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Dear Andrew Kelly,

Consultation - Applying the Consumer Rights Act 2015 to the rail, aviation and maritime sectors

The ORR welcomes the opportunity to respond to the Department's consultation on the application of the Consumer Rights Act 2015 (CRA) to the rail, aviation and maritime sectors. In particular, the proposal to exempt EU licensed rail passenger services from sections 57(3) and 57(4)(a) of the CRA in the event of disruption, so that they may conclude contracts with passengers that limit their liability to the levels set out in the sector specific arrangements.

As the independent safety and economic regulator for the railways and a designated enforcer of consumer law, the ORR has an interest in ensuring that rail passengers are treated fairly and they, and tax payers, get good value for money.

Our answers to the rail specific consultation questions are below, but these should be read in the context of the following general statement which sets out the understanding on which these are based.

General statement

We support the Government's policy on consumer rights namely that consumers need to have confidence that they can get things put right if something goes wrong. We also agree that UK consumer law, including the consumer rights set up in specific sectors such as transport, should be clear, simple and effectively enforced, to help consumers have confidence in the services they use.

We are not persuaded that exempting railways from the scope of the CRA is the only way in which those policy principles can be achieved, particularly given inadequacies in the existing system - by which we mean the poor level of awareness and take up of compensation terms currently available.

As in some other regulated sectors, rail has its own specific arrangements to compensate consumers alongside those provided in general consumer law. We do not see why the existence of these parallel arrangements in rail is necessarily any more complex than in other sectors or more complex than having two parallel sets of rail specific arrangements, as is the case at present. Indeed, we believe that

this complexity can be addressed by improving the information that train companies and others provide to passengers.

Our research has shown that the extent to which rail passengers exercise their rights is limited by their lack of awareness about what they are entitled to, as well as other barriers, such as the process of making a claim and we are currently looking at train companies' websites to see how train operators guide those seeking compensation through the process. We will be writing to train companies shortly to set out our findings, including identifying areas where we think improvements need to be made. Through our work on passenger information during disruption, we are also seeking to improve the information that is provided at stations and on-board trains when services are disrupted.

While these sector specific rights and arrangements bring the key benefits of:

- certainty and consistency (in the sense that each set of arrangements sets out when it applies and what the passenger is entitled to, rather than consistency between the two types of arrangement); and
- in the case of delay repay, access to compensation in circumstances where the supplier is not at fault;

lack of awareness may have resulted in significant detriment to the consumer measured by way of compensation unclaimed.

In addition, it is our understanding that, while exempting compensation for delays from the relevant provisions of the CRA might not affect the status quo, it would mean that the new rights conferred by the CRA would not extend to rail passengers in the same way as to consumers in other sectors, in two important ways:

- 1) in some cases, train companies will be able to limit the compensation they pay to passengers to less than the price they paid for their ticket; and
- 2) train companies will also be able to exclude their liability for compensation for delays beyond the price of the ticket, so that passengers will not be able to claim additional damages.

Consultation questions

Q.1 Do you agree that the existing schemes should continue to apply to the EU licensed rail sector? Please provide evidence to support your views. If you do not agree, please give reasons.

As noted above, the existing schemes do provide some benefits, although information provision needs to improve considerably to ensure that passengers are in a position to exercise their rights accordingly.

Q.2 Do you agree that sections 57(3) and 57(4)(a) should not apply to the EU licensed rail sector? Please provide evidence to support your views. If you do not agree, please give reasons.

It seems to us that the question of whether section 57(3) and 57(4)(a) should apply to the EU licensed rail sector is to some extent dependent on the impact of granting, or not, the exemption and we have therefore combined our answer to this question with our answer to question 3 below.

Q.3 Do you agree with our assessment of the likely impacts on EU licensed rail passenger operators if the exemption was not granted? If you do not agree, please give reasons. Are there any other impacts that are not referred to?

It is our understanding that the effect of disapplying sections 57(3) and 57(4)(a) to the providers of EU licensed rail passenger services in respect of their liability for delays and cancellations would be that passengers who experience delays to their journey as a result of the service provider failing to provide the service with reasonable care and skill would be limited to compensation under the industry specific delay compensation schemes.

This would mean that, in some cases, the compensation they receive for a delay would be less than the price they paid for the service and that they would not be able to claim compensation for other damages arising from the delay. While this would essentially maintain the status quo for passengers, given the existing sector specific arrangements and the exclusion of liability set out in the NRCoC, it would mean

that in some circumstances, rail passengers would not enjoy the rights conferred by the CRA on consumers in other sectors.

We also note that the compensation arrangements in the NRCoC are not mandated and are therefore subject to change by the train companies.

In addition, we also question what impact the exemption will have on season ticket holders, for example, where they are subject to sustained period of delays caused by the failure of a train company to provide the service with reasonable care and skill but these delays are below the relevant time threshold in the industry specific arrangements? Will they be able to claim compensation under the CRA or will they be covered by the exemption, even though they would not qualify for compensation under the industry arrangements?

According to the consultation document, the Government considers that the impact of applying the relevant section of the CRA to EU licensed operators would unbalance the current arrangements and impose disproportionate costs on the rail industry, in the form of increases in the amount of compensation payable to some passengers, as well as additional legal and administrative costs. Furthermore, any increase in costs is likely to be passed on to passengers through increased fares, or to taxpayers through reduced bid premiums.

The consultation document also cites the potential for unnecessary complexity and duplication, which could result in confusion for passengers, absent the exemption.

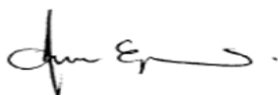
We recognise these arguments, particularly as regards the impact on funders, but make the following observations:

- Costs – it is not clear from the consultation why costs would be any more an issue than in other sectors or why increased compensation payments would lead to higher fares. With regard to legal costs, absent the exemption, any potential increase in costs due to legal proceedings as a result of passengers seeking to assert their rights could possibly be mitigated by train companies submitting to a process of alternative dispute resolution;
- Complexity – for the reasons explained above, we do not see why passengers would be any more or less confused than they are at present. In addition, we note that it is not the intention to exclude other aspects of the services provided by train companies, such as the provision of wifi and first class accommodation. Passengers will still, therefore, need to be conversant with the CRA provisions with regard to such services; and
- the proposal to exempt EU licensed rail passenger would catch both franchised operators and open access operators. It is not clear from the consultation that the arguments that support the proposal apply equally to both types of operator. Although nor is it clear what the impact of treating them differently might be.

Q.4 What is your estimate of the costs that might fall on EU licensed rail passengers operators if the exemption was not granted? Please provide clear reasoning on the assumptions and methodology used.

Given the time available, we have not considered this question, due in part to lack of published data on train companies' delay compensation schemes.

Yours sincerely,



Annette Egginton
Head of Competition and Consumer Policy