



Rail Executive

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Dear Samantha,

Rail Executive Response to Review of ORR's Economic Enforcement Policy and Penalties Statement

Thank you for the opportunity to respond to this consultation. We are grateful to ORR for allowing the Department more time to submit its response to the consultation.

We welcome your proactive approach to reviewing ORR's economic enforcement policy and penalties statement, and support the sharing of relevant best practice with other regulators.

The Department's view is that the regulator's use of statutory enforcement powers should be regarded as the ultimate sanction, normally used as a last resort and with formal enforcement providing a genuine deterrent against non-compliance. The vast majority of good performance outcomes should be the result of effective monitoring and engagement with licence holders. The Department wishes to stress the importance of performance outcomes for rail users and wishes ORR to put the end user at the heart of its thinking. This may, however, require a careful balance to be struck between managing customers' expectations of performance and the enforcement regime and the industry's incentive to invest in, for example, major network upgrades that will often inevitably involve a degree of disruption.

We note that ORR is mindful of the potential implications of the reclassification of Network Rail to the public sector. The Department believes that this is a significant issue and would welcome the opportunity to discuss it in more detail with ORR.

More generally, the Department is disappointed that, while ORR's consultation document refers to the regulator's other enforcement powers – competition and health and safety – it does not refer to its consumer enforcement powers or policy. The Department would like to understand how ORR sees its economic enforcement powers interacting with its powers to enforce consumer law.

Our comments on the specific consultation questions asked are below.

Question 1: On whether ORR should continue to have one economic licence enforcement policy and penalties statement which covers all licence holders, we would like to explore the options further with ORR, particularly in the light of the reclassification of Network Rail.

Questions 2 and 3: On whether ORR should be more transparent in highlighting issues and its activities in taking early intervention, we are supportive of this in line with pursuing openness and transparency generally, but would be keen to understand more about how ORR plans to use this approach to secure compliance and assess its effectiveness.

Questions 4-7: We would like to consider further with ORR the role of penalties when the enforcement regime is applied to publicly funded licence holders. We agree with the principle that penalties should be the last resort for enforcement.

Questions 9-11: We are supportive of the proposed revisions to the policy in respect of reparations. However, we would, again, like to consider further with ORR how reparations can feature most effectively when the regime is applied to publicly funded licence holders. We would also like ORR to consider with the industry how reparations and redress can best be targeted at those directly affected, including through making better use of technology and smart ticketing.

Question 12: On the more effective use of provisional and final orders, we would support improvements that learn from successful previous examples. In terms of the proposed forward looking approach including using data and forecasting more effectively, we are supportive in principle but would stress that, as you acknowledge, this be proportionate and targeted.

Yours sincerely,

A handwritten signature in black ink that reads "RD Thomas". The letters are cursive and somewhat stylized.

Richard Thomas