

John Larkinson
Chief Executive

15 January 2019

Dear Stakeholders,

Delay Attribution Review

Introduction

1. The purpose of this letter is to invite your input into the review of delay attribution, which ORR is about to begin.
2. Delay attribution is the process by which the reasons for delays to train services are determined – both the ‘what’ and the ‘who’. It plays an important role in understanding performance, while its outputs underpin the Schedule 8 performance compensation regime¹. ORR is therefore keen to ensure that the delay attribution process is fit for purpose and that it provides the right information and incentives to industry.
3. The scoping stage of the review will run until June 2019 and we are seeking views from stakeholders between now and the end of March 2019. We will be holding a stakeholder event on 19 February 2019. If you would like to attend this event, please register via this [link](#) by 12 February 2019.

Why are we carrying out a review of delay attribution now?

4. As part of the 2018 periodic review (PR18) consultation process, we proposed to base future Schedule 8 compensation payments on delay minutes caused by one operator on another (known as ‘TOC-on-TOC’ delay), in place of the current proxy measure – the delay that an operator causes to its own trains (known as ‘TOC-on-self’ delay).

¹ Schedule 8 in train operators’ track access contracts is a performance regime that involves payments to and from operators and Network Rail depending on the amount of delay they cause. There are separate performance regimes for passenger, freight and charter operators, reflecting the differing nature of the services operated.

5. In direct response to this proposal and at other stages of PR18, a number of stakeholders expressed a lack of confidence in the delay attribution process. The issues raised ranged from issues with specific delay attribution rules, to more fundamental concerns over the effectiveness of governance arrangements and dispute resolution mechanisms. Stakeholders also expressed concerns that the delay attribution process consumes a significant proportion of industry resources. Some suggested that our proposed Schedule 8 change would increase the cost and complexity of the process further, and hinder effective collaborative working within industry.
6. In part due to these arguments, we decided not to implement our Schedule 8 proposal in control period 6 (CP6). However, we noted that this decision would provide time to review the effectiveness of the delay attribution process more generally and for any improvements to be implemented to the delay attribution process ahead of the next periodic review². In the PR18 final determination, we confirmed that we would consult on issues and areas for improvement in delay attribution in early 2019.

What form will the review take?

7. We envisage that the review will be split into three stages: a scoping stage; a development/problem solving stage; and an implementation stage.
8. The purpose of the scoping stage is to: articulate objectives; establish facts; clarify issues; identify priority areas for improvement; and suggest potential courses of action. This scoping stage will be led by ORR and will conclude with the publication of recommendations in June 2019. In addition to written responses to this letter and discussions with stakeholders, our recommendations will take into account any outputs from the Williams review that arise in the intervening period.
9. Delay attribution is conducted and governed by industry, and we expect that industry will continue to have a key role in the process whatever the outcome of the review. Nonetheless, as an independent body with a strong interest in ensuring that industry faces the right incentives, ORR is well-placed to identify issues and suggest areas for improvement.

² *Charges and contractual incentives – consultation conclusions*, Office of Rail and Road, September 2017. This may be accessed [here](#).

10. The precise timing and approach of the subsequent stages will be agreed with stakeholders in due course, though we expect there will be a significant role for industry in taking that work forward. In the PR18 final determination³, we indicated that we would look to assemble a working group of representatives from across industry to lead the development, assessment, and implementation of detailed options.

What is the scope of the review?

11. We propose to structure the review around the following three themes:
 - governance structures, including around delay attribution systems, principles and rules, and dispute resolution powers and procedures;
 - principles and rules of delay attribution; and
 - processes, systems and ways of working.
12. As set out in the PR18 final determination, potential reforms to the functioning of the Schedule 8 compensation regime are out-of-scope and will instead be considered as part of the periodic review process. However, any relevant information that surfaces as part of the present work will be taken into account during PR23.

What are we seeking views on?

13. We would like to understand how well the delay attribution process meets different stakeholders' needs, what works well and what needs improvement. Annex 2 includes a list of questions we would like to explore and we also encourage stakeholders to provide any other information that is considered to be relevant. Please feel free to provide practical examples of issues and potential solutions where appropriate.

Responding to this letter

14. If you would like to submit a written response to this letter please send it to Orr.Delayattributionreview@orr.gov.uk by 29 March 2019. For our policy on publication and next steps please see Annex 1.

³ 2018 periodic review final determination – Overview of approach and decisions, Office of Rail and Road, October 2018. This may be accessed [here](#).



15. If you feel that a face-to-face meeting would be a more effective way to respond, or indeed if you would like to discuss your views before submitting a written response, then please get in touch with the review team (Orr.Delayattributionreview@orr.gov.uk).
16. We will also be holding a stakeholder event on the 19 February 2019 at our London office. This will be an opportunity for a more interactive discussion that we will use to identify and understand key common issues. We will (cont.) provide an agenda and further information closer to the date. If you would like to attend this event, please register through this [link](#) by 12 February 2019.

Yours faithfully,

John Larkinson



Annex 1 – How to respond to this letter, our policy on publication and next steps

17. Please submit any written responses by 29 March 2019 to Orr.Delayattributionreview@orr.gov.uk, identifying yourself and the capacity in which you are responding.
18. See Annex 2 for a list questions we would like to get stakeholder views on for our consultation. However, please feel free to provide any other evidence that you consider to be relevant bearing in mind that the purpose of the scoping stage of the review is to establish facts, clarify issues, identify priority areas for improvement, and suggest potential courses of action.
19. We will use your responses to help us develop recommendations for improvements, which we will publish in June 2019.
20. We plan to publish all responses to this letter on our website. This may include your personal data such as your name and job title.
21. Should you wish any information that you provide, including personal data, to be treated as confidential, please be aware that this may be subject to publication, or release to other parties or to disclosure, in accordance with the access to information regimes. These regimes are primarily the Freedom of Information Act 2000 (FOIA), the General Data Protection Regulation (GDPR,) the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004.
22. Under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, if you are seeking confidentiality for information you are providing, please explain why. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on ORR.
23. If you are seeking to make a response in confidence, we would also be grateful if you would annex any confidential information, or provide a non-confidential summary, so that we can publish the non-confidential aspects of your response.
24. Any personal data you provide to us will be used for the purposes of this consultation and will be handled in accordance with our [privacy notice](#) which sets out how we comply with the General Data Protection Regulation and Data Protection Act 2018.

Consent

25. In responding to this consultation you consent to us:
- handling your personal data for the purposes of this consultation; and
 - publishing your response on our website (unless you have indicated to us that you wish for your response to be treated as confidential as set out above.)
26. Your consent to either of the above can be withdrawn at any time. Further information about how we handle your personal data and your rights is set out in our [privacy notice](#).

Format of responses

27. So that we are able to apply web standards to content on our website, we would prefer that you email us your response either in Microsoft Word format or OpenDocument Text (.odt) format.
28. If you do send us a PDF document, please:
- create it from the electronic Word file (preferably using Adobe Acrobat), as opposed to an image scan, where possible; and
 - ensure that the PDF's security method is set to no security in the document properties.

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?
- Do you 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?
- To what extent does delay attribution help support improved performance?
- What requirements should an effective delay attribution framework meet?

Resources

- 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

- 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

- 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?
- What aspects of the delay attribution framework would most benefit from improvement? How do you feel improvements could best be achieved?
- Are there any aspects of the delay attribution framework that create perverse incentives?



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?