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Economic Enforcement Policy Review Project  
Operations and Network Regulation  
Railway Planning and Performance  
Office of Rail Regulation  
3<sup>rd</sup> Floor, One Kemble Street  
London W2B 4AN

27<sup>th</sup> February 2015

Dear Ms McClelland Hodgson,

Thank you for the opportunity to comment on the ORR's Economic enforcement policy and penalties statement review – consultation on options for improvement. Answers to the thirteen specific questions posed in this consultation will be provided separately by individual RDG members.

The Rail Delivery Group brings together the owners of Britain's passenger train operating companies and Network Rail to provide leadership to Britain's rail industry. We promote greater cooperation between train operators and Network Rail by working together with Governments, the supply chain and stakeholders across a range of policy areas.

We were pleased to attend the workshop you held on this subject and found it a valuable opportunity to discuss these important issues concerning enforcement policy.

We support the four key considerations Ofgem expressed at the consultation workshop and that they use for their enforcement policy: pragmatism, clarity, efficiency and engagement. We feel that these principles can also be applied to rail regulation.

The Rail Delivery Group supports the emphasis on transparency and fairness and welcomes an enforcement regime that is both proportionate and targeted. The Better Regulation principles are appropriate here: Proportionality, Accountability, Consistency, Transparency, Targeting.

We fully support the approach of early intervention set out in the consultation document and believe that a relationship of mutual understanding can be developed thereby encouraging dialogue and clarity of approach. This will often mean that formal enforcement is not required and this should be seen as a positive outcome.

The Rail Delivery Group welcomes the focus on the consumer expressed in this policy consultation and believe that the interests of rail customers should be placed centre stage.

It is important for ORR to set out a clear understanding of its over-arching principles for economic enforcement. The use of language in this area is very important and ambiguity in tone or content should be avoided, particularly in the area of flexibility.

A greater alignment of incentives across the industry will help in this regard. We welcome the ongoing work being carried out in collaboration with ORR on the Review of Charges and Incentives in advance of CP6. The results will be important in driving the right behaviours across the industry.

Although we recognise the advantages of ORR maintaining one enforcement policy for all licence holders, we urge strong consideration in avoiding double jeopardy when drafting the policy for train operators as well as Network Rail. Any parallel enforcement does open up the possibility of double jeopardy across Franchise Agreements and Licence obligations.

The position on Disabled People's Protection Policy (DPPP) monitoring remains fluid following ORR's open letter issued on 18<sup>th</sup> December 2014. We are working with ORR to establish a way forward, but we are unable to comment in detail on DPPP enforcement until the issues arising from the 18<sup>th</sup> December letter have been resolved. We are aware that there have been instances when Operators are held to account on DPPP before the circumstances that apply are fully understood.

As such we would like to see ORR explicitly demonstrate the use of Better Regulation Principles, including proportionality, when working with Operators. We await the ORR view on how it will monitor progress on Passenger Information During Disruption (PIDD) by licence holders and how this monitoring will be reported. In advance of this, we are unable to comment in any detail on potential enforcement policy in relation to the Industry PIDD Action Plan.

We look forward to seeing the results of this consultation and stand ready to work with ORR on the implementation of this revised policy. Should ORR wish to have further engagement with members, we would be delighted to help facilitate these.

Yours sincerely,

Jonathan Chatfield  
Manager Regulation