



ASLEF Response to the ORR Regulation Economic Enforcement Policy and Penalties Statement Review – January 1015

The Associated Society of Locomotive Engineers and Firemen (ASLEF) is the UK's largest train driver's union representing more than 20,000 members in train operating companies and freight companies as well as London Underground and light rail systems.

Question 1

ASLEF has long wondered how fining publicly owned (or previously not-for-dividend) companies actually acts as a deterrent for failure. Network Rail has long been funded by the taxpayer so that any fine levied on the organisation is, in fact, a fine on the taxpayer which, in turn, is ultimately rerouted back to the Department for Transport.

There is a clear rationale behind fining the private sector when a company has failed to meet its obligations whereby profits are negatively impacted. Companies therefore have an interest in avoiding fines in order to safeguard and increase profit. When a company operates on a not-for-profit basis, this incentive is absent and by levying a fine on the organisation, the impact is to remove funds which would otherwise be used to ensure the firm completes the tasks it is required to undertake. Therefore by fining such an organisation, the impact is to make failure more likely than less.

That is not to say that ASLEF does not strongly feel that failures by Network Rail should lead to punishment. However the union believes that fines should be designed to punish those responsible for such failures at director level. Not the taxpayers and traveling public.

Question 2 and 3

ASLEF welcomes any increase in the transparency of the ORR and the way in which it makes early interventions. The UK railway has become so fragmented that we have a huge amount of different licensed parties who function across the network. It only takes one of these companies to break regulations for the whole railway to be undermined. Such an instance could stop the network functioning, or at its worst, compromise safety. For this reason, all stakeholders should be aware of early interventions made and associated documents should be freely available.

Question 4 – 8

ASLEF notes paragraph 105 which states, “It is unclear whether or not the penalties we have imposed have been sufficient to incentivise NR to return to compliance and deter future non-compliance.”

The union feels that this supports our answer to question one above, that fining not-for-profit companies seems unlikely to ensure compliance.

It should be noted that the only individuals who are able to “profit” in such companies, are directors through bonuses. ASLEF acknowledges that the ORR does not have the power to fine individuals. However, the very well paid individuals who are responsible for failure are among the few people who could

genuinely have a financial incentive to ensure targets are met. Therefore fines should be levied towards the bonuses and remuneration of these individuals.

ASLEF acknowledges that the use of these fines is not under the control of the ORR but the union would point out that fining Network Rail for track issues which resulted in late running services which are subsequently used to improve Wi-Fi on trains, shows very distorted priorities. Passengers would rather their trains ran reliably and on time rather than being able to connect to Wifi on a delayed train.

For this reason, ASLEF believes fines must be levied alongside the full spectrum of regulatory instruments.

Questions 9 – 11

ASLEF strongly concurs that licensees should make early admissions and provide public apologies where targets and standards are not met. Those who hold licenses to work on the railway are financed, either directly or indirectly, by the taxpayer or fares of the traveling public. The traveling public also rely on these firms to fulfil their obligations. Therefore where performance has faltered it is only right that companies should apologise as soon as possible.

Question 12 – 13

ASLEF supports the idea of the ORR being more pro-active and forward looking in how it uses its enforcement process. Any methods which enable swift action to address an issue before loss and damage is inflicted must always be welcome. However provisional orders should not undermine the need for enforcement action in any way or reduce the likelihood of it. If the company was behaving incorrectly in the first place to require a provisional order, they should not be exempted from the original failing just because they rectified it quickly.

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