



OFFICE OF RAIL REGULATION

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Dear insurance manager

Third party liability insurance

We are writing to all operators who have a licence obligation to maintain third party liability insurance (TPLI) approved by ORR. Last year we checked how people were complying with these obligations. We identified several problem areas where some operators were not following the general approval as closely as they should. I enclose a list of these problems to help you avoid them when your policies are next renewed.

Background

It is a condition of your licences¹ that you maintain TPLI on terms approved by ORR. We used to check every TPLI policy in detail at least once a year. In 2007 we set up a simpler, streamlined system where brokers send us a letter confirming the TPLI they have arranged complies with a general approval we have issued². We think that this new system works well. We have no plans to change it.

However, the process is not working as smoothly as it should. We have identified several areas where intervention was needed that should not have been. This took a lot of effort by us, you, your brokers and insurers to resolve. The most common problems are set out in our list.

Please make sure you and your brokers take note of these when next checking that your TPLI is compliant with the general approval. (Although if we have contacted you already about specific problems, please fix those on whatever timescales we have agreed with you).

Your TPLI obligations are important and it is your responsibility to make sure that you comply. Failure to do so could result in enforcement action³. Insurance brokers conducting business from an establishment in the UK are also regulated by the Financial Services

¹ And statements of national regulatory provisions and some licence exemptions
² http://www.rail-reg.gov.uk/upload/pdf/3rdptyins_genapp-230207.pdf
³ <http://www.rail-reg.gov.uk/server/show/nav.1362>



INVESTOR IN PEOPLE

Authority (FSA). We have discussed our concerns with the FSA. The FSA has certain principles for businesses that brokers must adhere to⁴. These include:

- Principle 1 - Integrity: a firm must conduct its business with integrity.
- Principle 2 - Skill, care and diligence: a firm must conduct its business with due skill, care and diligence.

Other FSA rules may also apply. It is obviously important that your brokers check your TPLI cover complies with our general approval properly, before submitting a broker's letter to us confirming this is the case.

There is a facility for an operator's TPLI to be different to that set out in the general approval. This is known as a 'variation' and is explained in our licensing guidance⁵.

ORR contact

If you have any questions about this letter please call my colleague Mute Mowoe (020 7282 2148) or email networkregulation.enquiries@orr.gsi.gov.uk.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Gordon Herbert', written in a cursive style.

Gordon Herbert

Copied to insurance brokers

⁴ <http://fsahandbook.info/FSA/html/handbook/PRIN/2/1>

⁵ <http://www.rail-reg.gov.uk/upload/pdf/406.pdf>

Problems to avoid in complying with ORR's insurance general approval

- If we ask you or your broker to supply us with policy documentation or other information you should do so without delay (4c). We should never have to wait more than 30 days to see full policy documentation.
- If we ask you to change policy wording to make it compliant with the general approval then please do so. Under the general approval we can ask you to modify your arrangements (4d). Compliance with the general approval is not optional.
- The cancellation clauses must contain provision for ORR to be given 30 days' notice by the insurer of any lapse, cancellation or material change to the policy. Policy wording should refer to all these eventualities and, for example, not miss out 'lapses'.
- It is the insurer who must be responsible for notifying ORR of any such changes and not the broker or operator (although they may also do this).
- Cancellation clauses should not normally override the 30 day notification period. But it is acceptable to have a clause allowing an operator to change TPLI cover within that 30 day period because of an insurer's fall in a credit rating or security, if adequate insurance is maintained throughout and ORR is informed.
- TPLI must apply at all times that operations are undertaken and wording should not imply that this is not the case (3k).
- Policies must be clear that any exclusions of damage to property in the care, custody and control of the operator shall not apply to accompanied personal luggage (3c). This is not necessarily required for operators that do not carry passengers, for example, freight companies and light maintenance depot operators. But it is required for station and passenger train operators.
- TPLI cover must be on an occurrence basis and must include all relevant elements of that cover (3d).
- Cover must be arranged on a costs exclusive basis (3e).
- Where an aggregate limit of indemnity applies, for example for products and pollution, there must be wording for this limit to be reinstated at least once (3b).
- The policy must provide cover for any difference between its contractors' or sub contractors' cover and that required under the general approval (3g). [This is even if you do not normally employ contractors, as we have no guarantee that will always be the case, although it may still be relevant to your contractual discussions with insurers.]

- Policies should cover all your potential services. It should not be restricted to specified routes unless activities are so restricted by your licence.
- Policy schedules should include the primary and all excess layers up to the minimum limit required (3a).
- Please check that your policies are complete and have been proof read for errors and omissions. Please also avoid ambiguous wording. Clauses should not be confusing, for example when dealing with the different layers.
- If your policies are not written in English, please make sure that English translations are available.
- Please check you have included any endorsements from previous years' policies that are still needed.
- ORR's contact address is: One Kemble Street, London, WC2B 4AN or email networkregulation.enquiries@orr.gsi.gov.uk. Please do not refer to the SRA, IRR or the Office of the Rail Regulator in your insurance policies.
- The broker letter should only refer to licensed or exempted operator(s) with a TPLI obligation. Please do not include other company names covered by the policy if they do not have a TPLI obligation enforced by us. Please check the company number(s) carefully and make sure updated policy numbers are entered on broker letters when required.