

All in a good cause



Darren Fodey and **Richard Shepherd** look at the consequences of new passenger protections for train operators

Passenger satisfaction is increasingly important on the railways. From the coming into force for railway passengers of key parts of the Consumer Rights Act 2015, to the current proposals for a rail ombudsman, we are seeing train operators having to manage an ever-growing area devoted specifically to passenger interests.

As part of its general election manifesto, the current government pushed for more regulation in transport and energy to address the customer experience. These included commitments to review ticketing, introduce a rail ombudsman and impose

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minimum service levels during industrial disputes. In this article, we look a little further down the road and ask – what will these changes mean for franchise operators?

What will the rail ombudsman do?

As recently as 26th June 2017, transport minister Paul Maynard announced in Parliament that a ‘task force’ including Transport Focus and the ORR is already putting together a proposal for the rail ombudsman. Prior to this, however, there had been a variety of proposals made, in Parliament and elsewhere, regarding what the role and powers should be of the rail ombudsman.

While the detail will have to await the

‘task force’, some of the less controversial elements of an ombudsman are likely to be complaint resolution and compensation. The train operator will still be the first port of call for customer complaints, there will be oversight and, ultimately, decisions made by that train operator can be overturned by the ombudsman. As time goes on (and rail ombudsman decisions build up) train operators can expect to have less discretion over the resolution of complaints – which will come with cost and reputational consequences. Indeed, under current proposals, they will be required to contribute to a central ‘pot’ that can then be used to fund the activities of the rail ombudsman and to fund compensation payments.

Similar to the energy ombudsman, the train operator would first need to be given the opportunity to respond within six to eight weeks, and in the absence of a satisfactory response, complaints could be escalated to the rail ombudsman for resolution. Train operators will need to ensure that processes are in place to meet these timescales – and to address complaints in a way which is likely to reduce the risk of escalation to the ombudsman. If, despite the train operator's best efforts, a complaint is escalated, decisions open to the rail ombudsman would include requiring an apology, an explanation of what went wrong, action to correct the issue and/or a financial award. Awards of the Ombudsman would be enforceable in court.

Why is it needed?

One of the reasons could be that, although Transport Focus currently has a role in passenger complaints, it has never had the power to resolve them and impose binding decisions. Another reason might be that while the introduction of Delay Repay in recent years has led to compensation being more generous and easy to access, it does not always reflect the true loss that passengers may face. Although compensation claims have increased as Delay Repay has become better

publicised, there is still a gap between compensation paid to the train operators and compensation paid to passengers. Over the past few years, passengers have been given additional rights alongside the Delay Repay scheme – for example, passengers now have the right to sue if train services are not performed with reasonable skill and care, for a reasonable price and within a reasonable time. The true impact of these new rights is not, as yet, clear – although what can be seen is that there is a developing market for private initiatives seeking to secure passengers their compensation. Apps such as TrainTrick track train arrivals, automatically lodge claims and get refunds paid directly to your bank account.

At the same time, a centralised compensation procedure could save costs while increasing the likelihood of claims by making compensation regimes even more visible and accessible.

Incentives

Despite this, there remains a strong case that train operators – incentivised to get passengers onto their trains – are the body best placed to deliver any compensation regime – whether localised or centralised. Train operators have access to the relevant information, and (where the train operator

is a franchisee) have other incentives in their franchise agreements – National Rail Passenger Survey targets being a good example. As the parties driving customer service and satisfaction to generate revenue, the train operators are arguably best placed to act on criticisms to the services offered.

Getting it right from the start

There is a lot here that will not be news (good or bad) to the train operating community. The rail ombudsman has been in the offing for some time now. It is also fair to say that the interests of the passenger and the train operator are not always opposed – both are interested in ensuring trains operate efficiently and effectively, and that customers are satisfied.

It remains to be seen whether the powers given to the ombudsman will meet these expectations. It is essential to get the role of the ombudsman right from the start: failure to address fundamental issues at inception may not encourage the right behaviours. Indeed, it could discourage investment in the railway, which is not in the interests of train operators or their passengers.

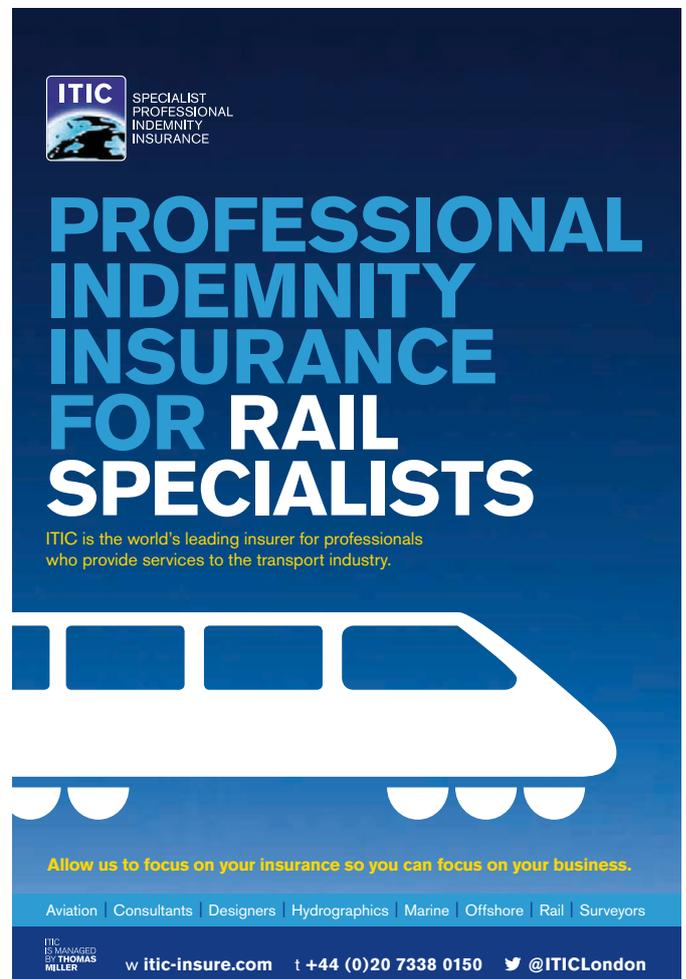
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