

# Appendix A – Marked up copy of extracts from Part B of the CVL Network Code and the CVL Access Dispute Resolution Rules in Annex to the CVL Network Code

## Changes to Part B - Performance Monitoring

### Condition B2 - DIAGNOSIS OF DELAYS OR CANCELLATIONS

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

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

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

##### 2.3.2 *Consideration by a Train Operator*

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

##### 2.3.3 *Agreement of delay attribution*

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

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

### 2.4.1 *Procedure for conducting further investigation*

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

### 2.4.2 *Referral for review*

If agreement has not been reached within the two Working Days referred to in Condition B2.4.1, the matter shall then, notwithstanding Condition B2.4.3 (b) become subject to a referred for period of review, of no more than 20 working days by the designated senior manager appointed by the Train Operator and the designated senior manager appointed by the CVL IM for the purposes of this Condition B2.4.2.

### 2.4.3 *Referral for further guidance or resolution*

If the CVL IM and the Train Operator are unable to agree on the attribution, within:

(a) The further 20 Working Days of the matter being referred for review by the designated senior managers in accordance with pursuant to Condition B2.4.2;

(b) Such longer period as the CVL IM and the Train Operator have agreed, within the same further 20 Working Days in order to continue and conclude the designated senior reviewing managers review.

then either or both parties involved in a dispute may notify the Board Secretary (by any electronic communication method made available by the Board Secretary for such purposes) of their wish to seek guidance from the Board, on the appropriate application of the Delay Attribution Principles and Rules or on any other relevant matter.

### 2.4.4 Provision of information

(a) Both the CVL IM and the Train Operator (or, in the case of a single request, the party requesting guidance from the Board) shall provide

copies of completed request for guidance forms in connection with their dispute to the Board Secretary in order for their views to be considered 56 days after the Board Secretary confirms to both parties acknowledgement of a request for guidance.

(b) Both parties shall make reasonable efforts to attend, or be represented at, the Board meeting where the guidance request will be considered, providing such meeting is no less than 35 days after date in 2.4.4(a).

~~, the CVL IM and the Train Operator are unable to agree on the attribution, they shall seek guidance from the Board, or from any sub-committee that the Board has designated for this purpose, on the appropriate application of the Delay Attribution Principles and Rules or on any other relevant matter.~~

#### 2.4.5 Guidance from the Board

(a) When submitting a request for guidance, parties should be aware that the Board can:

i. Provide clarification on attribution principles that are not explicitly documented in the DAPR Delay Attribution Principles and Rules or associated guidance documents and/or have potentially been misinterpreted.

ii. Provide guidance on the correct Delay Code and/or Responsible Manager Code (terms defined in the Delay Attribution Principles and Rules Sections B5 and B6) to use in connection with an incident based on the above.

(b) When submitting a request for guidance, parties should be aware that the Board cannot:

i. Carry out investigations into the facts of an incident on behalf of the disputing parties.

ii. Provide technical insight into the causes behind a fleet or infrastructure asset failure.

(c) In the event that the Board cannot, will not, or does not provide guidance on all matters submitted for its consideration in relation to a specific enquiry, it will provide enquiring parties with a written explanation on the reasons for this.

(d) If, within 10 Working Days of guidance or a written explanation in accordance with this Condition 2.4.5 (c), being received from the Board or any designated sub-committee pursuant to Condition B2.4.3, the CVL IM and the Train Operator are unable to agree on

the attribution, ~~either or both~~ they shall refer the matter for determination in accordance with the CVL ADRR.

~~2.4.4~~

~~2.4.5~~ 2.4.6 Precedence

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

## **Consequential change to the CVL Access Dispute Resolution Rules in Annex to the CVL Network Code**

### **Rule B6**

- 6 All disputes referred to resolution in accordance with these Rules under Condition B2.4.~~4~~5 of the CVL Network Code shall be referred to an ADA in accordance with Chapter G as a single stage dispute resolution process with no appeal. Following service of a Notice of Dispute relating to such a dispute an ADA shall commence and the Secretary shall appoint a Hearing Chair for the dispute in accordance with Rule G8. If either party raises any objection then the Hearing Chair shall consider the best way to proceed.