

Ms S McClelland – Hodgson / Mr G Taylor
Economic enforcement review project
Operations and Network Regulation
Railway Planning and Performance
Office of Rail Regulation
One Kemble Street,
London, W2B 4AN

Our Ref:
Your Ref:

6th February 2015

Dear Samantha and Gary,

Economic enforcement policy and penalties review : consultation on options for improvement

Thank you for the opportunity to comment on this.

In general terms, we feel that the current regime does not recognise the need to compensate passengers effectively and promptly in the event of disruption to the network and to their journeys. There is also limited visibility of the ORR's activities in early intervention when things go wrong, both to us as a statutory passenger watchdog and to the public.

The answers to your specific questions are as below:-

Question 1

Do you agree with ORR's view that it should continue to have one economic licence enforcement policy and penalties statement which covers all licence holders?

Yes, we agree that there should continue to be one economic licence enforcement policy and penalties statement.

Question 2

Do you agree ORR should be more transparent in highlighting issues and its activities in taking early intervention; for example publishing more of our intervention correspondence and associated documents? Including more information on which we make our judgement

Yes, we agree that the ORR should be more transparent in this area on its activities, but also on how other bodies such as ourselves can bring to the ORR's attention issues that we feel should merit early intervention. A recent example of this being the difficulties being experienced by the GTR Thameslink franchise, on which we made representations to the ORR in mid-December 2014. We felt that the initial response of the ORR did not reflect the seriousness of the situation as it was affecting passengers at the time, and that the role of the ORR was limited to the period when the problem had been resolved. This can mean that the ORR's intervention is not necessarily in a timely fashion for passengers, to benefit from their activity.

Question 3

What kinds of activities, (such as those discussed in this chapter) would better incentivise the industry and licence holder to raise issues and resolve these before formal enforcement was needed?

Requiring the use of automatic and timely recompense to passengers would be a significant incentive on Network Rail and rail operators to resolve situations when services are severely disrupted. The public perception is that Network Rail compensates train operators, but only a small proportion of that reparation is then passed on to passengers through mechanism's such as 'delay repay'. However, 'delay repay' can be a cumbersome bureaucratic process for passengers, and in the case of regular delays of less than 30 minutes but on frequently recurring basis (as has been the case recently on Thameslink, Southern and Southeastern), and where passengers are using Oyster / contactless tickets, we would advocate the use of automatic reimbursement through the Oyster / contactless system as practised by Transport for London (TfL) when their services experience similar situations. Please see the following press release from London TravelWatch:-

<http://www.londontravelwatch.org.uk/news/view?id=512&x%5B0%5D=news/list>

Question 4

Is the seriousness of breach table in the policy statement helpful to licence holders and wider stakeholders?

Question 5

Do you think the seriousness categories in the penalties statement remain appropriate?

Yes to both questions, but it should include reference to the impact on passengers (and freight users) as a result of a breach in the licence, both in terms of value (railway revenue), numbers of people affected and a wider societal or economic impact

Question 6

Would raising ORR's percentage of turnover starting point (beyond the percentages shown in the current penalty statement) for determining penalty amounts under its seriousness levels act as a stronger deterrent to future non-compliance?

No, if anything the percentage of turnover starting point should be lowered.

Question 7

Do you support the general revisions proposed to the penalties statement to ensure it covers all licence holders?

Yes

Question 8

Do you have any other general comments on the penalties statement?

Yes, see above answers to questions four and five.

Question 9

Do you agree that licensees should be encouraged to make early admissions and to provide public apologies?

Yes, because passenger trust in the industry is very low, and the adversarial / contractual nature of the industry makes it very easy for operators and Network Rail to default to a defensive mode of operation that is not open or transparent to passengers or other stakeholders. This is not helpful in resolving immediate issues, and gives the impression that the industry is not seen to care for its users.

Question 10

Do you agree ORR should revise its enforcement processes to enable offers of reparations to be considered in each of the following circumstances on a flexible basis depending on the circumstances of the case?

- a) Early in the investigation process where a licence holder provides an admission, apology and suitable offers of reparations;
- b) Before considering a penalty; and,
- c) As a mitigating factor once it has been decided that a penalty is appropriate and the level of penalty is being set?

Yes, flexibility of reparations would be helpful in all these cases, and must include the ability to give compensation directly to passengers in a timely and meaningful way. This could for example include dealing with the issue of consequential loss, which is normally outside of current compensation arrangements as defined by the National Rail Conditions of Carriage. This is particular issue on rail routes serving airports, and in our recent report on 'Improving public transport access to London's airports'

http://www.londontravelwatch.org.uk/documents/get_job?id=3894&field=file we recommended that public transport operators should work with the airlines to reduce the financial impact on passengers when they suffer unforeseen delays and miss their flight or onward connection.

Question 11

Do you agree that ORR's enforcement policy and penalties statement should incentivise non-compliant licence holders to offer early admission and offers of reparations by stating that the absence of such offers will be considered when:

- a) deciding whether a financial penalty is appropriate; and
- b) identifying factors informing the level of any penalty.

Yes, these should be incentivised. Early admission and payment to affected passengers should be recognised.

Question 12

Do you agree ORR should revise its enforcement policy and processes to reflect a more effective use of provisional and final orders, in particular, to enable ORR to be more proactive and forward looking?

Yes, these should be revised, although the use of taskforces etc, must not be used as an excuse to defer action being taken to implement a direct remedy where this is known at the outset.

Question 13

Do you have any general comments on how ORR can improve the format and style of our current published policy document to make it a more practical reference document?

No further comment

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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