accurate attribution;
    f) whether the role and structure of the Delay Attribution Board needs to be reviewed;
    g) whether improvements around reviewing the delay attribution rules could/should be made to make changes easier;
    h) whether short term financial implications impede making sensible long term changes to delay attribution and whether a governance structure is needed (including when and how Schedule 8 recalibrations are done) for such changes;
    i) the roles played by each relevant party in the management and mitigation of reactionary delay and incentivisation around this; and
    j) whether changes to Schedule 8 could address some of the observed issues such as: more risk and reward sharing (see reference to NTF paper above); or moving it away from individual events and having a deadband or "detuning" payment flows making them more driven by longer term performance.

Principles and rules

10. The issues in this area that we believe should be considered in stage 2 are:

a) why the level of unattributed delay minutes has increased and what action to take in response to this increase;
b) whether more delay minutes should be captured and attributed than is currently the case (e.g. sub-threshold delays) and if so how this could be achieved in an efficient and effective way (including potential systems implications);
c) the treatment of uninvestigated, unexplained and planned delay;
d) whether there are artificial (non-operational) boundaries in Schedule 8 that cause perversities to the delay attribution process that are difficult to reconcile to 'real world' outcomes and the extent to which this causes problems;
e) the extent to which the delay attribution rules need to be reviewed (e.g. around emotive issues such as suicides, weather, resilience for reactionary delays); and
f) the extent to which any changes to the delay attribution system resulting from this review should lead to a recalibration of Schedule 8.

Processes, systems and ways of working

11. The issues in this area that we believe should be considered in stage 2 are:

a) whether more collaborative working could be encouraged;
b) the extent to which disputes adversely affect working relationships and lead to adversarial behaviours, and how these effects could be avoided;
c) whether consideration should be given to delay attribution being a joint activity (where Network Rail and train operators appoint joint teams that are outwith normal line reporting, other than in terms of pay and rations etc);
d) whether appropriate levels and quality of resource is consistently given to delay attribution;
e) whether an appropriate level of status is given to this activity and those who do it (particularly at Levels 1 and 2); and
f) whether more automation is possible and/or desirable (for example in relation to reactionary delay).

Some specific responses from members to ORR's questions

Decision-making and value added

What are the benefits of delay attribution to your organisation?

12. The benefits of delay attribution are to provide an accurate picture of accountability for delays, both financially and in terms of business owner, and to form the basis for initiatives to drive performance improvement. The link with Schedule 8 is important, for example without a value attached to performance, there would be a significant risk to railway performance in planning aspirational journey times which generate ORCATS and MOIRA revenue at the expense of performance.

Do you consider delay attribution to be a necessary part of industry processes?

13. Delay attribution is a vital part of industry processes. It would be impossible to control any complex production process without monitoring deviations from plan, understanding the causes of these deviations and taking appropriate corrective action based on observed facts. However, the current adversarial nature of the processes can adversely affect working relationships.

How do the outputs of the delay attribution process inform decisions in your organisation?

14. The delay causation data from the delay attribution process is fundamental to targeting areas for performance improvement while the Schedule 8 financial flows are helpful to the formulation of performance improvement budgets/targets. The outputs of attribution are also used to drive franchise bid inputs.

To what extent does delay attribution help support improved performance?

15. The outputs from delay attribution and Schedule 8 support and target the development of technical performance improvement initiatives and business cases to drive performance improvement.

What requirements should an effective delay attribution framework meet?

16. An effective delay attribution framework should, as far as possible, possess the following characteristics:
    - accurate
    - complete
    - cost effective
    - robust
    - automated
    - able to get to the correct root cause
    - simple
    - an effective dispute resolution process

Resources

How much resource (staff time, consultancy spend etc.) does your organisation spend on delay attribution?

17. Some members consider that Schedule 8 provides an indication as to how much resource should be deployed for the purposes of delay attribution and this acts as a justification for its costs. Other qualitative responses indicate that there are lots of people involved but not necessarily working full time on delay attribution. For example, there is more time and cost spent by the teams concerned on analysis than on the attribution activity itself.

18. We have left our members to respond on the quantitative aspects of this question in their individual responses to the consultation.

How many delay attribution events (roughly) does your organisation deal with each year?

19. The number of delay attribution events (incidents) is dependent on a number of factors including the performance level on the day (good performance typically results in fewer incidents) and also the number of trains operated by each operator.

20. We have left our members to respond on the quantitative aspects of this question in their individual responses to the consultation.

Dispute resolution

What proportion of delay attribution events lead to disputes (incidents where the cause and/or the responsible body are not agreed at the first stage of the process)?

21. This varies markedly but in general it is unusual for train operators to accept incidents attributed to them without looking deeper into the attribution and by definition these incidents are disputed in the first instance whilst investigations take place. This places a considerable resource constraint on delay attribution teams. Incorrect regulation and Train Planning incidents take longer to resolve as these are often associated with larger incidents or points of principle.

22. We have left our members to respond on the quantitative aspects of this question in their individual responses to the consultation.

What is the typical time taken to resolve disputes?
What proportion of disputes require independent adjudication?
What proportion of your overall resources devoted to delay attribution go towards dealing with disputes?

23. We have left our members to provide quantitative responses to these questions in their individual responses to the consultation.

How satisfied are you with the existing dispute resolution procedures?

24. There is a clear process through Level 1 to Level 4, and where items are still unresolved, the gathering of evidence and subsequent elevation to Delay Attribution Board for guidance and to an Access Dispute Adjudication for final decision is available. This covers off the need for resolution within the train operators and Network Rail at four separate levels and where required, elevation for independent guidance and adjudication if necessary. There is concern from some of our members that there are not sufficient resources being engaged for timely close out of disputes.

Are there particular types of incident or specific delay attribution rules that cause a disproportionate amount of disputes or time to settle disputes?

25. In general, incidents which are less ‘easy’ to resolve involve a point of principle and these are often settled through a prior agreement being in place at Level 2. Although, they generate a lot of disputes they are quickly and easily resolved (through the prior agreement). Where no prior agreements exist, these incidents generally become 'unexplained', and Network Rail pays the vast majority of the Schedule 8 liability (c. 80%).

26. In terms of incidents that take a long time to settle, these are often larger incidents which would potentially have a large commercial impact on the owner or incidents where the base principle of the attribution is brought into question e.g. pantograph/overhead line equipment interface with no fault found on both sides of the dispute.

Do you have any delay attribution agreements with other industry parties that follow rules other than those set out in the Delay Attribution Principles and Rules (DAPR)?

27. Most train operators in collaboration with Network Rail will have certain commercially sensitive agreements in place, which expedite items being resolved. Although not restricted to seasonal issues, often the driver of having these commercial agreements in place is to resolve incidents where the volume of attribution would make it difficult to

pinpoint a specific cause or responsibility.

28. We have left our members to provide specific responses to this in their individual responses to the consultation.

Accuracy

Are delay attribution systems sufficiently accurate to meet the needs of your organisation?

29. TRUST meets the current requirements for delay attribution and performance regimes. Changes to delay attribution requirements may mean that this is no longer the case. The requirement in TRUST which automatically results in incidents not being accepted or disputed within a short time frame can lead to train operators finding it necessary to dispute incidents to provide more time for investigation.

Are there any areas in need of improvement?

30. There would be benefit in being able to identify the cause of small and regularly occurring delays so that they could be attributed and managed. Greater use of GPS systems and technology for delay identification might also help, if this technology is more widely used and shared with Network Rail. Simplification of reactionary delay would reduce workload, for example through automation.

Do you use any systems to support delay attribution beyond those that are standard to the industry?

31. BUGLE is the most commonly used system in train operators, however COMPASS is also used. In terms of other systems used these would include GPS data, DAS, Orbita and FFCCTV. Network Rail also uses many other systems.

Effectiveness

What aspects of the delay attribution framework work well?

32. The timescales work well, in theory, but 'time outs' do happen. The delay attribution principles also work well and the Delay Attribution Principles and Rules (DAPR), the delay attribution guidance document, is positive. Overall, train operators consider that delay attribution 'works well' as a process.

What aspects of the delay attribution framework would most benefit from improvement? How do you feel improvements could best be achieved?

33. It would be good to get as much information as possible and get the attribution right, first time, every time. The review should also consider how to reduce the number of disputes noting that only 10% of disputed incidents change from the original attribution (although the point above about TRUST time frames, meaning that many disputes are raised simply to provide more time for investigation, needs to be taken into account). We should seek to ensure that any inconsistencies between Schedule 8 and the DAPR, where possible, are removed to avoid confusion.

34. Consideration should be given to a requirement for more train operator data to be shared with Network Rail as well as better use of current technology. However, train operators are concerned that this could be very time consuming and so the practicality of this for all delays above three minutes would also need to be taken into account. Consideration could also be given to whether certain types of delay should be given joint responsibility

(for example in respect of reactionary delays, although noting the NTF proposal mentioned earlier).

Are there any aspects of the delay attribution framework that create perverse incentives?

35. Internal budgets and managing people by delay minute budgets, in particular when associated with bonuses, can create perverse incentives. Parties are incentivised to spend too much time working out why the delay should not be attributed to them as opposed to identifying the true root cause. Commercial pressures from Schedule 8 can drive perverse behaviours which impede the efficient and accurate attribution of delay.

Proposals for improvement

Can you tell us of any specific proposals that you believe would enable delay attribution to better meet the requirements of your organisation and of the wider industry?

36. We think stage 2 of the review should consider all of the issues outlined in this response and any proposals for improvement that may arise from these.

ANNEX - letter to ORR dated 15 May 2017

Rail Delivery Group

National Rail BRITAIN RUNS ON RAIL

Joanna Whittington
Office of Rail & Road
1 Kemble Street
London
WC2B 4AN

15 May 2017

Dear Joanna

Schedule 8 regime

I write further to the RDG response of 9 March to the ORR's Charges & Incentives consultation, specifically to the proposal to move to a Schedule 8 regime where passenger train operators (TOCs) pay for the actual delay/lateness they cause to other train operators. In our response we said that TOCs were unable to support the ORR proposal, and advised the ORR that the National Task Force (NTF) – the cross-industry and recognised body charged with improving industry performance nationally – had been asked to examine it in more detail.

At its meeting on 10 May, the NTF considered a paper (see attached) from a Task & Finish Group of industry practitioners asked to look at this issue. Graham Richards, your NTF member, was at the meeting and so you may have also received a copy of the paper from him. The NTF endorsed the counter-proposal described in the paper which addresses all reactionary delay, not just a small proportion, and aligns with the direction of travel for franchise obligations (one of the ORR's policy tenets for PR18), as confirmed by the Department's representative.

The NTF also agreed with the Task & Finish Group's view that providing evidence of downstream impacts before implementation of any changes is difficult; this mirrors the ORR position that potential downstream impacts have not been modelled.

The examination by the NTF has dealt solely with the proposal by the ORR to change the passenger Schedule 8 regime. The freight Schedule 8 regime is already structured on the basis that freight operator payments are paid on actual reactionary delays from incidents attributed to freight operators rather than modelled delays. I am aware that freight operators have raised, and continue to raise, concerns that this regime does not include a structure that incentivises Network Rail to minimise the impact of freight operator attributed incidents on other operators. This is a different proposition from that affecting passenger operators, and continues to be discussed between Network Rail and freight operators, who may contact you further. That said, I note the Task & Finish Group's observation about application of the Railway Operational Code and would support any review of this.

In summary, I am pleased that the NTF has used its influence and expertise to arrive at a joint industry position, one that builds on the ORR's policy intent, targets reactionary delay as a whole and has DfT support.

Yours sincerely

Paul Plummer
Chief Executive, Rail Delivery Group

PAPER TO THE NATIONAL TASK FORCE

Meeting Date:	**10 May 2017**
Title:	**Schedule 8 TOC on TOC proposed change / T&FG assessment of impacts**
Author(s):	**Steve Price / Dean Johnson**
Sponsor:	**Gary Cooper**
Paper Date:	**03 May 2017**
Reference:	**NTFP 171005 Paper H**

1.0 Executive Summary

As set out in the 15 March NTF paper, as part of its Charges and Incentives Consultation, the Office of Rail and Road (ORR) has consulted on proposed changes to Schedule 8 to move to a regime where passenger train operators pay Network Rail (NR) in proportion to the actual delay/lateness that they cause to other train operators. This would alter existing arrangements where payments are in proportion to the historically calibrated relationship between the delay/lateness they cause themselves and the delay/lateness they have caused to others.

The ORR's proposal will move TOC-on-TOC (ToT) considerations closer to arrangements in respect of the FOC Schedule 8 regime which works based on FOC-on-FOC/TOC.

NTF initiated a Task & Finish Group (T&FG) to consider the concerns raised by TOCs over the ORR proposal, with the outcome of the T&FG generating a counter proposal which focuses on targeting all reactionary delay rather than just ToT. This would be achieved by altering franchise agreements to incentivise TOCs to reduce NR and TOC reactionary delay, rather than being focused solely on TOC-on-self delay. Existing contractual and delay attribution arrangements, tools and processes can continue to be used, with no implied change to NR's existing responsibility to manage ToT (which is at the heart of the operators' concerns), and no change to Schedule 8.

2.0 Purpose of Paper

To provide a summary of the outcome and recommendation from the NTF Task & Finish Group meeting on the Schedule 8 TOC-on-TOC proposal.

3.0 Background Information

Following the 15 March NTF meeting, two key points were recorded, including:

- Some train operators considered that ORR's consultation did not reference to the actual wording and the original purpose of Schedule 8 as a liquidated damages regime that offset operator risk associated with third party impacts. Some train operators* also considered that the Network Code makes clear that NR is responsible for managing service recovery.

They are of the view that if TOCs are not in control of service recovery, they should not bear the cost.

- NTF agreed to go ahead with option 2, as set out in the 15 March NTF paper - that a decision on the future structure of the Schedule 8 Operator regime should be postponed until the ORR provides full analyses of the anticipated downstream behavioural change impacts, implementation costs and specific benefits of implementation compared to existing arrangements. In addition, the ORR should give further consideration as to how Network Rail could be properly incentivised to continue to act as an effective System Operator following any elimination or reduction of the existing incentives in this area.

*[*Authors' note: the train operators referred to in bullet 1 above include both passenger and freight.]*

Subsequently this led to the setting up of a T&FG to carry out an assessment of the impacts that the proposed changes could have on performance and behaviours and to report back to NTF in May. The T&FG met on 18 April 2017 at RDG offices, and was attended by the following:

TOCs	Tony Southerton (EMT); Alistair Rutter (ARN); Peter Finch (Chiltern)
OGs	Russell Evans (First); Oliver Bratton (MTR)
NR	Peter Swattridge; David Hunter; Mark Hayles; Stephen Draper
RDG	Dean Johnson (NTF); Steve Price - Apologies – James Mackay
ORR*	Apologies - Matt Durbin

** It was regrettable that the ORR, although invited, was unable to be represented, due to a change of personnel.*

4.0 Material for Consideration/ Discussion

4.1 Key points / summary from T&FG meeting

The background to the ORR proposal was discussed and the aims of the Group were re-stated (as set out in section 3), with the point made that the ORR was looking for evidence or examples to illustrate the concerns expressed through the formal consultation process.

The T&FG group reiterated the purpose of Schedule 8 payments is to reimburse train operators for loss of revenue caused by unplanned disruption, which train operators have not directly caused. If Network Rail's, or other train operators', performance in preventing unplanned disruption is worse than forecast, it will have a negative impact on the reliability of train operator services. In turn, this will lead to poorer performance and a loss of revenue. Schedule 8 reimburses operators for this revenue loss. This system allows the industry to manage risk and money flows smoothly, through contractual frameworks, and ultimately benefits customers by incentivising the delivery of more reliable train services.

The Network Code / Part H already gives NR the ability to manage reactionary delay (see Appendix A – Explanation of, and link to the Network Code - Part H - Railway Operational Code (ROC)), irrespective of whether freight or passenger services are affected. There should be renewed focus to look at the contents, industry understanding and compliance of the application of the ROC.

Schedule 8 also reduces uncontrollable financial risk for rail franchises, by ensuring that revenue losses associated with 3rd party performance are compensated, where such performance is at a level less than forecast at the time of franchise bid. This ultimately benefits taxpayers because it incentivises train operating companies to offer best value in their franchise bids.

Schedule 8 is designed so that passenger operators do not need a performance regime with every other operator to protect themselves from ToT impact. This is achieved through a Star Model, where payments are made from the causing TOC to NR and then payments are made to the suffering TOC by NR. Although payments rates vary by TOC, it is important to NR that this regime operates as close to financial neutrality as possible otherwise it is exposed to a windfall loss/gain based on TOC performance outside its direct control.

4.2 Areas of agreement between T&FG participants

- Supportive of any proposals that improve performance;
- Calibration should be as accurate as possible;
- NR to make best decisions for the industry – these are not Schedule 8 driven;
- PEARS is not the problem - it is a processing tool that takes industry data and applies the algorithms set out in Schedule 8 of the TAC to generate performance payments;
- Penalising TOC cancellations, even if no lateness caused, is not the problem – TOCs have a greater incentive through the franchise mechanism to manage cancellations - customer satisfaction, revenue, reputation and Schedule 7.1 of the Franchise Agreement, noting that TOCs already have a large number of incentives outside of schedule 8 to minimise disruption;
- A focus on ToT is part of a bigger problem – that of reducing reactionary delay. The sufferer of reactionary delay is impacted, so already has an incentive to see improvement (see Appendix B – total reactionary delay % ToT);
- Schedule 8 is about lateness – not about delay. Delay is used to apportion responsibility for lateness. Operators should only pay for lateness;
- Franchise regime incentives should align with track access regime incentives;
- Arguments against the ORR proposal are not related to direct financial impacts, but to downstream impacts such as performance delivered and how behaviours would change;
- Arriving at evidence or examples will not be easy, in advance of introducing of the changes;
- The bigger changes in CP6 will be the move of performance metrics to on-time, against a background of devolution to Routes and the introduction of scorecards;
- Moving to on-time is wide-reaching, with changed behaviours, more collaboration between parties, and requiring greater attention to detail;
- ORR will need to clearly set out any consequential changes to track access contracts that will be required.

4.3 Proposal

A counter proposal, set out below, was agreed by T&FG members at the meeting.

The group agreed that the Rail for London (RfL) concession approach offered a potential way forward by using future franchise arrangements to build-in a requirement for TOCs to have a limited financial exposure to all reactionary delay.

This would mean that, through their franchise agreements, TOCs would be exposed to a pre-defined proportion of all reactionary delay that they experience (RfL exposes TOCs to 10% of all reactionary delay). This would provide a financial incentive to TOCs to help mitigate all reactionary delay on the network. It would also mean that it would not be necessary to make any changes to the Schedule 8 regime.

In addition to incorporating this approach into future franchise agreements, it would also require an adjustment to existing franchise agreements to incorporate this approach, using the franchise change mechanism. Existing franchisees would be held financially harmless to the anticipated costs to them of this change.

This would allow the continued use of existing contractual arrangements, tools & processes. NR would retain prime responsibility to manage ToT with no change to Schedule 8.

Since some operators cause low levels of ToT (*e.g.* c2c), this alternative proposal would have the effect of being more targeted on the areas of the network where there is significant reactionary delay.

This proposal leaves Network Rail exposed to the difference between modelled and actual TOC caused reactionary delay. It should, however, lead to reduced Schedule 8 payments from reactionary delay because, Network Rail and franchised passenger operators would all be financially exposed to the effect of reactionary delay and would be financially motivated to reduce it.

This proposal will require Schedule 8 to have a star model arrangement whereby the causing TOC is compensating NR for the ToT lateness for which it is responsible for in the suffering TOC. The causing TOC is still incentivised to reduce its own TOC on Self lateness with the expectation that this will drive down TOC on TOC delay. The extra incentive is on the suffering TOC to work with NR to reduce the impact of disruption caused by their services. The complexity of calibrating the star model therefore remains. To promote cross working between TOCs and to assist in the industry understanding ToT delay the industry wide cost of TOC incidents can/should be reported to the causing/suffering TOC within the standard Schedule 8 statements.

5.0 Recommendations

The National Task Force is asked to

1. **Note** the areas of agreement between T&FG participants;
2. **Note** the T&FG point about a renewed focus to look at the contents, industry understanding and compliance of the application of the ROC and **consider** how best to progress this;
3. **Endorse** T&FG counter proposal; and
4. **Advise** the T&FG of any next steps – if any.

If recommendation 3 is endorsed, the National Task Force is asked to **direct** its Chair to formally write to the ORR to place on record the counter-proposal, as part of the ORR's consideration of comments received from the Charges and Incentives Consultation.

Paper Ends – Appendices to follow

Appendix A – Explanation of the Network Code - Part H - Railway Operational Code (ROC)

The Network Code - Part H - Railway Operational Code (ROC)

ROC Explanatory Note:

A. Part H sets out a requirement for Network Rail, in consultation with the industry, to establish a Railway Operational Code (the "ROC"). The ROC has the objective of sustaining operation of train services on the network in accordance with the working timetable, as well as where necessary restoring operation in accordance with the working timetable, having regard to the needs of passengers and freight customers; the interests of safety and security; the efficient and economical operation of the network and of trains operating on it; and criteria published by the Office of Rail Regulation.

B. The ROC is to be kept under regular review, and covers such issues as notification of disruptive events; contingency plans; clearance of track blockages and assistance to failed trains; emergency timetabling procedures; control arrangements; train regulation; seasonal-preparedness; and other matters necessary or expedient to achieve its objective.

C. Part H also sets out a procedure for varying the ROC, which includes all ROC Sections and Subsidiary Documentation. A ROC Section may also set out its own procedure for varying the ROC Section in question or Subsidiary Documentation produced under that ROC Section. Subsidiary Documentation may itself also contain procedures governing its own variation which are additional to or are intended to replace the procedures set out in Part H.

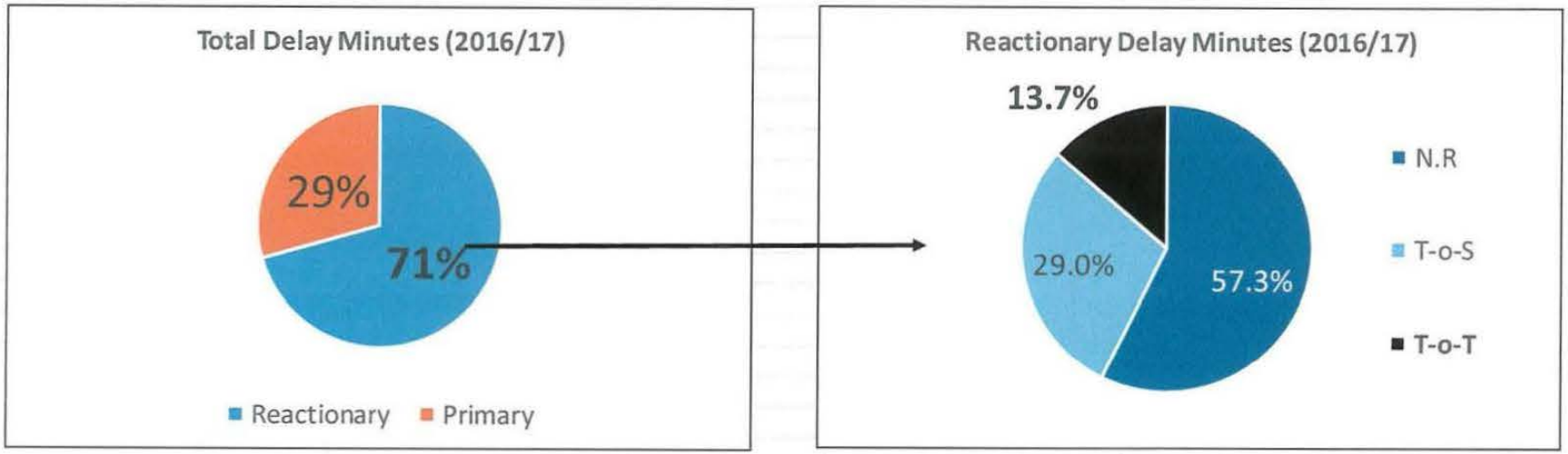
D. Guidance on the management of operational disruption is now contained in the ROC, which can be found on Network Rail's website.

E. The Explanatory Note does not form part of the Network Code.

Appendix B – total reactionary delay % ToT

	2016/7 Total Delay Mins
Reactionary	71%
Primary	29%

	2016/7 Reactionary Delay Mins
N.R	57.3%
T-o-S	29.0%
T-o-T	13.7%



ORR Delay Attribution Review – Stagecoach Commercial Business Development Response

This confidential document is in response to the scoping stage of the ORR Delay Attribution Review as invited by John Larkinson in a letter dated 15th January 2019.

We acknowledge that ORR have excluded the Schedule VIII process from this consultation, however, we *strongly believe* that without consideration of this area, reform of DA will be insufficient and will not address the clear majority of the problems operators encounter. We share the RDG position – voiced by most of the industry – that the commercial arrangements, incentives and aligned objectives of DA are more important than the process by which it is recorded. Without this approach, the whole premise of DA – to accurately identify delays and put in place measures to prevent their recurrence – will be undermined.

Combined Stagecoach C&BD and East Midlands Trains Response

The content that follows is in response to the scoping stage of the ORR Delay Attribution Review as invited by John Larkinson in a letter dated 15th January 2019 and is a combined response from both Stagecoach Group (Commercial & Business Development team) and East Midlands Trains Limited. A further separate response will be provided from our colleagues in Virgin Trains West Coast.

The responses have been loosely grouped around the focus areas and questions as suggested in the initial letter, with comments grouped together where relevant.

The benefits of delay attribution to our organisation

The process of delay attribution has three main uses: - Understanding, Accountability and Improvement. Delay attribution is a key pre-cursor to the entire cycle of operational performance delivery and improvement and is a foundation for this within our rail franchises.

Understanding allows business leaders to have a clear view as to how each franchise is performing. Delay attribution is used to define the root causes of poor performance in each of the Stagecoach owned franchises. The outputs of this attribution process are analysed and used to drive deeper business analysis, resulting in detailed reporting and visualisation that informs the business of ongoing delivery and highlights where functions or elements are underperforming.

This information is then utilised to hold those accountable for underperforming areas and encourage preventative or corrective actions to be taken to mitigate increasing risk. The annual budgeting process (in which each function and owning manager is given a delay minute and cancellation target) uses the data collated and attributed to forecast each team's annual achievement and to challenge managers to deliver continuous improvements. These incremental improvements drive an overall business improvement by allowing corrective action to be taken part-way through each year, normally in the form of developing individual business cases for improvement (such as additional resources or investment in hardware or software).

Leading on from this is the third use which is that of improvement. In addition to isolated initiatives in specific underperforming areas, attribution data is also a key element of planning for future. It is used to develop performance strategies and joint improvement plans with

Network Rail as part of the Joint Performance Improvement Plan (JPIP) or the Performance Planning and Reform Programme (PPRP) within franchises. On a larger scale, the detailed data produced as an output of the delay attribution process is also used in understanding the inner workings of other franchises (such as competitors or potential acquisitions) when completing the franchise tender process. Detailed root cause knowledge (the output of Delay Attribution) allows more detailed, accurate and specific initiatives to be developed as part of franchise bids to create a much more value for money franchise with greater accuracy and confidence in delivery.

Worthy of note is the fact that Schedule 7.1 of the Franchise Agreement and Schedule 8 of the Track Access Contracts require operators to record and attribute delay and cancellation (to a specific level) in order to monitor performance and allocate penalty or bonus payments based on delivery.

Delay attribution is a necessary part of industry processes in order to deliver the benefits described above and to drive both improvement and investment within rail franchises. Without some form of delay attribution none of these activities would be possible.

Using the outputs of the delay attribution process to inform decisions

As mentioned in the benefits section, delay attribution is the pre-cursor to operational and performance analysis and drives the following outputs:

- The outputs are used for the annual budgeting process which in its simplest form takes historical performance (Delays/Cancellations) as a forecast for future performance, with targets set for a reduction by each function and manager. Annual, periodic and daily reporting is then generated to focus the workforce on underperforming areas and highlight potential risks which are reviewed regularly by the management teams. These are filtered down and used to create a positive culture where all staff are encouraged to ensure train services are kept on time wherever possible and cancellations are kept to a minimum.
- As part of the Schedule 8 regime of the Track Access Contract with Network Rail, we are required to keep a record of the causes of all delay and cancellation. This is used to both recover costs associated with non-fault incidents and recompense Network Rail and other operators for incidents caused by Stagecoach operators.
- Our Franchise Agreements with the Department for Transport require the monitoring and recording of all delay and associated causes. This is used as part of Schedule 7.1 to calculate and agree any penalties or bonus payments because of our ongoing performance.
- Once again, the detailed data produced as an output of the delay attribution process allows us to analyse and understand the inner workings of other franchises (such as competitors or potential acquisitions) when completing the franchise tender process.

Supporting improved performance through delay attribution

The key area in which improved performance is achieved by detailed and accurate Delay Attribution is that it highlights poorly performing areas of the business and drives a focus on delivering mitigation or improvement in key functions. Regular reporting against the root causes generated (Annually, Periodically and Daily) gives an overview of how each business is performing against budgets or previous years. This allows management to spot early signs of underperforming areas and focus attention and investment on minimising the risk these present.

The analysis generated as an output of Delay Attribution also highlights areas of positive performance and allows us to both reward these functions/people for their delivery and to share any positive lessons to a wider audience both within Stagecoach and across the industry.

Again, the process of Delay Attribution supports the calculation and payment of penalties/bonuses based on delivery which in turn drives positive culture and behaviour(s).

Requirements of an effective delay attribution framework

The ideal framework should be entirely unbiased. The existing process allows for different incentives to drive different behaviours (detailed later in this document) and the only way to resolve this is to remove all bias from the decision-making process when trying to allocate a business owner or cause.

The ideal framework should have the sole purpose of highlighting the root cause of any delay or cancellation and should not be influenced by any other means. This would allow businesses to have complete confidence in the accuracy of the outputs and will be able to use them to drive improvements or drive investment into the specific route cause of an issue.

The ideal framework should not encourage commercially driven decisions, for example attribution to a specific cause/owner in order to reduce penalty outgoings and increase bonus income. This is discussed in a little more detail later on in this document.

Resources & Dispute
[redacted]

Accuracy
Accuracy of delay attribution systems

As a generalised comment, delay attribution systems at present are somewhat dated and clunky but achieve most of the existing requirements. At an industry level, they allow allocation to a specific function with a specific company which is suitable for TOC vs. TOC or TOC vs. NR attribution. This is not detailed enough however for internal root cause understanding, and would require significant additional resource should further requirements be added (sub-threshold and empty coaching stock attribution).

TRUST/TOPS is a very outdated system and is still used by every operator and Network Rail. It has significant limitations such as only allowing a basic level of understanding, limitations on the number of characters and data only being stored for a short timeframe. As the principle measure, along with manual attribution against the Delay Attribution Guide (DAG) is out dated and doesn't fit with the 'big data' world we are now in. This being said, TRUST performs the job is was designed for well. Future reforms present the opportunity to create a bespoke new system to replace this and combine the data storage requirements with the requirements of Schedule 7.1 and Schedule 8 (currently performed by PEARS) and analysis and reporting (Business Objects / SAP BI / Bugle / Compass) into one system.

Areas in need of improvement

As mentioned, for a significant reform of the delay attribution process, there is an industry need to replace TRUST/TOPS with a more up to date, accurate and detailed system. It is also important for improvements to the data input process (physical tracking of trains on the network) in order to remove all of the data "blackspots" (for example where timings are manually entered by controlling signallers at present).

It would be of great value to understand the causes of delay and cancellation for sub-threshold delay (delays of 1 or 2 minutes that are not currently attributed) and for empty coaching stock moves (for example understanding why a train is late from a depot). Whilst there may not be a

need to include these in financial regimes, it would allow a greater understanding of business issues and the ability to develop mitigations and improvements.

It could potentially be beneficial for root cause analysis to take place in the same system as ownership allocation – at present TOCs download all data from TRUST/TOPS within the 8 day timescales and perform root cause allocation within a separate system. PEARS is also used by Network Rail to perform contractual calculations – which could also be combined.

Likewise, long term data storage, analysis and reporting in completed in several downstream systems. It is of slightly less importance but it may be beneficial for this to be completed in a combined system. There are however arguments against this such as allowing operators to use different systems based on their specific needs and requirements.

Other systems used to support delay attribution

TRUST/TOPS and **TRUST DA**, the industry standard software is used in all of our TOCs for the attribution process. This is echoed by Network Rail and other operators allowing for initial ownership allocation and high level cause identification on a unified platform.

The **BUGLE/Acumen/Compass** systems are used as internal root cause analysis to a much more detailed level, and as a long-term data storage system with varying levels of reporting and analysis available.

The use of **DayOne** has been explored and has potential to allow “to the second” timing information (rather than to the half minute as TRUST/TOPS allows) and early root cause identification. There is clearly some potential for automated allocation of a significant proportion of causes using this or similar software.

Effectiveness

Aspects of the delay attribution framework that work well

It is key that strict timescales for allocation of incidents are kept to, and in most situations, this works well at present. It helps to ensure the appropriate focus on identifying a cause is kept within each business and that focus is not lost. It also ensures that the number of incidents which require escalation or adjudication are kept to a minimum. Everyone in the industry signs up to these timescales and adheres to them.

TRUST/TOPS as the first port of call for incident allocation – all parties use the system and despite being old and clunky it is very reliable. The selection of manager codes and cause codes appear to cover the majority of scenarios and are as a result of many years of refinement.

It is also worth noting that whilst it is out of scope, and we do feel that the Schedule 8 financial mechanism does not currently drive the right behaviours, removing financial incentives entirely would result in operators and Network Rail being unable to find funding for some business cases. Whilst it drives some of the wrong attitudes in operations and in attribution, it is used extensively when trying to fund small improvement initiatives.

Aspects of the delay attribution framework that would most benefit from improvement

The limitations of the TRUST system certainly restrict outputs and could benefit from improvement or replacement. For example, there are a limited count of characters for some text entry fields, no possibility of additional fields and the allowances for splitting incidents disproportionately are limited. Unique IT skills and training are required in order to use the system optimally and to be able to interrogate and understand the information within.

It would be beneficial for the industry to have a single system for recording of train running, cause and root cause by all operators, and for long term storage of this information, to save

having to extract the data every night into a bigger database. This should include the calculation and recording of financial regimes and could possibly (although of a lesser importance) include analysis and reporting tools.

Automation of the allocation of some delay would be of great benefit – especially if sub-threshold and empty stock moves are to be included in the attribution process. Rules could be set which allow delays to be allocated, in certain circumstances, to the preceding train (for example on single line routes or where the number of trains running is relatively low).

When there is significant disruption, the volume of attribution required increases considerably, whilst the resources available for attribution remain static. This results in a significant number of unattributed incidents or “holding TINs”. Sometimes these are attributed much later when information is lost or unavailable or in some circumstances do not get allocated at all. These therefore skew the outputs of the process. There needs to be a method in place to agree how these are dealt with (for example a central team to pick up any additional work or some on-call resources) to ensure all delays are attributed to root cause.

Finally, anything that resolves the issues highlighted in the perverse incentives section below would be beneficial.

Perverse incentives in the delay attribution process

Almost all TOCs have a perverse incentive to try and minimise the number of incidents/delays/cancellations allocated to themselves to reduce the outgoings in Schedule 8 payments and maximise the income from Network Rail. This is not to say that TOCs operate in this way, but there are examples of behaviours and attitudes that support this notion. It is also entirely possible for parties to hide or alter evidence to bias the outcome of investigations if they wish to do so.

There are regularly concerns around the balance between Primary delay and Reactionary delay – and the part Network Rail plays in reducing reactionary delay. There are situations where an operational decision maker has multiple options available to recover the train service with various potential outputs. As a basic example, keeping a large number of trains running just a few minutes late could be a better outcome for a customer than part cancelling or diverting a small number of trains and running the rest on time. It is however worse for Reactionary delay minutes. In this example situation, a train operator could theoretically ask for the additional delay (for the customer benefit) but retrospectively argue that Network Rail could have regulated in a manner that reduced delay. There are also examples in the industry where an operator caused incident has a significant proportion of the reactionary delay by an incident they caused, reallocated to Network Rail as they feel the decisions in regulating train services after the incident could have been performed better. This potentially adds significant amounts of time into the attribution process, often disputing very small numbers of minutes. Perhaps the approach could be to have primary and reactionary delay reviewed and allocated separately. It is still important for reactionary delay to be included, as there may still be lessons that can be learnt within incident management and regulation activities.

Financial and industry regimes are focussed on train based metrics (not customer based). Both historic (PPM, CaSL) and the new metrics (T-3, T-15, All Cancellations) focus on train based reporting and despite the newer metrics now considering performance on a location by location basis (rather than at the end station), they still do not truly take into consideration the impact on the end customer. This can potentially result in operational colleagues focussing on meeting the metrics rather than delivering the train service. As an example, it may be decided that cancelling one train and running the rest on time is better than running multiple trains 5 minutes late (one PPM failure instead of multiple) but from a customer perspective the (circa. 300)

people on that train will have a significantly worse experience.

Finally, joint and co-located teams are being created across the network, mostly in Control Centres and Performance teams where the attribution process takes place. This results in conflicting atmospheres – with operational delivery teams and performance analysis teams working together to achieve mutual outcomes but colleagues of the same two (or more) companies in delay attribution in dispute with each other.

Proposals for improvement
Proposals that may enable delay attribution to better meet requirements

There is no reason why initial allocation of incidents cannot be at least partially automated with some clever software tracing the cause of delay of a large proportion of events. This could then be supported by an independent body “filling the gaps”. Railway undertakings (or train operators) and Network Rail would then review the allocation and where they disagree, an appeal is made. This would utilise much less resource, allow the additional (valuable) attribution of sub-threshold and empty coaching stock moves and would remove the need to dispute very small delays.

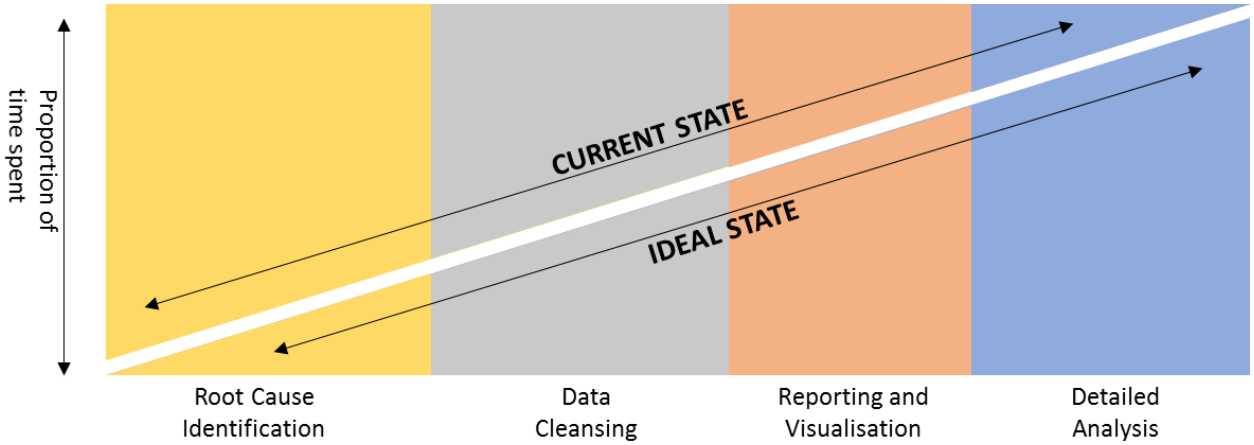
One proposed solution could be to make attribution independent – allocation of ownership of delay (both automated and then resolved) could be facilitated or mediated by an independent body. Where disputes occur, each party should provide a response with evidence to be reviewed and allocated by the independent party. The purpose of this would be to remove any time wasted in dispute resolution, however one argument against may be that the same amount of dispute would still exist (if not more) it would just be a separate body responsible for the mediation.

It is worthy of note that the Delay Attribution Board was initially set up to achieve some of these requirements – and in part it does - but they do not truly have the power to enforce the good practise, guidance and recommendations that they produce. They are also not involved in settling disputes until too late in the process and often relationships have already been damaged by this point.

One single system should be deployed and its use enforced for all rail parties to record train timings (and automate current manual blackspots), to allocate causes for incidents/delay and for Train Operators and Network Rail to associate root causes for more detailed analysis. A new and improved version of the industry TRUST system.

Separation of the attribution process for Primary and Reactionary delay would be beneficial, with different incentives for each ensuring that they drive the right actions where improvements are made.

Far too much time and resource in railway undertakings is spent doing data quality work and not enough on analysis and understanding as the image below shows. The attribution process should be academic and not political with the end result being a true understanding of the issues within each business. Resource can then be re-allocated to the understanding of this data.



Finally, despite it being out of scope for this consultation, we cannot see how a truly independent delay attribution process, without perverse incentives that drives a clear understanding of the root cause of all delay/cancellation can be achieved, without reforms to the functioning of the Schedule 8 compensation regime. It seems inefficient to assess the delay attribution process in isolation without considering this and we look forward to the focus on this as part of the periodic review process.

Rail Directorate
Policy Team

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TRANSPORT SCOTLAND
CÒMHDHAIL ALBA

John Larkinson
Acting Chief Executive
Office of Rail and Road
One Kemble Street
London
WC2B 4AN

Date:
29 March 2019

Dear John

Delay Attribution Review

Thank you for your letter of 15 January inviting Transport Scotland to contribute to your consultation on the Delay Attribution Review. I acknowledge this is the beginning of the process to scope the Review in anticipation its outcome will be implemented before the start of rail control period 7.

As you are aware delay attribution is important to us as franchising authority for the ScotRail and Caledonian Sleeper franchises. In particular through PR18 we have previously expressed concerns around the potential exposure and risk any proposals to delay attribution and related consequences for schedule 8 payments may place on the Caledonian Sleeper franchise.

Given this we very much appreciated Liz McLeod organising a recent workshop with ORR and Transport Scotland to consider and discuss Scotland specific issues in some detail. This was a very useful session where ORR clarified a number of points and we covered a range of our concerns. ORR took away a number of related actions, including to explore if the ORR can apply some financial forecasting to modelling to illustrate potential impacts, and we look forward to engaging on this again in the near future.

We also agreed at the workshop that Transport Scotland would be interested in participating in the proposed delay attribution working group once it is established; we will look to see how to do this in the most targeted and efficient way possible.

I trust our input and engagement so far is helpful. I am content for this letter to be published and I am copying this letter to Liz McLeod.

Kind regards,

Fiona Hesling

Fiona Hesling
Head of Rail Planning

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John Larkinson
Chief Executive
Office of Rail and Road
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February 21st, 2019

Your ref:

RE: DELAY ATTRIBUTION REVIEW

Dear John

Thank you for your letter of 15th January setting out your intentions to undertake a review of Delay Attribution. We welcome the opportunity to take part and have met with your representatives to discuss our response, before responding formally by letter.

Firstly, I would like to ask for clarification on what issues the ORR identified that needed clarification, leading to a need for a review?

Response to the questions set out in Annex 2 of your letter

Decision making and value added

- ***What are the benefits of delay attribution to your organisation?*** The collection of rich data allowing us to analyse causes and owners of poor performance, whether by special-cause incidents or themes. It allows us to respond to our customers when questions as to why their journey has been disrupted and allows us to challenge Network Rail about their own performance. The data gathered underpins all of our performance delivery processes.

- ***Do you consider delay attribution to be a necessary part of industry processes?*** Absolutely. We all need to know how the network and train service is performing and in turn how our franchise is performing too. Its key to learning from incidents, understanding root cause, understanding network capacity and interaction between services, and for pulling together business cases. Gathering all of this data allows us to inform our future planning, whether for new or existing franchises and what work we may need to undertake with industry partners to achieve that. We also need to note that both Schedule 7.1 of the franchise agreement and Schedule 8 of the Track Access agreement specifically requires us to record delay and cancellation data.

- ***How do the outputs of the delay attribution process inform decisions in your organisations?*** It allows us to identify areas of weak performance and respond quickly, identify larger causal themes and respond to them either through process or physical intervention. It also informs our business cases when appropriate and allows us to recognise our people when targets or improvements are met or exceeded. The historical data allows us to analyse and set targets for performance both throughout the control period, and the individual years. Outputs for Delay attribution also inform our Schedule 7.1 franchise performance and the drives the penalty or bonuses of the Schedule 8 performance regime.

- ***To what extent does delay attribution help support improved performance?*** The data gathered helps us to identify problem areas and repeat issues and allows us to mitigate them. The historic data gathered allows us to report on how far we have come, how we have improved (or worsened) and confirm that the actions we have taken to improve performance have been successful.

- ***What requirements should an effective delay attribution framework meet?*** For an effective framework we need to include protections that ensure the attribution is undertaken in a timely manner, that the details about the delay are entered accurately, that the attribution is undertaken in a fair and unbiased way, and identifies the prime cause of delay, but also allows root cause to be added. The framework should be constructed in such a way that it successfully drives out perverse incentives.

Resources

- ***How much resource (staff time, consultancy spend etc) does your organisation deal with each year?*** The Delay Attribution process reaches far and wide throughout our business, and across many of our people. We start with our Route Control Managers who are based (on a shift basis) in our train running control managing real-time attribution on Day 1 (the day of the event occurring). This is a 24-hour 7 day a week process. Post Day 1, we have a dedicated Level 2 Attribution Manager to check the quality of attributed incidents and resolve any disputes that have not been successfully resolved 'on shift'. For incidents attributed to us the Performance Team (though 3 Route Performance Managers) engage with the functional front-line teams and delay minute budget holders to ensure that attributed delay is correct, or if it needs disputing to be resolved with Network Rail. There is also much time spent by both 'back-office' and management staff producing reports and gathering feedback, and evidence to support disputes and apply root causes, and produce performance related data.

- ***How many delay attribution events (roughly) does your organisation deal with each year?*** About 10,000 incidents per year. A better question here might be how many accurately attributed incidents are attributed to us each year!

Dispute resolution

- ***What proportion of delay attribution events lead to disputes (by disputes, we mean incidents where the cause and/or the responsible body are not agreed at the first stage of the process)?*** Around 35% of our daily incidents are disputed, with a high proportion of these being because of problems with accuracy, or unexplained loss in running which NR have stated they are not able to explain, without undertaking thorough checks, but we spend much time explaining on their behalf.

- ***What is the typical time taken to resolve disputes?*** The typical time is around 5 days depending on how well NR are resourced. We do have some controls in place such as defined processes that have agreed timescales, and a soft maximum 14 day rule for resolution of all individual incidents at Level 2. However, we do have some concerns that a number of incidents are not resolved before Day 28 of the period, leading to the train operator to be shown at fault for incidents that haven't been resolved in systems.

- ***What proportion of disputes require independent adjudication?*** In the past 10 years, we have taken one incident to the Delay Attribution Board.

- ***How satisfied are you with the existing dispute resolution procedures?*** We are not satisfied. The existing processes take too long to resolve incidents, but which many could have been avoided if attribution had been more accurate in the first place. We are also attributed many 'loss in running delays' where Network Rail have stated they have exhausted their sources of information, and attributed the delay to the train operator, only for us to use the same sources to explain the delay. These incidents can then sit unresolved for several days because NR are unwilling to recode them internally.

- ***What proportion of your overall resources devoted to delay attribution go towards dealing with disputes?*** Around 25% of our workforce actually have some level of involvement with supporting evidence for disputes. We feel we need more resources than is necessary to support the gathering of evidence and support of disputes because we have a high number of incidents attributed to us for no other reason than NR are under-resourced to complete the delay attribution process in an accurate and timely manner.

- ***Are there particular types of incident or specific delay attribution rules that cause a disproportionate amount of disputes or time to settle disputes?*** Loss in running unexplained delay (TO) delay causes us much work to explain on Network Rail's behalf after they have stated their own sources of information have been exhausted, around 75% of our daily disputes are of this type, and we spend around half the day explaining the causes of these types of incident. In terms of Delay Attribution Rules, both the rules around stock and crew after rest following major network disruption, and extreme weather events give rise to many disputes.

- ***Do you have any delay attribution agreements with other industry parties that follow rules other than those set out in the Delay Attribution Principles and Rules (DAPR)?*** No, but we do have a number of process guidelines that allow us to follow-up and attribute particular incidents in a consistent and timely manner.

Accuracy

- ***Are delay attribution systems sufficiently accurate to meet the needs of your organisation?*** No, TRUST is now outdated and outmoded and cannot accurately handle train running data. For example train schedules are planned to ½ minutes, but TRUST will round to the nearest minute – when putting adjacent sections of schedule together where this occurs, this can give us a false time loss to explain. Also, our own internal systems, in line with other train operators allow us to add both root cause, and detailed incident updates, TRUST and TRUST DA does not allow Network Rail to do this, meaning that we are potentially missing a huge amount of rich data that we could use to improve performance.

Repeating work

- *Are there any areas in need of improvement?* Accuracy of delay attribution is a key requirement, because of its use in informing the performance community for analysis and ultimately driving performance improvement. We need NR to have the ability to add root cause data. We should also have the ability to automatically attribute reactionary delay based on the Delay Attribution Principles and Rules, Network Rail have explored this previously but stopped when they believed it was becoming too difficult to deliver. Doing this would dramatically improve the accuracy of attribution, and free up time and resources. We need to reform the delay attribution process by introducing better and smarter technology to make attribution more accurate and removing gaps in the data that exist now. Sub threshold (delay which is not explained) needs to be included going forward, as we move to our new train performance monitoring measures, our customers will rightly want to know why their trains are late – even when less than 3 minutes! It would ne advantageous to the industry if we were to have one system of attribution and delay information that could be shared by all to allow us to get the best from attribution, delay

and train running data – with controls in place on how we use or access the information when a franchise is open for bidding.

- ***Do you use any systems to support delay attribution beyond those that are standard to the industry?*** We use a number of systems to support us with delay attribution, namely VORTEX (OTDR data), BUGLE Day 1 (real-time delay reporting), BUGLE performance package, SAM (OTDR data).

Effectiveness

- ***What aspects of the delay attribution framework work well?*** Timescales must be adhered to, TRUST/TOPS currently for allocation.

- *What aspects of the delay attribution framework would most benefit from improvement? How do you feel improvements could best be achieved?* Improve Day 1, NR staffing levels, more thorough investigation by NR not just cut and paste. One universal system for performance and attribution with shared data. Automation of reactionary delay to follow rules. NR staff up to reduce timescales and avoid OU.

- ***Are there are any aspects of the delay attribution framework that create perverse incentives?*** During and after perturbation Network Rail will often ask us to cancel trains rather than run late to reduce their delays per incident and delay minutes overall with no thought of the impact to either our customers (because nearly all our trains are full most of the day) or the impact on CASL. They will also insist on Day A for B timetables when incidents are expected to run into a second day versus the right thing to do for the customer. We should also note that NR have a responsibility to reduce overall delay around the network through reactionary delay, but proper management of reactionary delay only appears to be of concern when the incident is of their own cause.

Proposals for Improvement

- ***Can you tell us of any specific proposals that you believe would enable delay attribution to better meet the requirements of your organisation and of the wider industry?***
  As an industry we should trial more accurate systems for recording train location and time-stamp, how we can report delays real-time from locations and feed that information directly to delay attribution, support Network Rail with getting ITED off the ground, review current and where necessary create new standards, and also introduce automation of delay attribution to some level using the current DAPR. Consider giving greater powers to the DAB in terms of earlier assistance with disputes, enforcing good practice etc. With the greater powers that devolution brings to each Network Rail route, we would like to see the ability to form local agreements with NR route to avoid the impact of issues that are not able to resolved quickly (for example the allocation of TO delay to us when the issues are known but the fix date can be up to five years into the future).

I hope that this feedback is useful to you and look forward to seeing your conclusions from this exercise.

Yours sincerely

Jason Nash
Head of Performance and Control

West Coast Railway Company response to the January 2019

ORR Delay Attribution Consultation

This note is the West Coast Railway Company (WCRC) response to the ORR Delay Attribution Review authored by Phil Marsh of WCRC.

1. Preamble:

The WCRC operates freight and passenger charter trains across the whole of the UK main line rail network, frequently using non-passenger lines and onto and off heritage railways. It is by far the leading such operator with over 20 years operating experience operating the majority all UK charter trains.

WCRC crosses all Network Rail (NR) boundaries, regions and routes, operating diesel, electric and steam hauled services. It also provides traincrew for many non-passenger services and conductors for passenger, infrastructure services and freight customers. This is the experience we have drawn on to offer our suggestions to this review.

From the above it can be seen WCR has one of the broadest pan-uk operational experience of delay attribution (DA) of any train company. And it is this range of services that create DA difficulties as many NR TDA staff simply do not understand what WCRC's operations are and involve, such as simple tasks like shunting requirements. These skills have largely left the Industry with the exception of the train planning and account teams at Milton Keynes who fully engage with WCRC on their unique operational requirements.

WCRC understands that the application of Sch. 8 is outwith this Consultation and references to this are made in contextual terms linked with delay attribution and not any actual penalty rates. Although this ORR Consultation only directly concerns DA, it is impossible to ignore the way DA is carried out when influenced by consequential Schedule 8 payments.

2. DA conflicting safety and commercial pressures

It is WCRC's view that it is absolutely impossible to ignore the link between safety and Sch. 8 pressures. This is due to Network Rail's funding package and franchisees due to the ever tighter commercial franchise awards and resultant financial awareness on operating and DA staff alike.

For example, during one PR18 CP6 Freight and charter working group meeting, a senior NR representative said that one ORR decision on Sch. 8 commercial principles had cost NR's FNPO £6million which had not been budgeted for and had to be recovered by other means.

This is relevant within the Governance aspect of this review because NR manages the DA process using their own staff who will clearly be aware of and unavoidably have an interest in reducing their employer's Sch. 8 exposure.

In times of disruption, many individual delays will simply be allocated to an operator because it is the easiest thing to do while under pressure. This means operators have to put resources

on investigation work to uncover the facts in each incident as to the prime cause and ultimate responsibility.

WCRC understands that there is a growing tendency for new operational recruits to the industry to be made very aware in their training of the potential financial penalties for delays which then unavoidably can become part of the decision criteria for resolving a delay situation.

This in turn has the possibility of compromising safety by expediting a recovery plan.

There are frequent just above threshold delays put down to loss in running. These more often than not are due to professional driving instructions being adhered to in inclement weather but there may well be a temptation to keep to time by some operators. Especially if they are close to failing PPM/DfT targets. This driving technique is also often due to lineside vegetation management issues.

3. Governance

Delays are input into TRUST in NR Control Centres by NR staff. The TDA system is deemed to be independent but it is difficult to understand how this can be guaranteed with the current system in operation while managed and operated by Network Rail.

It is also a fact that seven years of declining infrastructure performance has put more pressure on TDA staff to perhaps when in doubt, allocate delays to operators without the affected operator being involved in the DA, who subsequently have to investigate and disprove the attribution.

This in turn can often cost more in staff time than the delay allocation when costed against Sch. 8. Regular examples of this is when a service is running at caution under restricted signal aspects losing enough time to create a delay incident but the signaller is able to truthfully state the train was running under clear proceed aspects. The same issues arise with approach control signals. The train operator then has to investigate all delay allegations.

This is the type of incident where Level 1 dispute agreement should be improved. From a control point of view a driver will inform them of a delay and it is attributed as FO or TO when clearly there are other factors as explained previously.

Controllers will dispute the incident and it remains in dispute status when Level 1 should be dealt with on the day. It’s often a signaller or ARS issue but NR TDA staff seem very reluctant to attribute delays to their signallers or systems. This may be since TD Team Leader roles vanished years ago, but they controlled Level 1 disputes. Currently it's down to the member of staff who attributed the delay and they may be swamped with incidents and simply not able to manage through no fault of their own.

4. Principles and rules of TDA

WCR has recently signed off many outstanding incidents dating back to 2011 which had remained outstanding because of inconsistent NR application of DA across the network. This was illustrated in the Delay Attribution Board Guidance note No. 43 concerning lineside fires

after the passage of a steam hauled service. WCR contended that opinions or assumptions had been made by NR staff so far as DA was concerned, as opposed to factually investigation-based DA carried out by WCRC staff.

Additionally, when some of these very old delays were investigated, attribution was proven to be incorrect and based on NR TDA staff assumptions.

This WCR believes this is a microcosm of the DA process on the NR side and WCRC will only dispute an incident where it is in possession of the facts and not assumptions.

5. Processes, systems and ways of working

WCRC manages delay attribution in several stages:

Level 1 by on the day controllers.

Level 2 by a delay attribution manager

Level 3 and 4 by a senior delay attribution manager

WCR fully understands and totally supports the prime reason for DA, to benefit passengers and freight customers through better performance brought on by investigating delays, especially recurring ones to be able to mitigate them in the future. DA must continue for performance improvement reasons ultimately benefitting customers.

But DA has been hijacked by its secondary purpose, the associated Sch. 8 financial incentive to avoid being attributed delays.

ORR is requested to make sure DA priorities go back to their original purpose to maintain safety first and performance second but with the consequential financial implications still applicable – in some areas.

Franchised traincrew may not then feel so pressured by financial implications of a delay as now at a time when many franchise finances are on a knife edge and Sch. 8 is regarded by some operators as a profit centre.

6. Specific recommendations

<u>6.1 Safety of the Line associated delays</u>

WCRC would support any proposal that emerges from this review so far as direct safety of the line associated incidents are concerned.

For example, HABD alarms, suspected open doors, missing or extinguished tail lamp alarms, signal irregularities, level crossing incidents, animals on the line etc. This would obviously require a discreet codification in the DA system from which performance improvement plans can still be monitored but Sch. 8 payments not triggered.

The proposal would be that delay minutes would be attributed as now but without any associated Schedule 8 payments applicable in either direction. For clarity, this should apply

both ways, (i.e. TOC/FOC on NR, or NR on TOC/FOC). Only by doing this can we be shown to be considering that safety has primacy over performance.

6.2 NR TDA staff accuracy monitoring

Given the number of incorrectly allocated delay incidents and the resultant quantity of disputes, WCRC proposes that a performance indicator of accurate attribution be introduced, perhaps with financial penalties for continuing incorrect attribution.

This is especially prevalent in charter sector where many odd delays were initially set against a charter service because they were so rarely challenged. This has improved in recent years but is still common.

In financial terms, inaccurate DA costs WCRC in financial terms by having to fund two DA posts to challenge and investigate cases of clearly wrong attribution, whether it be accidental or lack of proper investigation.

Where consistently incorrect DA takes place, perhaps within a route, a figure on a sliding scale between maybe 10% to 25% of the delay incident Sch. 8 costs should be made to the affected TOC if misallocation continues to cover their avoidable costs.

NR, if they have confidence in their own TDA staff should not object as if DA is accurately carried out, they would not suffer financial penalties. In essence, this would be their own internal route performance DA regime.

This would in effect make TDA staff responsible and accountable for their actions, explaining errors, which is the purpose of NR's devolution plans. This would ensure incidents were properly investigated and attributed in the first place whereas currently there is no comeback whatsoever for inaccurate DA.

Currently operators have to provide resources to investigate such incidents. If there were less erroneously allocated events, less resources would be required to scrutinise TDA and reduce Industry costs all round.

6.3 Independent TDA organisation

WCRC, along with many others believe it's time Network Rail were stripped of the role of delay attribution and placed with a private independent body (as with the DAB) where delays are attributed fairly without any perceived incentive to allocate either way. Colloquially it is currently similar to 'marking your own homework'.

This would mean NR would have to do the same as operators and investigate delays rather than make assumptions or opinionate on delays leading to more accurate DA than today.

This would offer a transparent and consistent independently operated TDA system removing governance issues in the same fashion as the DAB which must also remain as now, independent. The NR devolution plans will need to be monitored so far as consistent application of DA principles is concerned across all routes which does not happen currently with sub-threshold delays.

All TDA staff should have a good understanding and experience of front-line operations and pressures. This is only currently apparent where regular charter services operate, such as Fort William, York or Carlisle for example.

ENDS

NOTES for information and background:

- WCRC is content for this submission to be posted on the ORR Website.
- Please contact the author should any clarification or further information be required.
- For background information only. The author's commercial and operational railway career spanned 30 years followed by over 15 years of experience (and counting!) gained working in front line operations for WCRC. He represented the company in the PR18 CP6 Freight and Charter Working Group and carries out Level 3 and 4 delay attribution.

West Midlands Rail Executive
16 Summer Lane
Birmingham
B19 3SD

Delay Attribution Review
Office of Rail and Road
One Kemble Street
London
WC2B 4AN
10 February 2019

Consultation on Delay Attribution in Rail Industry

Dear Sir/Madam,

Thanks you for the opportunity for the West Midlands Rail Executive (WMRE) to comment on the rail industry's Delay Attribution process.

This is not an area with which WMRE have direct involvement, so I will restrict our response to the following observations from a purely external perspective.

1 Understanding the root causes of delays to rail passengers and to, increasingly time sensitive, rail freight customers is key to understanding how performance of the rail industry as a whole might be improved.

2 However, there is a perception that the current Delay Attribution process:

   a. focuses too much on apportioning responsibility for a problem to one party or another within the industry

   b. does not appear to fully support delivery of the ORR's key stated objective of the Schedule 8 performance regime:

      to drive decision-making by both Network Rail and train operators in relation to performance management; for example investment prioritisation and preparation of business cases for performance improvement schemes

3 The Delay Attribution process should ideally focus more on improving the service delivery to the end customer, providing the evidence required to identify key problems and making the joint rail industry case for interventions to address these issues and drive up performance.

4 There is potentially a key role here for passenger representatives such as Transport Focus and devolved, democratically accountable, franchise specifiers such as West Midlands Rail Executive.

   In particular, there is an opportunity to build on existing participation of both Transport Focus and WMRE in Network Rail LNW's new Route Supervisory Boards to drive forward such evidence based solutions to long standing or recurring performance issues.

5 Similarly, the innovative West Midlands "Grand Rail Collaboration" concept which has been jointly developed by WMRE, Network Rail LNW and West Midlands Trains, could also act as a catalyst for a more coordinated, consensual pan-industry approach to using Delay Attribution evidence to drive up performance for passengers and freight customers.

   More details of the emerging "Grand Rail Collaboration" concept are appended to this letter.

West Midlands Rail Executive
16 Summer Lane
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B19 3SD

Thank you once again for the opportunity to comment on this review. Should you have any further questions, on this response please contact us.

Yours sincerely,

Councillor Roger Lawrence
Chair, West Midlands Rail Executive

West Midlands Rail Executive

West Midlands "Grand Rail Collaboration"

February 2019

Context

With a population greater than that of Scotland, the West Midlands is the largest city region economy outside of the capital. In railway terms, the West Midlands is a complex multi-operator environment located at the crossroads of the national network, whilst in the Cross City Line it boasts the busiest rail route outside of the South East. Historically, however, the West Midlands has suffered from being situated on a loop off the (inevitably) higher profile WCML. It has always been thus. As such, it has seldom benefited from the clear focus that it arguably deserves, and there is a perception that when it does it distracts from the WCML.

The context is now different, however. Rail is now, for the first time in history, the dominant mode for Birmingham city centre commuting, and critical to the region's economy. The region also has an ambitious Mayor, and will host the Commonwealth Games in 2022. All this means that there is now a unique opportunity to try something radical and different for the region that brings both track and train together with local government in a *Grand Rail Collaboration* to deliver for passengers in a way that has not been possible before.

The Grand Rail Collaboration Approach

The Rail Review that is currently underway combined with the arrival of a new Chief Executive at Network Rail provides an ideal opportunity to attempt something bold like a Grand Rail Collaboration (GRC). At its very core this involves creating a governance structure that aligns rail industry geographies and incentives into a cohesive form in order to engender a greater sense of collegiate responsibility. Those rail industry geographies would match the local authority structures for the West Midlands "travel to work" area, already established over recent years through the development of the West Midlands Rail Executive.

As an accident of franchising five franchises coalesce on the region, and it is inevitable that in such a complex multi-operator environment there can be a lack of a single guiding mind. This issue rarely manifests itself when the industry is working well, but as soon as the network is placed under strain this vacuum of accountability becomes ever more conspicuous. The GRC has the potential to fill this void, and become a virtual body with collegiate responsibility for delivering the railway for customers.

Attempts to align track and train have made previously, with varying degrees of success. In some cases it has not been possible to achieve a unifying sense of identity and purpose between the teams running track and train because the incentives that influence how each party behaves have not been aligned. In some cases adding a layer of commercial complexity to an already complicated industry commercial structure has defeated the clarity of purpose originally intended.

That previous deep alliances have failed is not wholly surprising given that the industry has been designed around the principle of competition. Addressing and overcoming the challenges facing the West Midlands will require a change of culture to one based on shared rather than mutually exclusive behaviours.

Consequently, the GRC does not seek to align the commercial considerations of each partner, but instead strives to harmonise the outcomes that each are seeking. These shared outcomes would include amongst others creating a more accessible and intuitive network for customers, increased punctuality and reliability, safer trains and stations, greater community participation, more effective and efficient operations and maintenance, and a smarter approach to scheme delivery. Value will also be added through the local authority involvement, ensuring that value for money public transport solutions can be considered in the round, and not just through heavy rail.

The GRC will also take collective responsibility for strategic planning for the region, speaking as one voice to plan and develop the rail network in the region to meet future economic and societal needs.

West Midlands "Grand Rail Collaboration"

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Putting the Grand Rail Collaboration into Action

The concept outlined in this document will require a concerted and determined effort on the part of each partner to the GRC.

Making any change in an industry as complex as rail will require careful planning and execution.

As such, an Implementation Working Group (IWG) is to be established consisting initially of representatives from Network Rail, WMT and WMRE, but to be added to quickly as work streams and thinking develops.

Inaugural members of the IWG are:

- Tina Purkis, Network Rail
- Sarah Higgins, WMT
- Tom Painter, WMRE

Future representation on the group is likely to be drawn from Transport Focus, other TOCs/FOCs, DfT, ORR etc.

The role of the IWG is to take the outline concept and to turn it into a deliverable reality that leads to the creation of a virtual vertically integrated rail delivery and planning body for the region, ready to deliver tangible and demonstrable benefits for passengers and citizens of the West Midlands.

A steering group of LNW RMD, WMT MD and WMRE Executive Director will guide and oversee the work of the IWG. The steering group will meet with the IWG each period during development, mobilisation and transition.

Programme

The creation of the GRC is expected to be announced early in the New Year as part of Andrew Haines' 100 Day Plan. The GRC is to be launched at the commencement of CP6 in April 2019.

IWG should develop a clear programme of activities to deliver the required tasks and organisational changes required to deliver the GRC.

Structure and Governance

The GRC will be led by a Strategic Board with an independent chair (Andy Street for the first 12 months). Beyond that, all governance arrangements are still to be determined.

Wherever possible existing meetings/structures should be adapted to accommodate the GRC rather than inventing new. This will not always be feasible.

West Midlands "Grand Rail Collaboration"

February 2019

The Grand Rail Collaboration has three key areas of focus:

Focus Area	Key Components
Customer Delivery	**Single Network Vision** Customer Experience Brand and identity Cornershop Culture
	Operations and maintenance Delivering a dependable railway Cornershop Culture
Strategic Planning	**Meeting future needs** Network capacity Timetable planning Future network development Making the case for investment
People and Change	**Culture and Behaviours** Mechanism to secure bottom up involvement Organisational change Governance Staff engagement, rewards and incentives Brand and identity Approach to strategic communications – Establish how we get the message about the GRC out to staff, industry, passengers, public

The Key Requirements for the Grand Rail Collaboration are:

- The creation of a Strategic Board, with clear ToR
- A West Midlands O&M business unit within LNW led by an Area Director. To include:
    - Boundaries nominally at Leamington, Rugby, Worcester and Stafford (whilst being pragmatic to ensure unnecessary inefficiencies are avoided)
    - The separation of Banbury DU from Saltley to allow the later to focus solely on the West Midlands
    - The transfer of New Street station to the Area Director, West Midlands
- The development of governance structures for each of the key focus areas outlined in the table above that:
    - Encourage buy-in and ownership at all levels – focussed on delivering shared outcomes
    - Take full advantage of the collaborative intent of the GRC
    - Where possible adapt existing arrangements
    - Are explicit that they are part of the GRC and are branded as such
    - Include clear ToR
- The development of a formal alliance agreement or similar
- The development and alignment of key incentives (existing such as performance, asset maintenance, customer delivery, value for money delivery of committed enhancements, and new, such as customer advocacy)
- The development of an approach to staff engagement that seeks to allow all GRC members of staff to share in the success of the collaborative partnership
- Consider how the existing WMT/Network Rail alliance arrangement will need to adapt to take account of the GRC (focus solely on West Coast?)

There is a need to find balance in activities such as possession planning that is suitable to the requirements of long distance, local and freight users of the GRC network, and to balance needs of local people making local journeys against local people making long distance journeys that take them out of the GRC geography.

Whilst this might seem obvious, with protection already provided by existing industry structures, such concerns are likely to be voiced by longer-distance operators.

The list above is far from exhaustive. The IWG will inevitably identify a myriad of other matters that will require attention if that ambition of the GRC is to be fully realised.

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Scope of the Grand Rail Collaboration

Areas of activity for the GRC to include (but not limited to):

- The development of a clear sense of identity for the GRC and the rail network in the region that all members can feel part of (recognising that for some TOCs this will be more difficult to achieve) based on the West Midlands Railway identity
- Operations and maintenance delivery
- The development of a shared outcomes scorecard
- New fleet introduction
- West Midlands Stations Alliance
- Timetable change readiness
- The management of New Street station
- Introduction of new services and new stations
- Development of new rolling stock concepts
- Strategic planning for the region e.g. own the long term rail investment strategy
- Act as a test bed for new approaches to project delivery/governance
- Rail programme delivery
- Access and inclusion strategy
- Opportunities for employees to share in the success of the GRC
- 'Cornershop culture' of performance improvement and customer delivery – recreating local rail industry communities of train service delivery across track and train
- Implementation of the West Midlands Single Network Vision
- Encourage maintenance of all railway assets - as graffiti and uncontrolled vegetation creates the impression that the railway is poorly maintained, even if it is not
- Land use planning – being radical with space - e.g. redeveloping car parks as residential accommodation with hypothecation of gains to reinvest in the network, reduce congestion, bring people to rail etc.
- Create shared mechanisms for customer feedback
- Transport integration

Proposed Grand Rail Collaboration Membership

The following organisations are anticipated to become members of GRC to varying degrees:

- Network Rail LNW
- West Midlands Trains
- Virgin Trains
- Chiltern Railways
- Cross Country Trains
- FOC representative
- Transport Focus
- West Midlands Rail Executive
- DfT
- ORR

A stakeholder mapping exercise will be required to ensure that all organisations who will be impacted by the creation of the GRC are engaged with.

Risks Management

The IWG should develop a master risk register. Some risks that will need to be considered and mitigated where appropriate include:

- Unable to gain DfT support to amend TOC Franchise Agreements
- Unable to gain ORR support to amend regulatory outputs for LNW
- Technical challenges to aligning Network Rail's operations and maintenance geographies lead to a dilution of GRC potential benefits
- Costs associated with setting up and running the GRC; neither TOCs nor NR will necessarily have budgeted for this
- Lack of appetite amongst TOCs to participate, especially those more peripheral to the geography
- Has never been done before, which means there are a number of unknowns
- Pace and willingness to change at senior level not being replicated as you get deeper into each of the partner organisations
- Trade Union policy/activity

This list is not intended to be in any way exhaustive.

Martin Frobisher, Managing Director, Network Rail LNW

Jan Chaudhry-van der Velde, Managing Director, West Midlands Trains

Malcolm Holmes, Executive Director, West Midlands Rail Executive

December 2018