

Messrs R Mills & S King
Office of Rail Regulation
One Kemble Street
London
WC2B 4AN

4-6 Ripon Road
Harrogate
North Yorkshire
HG1 2HH
t 01423 522431
f 01423 523467
bluefingroup.co.uk

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Dear Rob and Steve

Compensation Related to Charter Operators

I refer to our meeting on 14th January and thank you for the time you gave myself and James Shuttleworth from West Coast Railway Co Ltd to discuss the situation.

My area of concern related to the incident cap as opposed to the wider issues presented in your consultation document.

At the moment, the incident cap limits the amount of compensation paid by charter operators to Network Rail at £5,000 and one of your options is to remove the requirement of Network Rail to offer an incident cap. You felt that, if charter operators funded a greater proportion of delay costs, they could arrange insurance to protect their financial exposure to performance regime charges.

Question 7.20 in your consultation asks “Do you agree that incident caps are something that could be provided to charter operators by the private insurance market? If not, please tell us why.” This question is, however, incorrectly worded as your favoured option is to remove the current cap and for the charter operators to purchase private insurance for cover that is appropriate to them – not to purchase insurance to protect the current cap. However, as discussed in our meeting, I am writing to comment on the availability of any type of cover – capped or uncapped – from the UK insurance market.

Rail charters can involve a number of separate parties, i.e. the charter operator, the tour promoter, the locomotive owner, the rolling stock owner, the catering company plus outside suppliers (e.g. watering companies). A delay could be caused by any one of these companies so the charter operator would look to recoup any performance charges from the responsible party.

Bluefin acts for the majority of support companies involved in main line charter operations and, as such, have wide experience and expertise in the placing of insurance and the market availability.

There are two main issues:

(i) Scope of Cover

Whilst the ORR does not list or specify the types of losses that train operators can claim for or be charged for, any insurance arrangements would only respond to specific events, eg

damage or breakdown to the locomotive or rolling stock; negligence for damage to trackside property, negligence for collision etc. There are, therefore, a vast number of occurrences that would, or could not, be catered for by insurance, e.g. illness or injury to drivers, crew, passengers; delays due to passengers; delays due to signaling queries, incorrect preparation of locomotive (water, oil, fuel etc.).

(ii) Availability of Cover

As you are aware, there is a restricted market for main line Public Liability cover and this also applies to Damage and Breakdown cover for locomotives and rolling stock.

As far as charter operators are concerned, the main markets available for Public Liability cover are QBE, Travelers and Newline and, for locomotives and rolling stock, Aviva, Allianz, Royal & Sun Alliance and Zurich. With regards to the locomotive and rolling stock owners, the available markets are Catlin, Travelers, Aviva, Allianz, Royal & Sun Alliance and Zurich.

I have been discussing the situation regarding performance regime charges for several years with a number of the insurers but all were unwilling to provide cover - even at the existing cap level. However, I am currently negotiating with Aviva, who provide damage and breakdown cover for locomotives and rolling stock, to extend their policy and provide a £5,000 limit. In view of your consultation document, I have also discussed the feasibility of a higher limit with them but was advised that any increase in the limit or unlimited cover would not be available.

At the present time, Aviva is the only insurer willing to offer any type of cover to Bluefin for our charter operators and locomotive owners. The premiums they intend to charge reflect the anticipated claims cost to them at the current cap based on an analysis of the number of main line locomotive breakdowns over the last five years. If they, or any other insurer, were ever prepared to offer cover for a much higher cap (say £500,000) I would envisage that the total premium requirement would exceed the average annual cost of performance charges by 30% to 40% which would be wholly uneconomical for locomotive owners and/or charter operators.

In view of the above, I feel that the current incident cap should be retained and not increased or deleted due to the lack of availability of insurance cover which would expose charter operators and locomotive owners to large potential financial risks.

Yours sincerely

Derek Parry

Derek Parry
Executive Director

Direct Tel No: 01423 700788
Direct Fax No: 01423 523467
Email Address: derek.parry@bluefingroup.co.uk

