

The Passenger Rights Regulation 2009 and the Claims Allocation and Handling Agreement

October 2010

Introduction

On 3 December 2009 a new EU Regulation came into force on rail passengers' rights and obligations – the Passengers Rights Regulation (PRR). The PRR has direct force in the UK without the need for national legislation.

This briefing follows our briefing on the Claims Allocation and Handling Agreement (CAHA) found at http://www.burges-salmon.com/Sectors/transport_and_logistics/Publications/CAHA_Update_and_Overview.pdf and on the PRR found at http://www.burges-salmon.com/Sectors/transport_and_logistics/Publications/Tightening_Passenger_Rights.pdf. In particular this briefing considers the rights of passengers to financial compensation under the PRR and the interaction with CAHA.

Certain key issues are set out in the box below :

- TOCs have absolute liability to passengers in most situations in respect of death or personal injury - up to 175,000 euros per passenger under the PRR - and damage/ loss of property. This is subject to a limited carve out for third party fault
- Advance payments are to be made by TOCs to passengers/ family where death or injury occurs with a minimum of 21,000 euros in the case of a fatality
- The PRR specifies a default Europe wide allocation mechanism to determine liability
- Under CAHA it remains possible to recover payments from the liable party
- The CAHA allocation mechanism is preserved

Absolute Liabilities under the PRR

The PRR introduces certain new absolute liabilities on industry parties to compensate passengers for death, personal injury and loss/ damage to luggage. In addition there are specific compensation provisions for delays and cancellations. These liabilities are in addition to the existing regime and in the first instance fall primarily on TOCs:

- The carrier is primarily liable where death or personal injury occurs for whatever reason. Under the PRR carriers are liable to pay up to 175,000 euros per passenger.

- Carriers are obliged to make advance payments (not less than 21,000 euros in the case of death) to passengers who are injured/killed pending the final outcome of any claim.
- Carriers are liable for damage to registered luggage and, where linked to personal injury, also for damage to hand luggage.
- In addition to replacement services and refunding tickets, carriers will be liable to refund part of the ticket price where the delay exceeds one hour.

The carrier is not liable if:

- The accident was not connected with the operation of the railway and the carrier took all reasonable care to avoid the accident;
- It is due to the fault of the passenger; or
- It is due to the behaviour of a third party and the carrier took all reasonable care to avoid the accident.

Another undertaking using the same railway infrastructure (e.g. another TOC) does not fall within the definition of "third party". The PRR does not set out clearly whether Network Rail would meet the definition of "third party". It is therefore untested whether, in the case of an accident caused due to infrastructure failure, a TOC would be relieved of its initial absolute liabilities and could instead seek to pass liability to Network Rail. This is a point likely to be tested in due course.

It is not possible for TOCs to contract out of the obligations imposed by the PRR.

The PRR specifies which party an action must be brought against. This is typically the operator of the train the passenger was on at the time of the accident.

Claims Allocation and Handling Agreement

The provisions of the PRR apply Europe wide. However, within the UK, CAHA had previously in operation for many years. CAHA is a specific industry arrangement designed to handle passenger claims, primarily claims following death or personal injury. It therefore applies to the same ground as the PRR.

By way of high-level summary of CAHA:

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- The purpose of CAHA is to present a united front to passengers who may claim against any rail industry party following an incident. Allocation of liability between industry parties is handled within CAHA after the claim has been paid out.
- There are detailed mechanisms stipulating which party should have responsibility for managing the claim and how liability is to be allocated. These are dependent on the value of the claim, the nature of the incident and the potential liability of each party.

Revision of CAHA in light of the PRR

The PRR threatened the CAHA process. As directly applicable European legislation the PRR potentially superimposed a structure over CAHA which was incompatible with the CAHA process. However arguably the PRR was not clear in its drafting and the process was unsuitable to the United Kingdom which (through CAHA) already had a developed and effective system for paying out passenger claims and allocating liability (unlike many other EU member states).

CAHA was therefore preserved, but amended in response and to accommodate these new rights of claim.

Where an advance payment has been made by a TOC it should be possible within CAHA to recover this from the party which has liability for the incident.

In similar vein, although a TOC has absolute liability under the PRR for claims for death, personal injury or property damage/loss (in the circumstances mentioned above), again a TOC should be able through CAHA to recover these monies from the liable party.

The default Europe wide allocation mechanism can be disapplied and the usual CAHA principles used instead.

These changes have only recently been introduced. It will be interesting to see how the revised CAHA operates and the interaction in practice with the PRR.

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