

20 June 2011

Abigail Grenfell,
Manager, Licensing and Network Regulation,
ORR
One Kemble Street,
London,
WC2B 4AN

Dear Abigail,

Response by The Chiltern Railway Company Ltd to ORR consultation on proposed changes to Passenger Train Operators' Licences in relation to passenger information

This response is by The Chiltern Railway Company Ltd, part of the Arriva UK Trains group of companies, to the proposals set out in the consultation dated 29 March 2011.

Whilst we regard providing information to passengers that is as timely and accurate as is reasonably practical as an important objective, I regret to inform you that we are unable to accept the current proposals as agreed changes to our licence for reasons set out below. We recognise that ORR may choose to pursue this matter by reference to the Competition Commission and if so we reserve our right to expand upon the arguments herein. We would, however, strongly recommend further cross-industry dialogue, as proposed in the joint response by ATOC to this consultation, is actually the preferred way forward.

We agree with the statement that the current position is complicated. Indeed in our view it is probably even more complicated than ORR's analysis suggests. In particular we believe insufficient attention has been placed on two crucial aspects of the problem:

1. That on many occasions during disruption it is not a lack of will or effective processes that prevents accurate information being disseminated, but a genuine lack of knowledge of what will happen next (for example just how long it will take to find and replace a stolen or vandalised signal cable).
2. That systems and responsibilities are split between industry players with different funding and incentive structures.

The licence route does not offer a solution to either of these problems. Indeed it could make the situation worse by incentivising risk-averse behaviour such as announcing and sticking to service shutdowns in order to make information accurate, rather than running what proves possible.



Chiltern Railways

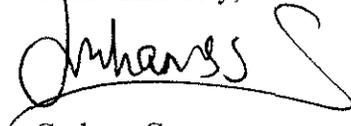
The debate on industry structural issues and costs stimulated by the McNulty Report may offer an opportunity to clarify roles in the future and indicate migration routes to new and more effective systems. However, these will take time to identify and implement. Until these future arrangements are clear, we consider it premature to introduce new obligations, the fulfilment of which is problematic under current structures.

We note the consultation document identifies four options for improving information provision, one of which is to allow the industry to continue its current improvement process. We consider this process should be permitted to continue and do not see any evidence presented that this will not produce improvement. Indeed we note that the consultation document states "We think the current codes of practice and industry improvement plans are adequate but they should be made more visible to passengers and may need revision over time", a statement that does not suggest a strong case for additional regulation.

We do not accept the proposition contained in para. 35 that the proposals will not place a greater regulatory burden on licence holders. We consider the whole tone of the consultation document is clear that new obligations are exactly that which is intended, and we note that unhelpful statements have been made indicating the scale of potential future enforcement action. Our business is operated under a Franchise Agreement awarded competitively against requirements of the (then) Strategic Rail Authority and the licencing framework as it existed at that time. The SRA could have chosen to, but did not, specify in its ITT improvements in passenger information of the type now sought through this licencing proposal. We consider these proposals introduce new and potentially costly obligations that were unknown and unforeseeable at the point our franchise was tendered, for which there is little commercial benefit, but for which there is a risk of substantial enforcement costs.

Given that there is no mechanism to permit franchise payments to be adjusted to take account of new licence obligations, we cannot accept these proposals as an agreed change and would regard any attempt to impose them as being a significant breach of ORR's duty to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance. The suggestion in paragraph 34 that the proposals will help with this particular duty is actually quite contrary to the position as we see it. Furthermore, we are disappointed to note that the proposed changes to Network Rail's licence are subject to the general disclaimer regarding the ability of the licence holder to finance its licensed activities, whereas no such protection is available to TOCs. Since, as indicated earlier, most improvements to information are likely to require joint action of TOCs and Network Rail, we consider this leaves us unacceptably at risk rather than better able to plan our business. We would be pleased to continue with joint industry efforts to improve the quality of information provided to customers, and welcome ORR's active involvement in finding best value solutions, but have concerns that the proposal expands regulation in a way which exposes us to greater financial risk.

Yours sincerely,



Graham Cross
Business Development Director