

# Claims Allocation and Handling Agreement (CAHA)

## Update and Overview

October 2010

### Introduction

A revised version of the Claims Allocation and Handling Agreement (CAHA) was issued last year by the Railway Industry Dispute Resolution Committee (RIDRC). RIDRC has been in continuing dialogue with industry parties over further changes this year.

This briefing provides an overview of CAHA including issues relevant to the update and the current dialogue.

A summary of the key provisions within CAHA is set out below.

- Primarily covers personal injury claims against the rail industry by third parties
- Concerns the handling of claims within the industry and allocation of liability between industry parties
- Claims below £7,500 automatically allocated on the basis of the type of claim
- Claims above £7,500 allocated according to liability at law
- Passenger Rights Regulation requires TOCs to make no-fault advance payments which can be recovered within CAHA

### Purpose and Application of CAHA

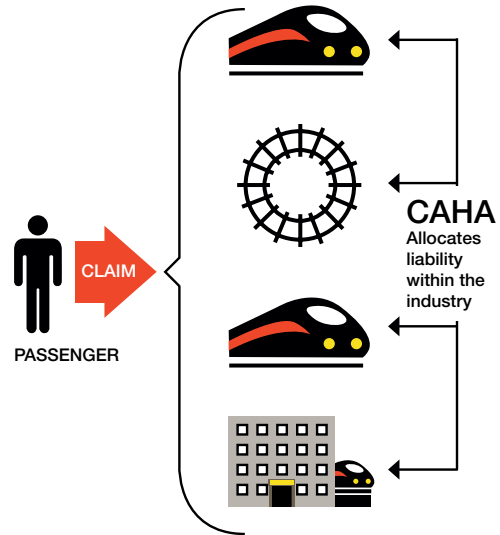
CAHA deals primarily with the handling and allocation of claims for personal injury made by third parties against the rail industry. In addition it covers some limited categories of contractual claims, such as an employee claim for personal injury.

The policy purpose of CAHA is that it is not necessary for the public to identify which industry party is responsible for their loss. He or she can sue any party and leave the industry to separately allocate responsibility.

All licence holders are obliged by the terms of their licence to sign up to CAHA (Schedule 6 lists all CAHA parties). Any breach of CAHA obligations is therefore potentially a breach of operating licence.

CAHA does not apply to all rail industry parties (for example contractors or suppliers). However they can be bound into CAHA under contract or, if this has not been done, invited to

join the process. If a body is not within CAHA, issues of recovery must be dealt with through the normal civil court route.



### Allocation of Claims within CAHA

How an injury claim is treated depends on whether it (together with other claims from the same event) is worth more or less than £7,500 (the Threshold).

#### Claims below £7,500

Liability is pre-allocated. This is to prevent small claims being argued within the industry. Regardless of liability at law, if a claim is worth less than £7,500 then a CAHA party is responsible for:

- Claims by its own employees
- Claims by its independent contractors
- Claims pre-allocated to it under Schedule 1 (which amongst other provisions makes a TOC liable for claims by its passengers)

#### Claims over £7,500

These are determined according to liability at law.

A Registrar exists to assist RIDRC. Where the claim is over £7,500 the Registrar must be notified. All "potentially liable parties" (PLPs) must be identified and their details passed to the Registrar.

The parties must then allocate a Lead Party. The role of the Lead Party is to handle the claim and act as a central point of reference. If this cannot be agreed the Registrar will call a meeting and decide. The parties can take this decision to the RIDRC for a final determination if they are not satisfied with the decision.

The Lead Party is normally the body which appears to bear sole or principal liability at law. However it is usual for the Lead Party to accept the role on a without prejudice basis until the full facts emerge.

The Lead Party is responsible in the first instance for paying any damages awarded to the Claimant and their costs. Reasonable expenses of the Lead Party can be recovered from other PLPs during the progress of the claim. However in essence the Lead Party bears the up-front cost of the majority of all outgoings.

### Major Incident

These provisions are varied where a Major Incident has occurred. A Major Incident is an event where:

- The Final Liability (the total of all third party claims) will be over £10 million; and/or
- The anticipated amount of all Outgoings (legal and expert costs, expenses, interim payments etc)
  - Exceeds £2 million, prior to determination of Final Liability; or
  - Exceeds £1 million in any calendar year.

Where a Major Incident occurs the Lead Party pays all sums to the claimant but can invoice other PLPs monthly for their agreed or an equal share. Whether PLPs should remain as a PLP is reviewed every six months or on request.

### How are claims ultimately divided up?

At the end of the claim the Registrar calls a meeting of the PLPs to seek to agree contributions. If this is not possible it goes before RIDRC which makes a determination.

RIDRC's decision can be appealed to an arbitrator, or to a Court if the final amount is over £5 million.

If there has been a Major Incident or the Final Liability is over £10 million, a majority of the PLPs can elect to bypass RIDRC and ask an arbitrator for a determination.

### Passenger Rights Regulation

The EU Passenger Rights Regulation (PRR) came into force in December 2009. This introduced additional rights for passengers to claim and effectively imposed absolute liability on TOCs in respect of certain claims (broadly death or personal

injury - where under the PRR a payment of up to 175,000 euros per passenger can be awarded - or damage to passengers property). This absolute liability is displaced only where the loss or injury is caused by the fault of (largely non-rail) third parties. It also included a no-fault advance payment to be made by TOCs to passengers (not less than 21,000 euros in the case of a fatality) and a default Europe wide allocation mechanism.

CAHA was revised to accommodate the PRR. In practice TOCs should still be able to recover advance payments from the liable party. The PRR can be excluded where its provisions regarding division of liability are inconsistent with CAHA.

We have prepared a separate briefing on the PRR which may be read alongside this, found at web address: [http://www.burges-salmon.com/Sectors/transport\\_and\\_logistics/Publications/The\\_Passenger\\_Rights\\_Regulation\\_2009\\_and\\_the\\_Claims\\_Allocation\\_and\\_Handling\\_Agreement.pdf](http://www.burges-salmon.com/Sectors/transport_and_logistics/Publications/The_Passenger_Rights_Regulation_2009_and_the_Claims_Allocation_and_Handling_Agreement.pdf).

### Current Dialogue with RIDRC

Despite the amendments made to CAHA a key issue which RIDRC continues to consult on is the cap on liability for property damage. At present there is a £5 million cap on liability in respect of property damage.

This cap is disapplied by the model clause Track Access Agreement (therefore between TOCs and Network Rail).

Applying the cap proved very complex in the leading industry dispute (GNER v Network Rail which followed Hatfield). As it is now partially disapplied between some parties but still purports to apply between others its application may prove to be more complex still.

RIDRC has consulted on this cap but did not feel the responses provided sufficient guidance on how best to proceed. It has therefore proposed how the clause could be amended and intends to consult further during Autumn 2010.

This is clearly a significant issue for most industry parties and is something to be alive to as the consultation develops.

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