



The Transport Trust

Preserving the past for the future

202 Lambeth Road
London SE1 7JW

From Stuart Wilkinson
Trust Chairman
stuart.wilkinson@transporttrust.com

Rob Mills
Office of Rail Regulation
One Kemble Street
London WC2B 4AN

January 28th 2013

Dear Mr Mills,

Lifting the Liability Cap – Schedule 8

The Transport Trust is the UK's only body with the remit to promote the preservation and understanding of our nation's Transport Heritage in all its forms, on land, on water and in the air; no sector is more important than the railway sector, and among our affiliate members are many bodies operating heritage locomotives.

We are concerned that the proposed lifting of the Liability Cap will make it very difficult, if not impossible, for historic locomotives and rolling stock to use the national rail network since the potential risk is not insurable nor can most owners bear it themselves.

This will significantly reduce the visibility of this aspect of our Transport Heritage, restricting it to preserved railways. Furthermore it will cut off a vital slice of income to these not-for-profit organisations, income which they reinvest in the ongoing preservation of their locomotives and rolling stock.

In addition charter trains are a very successful part of our tourism offering, mainly because they run through scenic parts of the country and take tourists to places which they might otherwise not go. Clearly charter operators have benefitted from the cap on any penalty arising from poor performance directly relating to deficiencies in Traction & Rolling Stock in the past and Network Rail have in effect subsidised the operation of charter trains. It cannot be denied that such a situation is unsustainable. It is of course important that poor performance by one TOC or FOC causing consequential delays to scheduled train services operated by another be penalised. However, TOCS and FOCs are typically large publicly listed companies in their own right or subsidiaries of foreign state railways, and in many cases TOCs are currently receiving Government subsidies.

In contrast charter-train operations tend to be irregular and often one-off, their promoters either private individuals or groups, with some established tour operators promoting itineraries on a commercial basis. They often cross TOC boundaries.

Demand for tickets is very sensitive to price and the promoter is fully exposed to any financial loss. An uncapped penalty system presents a very serious threat to the charter/special trains by adding further and unquantifiable financial risk.

We support the suggestion of the levying of an additional Access Charge Supplement (ACS) whereby Network Rail can effectively act as insurer. The cap could then be retained and a balance reached between the magnitude of the cap and the ACS i.e. the higher the cap the lower the ACS per operation – the lower the cap the higher the ACS.



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We hope that you will recognise the very significant potential impact of the lifting of the cap and consider the suggested proposal in your consultation.

Yours faithfully,

Stuart Wilkinson
Chairman



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