

SRA's Response to the DG TREN's Consultation Paper on International Rail Passenger's Rights and Obligations

Summary preliminary position

The Strategic Rail Authority (SRA) welcomes the objectives set out in the Commission's consultation document on Passenger Rights and Obligations. Please note that in view of the short period given to respond to the consultation, the position detailed below only outlines SRA's initial and general views.

The Commission's paper touches a large number of areas. Good standards of performance and quality are necessary for rail traffic. SRA believes that a combination of voluntary actions and regulations may contribute to these objectives. Regulation should be high level and apply to international services only. Co-ordination between operators may be achieved in certain areas through the introduction of regulation in order to meet passengers' expectation to be provided with a "single product" approach.

However, care must be taken to ensure that the objective of the Commission's proposal which is to increase international rail travel is not made unachievable or still worse because the cost of new regulations itself represents a damaging cost burden on the industry, making it less competitive in comparison with other modes. Any proposal must also be supported by proper regulatory impact assessments founded on sound analysis of costs and benefits.

It is important to make the point that where regulation is supported, regulation must not be excessively prescriptive: The right balance must be achieved between Regulation which is so general as to not achieve any purpose and Regulation which is so prescriptive that even the considerable protections which are in place within the UK and other Member States require alteration (at a cost) because they fail to meet the Regulation on quite small points.

However, insufficient information is available at this stage on the costs and benefits of various proposals to enable SRA to express a view on whether it is necessary to have EU regulation at this level or how detailed provisions are to be introduced.

In giving these answers, we have borne in mind that what is proposed and agreed for international rail journeys may have an impact on national services: The rights of domestic passengers must remain the responsibility of the individual Member States.

The primary reason for providing statutory consumer protection is as a proxy for the working of the markets where rail is in a quasi-monopoly position. This is rare in the context of international long distance passenger services, where there is strong competition from air and road. This should be a relevant factor in considering the need for regulation for these services.

It is also worth noting that in the UK international passenger traffic represents less than 1% of total passenger traffic.

Questions

1. What are the areas most cost-beneficial measures justifying a Regulation at EU level

Subject to proper cost benefit analysis, we believe that EU regulation of international services may cover the following areas:

- consultation with consumer organisations and persons of reduced mobility;
- transparency of service performance, contract conditions, service quality commitments made by railway undertakings and policies for refund
- Complaint handling
- Liability limits
- Minimum compensation limits
- Information and ticket availability.

The scope of the proposal should be restricted to international journeys and should not include chartered services.

2. Should occasional services be excluded from the scope of the Regulation if such a service is not a service open to the public?

Yes. Heritage Railway should also be excluded.

3. Should the scope also cover entirely national services or should it be left to the sole competence of the Member States to establish appropriate rights for those services?

No. It is considered that national services are best left to the competence of the Member States because they are best placed to understand the domestic market conditions and provide appropriate protection for passengers using these services. Within the UK, Passengers' Rights for passengers making domestic journeys (i.e. on national services) are already well protected through a combination of licences, franchise agreements and national law. SRA policy has been and continues to be, to progressively improve passenger rights.

4. Should consultation of consumer and passenger organisations be regulated? If yes, according to what principles of organisation?

Yes. It is recognised that while the position on consultation with consumer and passengers organisations is well established for national services in the UK through franchise agreements (commitments within Passenger Charters) and national law (Rail Passengers Committees/Council), on international services, this may not be the case. In the absence of protections under national law within Member States, Regulation at a European level may be appropriate to establish certain minimum requirements for consultation: The UK model has shown that consultation with consumer and passenger groups is usually beneficial and should not be seen as an unnecessary interference in railway operations. The establishment of effective organisations representing passengers

at national and local levels is possible without excessive cost. The Rail Passenger Committee (RPC) model could be used with geographically based local committees reporting into a national structure. National bodies should be able to feed into/work with an EU level body but should not be under the formal control of the EU level body: The relationship should be one based on the exchange of views/informal consultation with any agreements which are necessary, only reached on a voluntary basis.

5. **What issues should be covered in such an exercise (e.g.: investigation of individual complaints not satisfactorily addressed by the railway undertakings concerned consultation on changes in timetables, fares, conditions of carriage, monitoring of passenger rights, cross-border services, line closures)? Should there be minimum requirements? Should an independent chairperson be appointed to facilitate to consultation process?**

Yes. All of the issues listed should be covered. In the UK, the RPC performs these roles successfully. The independence (in terms of funding and appointment of staff) of these passengers' organisations from railway operators is critical to their effectiveness and also to how passengers perceive them.

6. **Could the set-up of the monitoring scheme contribute to better service quality in international rail passenger transport?**

Theoretically yes as transparency is needed. But monitoring of international services effectively and using the outputs to change aspects of the service may require significant resources. The UK is moving towards a policy based on self-regulation/certification rather than compliance monitoring. Compliance monitoring might sound attractive but it would be expensive and would have to be paid for. It must be remembered that regulation is only a proxy for the market which is the main driver on service quality and price.

7. **What essential performance indicators are to be measured and disclosed by the railway undertakings?**

Train performance in terms of punctuality (time the train arrived at its final destination) and reliability (cancellations) is the most important measure and should be regarded as minimum requirements. On punctuality, it is important to point out that measuring and reporting the punctuality of all trains at all stations would be an enormous exercise. It would also create considerable volumes of data which passengers would find difficult to interpret in a meaningful way. The UK model is to measure punctuality at the final destination. While this is not a perfect measure, experience has shown that it is feasible to collect and report data in this way without excessive cost.

8. **Which of the contract conditions should at least be mentioned on the ticket, and how should that be regulated? See Annex I for an example.**

In the UK, the ticket format (credit card size) does not allow to show all contract conditions on the ticket. As mentioned in Question 3, this matter should be left to the competence of the Member State. Current information appearing on the ticket in the

UK includes a general reference to the National Conditions of Carriage and to the conditions of carriage of other operators on whose services the ticket is valid.

9. What is the minimum set of information that should be mentioned on a ticket, and how should that be regulated? See Annex II for an example.

The list given in Annex 4 should be adapted to the rail industry. Minimum information could include in particular date of issue, fare, origin and destination, date and time of travel, reservations, form of payment in respect of international tickets. On domestic tickets, the issue should be left to Member States.

10. How can information services, especially concerning fare levels and conditions, be improved? How should the scope of services to be covered be defined, in order to ensure that the majority of passengers' needs are served without imposing unjustified costs on the undertakings concerned?

In the UK, each train operator is required by its passenger licence to be a party to, and comply with, arrangements for a 'telephone enquiry bureau' (the National Rail Enquiry Scheme - NRES). The NRES is a strong and efficient instrument. The agreement signed by each railway undertaking sets out how NRES will operate and how the costs will be divided between operators, it sets out the range of travel information to be provided to callers and the call handling standards that the service must achieve. NRES ensures that passengers have access to a single, impartial and comprehensive source of information about all GB train services, regardless of how many individual operators provide the train services.

The adoption of existing EC developed systems like Trident, or its UK equivalent TransXchange, would help improve sharing of information about public transport generally. The introduction of any new system would require a robust cost and benefit analysis.

11. In the short term, how can reservation systems be made more compatible with each other in order to have EU wide reservation made possible, and how to ensure their interoperability with other modes of transport?

The development of the "Telematics" and other relevant TSIs should help harmonising the reservation systems and ensure their interoperability.

12. Should there be a legal obligation on rail operators to supply information about international rail of the same standard as the information they supply about national rail ?

Yes in principle, but the cost and benefits of any solution for a non-segregated system should be examined first, as international enquiries might be time consuming. In the UK, it could be achieved by getting NRES to take Eurostar information, and by getting Eurostar to join NRES and pay for its share calls. Clarification is required as to what "same standard" of information means.

13. In the absence of accurate information on train services, should railway undertakings be obliged to provide information on the services of their direct competitors?

Clarification is needed on what "accurate information" means? Does it mean up-to-date train running (ie alternative routes if Eurostar goes down? Impartial information would have to be provided.

14. Should the railway undertakings be obliged to sell tickets for all possible connections between major stations or alternatively the most important international connections? How could this obligation be defined?

It is difficult to answer this question without carrying out a proper cost benefit analysis of different solutions.

15. Should incumbent railway undertakings be obliged to allow new railway operators to use the existing ticketing systems in order to ease distribution of tickets?

A multi-party ticketing system similar to the one used in the UK by rail undertakings or by international airlines is desirable.

In the UK, each train operator is required by its passenger licence to be a party to, and comply with, arrangements for the sale of through tickets, and the settlement of monies taken in respect of through tickets, approved by the Strategic Rail Authority. SRA has approved an agreement between all operators called the Ticketing and Settlement Agreement (TSA) for this purpose. The Ticketing and Settlement Agreement specifies the products that must be sold at each individual ticket office, in terms of the ticket issuing system to be provided, the range of fares manuals that will be held, and whether or not that station will arrange seat reservations. In practice, this means that even the smallest station ticket office is obliged to sell all walk-up tickets from that station to any other station on the national network, plus tickets between London and any station on the national network, plus tickets for many other journeys over a wide local area. Larger ticket offices are usually obliged to hold the full range of fares manuals, and to undertake reservations, allowing all national rail products to be sold at that station. The TSA also places accuracy and impartiality obligations in the retailing of tickets at stations, through telesales and on the internet.

There is no requirement on UK rail operators to sell international rail tickets, and most UK operators have progressively withdrawn the sale of international products at stations, other than a few ticket offices who sell Eurostar as far as Paris and Brussels. Specialist independent travel agencies sell European rail tickets beyond Eurostar.

16. What could be done at EU level in order to ensure that also as regards fare levels for cross-border rail, these are in line with fare levels for a similar distance within one country?

Fare pricing should be left to the market or to national authorities setting out public service contracts for these types of services. The UK uses market pricing to determine fare level, rather than a kilometre based method. There is no reason why international and domestic journeys should be priced at similar levels.

17. Do you agree with the proposal to oblige railway undertakings to develop public quality standards for international services geared at the specific services applicable?

Subject to comments in Question 3, Yes. This approach is close to the self certification route for service quality adopted in the UK in the new franchise agreements.

18. Is the proposed list of quality standards to be made public by railway undertakings adequate?

Quality standards developed in the UK are being formulated under the new franchise policy. It is thus envisaged that in addition to the service performance regime, the new franchise agreement will contain a number of journey quality Key Performance Indicators. These indicators will include items such as cleanliness, passenger information provision, availability of ticket selling facilities and security. The list of KPIs may vary depending on the particular requirements of the franchises.

19. How should the performance of the quality standards be monitored?

Reporting on quality targets is important. In the UK, implementation of quality standards is monitored via compliance of franchise agreements. The National Passenger Survey is also a measure of customer satisfaction. Rail performance figures and the results of customer satisfaction surveys on quality of rail services are published twice a year in the UK.

20. Should railway undertakings develop contingency plans in case of major service disruptions? And if so, what should they cover?

Yes. In the UK, railway undertakings are required to prepare contingency plans for service disruption, right through to the service recovery phase to get back to normal as quickly as possible.

21. Should there be European quality and reliability standards for international rail services as in the other sectors?

No. This should be left to the voluntary approach of railway undertakings as international rail systems vary considerably.

22. Do you agree with the proposal to involve associations representing PRMs in consultation procedures to enable an improvement of the shortcomings mentioned above?

Yes. Co-operation with PRMs representative organisations is desirable. In the UK, all measures in respect of information, assistance of passengers, etc. are being tackled by the SRA. Disabled passengers are already well protected through a combination of licences and the respect documentation required under them, through franchise agreements and national law. The SRA is bringing about improvements and commitments in these areas through its own policies for accessibility. Domestic accessibility organisations are involved in consultation over domestic policy documents and where necessary are consulted on individual schemes at stations and on trains.

23. Do you agree with the 3 proposals mentioned above, and should those be regulated in a Regulation?

Yes. We agree with the three proposals, as stated in point 22 above these are already covered by SRA policy on accessibility for domestic journeys, and will shortly be written into enforceable documentation through the licence system.

We do not believe that impact assessment carried out by infrastructure managers is necessary, as it will interfere with accessibility assessments of works already being undertaken by the SRA where the domestic operator refurbishes or builds from new facilities on trains and at stations that will be used by disabled people. The SRA as the funding body for domestic railway infrastructure and rolling stock improvements is in the best position to know what can and cannot be achieved during refurbishments and new build, as the SRA would define the scope of the works and enforce them through the relevant control mechanisms. To make this final point a regulation would take away the ability of the SRA to make value judgements on the scope of works and may mean that many schemes will not go ahead. This would particularly be the case if excessive regulation handled by third parties who do not have to justify the budgets and funding mechanisms take over the role of defining the scope of works. There is no particular benefit of enshrining the first two points in regulations as they are adequately covered by the mechanisms currently open to the SRA, although we have no particular objection if they are included subject to the 'Summary preliminary position' in this response.

24. Do you agree with a mandatory impact assessment for PRMs of any modification proposed for rolling stock or stations?

No. The SRA as the domestic funding body already has processes in place to ensure accessibility benefits are included where possible, practicable and not involving unreasonable cost whenever station improvements and rolling stock improvements occur. The SRA Code of Practice 'Train and Station Services for Disabled Passengers' has had several consultations with domestic disability and railway industry players before being published. This Code goes far beyond the recommendations in the COST 335 study and provides significantly improved benefits for people with all disabilities at UK stations and on domestic rolling stock. There seems little point in having a mandatory

impact assessment that is not controlled by the funding body which works to standards that are not as beneficial as those currently being worked to in the UK domestic market.

25. Should railway undertakings be obliged to carry bicycles on international journeys or should they merely concentrate on developing facilities for bike rental at the major stations (and allowing bikes to be returned in another station)?

No. Provisions for cyclists should be addressed on a voluntary basis, with railway undertakings providing appropriate information on proposed services. Any new solution should be backed by a cost benefit analysis. Railway undertakings should be encouraged to convey a limited number of bicycles on trains, but the main thrust of any policy development should be concentrated on the development of secure storage facilities at stations. There are a limited number of facilities at stations in the UK where cycle hire is offered to passengers, this is mainly in areas where cycle usage is high.

26. Should an 'accessibility assessment' for bikes be compulsory in case modifications of stations or its surroundings are planned?

No. This should be a matter for Member States, In the delivery of government policy and to meet policy targets improvements at stations in the UK, modal shift and access for all is considered. The government's National Cycling Strategy is looking for a four-fold increase in cycle usage by 2012. The SRA's Rail Passenger Partnership provides additional funding for projects; these projects included the improvement of facilities for cyclists at stations.

27. Should railway undertakings be obliged to offer registered luggage for PRMs?

No. This should be left to operators to decide. Clarification is required on what this means exactly. Assistance should be provided to PRMs. In the UK, this condition is included in the Passenger Charter.

28. Should railway undertakings be obliged to have a safe or secured area for the transport of luggage in long distance trains?

No. This does not make commercial sense. Should be left to railway undertakings to decide.

29. Should the issues raised in this paragraph, such as noise levels, smoking, cleaning of trains be part of a Regulation or a Quality Charter to be developed by the railway undertakings?

It should be part of a Quality Charter. As mentioned above, train cleanliness will be one of the Key Performance Indicators introduced by the UK as part of their new franchise policy. Most public transport operators now operate a 'No Smoking' policy, although longer train journeys often convey separate smoking and non-smoking accommodation. Under the Railways Act 1993 a train operating company may regulate smoking in railway carriages and at their stations. It is a matter for the train operating companies to decide whether and where, to permit smoking. There are powers within the Railway byelaws to

permit enforcement of a no-smoking area on the railway should an operator designate an area as such.

30. Should a public security analysis be mandatory if plans are drawn up to modify or restructure stations and what should be the consequence? Should initiatives, such as the improvement of the co-operation with law enforcement services, be taken under the Justice and Internal Affairs pillar (third pillar)?

No. This is a matter for Member States. Security analysis (internal / external) should be considered as should improvements in relationships and co-operation with law enforcement agencies. In the UK we fully understand the impact that the perception of poor security has on the passenger. In the UK, security (ie appropriate environment to catch train) is measured through our National Passenger Survey.

31. Which are the measures to step-up prevention of security infringements? What are measures to improve the possibility to act in case of infringement occur (e.g. are there any measure to improve security such as possibly an emergency voice contact between passengers and on-board staff to be required for all services?).

Many measures already exist to improve the station and train environment in the UK; we would encourage further security initiatives that improve passenger perceptions.

32. Should there be a mutually recognised standardised form for reports of theft and other petty crime and/or a shortened procedure for victims to report this type of crime?

This is a matter to be left to Member States. Any proposed solution should be backed by a cost benefit analysis.

33. Is any legislative action necessary to improve intermodality between rail and other modes of transport? If yes, what actions in particular?

No. In the UK, key connections can be specified in the franchise agreement (for instance ferry - rail for Island Line). Cross modal information and ticket availability should be addressed as part of the review of TSI for rail passenger information system.

34. Should a one-stop shop for complaint handling in relation to international services be obligatory for railway undertakings?

Yes. Railway operators should not be required to establish a single body for complaints at a European level. It should be possible for passengers to complain to a single point (the ticket seller) within their Member State of residence as passengers for many reasons, including language, may be discouraged from complaining to either a single point for an international service (located in another Member State) or a 'European 'call-centre'. Operators should be required to pass on complaints wrongly received to the appropriate operator and tell the passenger they have done this.

35. Should railway undertakings be obliged to publish analyses of the complaints, such as the number of complaints, broken down by category and service, and the average time to handle a complaint? Should the results of these analyses be monitored and discussed with passenger organisations?

Yes. We already do this in the UK and it is generally considered to be a useful thing to do.

36. Is 4 weeks a reasonable time limit to answer complaints?

Yes, but only for the initial reply stating that an investigation of the complaint is underway. Through their Complaints Handling Procedures, UK operators are required to commit to precise standards on time periods for answering complaints. 20 working days would be the maximum which would be allowed in normal circumstances to provide a full answer to 95% of all complaints. While 28 days is a reasonable period with regards to national services, it is probably too tight as the normal standard to provide a full answer for most complaints regarding international services where it is often likely to take longer to investigate complaints, particularly where language barriers exist and more than one operator may be involved.

37. For points where tickets are sold or distributed on behalf of railway undertakings, should these points also handle complaints, which are the results of a situation beyond the control of the distributor? Or should they be referred directly to the railway undertaking?

Yes the retailer should handle the complaint. Complaints should not be referred direct to the railway undertaking. In selling a ticket on behalf of the railway operator, the Agent/Tour Operator enters into a direct relationship with the customer and that relationship should carry with it the responsibility for answering complaints. Agents/Tour Operators in the UK strongly value their relationship with their customer and would expect to answer their own complaints, obtaining the necessary information from the railway operator to do so. They would be unwilling to see these complaints handled directly by the railway operator not least because they would have to give their customers contact details to the railway operator. This arrangement generally works well in the UK and any Regulation should not seek to change this.

38. What language regime should be applied for complaint handling? Should the official languages of the countries where the trip has taken place determine the language used, in case a ticket was purchased in another country than where the trip was undertaken? What should be the regime for users of cards like the Eurail or Interrail card?

Passengers must be allowed to make complaints in the native language of the Member State which they are in, or in a language which they can communicate in. The operator of the international service should be required to communicate with other Member States to answer the complaint. The languages used by the operators in communicating with other operators should be the official languages of the country where the trip has taken place.

39. Could representative consumer bodies have a role in taking up individual complaints?

Yes if problem not resolved by railway undertaking to the satisfaction of the complainant. If the complainant is not satisfied with the response received from the railway undertaking, passengers must have an opportunity to take their complaint further, without having recourse to law. In the UK, the Rail Passenger Committees have performed an effective role for national services. While national law provides this protection in the UK, to ensure protection for international services at a European wide level, regulation is appropriate.

40. Should an out-of-court dispute settlement procedure according to the principles of Recommendations of the Commission (98/257/CE and 2001/310/CE) be sufficient, or should there be additional requirements, such as the creation of a mediator within railway undertakings to review replies to complaints in case the plaintiff is not satisfied?

In principle we support Regulation. In the UK, the RPC system in effect enables the vast majority of complaints which have not been resolved to be done so out-of-court. The RPC acts as a mediator where the plaintiff is not satisfied with the railway operators response. This works to the benefit of both passengers and railway undertakings. The RPC model could be applied within other Member States.

41. If the passenger wants to file a lawsuit, where should he be able to do that? Where the case/accident happened, where he bought the ticket, the origin and destination of the journey, the country with a changeover in the journey?

See reply to question 40.

42. What language regime should be applicable to this?

Passengers must be allowed to make complaints in the native language of the Member State which they are in, or in a language which they can communicate in.

43. Are there reasons for a higher upper limit of the liability of railway undertakings or should it not be limited at all? Should there be a common upper limit for the EU?

It is hard to see the potential benefits from setting an upper limit of liability and a proper study would need to be made before moving away from the current regime and introducing any new regulation which may result in additional problems and distortions.

An upper limit on liability appears to protect railway undertakings against higher claims which passengers and other third parties might otherwise successfully make. The benefits might include lower insurance premiums than would otherwise be payable, helping to reduce the railway undertakings' costs. It should be borne in

mind, however, that the amount of premium payable per unit of cover decreases the higher the insured amount, as the probability of pay-outs decreases as the level of indemnity increases. This means that benefit to railway undertakings decreases the higher the maximum limit of liability is set.

In assessing the level at which any such maximum level of liability should be set and whether a common limit should be set for the whole of the EU/EEA, it would be necessary to be aware of the disbenefits too. In particular, passengers and other third parties with good claims in law might find that their claims would be reduced compared to what could otherwise have been achieved in the courts in the country in which they make their claim. This is particularly true in some countries such as the United Kingdom with a record of higher court settlements than other countries. We must ask whether this is equitable. Not only would claimants be disadvantaged, but competing modes would potentially find that rail had been given an unfair 'advantage', particularly if the limit was set at a low level. Moreover, we should recall that, in a vertically separated railway system, railway undertakings are not the only railway companies who might be found liable. A peculiar distortion would be introduced if, for example, network operators, rolling stock owners, etc, found themselves potentially liable for higher sums than the railway undertakings for the same incident solely because railway undertakings benefitted from a statutory limitation on liability. We should also be aware that the structure of the Directives means that some train operators do not qualify as 'railway undertakings' (for example operators of maintenance trains). This means that there would not be a level playing field as between train operators either

44. Should there be a strict liability regime, like in the air transport sector?

Strict liability is worth consideration because it does bring distinct benefits, but these need to be balanced against the potential disbenefits. In our view, a fuller study is needed before a proper understanding can be gained of where this balance lies. A key advantage of this approach is the certainty it gives to claimants about who will meet their claim (i.e. the issue it addresses is allocation of liability). It also potentially means, if drawn up in such a way, that there would be money for claimants in so-called 'no fault' incidents (i.e. those where there is no identifiable negligence or fault). It is important to recall that imposing a strict liability regime does not in itself mean that there would be money to meet a claim, so it needs to be backed by a rigorous approach to checking that railway undertakings continue to hold insurance if it is to have meaningful effect.

An important point to consider is the degree to which there are similarities and differences between the passenger rail and air sectors and what effect these might have on the arguments for and against strict liability in the passenger rail sector. A particular difference is the presence of an infrastructure operator for the whole of the journey in relation to rail who fulfils functions in many ways similar to both airports and air traffic control in the air sector. There is not enough information about the air sector to know whether airports or air traffic control have been solely responsible for significant numbers of accidents, but in the rail sector it is clear that there have been numerous

accidents in which the infrastructure operator has been either wholly responsible or has had a share of responsibility (c.f. the Hatfield crash in the UK, for example, where there was no suggestion that the train operator was at fault). Equally, the fault may lie wholly with a freight or other non-passenger train operator.

In these cases, there is potentially a large benefit for passengers from the greater certainty deriving from strict liability. It is necessary to consider, however, how this benefit balances with the loss of financial discipline on the other parties to improve/maintain good safety standards. Many risk professionals argue that one of the side benefits of fault-based allocation of liability is that it leads to improved safety standards because insurers penalise those with poorer standards by imposing higher premiums, expanding policy exclusions, increasing the level of deductible payable by the company itself or refusing cover and that this has a significant effect on safety because it focuses management on the financial effects of its actions. Another issue which needs to be considered is whether strict liability as between the passenger train operator and its passengers is sufficiently wide in scope to cover all the interested claimants. UK experience of rail accidents shows that passengers on platforms, lineside residents and businesses and members of the public on adjacent roads with no relationship with the railway have all been affected by accidents and can have valid claims. An issue is whether strict liability to passengers unfairly discriminates against these other people.

In the UK, allocation of liability between rail operators (all operators of trains, stations, networks and depots) is governed by the Claims Allocation & Handling Agreement ('CAHA'), which is a requirement of the operators' licences. One of the things it provides is for a range of common smaller accidents below a threshold (currently £7,500) to be pre-allocated as between the different parties. For example, where a passenger is injured when getting on or off a train, it is the train operator who is responsible, even if it could be argued in individual cases that the station operator contributed to the incident (for example because of poor lighting). The advantage of this approach is that it covers the numerous small accidents that account for the vast majority of incidents on the railway. CAHA also provides for mechanisms for the railway companies to allocate liability for the larger incidents quickly without initial recourse to the courts (this remains a back stop). There remain difficult cases, such as the Potters Bar incident, where none of these mechanisms provide the sort of immediate certainty of strict liability.

One of the disbenefits of strict liability is that, because the passenger train operators would bear all claims, their insurance costs will be correspondingly high. This would militate against other ideas here for reducing insurance costs such as imposing a maximum indemnity limit. The transition from the current position to strict liability also needs to be considered. There has not been time to do any in-depth analysis of likely market reaction, but there must be a risk that the increases in premium borne by the passenger train operators would not be fully compensated for by a reduction to other operators and reduction in access fees. There must be a risk of an overall net increase in industry costs.

45. Mandatory insurance of railway undertakings would help the passengers practically in pursuing their claim. Are any procedural improvements of this kind necessary?

The question is somewhat unclear – it seems to imply that railway undertakings might not maintain insurance. However, the licensing Directive (2001/13/EC) requires railway undertakings to be insured. Also, we do not think that the requirement to hold insurance helps passengers in making their claims per se, as what it does is ensure that there will be money to meet a claim once it has been successfully established that the company in question is liable.

There are, however, based on UK experience, a number of issues which should be borne in mind when addressing the issue of how to help passengers make claims. Firstly, there is the question of who to make the claim against. This might seem obvious, but practical issues arise, including what address to use, which company is actually involved (do passengers really always know who they travelled with) and how claimants who are not passengers know who to claim against (the accident may have been caused by a freight train, for example). CAHA addresses this by ensuring that all participants in the railway system follow the same approach to claims handling. Basic principles include that a claimant can claim against any railway company (even a freight operator) safe in the knowledge that the claim will find its way to the correct company. There is a central address (the so-called Registrar) to whom claims can always be sent. All companies have to follow a code of practice on quality standards for dealing with claims. We consider that these issues remain even where passenger operators have strict liability to their passengers, as there will continue to be claims by non-passengers.

Another point in this question is whether compulsory insurance by ‘railway undertakings’ helps passengers. It does, but ‘railway undertakings’ are not the only train operators and facility operators may also be liable for some incidents. Therefore, if there is a concern to ensure that there is money to meet valid claims, compulsory insurance needs to extend beyond solely ‘railway undertakings’. In Britain this is achieved by requiring all national network operators of trains, stations, networks and light maintenance depots to hold insurance (done through the respective licences).

46. Should there be an EU-wide approach in relation to minimum requirements regarding refund policy?

In principle yes if there is concern that passengers rights are not reasonably covered in this area. Rights for tickets purchased within the UK are laid out in the National Rail Conditions of Carriage, which are publicly. Refund arrangements are sometimes not understood by passengers although operators are required to communicate them. The National Rail Conditions of Contract do require that passengers can obtain a full refund if the passenger chooses not to travel because the service is severely delayed or cancelled. The Commission should be strongly encouraged to undertake a business impact assessment for the economic aspects of the compensation and assistance to passengers which it is proposing.

47. Do you agree with the principle to reimburse passengers for consequential damage in case of delays, unless the railway undertaking can prove it is not responsible?

No. There is no case for reimbursement for consequential loss for delays. This would result in increasing the cost to SRA. Opening railway operators up to consequential damage where they were responsible for a delay should not be supported. The vast majority of delays are due to matters within the control of the railway operators/infrastructure provider. It is not clear from 6.2 on page 34 what the proposed limits for airlines would be (which would be the limits which would be applied to international rail journeys). The number of claims which could result and their cost would be significant both in terms of the cost to the industry of handling them and the cost of claims which are actually accepted. In the UK, where a large number of existing franchise operators receive financial support from the SRA, this would open up the SRA to significant additional liability. Bidders for new franchises would also include the potential liability in their bids to the SRA so again this would lead to additional liability for the SRA.

48. Do you agree on the proposal for compensation payments for delays? What would be a reasonable minimum compensation payment in the form of reimbursed tickets for late and cancelled train services?

Yes. In principle, but cost benefit analysis of any solution needs to be produced. The proposed compensation commitments for high-speed services exceed those in place for national services in the UK in most cases, sometimes by significant amounts. The lower threshold of 30-minute delays for journeys up to 2 hours giving 50% compensation exceeds that currently committed to by all UK high-speed operators.

Before determining compensation levels, research must be undertaken to establish what passengers on international journeys consider is appropriate compensation, supported with adequate cost benefit analysis: It is essential to understand what passenger tolerance of delay is before compensation is expected, and to what level that compensation should then be. Doing this will ensure that costs are not increased unnecessarily by paying compensation which is not expected. Research undertaken by the SRA in Summer 2002 as to what the position for passengers using national services was, indicated that a significant proportion of passengers did not expect compensation at 30 minutes.

The principle behind the proposal in 6.3 that compensation schemes for high-speed services should be stricter because passenger expectations are higher and services are mostly operated on dedicated tracks which makes it easier to prevent delays is not supported: While passenger expectations may be higher, the reality in the UK is that high-speed services share infrastructure with other services and it is not easier for delays to be avoided. Even where separate tracks exist on European railways, in almost all cases, high speed services share infrastructure on the approaches to terminals so will be vulnerable at these key points to delays experienced by other services. It is possible that differential compensation should also not be supported because it could promote social exclusion: It implies that passengers on high-speed services (who will have paid

proportionately higher fares and have higher incomes) should receive superior compensation. The avoidance of social exclusion is a policy aim of UK Government. DfT may have a view on whether this is a real issue.

Looking at the conditions under which compensation should be paid:

- In cases where compensation is to be paid only for events within the control of the industry (ie the position within the UK, where no compensation is paid for delays due to terrorism, suicides - although it may be possible to mitigate the effects of some of them), this is a reasonable policy and we strongly support this in Regulation. It is not reasonable to require railway operators to compensate passengers for events over which the industry has no control. Passenger research conducted by the SRA in Summer 2002 also indicated that most passengers did not expect compensation for delays caused by these events. Data on expectations by type of delay by business, leisure and commuter passengers can be supplied if necessary.
- No, all cancelled trains should be included in the calculation of delay unless they are part of a significant and prolonged disruption which passengers will have been made aware of through the media. Train passengers do not generally check before they travel and in most cases even if they did, could not be advised whether their service will or won't be cancelled. Operators do not have contact details even for passengers with reservations so could not advise passengers either. The published timetable should form the measurement tool. All cancellations should be included in the calculation of delay unless there has been a significant and prolonged disruption (what qualifies as this would need to be the subject of further debate) which passengers will have been made aware of through media etc. In these cases, it is reasonable to exclude cancellations planned with 24 hours notice. In simple terms, if compensation costs are increased, the money available for use in other areas is reduced.
- Yes, but compensation should be in vouchers first and cash only if the passenger comes back stating he/she does not wish to have vouchers. If cash, most of it is likely to leak out of the industry, whereas vouchers retain the compensation within the industry. UK experience shows that vouchers are tolerated by most passengers. Vouchers should be available on all train services operated within the network. They should not be route or region specific.
- Compensation for financial transaction costs is not desirable. This is not a practice in the UK and, if introduced, will incur additional cost. It would not be reasonable to expect service providers to bear all the cost of complaints. This is not done in other sectors. While many railway undertakings in the UK provide reply-paid letters for complaints, none provide free call numbers to Customer Relations.

49. Should all passengers have the right for compensation of fares in case of delays or could this condition be limited to a certain number of tickets with a possible different price?

Yes. In principle, all passengers should be entitled to receive compensation proportionate to the delay experienced and the fare paid for the ticket. Passengers with lower value tickets should not be excluded, although inevitably the amounts paid in compensation should reflect the value of the ticket and may often be small.

50. Should there be common rules at EU level, which determine the surcharge to be paid in cases of travel without a valid ticket? Should there be a distinction between travel without a *valid* ticket, and without a ticket at all?

No. It should be left to Member States, but an EU standard may be appropriate for international services. The UK makes a distinction between those joining a train with a wrong ticket and those without a ticket at all. It seems sensible that a passenger boarding the wrong train is only charged the excess fare to make up a full fare rather than be treated as having joined without a ticket.

51. Should train staff be given a limited law enforcement authority in order to safeguard safety and security on board of international services as well as the punctuality of the service or do the existing, national provisions suffice?

This question should be left to Member States. We have to ask the question if on train staff would want, or use any additional powers in the area of law enforcement. Primary Legislation would be required in the UK to give on board staff law enforcement powers.

52. Should there be common rules at EU level to deny a passenger the right to board a train or to have access to a station, if that passenger might endanger safety and or security on board of international services?

In the UK, the National Conditions of Carriage and the Railway Bye-Laws set out in what circumstances an individual may be excluded from the railway, though there are more set out in terms of anti-social behaviour. Regulations permitting exclusion on safety grounds could be envisaged. Rules applying need to be transparent.