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Dear Sir

Consultation on Schedules 4 and 8 possessions and performance regimes

We would like to make representations on Section 7 of this document and in particular address the Consultation Questions at paragraph 7.19 and 7.20.

The consultation says that the ORR is minded to choose option (b) and to remove the requirement for Network Rail to offer incident caps to charter operators which are presently set at £5,000. The ORR goes on to comment that it recognises the importance of the financial protection to charter operators provided by incident caps. However, in principle this form of protection could be arranged through private insurance markets.

Our representations to the points raised are:

Q: Do you agree with our proposal not to require Network Rail to provide incident caps to charter operators on the basis this currently results in a subsidy to charter operators? If not, please tell us why?

We do not think the ORR has a full understanding of the relationships here and an explanation may assist. A Rail Company, say DB Schenker, is contracted by a Charter Operator to run a tour. The Charter Operator will often contract with a Locomotive Owner to provide the traction for the tour. This could be an historic steam locomotive or a heritage diesel or electric locomotive. These locomotives have been lovingly restored by volunteers and are usually owned by charities or members organisations. The Deltic Preservation Society Limited is a Registered Charity supported by 860 members through donations and subscriptions. We own one of these heritage diesel locomotives and we provide it for a fee to the Charter Operator and it is managed and crewed by the Rail Company.

It is important to stress that all such locomotives, which are allowed to operate on the main line, including ours, are maintained to a very high standard and comply with all rail industry regulations.

The consequence of a delay is that the Rail Company will receive a penalty for delay minutes and this is passed down to the Charter Operator and then to the Locomotive Owner. Those are the contractual relationships. At present this penalty is capped at £5,000 but under option (b) would become unlimited. A charity which is a Locomotive Owner cannot put charity funds at risk of an unlimited penalty and so the locomotive would not be able to be provided for the tour.



The consequence is that national heritage assets owned by charities and member organisations could disappear from the railways of the UK and that would be hugely disappointing and not what the public or the rail industry would want. We would add that we doubt it is what government would want either with the present emphasis on Big Society and the encouragement of charities to take a more active role in society.

We consider that a more appropriate solution to the issue is for Network Rail to charge an additional fee to the Charter Operator in exchange for the cap being maintained at £5,000. This provides the required degree of protection to Locomotive Owners from unlimited risk.

It is worth adding that the commercial fee that can be commanded by a Locomotive Owner for a Charter train is not high and does not cover the overall costs of maintenance of the locomotive. These are funded by the charity through subscriptions, donations and commercial sales operations. This further reinforces the need for a cap to be left in place to protect the Locomotive Owner since there is not commercial profit out of which to absorb additional costs.

Q: 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?

Insurers will charge a premium for covering a risk where they can determine with reasonable certainty. We do not consider that delay, caused by the operation of a heritage railway locomotive, is a risk which an insurer would be able to assess with any sort of certainty and be able to provide a cost effective premium for.

Summary

We favour option (a) in your document for the reasons we have explained.

The complexity of charter operations with its linkages to Locomotive Owners who are often registered charities means that option (b) could seriously damage the ability for the general public to see heritage steam, diesel and electric locomotives in operation on the UK rail network.

Yours faithfully

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