

Responses to Legal Advice on the Applicability of the Public Service Vehicles Accessibility Regulations 2000 (PSVAR) – Published December 2019

Organisations:

1. Abellio UK
2. Classic Bus Hire
3. CPT UK
4. Disabled People's Transport Advisory Committee (DPTAC)
5. First Group
6. Govia Thameslink Railway
7. Great Western Railway
8. Hull Trains
9. London North Eastern Railway
10. Mobility and Access Committee for Scotland (MACS)
11. Rail Delivery Group
12. ScotRail
13. South Western Railway
14. TransPennine Express
15. Transport Focus
16. Virgin Trains
17. West Midlands Railway

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Stephanie Tobyn
Office of Rail and Road

By email

11 October 2019

Abellio Transport Holdings response – Legal Advice on the Applicability of the Public Service Vehicles Accessibility Regulations 2000 (PSVAR)

Dear Stephanie,

Abellio Group provides services across the UK. We welcome the opportunity to respond prior to the re-issue of the consultation document by the ORR. We also welcome the focus and discussion of the ways in which we can seek to ensure that our Rail Replacement provision is accessible to all and wish to play an active part in this process.

Abellio Rail Replacement are one of the UK's largest supplier of Rail Replacement vehicles for both planned and unplanned disruption to Rail Services. In common with other providers, and due to the flexible and ever-changing vehicle/route requirements, ARR uses a large network of sub-contracted vehicles from a wide-range of providers (currently c.550 operators). This requirement and the supplier fleets varies across the UK in response to the different urban, rural and long distance rail routes they support.

We have some concerns over the both the suggested timeline for the implementation of PSVAR on Rail Replacement services and the serious safety and operational ramifications of doing this on January 1st 2020. We would note that TOC have already begun securing vehicles for some services due to operate after this date and therefore swift clarity for our customers, supplier and ourselves would assist us in preparing to move forward.

In outlining both our current brief assessment of the market and our concerns below, we are not seeking to suggest that the challenges posed by the introduction of PSVAR to Rail Replacement is insurmountable. We have therefore also taken the opportunity to present a range of potential positive options which would allow

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us and other providers to comply with the spirit in which we believe the proposed changes, and indeed the ORR's wider aim of ensuring the railway is more accessible, can be achieved.

Current State of the Market:

In 2018, ARR provided around 38,500 vehicles across the UK on Planned and Unplanned Rail Replacement duties¹. In 2019, the volumes are expected to be similar to 2018, noting that ARR have been supplying East Midlands Railway (EMR) since the start of their franchise in August 2019 and as such the percentage of long distance journeys will rise as a result.

The fleet profile used varies considerably by route and across the different regions in which we operate, however, we have a significant reliance on the use of coaches. In 2018, 80.5% of all Rail Replacement Duties (planned and unplanned) were operated by a coach, 12.2% by small vehicle (8-16 seats) and just 7.3% by bus.

In supporting our customer TOCs in their previous responses to the ORR we have undertaken an assessment of the current availability of vehicles with our supply chain. We currently estimate that between 3 and 5% of coaches (over 16 seats) within our suppliers fleets meet the requirement for accessibility as set out in PSVAR. There are some routes/regions where it is appropriate to use buses which already meet the existing PSVAR requirements for Public Service Vehicles.

It is our view that there simply is not capacity within the current market of supply to meet the demand which will be created from January 1st 2020, nor is there time for the market to adapt to this requirement before that date. In our further response below, we have sought to provide a snapshot of the more detailed challenges and impacts of implementing PSVAR on Rail Replacement coach services.

Safety/environmental challenges:

We have serious concerns that the potential implementation of the requirements impacts directly upon both safety and security responsibilities for TOCs. It would be negligent of them not to assess and validate the impact of the changes resulting from implementation and we believe that it is necessary to take the time

¹ ARR define a duty as a collection of journeys undertaken by a vehicle during a day so the number of journey legs will vary within a single duty.

to properly consider these. It is clear to see that there would be increased risk to employees, passengers and public in a scenario in which the PSVAR regulations were implemented whilst the supply chain is unable to meet the volumes demanded by ARR.

The increase in crowding that would result from reduced supply raises the security risk and would potentially invalidate the current approach legislated by the National Rail Security Programme. It is our view that this will require a risk review lead by the Department for Transport, Land Transport Security, British Transport Police (BTP) and Centre for the Protection of National Infrastructure colleagues.

Additionally, the management of disruption, already a concern for the ORR, BTP, Trades Unions and TOCs would suffer a significant increase in safety risk resulting from the behaviour of passengers denied an acceptable level of service.

Assessment of this potential is required to establish what may be done to manage that risk acceptably within 'As Low as Reasonably Possible' (ALARP) principles. It is unlikely that effective risk controls can be implemented in the timescales proposed.

Operational challenges arising from the introduction of PSVAR on Rail Replacement:

- **Availability:** As discussed above, it is our view there simply are not enough compliant coaches in operation to source for the entire engineering works programme. We believe our assessment of the market is likely to be representative of the UK as a whole given our diverse geographic coverage across the UK. As such, it is unlikely that seeking capacity from elsewhere in the UK will be an option, particularly during major, multi-TOC operations or at peak times of the year.
- **Distance:** We run a wide variety of different routes and coaches are a practical choice for a number of reasons including passenger comfort, toilet facilities, luggage capacity and journey speed (noting many journey times are already longer than the equivalent journey by rail).
- **Tachograph Regulations:** A concern raised by ARR suppliers is around the use of tachographs. On longer distance routes, these would be required as well as requiring operators/ARR to schedule driver hours under EU rather than Domestic regulations. Because many operators/drivers undertake a mix of work other than Rail Replacement during a week, the requirement to comply with both EU and Domestic hours reduces scheduling efficiency and will have a further impact on the willingness of operators to supply vehicles.

- **Supplier Safety Concerns:** In discussing the potential impacts of PSVAR introduction on Rail Replacement, suppliers have raised concerns around the need to ensure wheelchairs carried are crash tested and the various restrictions this will place on some users.

Infrastructure challenges:

We note that the full introduction of PSVAR on Rail Replacement would, in effect, mirror the current situation on heavy rail whereby vehicles serving pick up points would be accessible, however, the stops they serve may not be.

Due to the temporary and sometime unplanned nature of Rail Replacement it is often necessary to create temporary pick up points at stations (particularly larger Rail Heads) which would otherwise not be used as stopping points. At some smaller or rural stations, pick up points are at the roadside or some distance away from the station due to the practical space and safety constraints of the road network. This may mean a PSVAR compliant vehicle may not be able to safely pick up or set down customers at a station pick up point.

Due to the timescales for response, we have not been able to fully assess the individual impact on our c.800 served stations however we note that the current guidance does not consider this implication, nor the adjustments which may be considered reasonable in order to meet the spirit of the requirements in allowing customers to plan and travel with confidence.

Potential Improvements to the accessibility of Rail Replacement services:

The below options are intended to provide a practical set of suggestions based on the current supply within the market as outlined above. In each case, we are willing to work with the ORR to better scope and define the options and the timelines in which they could be practically delivered. We also recognise that a 'one size fits all' approach may not work in all cases due to the varying nature of the routes we serve across the UK.

Option 1: Review of accessible supply by route:

It is clearly our preferred option to look to supply PSVAR compliant vehicles wherever possible. We would suggest this is best done on a route-by-route basis to assess whether switching to using buses rather than coaches with immediate effect may be practical. We would also look at the local/regional supply of coaches

available and would welcome a discussion on the best way to prioritise supply to maximise the accessible journey opportunities for customers.

Option 2: Multi vehicle departures:

On some busier routes, we currently run multiple vehicles per departure. We would propose that in this scenario we seek to prioritise offering a PSVAR compliant vehicle on each departure in order to create an accessible journey option across the timetable with the longer term aim of full compliance on all vehicles on that departure.

Option 3: Accessible standby vehicle provision:

It is already common practice during planned operations to put additional 'standby' vehicles at stations to allow for additional capacity where passenger numbers are high or to cover mechanical faults. Our discussions with suppliers indicate that there is a supply of smaller vehicles (fewer than 22 seats) which meet the standards for PSVAR. This would allow us to use limited supply as well as improving the accessible journey options from stations on an 'on demand' basis to create accessible journey options for customers.

Option 4: Network Planning:

Working with Network Rail and TOC's may allow us to review and amend some rail heads on pre-planned work order to improve the journey opportunities for accessible travel. Practical examples of this include shortening the possession limits/the distance between railheads to allow for buses to be used instead of coaches or looking to move customers shorter distances to parallel routes for train connections.

In proposing this, we note that some major work is planned over 12 months in advance and that minor work for the first quarter of 2020 is already planned. As such the lead time for review and introduction of this solution may be significant.

Option 5: Supplier Behaviour:

We recognise that we have a responsibility to positively influence and encourage our supply chain to move towards full compliance and can influence the speed with which this is done. A number of suppliers recognise that Rail Replacement makes up a significant percentage of their business and have indicated a willingness to work with ARR to improve the supply of vehicles within the market.

We will continue to look to work with suppliers and create opportunities for them to better understand and comply with the requirements of PSVAR, however a

certainty around the way forward is required before we seek to ask suppliers, the majority of whom are SME's or sole traders, to make significant investment in their vehicle fleets.

Kind regards,

Rebecca Holding

UK Head of Operations Delivery
Abellio Transport Holdings.

In order to arrive at my conclusion that the National Authority is responsible for the rail replacement services and has simply delegated to day to day operation to the TOC's a review of legislation and advice from the TC was required, operational experience was also used.

As we know and unless exemptions apply Local Bus services are required to be registered in accordance with current legislation, this is detailed in an easy to read format as produced by the Office of the Traffic Commissioner in Statutory Document No14, PSV 353A and in detail as contained in relevant legislative Acts of Parliament.

As part of the review a number of key pieces of information became relevant,

- Transport Act 1985, regulation 6 (1).
- Railways Act 2005, regulation 40 (1).
- Public Service Vehicle (Registration of Local Services) Regulations 1986.
- The Public Service Vehicles (Registration of Local Services) (Amendment) Regulations 2018
- Notices and Proceedings for the Western Traffic Area at Section 3.
- Statutory Document No14.
- Operational experience.

The review produced, at least in as far as (our main operating area) the Western Traffic Area Notices and Proceedings document produced by the Office of the Traffic Commissioner for the Western Traffic Area and relevant local authority publications in accordance with the The Public Service Vehicles (Registration of Local Services) (Amendment) Regulations 2018 no evidence could be found to confirm that any rail replacement service had been registered in accordance with the provision set out in statute. This brought the following questions,

1. In order for Rail operators and or agents to be registering rail replacement services they should hold a PSV operators Licence.
2. Are rail operator acting appropriately by not registering rail replacement services?
3. An exemption applies for the registration of rail replacement service in accordance with the Transport Act 1985, regulation 6 (1) where it says - *In this section "service" means a local service which is neither a London local service [F1 nor a service which falls within subsection (1A) below] nor a service provided under an agreement [F2 entered into, where a railway service has been temporarily interrupted, with the Secretary of State, the Scottish Ministers or the National Assembly for Wales under section 40 of the Railways Act 2005 (substitution services provided for interrupted or discontinued railway services)]*.
4. Some other exemption applies.

I have been unable to establish what provisions would apply to allow rail operators or agents not holding a PSV Operators Licence to be able to register a local bus service.

There is no evidence to suggest rail operators are acting in any way that is not appropriate by not ensuring rail replacements services are registered.

I could not establish, at least in the context any exemption for the registration of local services other than that noted at transport Act 1985 regulation6 (1).

After reviewing the evidence I arrived at the conclusion that the Secretary of State is responsible is responsible for the the provision of rail replacement bus services.

I may have missed a crucial piece of information or misinterpreted the legislation and it is indeed as other have indicated the TOC's are responsible for managing and procuring the provision of rail replacement services. If that is the case it brings an additional number of questions,

1. Why are rail replacement local services not being registered?
2. What legal action could be taken against TOC's and or agents for failing to meet legal obligations in regards operating local bus services without registration?
3. Would operators become liable for operating local services where these are not registered?
4. Would it be possible for rail replacement services to continue if they are not registered?

All far too much to be discussed in an email and I have not even started to discuss London obligations!!!

I would be delighted to assist the ORR further in this matter by providing a face to face explanation of my thoughts an to provide information in regards bus and coach operator operational experiences.

Many thanks

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CPT supports the provision of accessible transport services and our members have invested many billions in accessible buses and coaches used on services that are in-scope of the Regulations. However, we are concerned about the implications of a requirement that all buses and coaches on rail replacement services would have an accessibility certificate. Currently, the majority of buses in the UK comply with PSVAR but only a minority of coaches do. This is because coaches are only required to comply when used on local and scheduled services.

CPT understands that the ORR has obtained a legal opinion indicating that most rail replacement services would meet the definition of a local or scheduled service and would therefore fall within scope of PSVAR. This is a matter of concern as we do not believe that all rail replacement services, particularly those provided in emergency circumstances, are operated ‘along specified routes, at specified times, and with passengers being taken up and set down at pre-determined stopping points’; this might indicate that not all services would be in scope of the regulations.

Whilst it goes without saying that bus and coach operators should always operate in a compliant manner, we should highlight that the available fleet of PSVAR compliant coaches is such that there would be an inadequate supply of suitable vehicles for most rail replacement operations if a requirement for compliance were imposed, based on the opinion received. CPT has attempted to estimate the number of PSVAR compliant coaches in the UK that might be available for rail replacement and other in-scope services. We have provided an estimate to colleagues at the ORR, indicating that there may be around 600 coaches that are not regularly used on express and other local/scheduled services. We haven’t been able to establish a firmer estimate but we are making further enquiries. Clearly, of those coaches that are compliant, availability for rail replacement work will depend on geographic location and use on other services that may or may not require PSVAR compliance. It is worth noting that the PSV Accessibility Regulations were implemented in 2000 and rail replacement services have until recently largely been interpreted as being outside their scope. Whilst this interpretation *may* have been (at least partly) incorrect, it would be unfortunate if any new interpretation resulted in rail passengers becoming stranded.

It is also worth noting that buses, the vast majority of which *are* PSVAR compliant, may not be suitable for many rail replacement operations. Apart from potential height issues and the absence of seat belts, most buses will not be fitted with a tachograph, which would be required for a regular service exceeding 50 kms.

Thank you again for the opportunity to provide our views. We look forward to contributing further on the subject in due course and please let me know if you have any queries on the above in the meantime.

Kind regards
Keith

Keith McNally
Operations Director, CPT UK

Thank you for sharing your legal advice with us, which we found very helpful. The advice seems to be quite clear in its conclusions, and places a clear responsibility on train operators to provide PSVAR-compliant road vehicles for all 'local' and/or 'scheduled' rail replacement services. These services account for the vast majority of rail replacement services.

The legal advice does, however, suggest that unscheduled, longer-distance rail replacement services, fall outside the scope of current legislation. Such services are, in reality, relatively rare and only likely to be operated during periods of very significant, unplanned disruption, caused by extreme weather conditions or similar 'force majeure' events. We would argue that even in these circumstances, it is an entirely reasonable expectation on the part of disabled travellers, that any unscheduled services operated would use PSVAR-compliant road vehicles, or, as an absolute minimum, WAV-compliant taxis.

Given the above, DPTAC sees no reason to change its original position (as set out in our response of the 18th January to your consultation on 'Improving Assisted Travel'), the gist of which was that rail replacement services should use buses and coaches that are PSVAR compliant.

Best regards

David Mapp (on behalf of DPTAC)

18 October 2019

Stephanie Tbyn
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Dear Stephanie

Accessible Travel Policy – Legal Advice on the Applicability of the Public Service Vehicles Accessibility Regulations 2000 (PSVAR)

Thank you for your letter of 30 September 2019 inviting us to comment on the applicability of PSVAR to rail replacement services. Your letter initially requested a response by 5pm on Friday 11 October 2019. We are grateful to the extension you agreed to that deadline to Friday 18 October 2019.

We are responding to set out comments and concerns which are, we have established, common to all of FirstGroup's subsidiary train operating companies (TOCs). We understand those operators will also be responding separately to provide their own, franchise-specific comments and concerns.

- 1 We acknowledge that the accessibility of rail travel is an important issue to passengers and the rail industry. FirstGroup and the TOCs take their obligations and responsibilities in relation to providing accessible travel to all passengers very seriously. We have worked hard to make significant improvements to accessibility over recent years, but we recognise that there are ongoing issues to be resolved to improve accessibility of rail travel. ORR's ATP Guidance is an essential part of that ongoing work, and we are committed to continue working with you to develop the ATP Guidance to improve accessibility.
- 2 We have considered carefully the advice obtained by the ORR from Zoe Leventhal of Matrix Chambers, which provisionally concludes that rail replacement services must comply with PSVAR (the "**Legal Opinion**"). As ORR is aware, this provisional view is contrary to the accepted position throughout the rail industry for nearly two decades that rail replacement services are not subject to PSVAR.
- 3 If the Legal Opinion is correct, we would request ORR considers carefully how best to manage this significant development to facilitate compliance across the industry in the interests of all passengers, and specifically disabled passengers.
- 4 However, we have serious concerns as to the analysis and conclusions drawn in the Legal Opinion. In particular, we do not agree with the interpretation of the National Rail Conditions of Travel (NRCoT) that a passenger's train ticket includes a bus fare (we also note the analysis is based on an out-of-date version of NRCoT).
- 5 The provisional conclusion in the Legal Opinion that a passenger's train ticket includes a fare for "*a service ... for the carriage of passengers by road*" is not sustainable. A train ticket is evidence only of a passenger's "*entitlement to travel on the National Rail Network [i.e. "the network of railway lines over which Train Companies operate scheduled passenger railway services"¹], as allowed by the type of Ticket [they] have purchased.*"² If

¹ Appendix B (Definitions) of NRCoT

² Condition 4.1 of NRCoT

a TOC cannot, because of planned or unplanned disruption, transport passengers by train, it *"will, where it reasonably can, provide [them] with alternative means of travel to [their] destination, or if necessary provide overnight accommodation for [the passenger]"* (Condition 28.2 of NRCOT). That is not a right to travel by road, and certainly not a right to travel by bus or coach.

- 6 The Legal Opinion ignores Condition 28.2 completely and instead relies only on an incorrect reading of Condition 27.1, Condition 27.1 provides only that *"From time to time, it may be necessary to replace a train service with a bus or coach."* This might *"envisage"* (as the Legal Opinion states) an alternative service by road being provided, but that does not make it *"a service which is encompassed within the fare paid by the passenger to the TOC when the rail ticket is purchased."*³
- 7 The Legal Opinion goes on to analyse and conclude that passengers are each paying a bus / coach fare as part of their train ticket. The case law put forward as supporting the Legal Opinion relates only to passengers who had intended to ride a bus / minibus and had made a payment accordingly. It does not apply to rail replacement services, where passengers have bought a train ticket intending to ride the train, but are actually transported by bus or coach because of disruption to their rail service.
- 8 The Legal Opinion also fails to consider the actual contractual arrangements between:
- (a)r TOCs and operators providing rail replacement services; and
 - (b)r Network Rail and TOCs, in relation to the recoverability of a TOC's costs of rail replacement services incurred as a result of planned and unplanned disruption.

The contractual arrangements in place make it clear that a passenger's train ticket does not include a fare for rail replacement services,

- 9 The Legal Opinion also largely fails to acknowledge any difference between planned and unplanned disruption. For example, it clearly would not be correct that a rail replacement bus / coach operating in the event of unplanned disruption constituted a 'scheduled' service. That then leads to the difficult outcome that TOCs might have different PSVAR obligations depending on if their stations are less than 15 miles apart (i.e. within the scope of 'local services', according to the Legal Opinion). TOCs operating long distance rail services would have reduced PSVAR obligations compared with TOCs operating short distance stopping trains, and so find it easier to provide rail replacement services because they would not have to source as many PSVAR-compliant vehicles.
- 10 However, we do not intend to labour over technical legal arguments in this response; fundamentally the wider issue is a matter of improving the accessibility of rail travel for disabled passengers, those with reduced mobility and who are otherwise vulnerable (for example, because of hidden disabilities). We fully support this. However, to be effective for the benefit of those passengers, the obligations imposed on TOCs have to be grounded in practicable, workable solutions. Improvements to accessibility are unavoidably subject to practical and economic constraints which it will necessarily take time and thought to overcome. It would be irrational for ORR to mandate TOCs to operate in a way that the current practical environment does not allow, and we welcome ORR's assistance and guidance in working through this.
- 11 If the Legal Opinion is correct that rail replacement services must comply with PSVAR (noting we do not agree this is correct), we consider this will give rise to unintended consequences that ORR will need to address in updated ATP Guidance. These issues are expanded upon below, but at a high level, we anticipate ORR will need to consider how the bus and coach industry can be compelled to upgrade a sufficient number of vehicles to comply with PSVAR in order to provide rail replacement services. ORR will also need to consider the extent to which non PSVAR-compatible station infrastructure

³ Paragraph 28 of the Legal Opinion

(particularly temporary bus/coach stops) may need to be upgraded to enable use by PSVAR-compliant vehicles, and the extent to which Network Rail has been funded to upgrade stations to compliance.

- 12 The alternative, if rail replacement services are required to comply with PSVAR without addressing the unintended consequences, is a severe risk that travel for all passengers, which may have a greater adverse impact on disabled passengers due to their additional needs, will be significantly worsened during times of planned and unplanned disruption.
- 13 We set out below the issues that we consider ORR needs to address when considering potential amendments to its ATP Guidance in respect of rail replacement services.

14 Passenger uncertainty:

- (a) Passengers have a firm, justified expectation that if a train service is disrupted, the TOC will otherwise transport them to the destination on their ticket. This is crucial to the successful operation of passenger rail services, and the faith passengers put in us to transport them to their destinations.
- (b) We recognise that the accessibility of rail replacement services can be improved. Accessible transport is a continuing focal point for the industry, and TOCs are acutely aware of the Inclusive Transport Strategy and the ATP Guidance. However, it is important not to lose sight of the fact that the current system does provide effective rail replacement services, and thereby gives certainty to passengers.
- (c) Requiring rail replacement services to be PSVAR-compliant could substantially prevent TOCs from providing a full rail replacement service, to the detriment of all passengers. It would put passengers in the precarious situation where they would not know whether they would be able to travel in the event of disruption, because they could not have confidence that enough rail replacement vehicles would be provided. That could only be an irrational outcome of a potential amendment to the ATP Guidance on rail replacement services.

15 Insufficient PSVAR-compliant buses and coaches:

- (a) Fundamentally, there are not enough PSVAR-compliant buses and coaches to perform rail replacement services. This is the case in all franchises operated by FirstGroup-owned TOCs, and is not within a TOC's control. Rail replacement services will form only a small part of a bus or coach operator's business, which prevents a TOC from having any real ability to compel an operator to upgrade their vehicles to PSVAR compliance.
- (b) In particular, the overwhelming majority of coaches are not PSVAR-compliant (usually because they fall under the exemption for tour buses⁴). If it is correct that rail replacement services are subject to PSVAR, then this will severely limit a TOC's ability to contract rail replacement services fulfilled by coaches.
- (c) Coaches play an important role in rail replacement services. They are the appropriate vehicle for long distance rail replacement services because they are designed for increased passenger comfort (including e.g. toilet facilities, full height seats and air conditioning). Coaches also have materially more space for passengers and luggage.
- (d) If all TOCs were required to use PSVAR-compliant coaches, there would not be enough compliant vehicles to satisfy a TOC's requirements for rail replacement

⁴ Pursuant to Regulation 3 of PSVAR, which applies to buses and coaches which are "used" or "in use". Under Reg.3(9)(b), those expressions "means the regulated public service vehicle is being used to provide either a local service or a scheduled service"; tour services are explicitly excluded from the definition of "scheduled service"

services. TOCs would have to attempt to use PSVAR-compliant buses as an alternative.

- (e) Whilst the majority of buses are PSVAR-compliant, they are predominately (overwhelmingly so) already in use providing bus services, and so cannot be diverted to provide rail replacement services. This would prevent the bus operator from providing bus services under its own licence, and put them in breach of their bus operator's licence conditions as well as damaging passenger confidence in the bus network. This difficulty would be exacerbated if a TOC was sourcing emergency replacement buses in the event of unplanned disruption.
- (f) Further, buses available to provide rail replacement services are usually smaller and slower than coaches, meaning more buses would be required to provide an equivalent service to rail replacement coaches. This exacerbates the issue that there is already extremely limited bus capacity for the reasons in paragraph (e) above (i.e. because they are already in use fulfilling existing bus services).
- (g) In addition to the issue of insufficient buses, there are also insufficient bus drivers available to drive those buses. We already experience existing rail replacement service operators struggling to find enough drivers even when using coaches, and operators would need to find more drivers if PSVAR-compliant buses were used instead (in the event buses were available).
- (h) As such, if rail replacement services were required to be PSVAR-compliant, TOCs simply could not source enough PSVAR-compliant vehicles or drivers to provide those services at a level much beyond essential travel. We anticipate that TOCs would then have to consider a number of unsatisfactory options, including holding passengers at a station, sending passengers away from a station, and issuing 'do not travel' notices. None of these are desirable options, and each would severely harm public trust in the rail industry.
- (i) These issues with availability of vehicles and drivers would be acute in the event of unplanned disruption, the nature of which means TOCs will be limited to using only those PSVAR-compliant vehicles which are available at very short notice.

16 Lack of compatible station infrastructure

- (a) Even if sufficient PSVAR-compliant vehicles and enough drivers were available, a significant number of stations do not have PSVAR-compatible temporary rail replacement bus/coach stops. PSVAR-compliant low-floor buses still require a raised curb at stations in order to be fully accessible. That is, even if a TOC could operate 100% PSVAR-compliant rail replacement services (which, as explained above, it could not), it would still be unable to provide fully accessible rail replacement services because bus/coach stops are not compatible at a number of stations.
- (b) A number of stations are used by several TOCs, however only one of the TOCs will, as Station Facility Owner, have full knowledge of whether their facilities are PSVAR-compatible. Other TOCs have no formal mechanism to find out whether PSVAR-compliant infrastructure is in place. It is not acceptable for a passenger who requires accessible transport to board a PSVAR-compliant coach at their starting station to find they then cannot disembark at their intended destination.
- (c) We expect Network Rail will want to make separate representations to you in respect of PSVAR-compatible infrastructure at their stations.

17 Arrangements currently in place for passengers requiring accessible transport

- (a) We recognise that non-PSVAR buses and coaches are unlikely to be suitable for passengers requiring accessible transport. Currently, in the event of disruption such passengers are usually transported (along with their travelling companions,

within reason and in accordance with the applicable policies) by private taxi, and often to their ultimate destination rather than just their intended destination station.

- (b) For passengers requiring accessible transport, transport by taxi provides a journey that meets their accessibility needs and allows for much greater flexibility to meet any additional needs and requirements of each individual passenger. Most obviously, a taxi will often take the passenger to their final destination, limiting the overall journey time, and can stop en-route if a toilet break is required. The provision of personal taxi journeys for planned and unplanned disruption will arguably also provide a significantly less disruptive travel experience for any disabled passengers, who, for example as a result of a hidden disability, would find the alternative of bus or coach travel stressful.
- (c) We acknowledge that rail replacement taxis are not a perfect long-term solution to the extent they may be viewed as treating disabled passengers differently from other passengers. However, in the absence of a sufficient number of PSVAR-compliant buses and coaches to provide all rail replacement services, they are an appropriate (and essential) adjustment to provide accessible travel in the event of disruption.

18 Impact on agreeing possessions with Network Rail

- (a) Given the limited number of PSVAR-compliant vehicles which a TOC can source to provide rail replacement services, it is likely there will be unintended consequences on the process for agreeing possessions with Network Rail.
- (b) It is possible a TOC may find itself in a position where it cannot realistically agree to a possession until it has established whether or not it will be able to source enough PSVAR-compliant vehicles to provide an appropriate rail replacement service to minimise disruption. As we note above, the overwhelming majority of coaches are not PSVAR-compliant therefore sourcing enough PSVAR compliant vehicles will currently be very unlikely.
- (c) The current lack of availability of sufficient PSVAR-compliant vehicles could therefore result in reduced maintenance, worse performance, a higher rate of cancelled services, and costly and time-consuming legal action between TOCs and Network Rail. Alternatively, if the TOCs agree possessions with Network Rail and cannot source enough PSVAR-compliant vehicles, the impact will shift to passengers, as the TOCs will only be able to provide limited rail replacement services during the possessions.

19 Criminal sanctions for non-compliance with PSVAR

- (a) The Legal Opinion provisionally indicates that TOCs could be criminally liable for non-PSVAR compliant rail replacement services. As noted above, we do not agree that rail replacement services are subject to PSVAR. However, TOCs must comply with the revised ATP Guidance. If, following consultation, the ORR indicates in revised ATP Guidance that rail replacement services must comply with PSVAR, the TOCs must act accordingly. That will include working on the assumption that the analysis in the Legal Opinion on potential criminal liability is correct.
- (b) Compliance with revised ATP Guidance should not however be interpreted as acceptance of the Legal Opinion and we anticipate the TOCs will reserve their positions in this situation.
- (c) TOCs cannot condone or engage in criminal behaviour. If it is potentially a criminal offence for a TOC to operate non-PSVAR compliant rail replacement services, then where there are not enough PSVAR-compliant vehicles available to provide a rail replacement service, realistically a TOC must limit services only to a level which can be fulfilled in compliance with PSVAR.

We hope this response assists ORR to understand some of the challenges faced by operators when it develops its new consultation on paragraphs A4 and A6 of the ATP Guidance in relation to the accessibility of rail replacement services. We recognise this is not a straightforward issue. The rail industry is striving to improve accessibility for all passengers, but that can only be done within the significant practical constraints that limit how quickly change can be implemented.

We request that ORR takes a measured, holistic approach to its proposed amendments to the ATP Guidance, bearing in mind the potential severe unintended consequences if certain levels of compliance are mandated before they can practically be achieved by TOCs.

We look forward to working with ORR on this consultation and on the future continued improvement of accessible rail travel. In the meantime, please do not hesitate to contact me if it would help to provide any detail on the matters raised in this response.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Andrew Levy', with a long horizontal stroke extending to the right.

Andrew Levy
Legal Director- Rail

11th October 2019 – by email

Dear Stephanie

ORR Legal Advice on the Applicability of PSVAR

We write further to your email received 30th September and to our previous response to you on the PSVAR (dated 16th September).

We have reviewed the ORR's legal advice and sought our own independent legal advice on this matter. Following consideration of both and to assist with the re-consultation on the accessibility of rail replacement services, we would like to raise the following points:

- GTR are dedicated to ensuring rail travel is accessible and equally supports all our customers. We also absolutely agree that during times when rail replacement services are necessary, customers with access needs should be offered an option that most resembles the service provided to passengers not requiring assistance. In relation to rail replacement services, we always endeavour to acquire as many accessible vehicles as possible and explore a wide variety of options to fulfil this. We also have robust processes in place to ensure our frontline teams support all customers with access needs and where an accessible rail replacement bus or coach is not available we make suitable alternative arrangements, in agreement with the passenger involved. For instance, we often offer customers with access needs a taxi (accessible if required), which may take them directly to their intended destination with no additional stops as opposed to taking them to a station.
- We are concerned that mandating compliance on rail operators will have a detrimental impact on all customers, including those with a wide variety of access needs and disabilities who rely on a regular and comfortable rail replacement service. Our current offering provides an accessible service to a lot of our customers who require assistance, such as those with visual impairments, hearing impairments, neurodiversity and hidden disabilities. Therefore, the consequential reduction of available vehicles that would result from mandatory PSVAR compliance for rail replacement services in the short to medium term is anticipated to have a particularly negative effect for a wide range of customers with wider needs beyond just physical disabilities. The PSVAR regulations are aimed at passengers with mobility needs, which GTR recognises is an area that requires improvement, however this should not be at the expense of customers with different access and support needs.
- Coaches are often used for rail replacement services as they offer greater capacity, comfort and facilities than buses. For instance, they often have toilet facilities which customers with a wide range of hidden disabilities require or value access to.

Govia Thameslink Railway

Monument Place, 24 Monument Street, London, EC3R 8AJ

Registered in England under number: 7934306. Registered office: 3rd Floor, 41-51 Grey Street, Newcastle upon Tyne, NE1 6EE

- The availability of PSVAR compliant vehicles is outside of the rail industry's direct control and therefore should not be included within a licence condition. The bus and coach industry's compliance with PSVAR is a wider inclusive transport issue that needs to be considered by appropriate organisations. These regulations were introduced in 2000 and yet many bus and coach suppliers are yet to take steps to comply, and passengers are now likely to suffer as a result.
- GTR and other TOCs have seen increasingly ambitious blockades in recent years, which have impacted on significant routes (such as Brighton mainline, East Coast mainline & East and West coastways) and sometimes lasting over a week. We know availability of suitable (PSVAR compliant) buses/coaches is already a major constraint. If the ATP guidance was amended to mandate that rail operators had to ensure that rail replacement vehicles had to comply with PSVAR, it will be impossible to offer a suitable rail replacement service as there are not enough certificated vehicles available to cope with the demand in certain areas, especially where multiple TOCs are all trying to source vehicles. As a result, TOCs may be less able to accommodate Network Rail's engineering works to the same extent that we can now. This would impact on Network Rail's ability to maintain infrastructure which is critical to deliver a reliable train service, to deliver infrastructure improvements and to deliver plans to increase network capacity through large blockades in the future.
- Legal advice seems to suggest that PSVAR applies to all rail replacement services, including unplanned service to manage any disruption that occurs. The number of accessible vehicles available at short notice is very dependent on time and location and often needs to carry high volumes of customers. Although GTR has processes in place for these incidents, we often require flexibility to provide dynamic solutions which would be greatly reduced if we could only use accessible vehicles. There is also likely to be customer safety and welfare considerations during times of major disruption where there are large numbers of passengers affected. GTR would appreciate clarity from the ORR on its expectations around PSVAR compliance during times of disruption.

Thank you for taking the time to consider our comments on this matter. We await the outcome of your consultation and, as always, are available to discuss should this be of assistance.

Yours sincerely

Kerri Ricketts

Head of Customer Experience

Govia Thameslink Railway

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Stephanie Toby
Deputy Director
Railway Markets & Economics
Office of Rail and Road

By email to: ATP@orr.gov.uk

Dear Stephanie

Accessible Travel Policy – Legal Advice on the Applicability of the Public Service Vehicles Accessibility Regulations 2000 (PSVAR)

Thank you for your letter of 30 September 2019 inviting us to comment on the applicability of PSVAR to rail replacement services. Your letter initially requested a response by 5pm on Friday 11 October 2019, but you confirmed last week an extension of the deadline to Friday 18 October 2019.

We have considered, and agree with, First Rail Holdings Limited's (FRH) response to your letter of 30 September which sets out comments and concerns which are common to us and other train operating companies (TOCs) owned by FirstGroup. We adopt and echo FRH's response here.

In addition to the overarching comments and concerns in that response, we have set out in this letter further detail on rail replacement services specifically in relation to Great Western Railway (GWR).

We strive for all our passengers to be able to access and enjoy our rail services. If there is disruption to those services, we work hard to provide appropriate alternative transport wherever we can reasonably do so. Our Disabled Persons Protection Policy (DPPP) (developed in consultation with disability groups and approved by ORR) sets out our approach to providing accessible services in the event of disruption.

In practice, during disruption we contract with bus and coach operators to provide rail replacement services (as we do not own rail replacement buses or coaches or employ bus or coach drivers ourselves). We currently request that PSVAR-compliant vehicles are provided wherever available, however it is the plain reality of the bus and coach industry today that there are simply not enough PSVAR-compliant vehicles available to us to provide fully PSVAR-compliant rail replacement services.

To illustrate, the table (appendix A) shows the use of PSVAR-compliant buses and coaches against the total number of rail replacement journeys in the last 13 periods.

These figures do not show local variation within our franchise where a greater or lesser number of PSVAR-compliant vehicles may be available. The GWR network is highly diverse and therefore, results in a highly diverse portfolio of rail replacement vehicles. For example, parts of our network are in large cities, that have large and diverse populations, where provision of PSVAR rail replacement vehicles are higher. Therefore, if we had a possession between Bath Spa and Bristol Temple Meads, then being able to acquire PSVAR vehicles is higher. However, other parts of the network, such as the North Cotswolds and areas of Devon/Cornwall have considerably smaller populations, which results in less provision of local coach/bus operators and less availability of PSVAR vehicles.

Where we cannot provide PSVAR-compliant rail replacement buses or coaches, we will arrange taxis for passengers who require an accessible option. For passengers with booked assistance, we will have an accessible taxi pre-arranged to ensure that a taxi is waiting for the passenger on arrival to the station. Dependent on the passenger's destination, we often take the passenger (with accompanying travellers) directly to their final destination, rather than just to the end station named on their train ticket. For passengers who "turn up and go", we often have an accessible taxi / rail



replacement vehicle on standby, to help reduce any potential waiting time for the passenger. To highlight the amount of journey's that must be done through accessible taxi's, between 17th October 2018 to 25th October 2019, GWR provided 631 accessible taxis. This figure hides the true number of taxi's booked for disabled/elderly passengers, as some passengers can use a regular taxi.

It is essential we understand the standard to which we must operate. The provisional legal advice enclosed with your letter of 30 September goes against nineteen years of the industry's understanding that PSVAR does not apply to rail replacement services. If it is correct, it has significant consequences for our operation.

There are significant planned engineering works within our franchise, which will require major track possessions over the next few years. These include:

- Ongoing electrification work to the Great Western Mainline.
- Ongoing Crossrail work between Paddington and Reading
- Major infrastructure upgrades to large parts of the network, especially over major holidays
- In 2020 there is currently 131 booked possession days.
- 2021 will see major infrastructure upgrades as part of Bristol East works, as well a complete branch blockade of the St Ives branch line

We need to be able to source enough buses and coaches to provide adequate rail replacement services to minimise the impact of these planned disruptions on the public. If we can only use PSVAR-compliant vehicles, then we cannot provide a full rail replacement service. We will only be able to provide a severely restricted rail replacement service, depending entirely on the number of PSVAR-compliant vehicles which our bus and coach contractors can provide. This is deeply unsatisfactory and will severely damage the public's view of the railway.

The current infrastructure at GWR stations across the network, severely restrict the use of PSVAR vehicles, as a significant number of stations do not have PSVAR-compatible temporary rail replacement bus/coach stops. PSVAR-compliant low-floor buses still require a raised curb at stations in order to be fully accessible. That is, even if we could operate 100% PSVAR-compliant rail replacement services (which, as explained above, it could not), we would still be unable to provide fully accessible rail replacement services because bus/coach stops are not compatible at a number of stations. Even stations that do have suitable bus/coach stops, we find these are already in use by local bus service providers and are not able to be used during major rail replacement operations. Major infrastructure enhancements across the GWR network will be required to ensure PSVAR vehicles can be fully utilised.

This is an important issue for us and the wider industry, and it is essential it is considered carefully to avoid severe unintended consequences. Please do not hesitate to contact me if it would help to provide any further detail on the matters in this response.

We look forward to working with ORR on the next phase of its development of the ATP Guidance.

Yours sincerely

Tom Law
Deputy Mobility and Inclusion Manager

Appendix A

Metric description	2018-19								2019-20				
	P6	P7	P8	P9	P10	P11	P12	P13	P1	P2	P3	P4	P5
For each rail period, what were the total number of rail replacement vehicle <u>journeys</u> due to planned disruption?	587	927	1131	1138	1004	357	997	680	421	384	348	263	334
How many vehicle journeys were on rail replacement buses due to planned disruption?	28	303	626	492	128	43	44	53	72	88	48	34	20
How many vehicle journeys were on rail replacement coaches due to planned disruption?	559	624	505	646	876	314	953	627	349	296	300	229	314
Of the total rail replacement vehicle <u>journeys</u> (metric 3), how many were undertaken by PSVAR compliant vehicles?*	28	303	626	492	128	43	44	53	72	88	48	34	20
Of the rail replacement bus <u>journey</u> total (metric 3a) how many <u>journeys</u> were undertaken by PSVAR compliant vehicles? *	28	303	626	492	128	43	44	53	72	88	48	34	20
Of the rail replacement coach <u>journey</u> total (metric 3b) how many <u>journeys</u> were undertaken by PSVAR compliant vehicles? *													

Paul Jackson
Head of Customer and Stakeholder Engagement
Hull Trains

18th October 2019

Stephanie Toby
Deputy Director
Railway Markets & Economics
Office of Rail and Road

By email to: ATP@orr.gov.uk

Dear Stephanie

Accessible Travel Policy – Legal Advice on the Applicability of the Public Service Vehicles Accessibility Regulations 2000 (PSVAR)

Thank you for your letter of 30 September 2019 inviting us to comment on the applicability of PSVAR to rail replacement services. Your letter initially requested a response by 5pm on Friday 11 October 2019, but you confirmed last week an extension of the deadline to Friday 18 October 2019.

We have considered, and agree with, First Rail Holdings Limited’s (FRH) response to your letter of 30 September which sets out comments and concerns which are common to us and other train operating companies (TOCs) owned by FirstGroup. We adopt and echo FRH’s response here.

In addition to the overarching comments and concerns in that response, we have set out in this letter further detail on rail replacement services specifically in relation to Hull Trains.

We strive for all our passengers to be able to access and enjoy our rail services. If there is disruption to those services, we work hard to provide appropriate alternative transport wherever we can reasonably do so. Our Disabled Persons Protection Policy (DPPP) (developed in consultation with disability groups and approved by ORR) sets out our approach to providing accessible services in the event of disruption.

In practice, during disruption we contract with primarily coach (but also some bus) operators to provide rail replacement services (as we do not own rail replacement buses or coaches or employ bus or coach drivers ourselves). Whilst we request that PSVAR-compliant vehicles are provided wherever available, it is the plain reality of the bus and coach industry today that there are simply not enough PSVAR-compliant vehicles available to us to provide fully PSVAR-compliant rail replacement services.

To illustrate, the table below shows the use of PSVAR-compliant buses and coaches against the total number of rail replacement journeys in the last 12 months (by period):

Metric description	2018-19								2019-20				
	P6	P7	P8	P9	P10	P11	P12	P13	P1	P2	P3	P4	P5
Unique rail replacement vehicles (buses and coaches) used during planned disruption	36	8	48	205	27	33	0	23	1	2	1	0	0
Number of PSVAR compliant buses/coaches used	0	0	0	0	0	0	0	0	0	0	0	0	0

Where we cannot provide PSVAR-compliant rail replacement buses or coaches, we always arrange taxis for passengers who require an accessible option. Where a taxi is arranged, the passenger (with accompanying travellers) will be taken directly to their final destination station. In exceptional circumstances we do take customers to their home location, rather than just to the end station named on their train ticket.

It is essential we understand the standard to which we must operate. The provisional legal advice enclosed with your letter of 30 September goes against nineteen years of the industry's understanding that PSVAR does not apply to rail replacement services. If it is correct, it has significant consequences for our operation.

In particular, there are significant planned engineering works, as part of the East Coast Mainline Upgrade which will require major track possessions over the next few years. Whilst we always proactively explore the opportunities to run train services, as we have shown during the recent King's Cross closure on August Bank Holiday, we may need to replace part or all of our services with rail replacement services.

We need to be able to source enough buses and coaches to provide adequate rail replacement services to minimise the impact of these planned disruptions on the public. If we can only use PSVAR-compliant vehicles, then we cannot provide a full rail replacement service. We will only be able to provide a severely restricted rail replacement service, depending entirely on the number of PSVAR-compliant vehicles which our bus and coach contractors can provide. This is deeply unsatisfactory and will severely damage the public's view of the railway.

This is an important issue for us and the wider industry, and it is essential it is considered carefully to avoid severe unintended consequences. Please do not hesitate to contact me if it would help to provide any further detail on the matters in this response.

We look forward to working with ORR on the next phase of its development of the ATP Guidance.

Yours sincerely



Paul Jackson
Head of Customer and Stakeholder Engagement

Stephanie Toby
Office of Rail and Road

By email

11th October 2019

Dear Stephanie

LNER response to legal advice received on the applicability of PSVAR to rail replacement transport

Thank you for providing us with this information and seeking this legal advice to clarify the legal position of the application of PSVAR which we have read with interest.

Our understanding of the legal advice is that all rail replacement transport, during both planned and unplanned disruption, must comply with PSVAR and as such be accessible to a wheelchair user. We believe that this is a positive move for society in following the PRM-TSI accessibility of trains to ensure that social mobility is guaranteed.

As part of our aspiration to be the most accessible train operator, disruption management is absolutely vital as we understand the impacts disruption can have on all of our customers – particularly those with disabilities. We have dedicated a whole scheme of work – Disruption: Our Finest Hour – to this area of our operation and are making great progress in this area and hope to continue doing so.

Rail replacement transport is a crucial part of disruption management and essential to ensure the continual movement of customers even when trains are unable to run. The advice received on PSVAR is likely to lead to major implications for the rail industry and provision of these vehicles and as such we have detailed our concerns below. Given the impending deadline of the regulations taking force in January 2020, we would like an immediate understanding of what the ORR's next steps are in this process to better prepare as a business. We must strongly encourage the ORR and DfT to agree a reasonable timeline for complying with this legislation to protect the interests of the wider community; the impacts of not doing so are summarised in this response. We would also like to understand whether a regulatory impact assessment has been undertaken to understand the impact of this regulation.

Why using PSVAR vehicles is a challenge to us as a long-distance operator

LNER run journeys that can span all the way from London to Aberdeen and Inverness. We do not offer many short-hop style journeys and the vast majority of our customers are travelling a long way.

Our rail replacement stance is to use Executive coaches only. The coaches we aim for are younger than 10 years old and have a working toilet on board. The reasons we focus on using coaches instead of buses are:

- Buses do not generally have air conditioning whereas coaches do – very important for customer welfare, particularly in summer.
- Buses do not have carpets. During adverse weather customer footfall traverses water/snow/ice onto the lining type flooring which provides an uncomfortable and more importantly unsafe slip-hazard environment for all customers.
- Buses traditionally do not have on board toilet facilities which creates a poor experience when providing a long-distance replacement in terms of catering for this welfare requirement.
- Seating on buses has traditionally been designed for short journeys rather than journeys lasting several hours.
- Many of our customers travel with luggage as we primarily transfer leisure travellers who tend to carry multiple large suitcases with them. Buses generally do not have any space for luggage and as such we would lose some seating capacity to luggage which would increase the number of vehicles needed.
- Coaches traditionally come equipped with an integral PA system which allows the driver to make announcements for each stop. Customers travelling on rail replacement will usually be

in unfamiliar surroundings so this information is very important to customers; it also helps meet the needs of customers who may have a visual impairment. Buses generally do not have this equipment.

- Buses are generally not fitted with tachographs as they tend to do shorter journeys. Examples of longer journeys (for example, operating with an express designation) will usually have two or three separate route registrations to circumvent European legislation. For a bus to run on some of our journeys (for example, a long-distance replacement from Aberdeen to Edinburgh) a tachograph would be required. This limits the number of buses available for us whereas coaches are generally fitted as standard due to the nature of their operation

Additionally to the problems that are experienced when using buses, there are some instances where a PSVAR compliant coach is not suitable for all. Some of the reasons behind this are:

- A coach with tie-down restraints requires the wheelchair is crash tested. This can exclude many types active manual wheelchairs, as well as scooter users.
- A front facing wheelchair user must use a tested seat belt which has to be either built into the chair or within the vehicle itself. In conjunction with this, a rear facing wheelchair user is more likely to experience travel sickness.

As such, we provide a taxi as required and if a customer cannot use a taxi we make every effort to source a PSVAR compliant vehicle. This better suits the demand for accessible alternative vehicles.

Coaches are necessary for us to suitably transfer our customers safely. The issue we face is that coaches are generally not PSVAR compliant and the number of these available is minimal.

To have to provide these during disruption would be near-impossible for us if we were unable to use both compliant and non-compliant vehicles.

As part of our procurement process, we use Stagecoach Rail Replacement who have a rigorous audit regime for our coach suppliers, ensuring they meet relevant regulations and we will only accept operators that meet our requirements. While we strive for PSVAR, availability being limited means at present we cannot select only operators that meet his criteria.

Impacts on customers with disabilities

While PSVAR has the aim of creating an accessible service for customers with disabilities – specifically those who are wheelchair users – we also have concerns on the experience for those customers who have other disabilities. To meet this requirement, as previously mentioned, we would have to use buses rather than coaches with the demand currently available. Buses are a much louder and less smooth experience which could create a more negative impact for customers that have hidden disabilities such as autism. Given customers would be expecting a train, providing a bus would potentially create a sensory overload experience which we would not be comfortable putting customers through.

We also have the issue that at some stations wheelchair users may have difficulty boarding a rail replacement vehicle as rail replacement stands may not be at the same level as the rail replacement vehicle. To enable wheelchair users to board, a secondary piece of equipment (such as a purpose built ramp) may well be need to be used. Referring to section III, 1, 9, 1, A which states: “to get on and off regulated public service vehicles in safety and without unreasonable difficulty (and in the case of disabled persons in wheelchairs, to do so while remaining in their wheelchairs)”, buses would not be able to enable these individuals to do so without a secondary piece of equipment being available.

Impact on customer welfare, safety and security

As an industry, we are very aware of the risks to both safety and security of the railway and take these very seriously. Disruption, by its nature, is a challenge to manage and as such it is vital we ensure we can continue to move our customers safely and in a secure environment.

The PSVAR impacts on LNER will mean that in many instances we are unable to run any replacement transport – and at best will provide a limited number. This would lead to us having several limited options in managing customer numbers (particularly at our busiest stations):

- Holding customers at a station: This would potentially create situations of severe overcrowding which increases the risk of public disorder (putting both other customers and our staff at risk), people becoming injured due to the crowded nature of the station and could put customers in unnecessary danger. As a train operator we have a duty to ensure customers are always safe and these environments would make that incredibly challenging. It also increases the risk of security alerts as we would be unable to carry out thorough security checks; this is likely to lead to a breach of safety legislation.
- Sending customers away from the station: This could again lead to public disorder risk due to customer dissatisfaction at not being offered a service, as well as causing us to breach of conditions of carriage. There is an increased risk to people with disabilities in these environments and risk we would not be able to provide them with the help they need

Engineering work carried out during pre-planned periods is essential to maintaining the safety and reliability of the railway and being unable to manage customers would mean these works were put at risk which could in turn lead to wider issues for Network Rail infrastructure.

If we were to use buses instead of coaches, the storage of luggage as previously mentioned is not possible. The risk of unsafe storage of luggage in aisles and positions where it could fall could make safe and prompt evacuation of a bus difficult which puts customers at risk. Buses generally do not provide seatbelts which also increase the safety of customers, while coaches do.

Impact on pre-planned Network Rail engineering work planning

When engineering work needs to be planned on for prolonged periods of time, a significant amount of preparation has to go into ensuring we can continue to keep customers moving. Replacement transport is the main way in which we continue to do this and, as in the data previously provided to the ORR, we used 699 replacement coaches between P6 2018-19 and P5 2019-20. Of these vehicles, only 18 were able to be sourced that met PSVAR – this was due to the lack of availability. The number of vehicles required during these works is massive and this change would potentially risk the future of large engineering work blocks completely.

Most of these works involve more than one train operator so the requests for vehicles will be significant – the supply of these vehicles at present however is not sufficient to meet this.

In light of this, if PSVAR were to apply to these vehicles, LNER would have a very much reduced willingness to agree to major engineering works. With some of our recent blocks between Edinburgh and Newcastle while our trains diverted via Carlisle, this would have meant cutting off locations such as Morpeth, Alnmouth, Berwick and Dunbar entirely due to the required vehicles not being available. This would potentially put £100m's worth of planned works at risk.

Legal risk, compensation and license obligations

A significant requirement like this will have a variety of impacts on us as a business in this area. Primarily, the submission of our Accessible Travel Policy which is expected to be approved only weeks before this change happens, is a risk for us as an operator as not being able to provide rail replacement transport may lead to an inability to meet some aspects of our ATP. We believe this needs serious consideration by the ORR. If we are unable to provide any alternative transport, taxis may be limited due to the high demand. As such, this may lead to us being unable to carry out passenger assist bookings. This is not a position we would want to be in and would cause both legal and moral concern for us. If during planned disruption we were unable to provide replacement transport, we would not be comfortable accepting a passenger assist booking as we would not be able to transfer that customer as a guarantee. This would again put us at risk from an Equality Act claim, breach our license agreement and be in complete contradiction of our company values and intentions.


If we are unable to transfer customers by any means, there is likely to be a surge in the amount claimed from consequential loss. At the moment we will handle this on a case-by-case basis, but this will apply to almost any customer who has to book a hotel or travel by their own means. These costs were not factored into franchises and as such discussions would be needed with the Department for Transport.

We also question the exemption in the law to airlines in the event of technical fault, weather or unforeseen circumstances, allowing their replacement vehicles to be in breach of PSVAR compliance. Rail operators are subject to the same situations impacting our ability to transport customers, mostly outside our control. We request the ORR challenge this aspect of the law with the Department for Transport. As airlines and train operators are competitors in the domestic commercial travel market, this caveat for airlines and not for rail operators would appear to be disadvantaging one operator over the other which would need assessing under competition law.

In conclusion, the application of PSVAR compliance would mean that in most circumstances of both planned and unplanned disruption, we would be unable to provide rail replacement transport to any customers or, at best, a limited service. This would be detrimental to all aspects of our disruption management as highlighted above and would not achieve the spirit of the law at this time and would set the rail industry back years. We would strongly encourage the DfT to work with coach operators to require them to meet this requirement and we would be happy to support them in taking this initiative. Once the supply of vehicles is sufficient we would strongly advocate the use of these vehicles so that all customers can have the choice of how they travel. At present, for anyone unable to use one of our replacement coaches, we will provide a taxi as required and take the individual needs of the customer into account.

Thank you for taking the time to read our response and we look forward to hearing the next steps in this matter from the ORR.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Horne', with a long horizontal stroke extending to the right.

David Horne
Managing Director
London North Eastern Railway (LNER)

**Mobility and Access Committee for
Scotland (MACS)**

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Stephanie Tobyn
Deputy Director Railway Markets and Economics
Office for Rail and Road

Our ref:
2019/38

Date:
9 September 2019

Dear Stephanie,

HEADER IN BOLD CAPITAL LETTERS IF REQUIRED

Thank you for your email dated 26 August 2019 and for giving MACS an opportunity to comment on the potential challenge made by Mr Doug Paulley around whether the ORR should have mandated the use of accessible buses rather than required 'reasonable endeavours' to secure these.

The document you attach states the actual decision is set out in para 175 of ORR's conclusion document. Para 175 states "we accept that it will not always be possible to procure PSVAR-compliant buses or get hold of accessible taxis" then makes a statement that there would be an expectation that operators make reasonable endeavours to do so.

The PSVA regulations 2000 use the definition "wheelchair accessible" and cover buses and coaches over 22 passenger seats which are used on registered local bus services. Buses had to comply with these regulations by 1 January 2017, coaches will have to do so by 1 January 2020. The regulations are different for buses and coaches because of the fundamental design differences, where coaches generally have steps up to the deck where seats are located. The design of a compliant bus has a low floor with specified space for a wheelchair, however coaches can comply as long as they can enable a wheelchair user to board. Most coach designs incorporate a lift, which raises the wheelchair to the deck where seats and the wheelchair space are located. Unfortunately the lifts have generally not been designed to carry passengers who may have mobility issues resulting in them being unable to climb steps.

It is interesting that both Mr Paulley and the ORR have used the term “buses” and have not referred to “coaches”. The vehicles provided for rail replacement are generally coaches and in the opinion of MACS, these are not fully accessible. The requirement to make “reasonable adjustment” is used in the Equality Act, unfortunately PSVAR 2000 have not been reviewed to incorporate the requirement for reasonable adjustments and the term has not been tested in law. However, we in MACS feel that coaches should allow for disabled passengers to access a reasonable proportion of the seats without climbing steps and that adjustments, such as adding additional handrails and/or lowering the height of steps are not sufficient to comply with the “reasonable adjustment” requirement.

In the case of accessible taxis, wheelchair accessible taxis may not be suitable for all disabled people, as many disabled people cannot step up in to the vehicle and would prefer a saloon car.

MACS have called for a review of PSVAR to incorporate the requirements of the Equality Act 2010 but although the Department for Transport (DfT) have agreed to undertake this, they have stated that the review will take place sometime before 2027.

Finally, we would point out that many disabled people and older people choose to use the train on longer journeys because it is more accessible than a coach and they can do so without asking for assistance. Many of these people struggle or find it impossible to transfer to replacement coaches. MACS have previously raised this issue with Scotrail during the extended closures on the Aberdeen to Inverness route, unfortunately suitable replacement vehicles were not used and we are aware of a number of occasions where people struggled and subsequently chose not to travel. We can understand that TOCs may find it difficult to find suitable replacement vehicles for unplanned disruptions. However, we feel that fully accessible vehicles should be available for planned disruptions.

Yours faithfully,

Hussein Patwa

Co-lead, Rail, for and on behalf Mobility and Access Committee for Scotland (MACS).

Stephanie Tobyn,
Deputy Director, Railway Markets & Economics
Office of Rail and Road
Via email

15 October 2019

Dear Stephanie,

Accessible Travel Policy – Legal Advice on the Applicability of the Public Service Vehicles Accessibility Regulations 2000 (PSVAR)

We read with interest the legal advice you received on the applicability of the Public Service Vehicles Accessibility Regulations 2000 (PSVAR). We are in the process of seeking our own legal advice to ensure we can test the arguments made. We believe that a balanced view of the legislation will be useful for all parties. Please consider this letter as an interim response whilst we obtain this advice.

I would like to be clear though that the rail industry does not disagree with the principle of providing accessible, inclusive transport. Train Operating Companies are currently in the process of introducing 7,000 new rail carriages, with each train being made either accessible or improving the accessibility across the country.

I would like to emphasise the importance of the customer. Equality in disability is much more than wheelchairs, although PSVAR focuses strongly on wheelchair access. Customers with assistance animals, hearing impairments, neurodiversity, learning impairments, toilet facility requirements and mental health requirements must also be able to travel without their journey experiences being impacted on. We are prepared to undertake research into this issue to understand what the impact could be.

The rail industry believes strongly in ensuring all our customers travel together. This needs to be balanced by all customers' needs and availability of services to satisfy those needs. This is why we will continue to ensure that all customers can undertake their journeys in a way that is accessible, comfortable and safe.

I would also like to emphasise that this advice will have a much wider impact on all customers. Regardless of travel needs, every passenger deserves an experience that delivers comfort, safety and reliability that they would otherwise expect from their train journey. We are concerned that the impact of the advice given to ORR by Matrix will have negative consequences on customer experience if this is not carefully managed, especially in times of unplanned disruption.

External factors

It must be acknowledged that there are some areas that are outside of the rail industry's control. Not all coaches are compliant, as the main business use for them is often tours or closed services. The business case for vehicle purchase is ultimately a commercial decision that stretches beyond just the requirements of the rail industry.

This means that whilst both industries adjust to this new advice, there may be a shortage of, or increased competition for the use of, PSVAR compliant vehicles. We will continue to, regardless of the outcome, work with the range of transport operators - be they coach, bus or taxi - to ensure that customers reach their destinations.

Other challenges

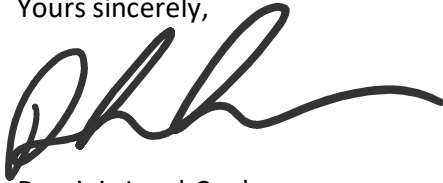
We would also like to bring to your attention some (but not all) areas where there could be issues. Key issues include bus stop infrastructure, which is usually designed to allow for vehicle front entrance (most coaches offer mid-vehicle entry), EU driving regulations related to driver hours and tachographs, adjustment in timings if buses (rather than coaches) are used and luggage constraints.

This is not an exhaustive list of the issues and we know that both owning groups and individual operators will be making representation to you also.

Next steps

We are aware that you will need to consult over the changes required within the Accessible Travel Policy Guidance. We believe that the rail industry is well placed to find solutions to the short- and medium-term challenges faced for customers. Through the Accessibility and Inclusion group, the Train Operating Companies look forward to working with you through the process.

Yours sincerely,



Dominic Lund-Conlon
Head of Accessibility and Inclusion

ScotRail response – Legal Advice on the Applicability of the Public Service Vehicles Accessibility Regulations 2000 (PSVAR)

ScotRail provides the vast majority of rail services to Scotland. We welcome the opportunity to respond prior to the re-issue of the consultation document by the ORR. We also welcome the focus and discussion of the ways in which we can seek to ensure that our Rail Replacement provision is accessible to all and wish to play an active part in this process. Our Rail Replacement Provision is delivered by Abellio Rail Replacement (ARR).

ARR are one of the UK's largest suppliers of Rail Replacement vehicles for both planned and unplanned disruption to rail services. In common with other providers, and due to the flexible and ever-changing vehicle/route requirements, ARR uses a large network of sub-contracted vehicles from a wide-range of providers (currently c.550 operators) of which approximately 175 operators are used for ScotRail Rail Replacement services. Our requirements and the supplier fleets vary across our network in response to the different routes and rural geographies we service, supported from time to time by these operators.

We have some concerns over the both the suggested timeline for the implementation of PSVAR on Rail Replacement services and the serious safety and operational ramifications of doing this on January 1st 2020. We would note that we have already asked ARR to begin securing vehicles for some services due to operate after this date and therefore swift clarity for our customers, supplier and ourselves would assist us in preparing to move forward.

In outlining both our current brief assessment of the market and our concerns below, we are not seeking to suggest that the challenges posed by the introduction of PSVAR to Rail Replacement is insurmountable. We have therefore also taken the opportunity to present a range of potential positive options which would allow us and other TOCs to comply with the spirit in which we believe the proposed changes, and indeed the ORR's wider aim of ensuring the railway is more accessible, can be achieved.

Current State of the Market:

In 2018, ARR provided around 38,500 vehicles across the UK on Planned and Unplanned Rail Replacement duties¹. ARR provided 18,500 duties to ScotRail in 2018. In 2019, the volumes are expected to be similar to 2018.

The fleet profile used by ARR varies considerably by route and across the different regions in which we operate, however, ScotRail and the industry as a whole has a significant reliance on the use of coaches. In 2018, 80.5% of all UK Rail Replacement Duties (planned and unplanned) were operated by a coach, 12.2% by small vehicle (8-16 seats) and just 7.3% by bus.

¹ ARR define a duty as a collection of journeys undertaken by a vehicle during a day so the number of journey legs will vary within a single duty.

ARR have undertaken an assessment of the current availability of vehicles within the supply chain. They currently estimate that between 3 and 5% of coaches (over 16 seats) within their supplier's fleets meet the requirement for accessibility as set out in PSVAR. There are some of our routes/regions where it is appropriate to use buses which already meet the existing PSVAR requirements for Public Service Vehicles.

It is our view that there simply is not capacity within the current market of supply to meet the demand which will be created from January 1st 2020, nor is there time for the market to adapt to this requirement before that date. In our further response below, we have sought to provide a snapshot of the more detailed challenges and impacts of implementing PSVAR on Rail Replacement Coach services.

Safety/environmental challenges:

We have serious concerns that the potential implementation of the requirements impacts directly upon both our safety and security responsibilities. It would be negligent of us not to assess and validate the impact of the changes resulting from implementation and we believe that it is necessary to take the time to properly consider these. It is clear to see that there would be increased risk to employees, passengers and public in a scenario in which the PSVAR regulations were implemented whilst the supply chain is unable to meet the volumes demanded by ARR and ourselves.

The increase in crowding that would result from reduced supply raises the security risk and would potentially invalidate the current approach legislated by the National Rail Security Programme. The implications of this anticipated crowding on the connectivity and wider economic activity of UK rail customers affected by disruption is clearly challenging. It is our view that this will require a risk review lead by the Department for Transport, Land Transport Security, British Transport Police (BTP) and Centre for the Protection of National Infrastructure colleagues with appropriate involvement of Transport Scotland.

Additionally, the management of disruption, already a concern for the ORR, BTP, Trades Unions and ScotRail would suffer a significant increase in safety risk resulting from the behaviour of passengers denied an acceptable level of service.

Assessment of this potential is required to establish what may be done to manage that risk acceptably within 'As Low as Reasonably Possible' (ALARP) principles. It is unlikely that effective risk controls can be implemented in the timescales proposed.

Operational challenges arising from the introduction of PSVAR on Rail Replacement:

- **Availability:** As discussed above, it is our view there simply are not enough compliant coaches in operation to source for our entire engineering works programme. We believe ARR's assessment of the market is likely to be representative of the UK as a whole. As such, it is unlikely that seeking capacity from elsewhere in the UK will be an option, particularly

during major, multi-TOC operations or at peak times of the year. Further to this, providing capacity from elsewhere in the UK to Scotland within an acceptable timeframe is potentially a greater challenge than sourcing capacity between regions in England.

- **Distance:** We run a wide variety of different routes and coaches are a practical choice for a number of reasons including passenger comfort, toilet facilities, luggage capacity and journey speed (noting many journey times are already longer than the equivalent journey by rail). ScotRail also operates rail services to a number of rural communities in the west highlands and far north regions where ARR's work to secure rail replacement vehicles is significantly more challenging than in more heavily populated regions of Scotland and the rest of the UK.
- **Tachograph Regulations:** A concern raised by ARR suppliers is around the use of tachographs. On longer distance routes, these would be required as well as requiring operators/ARR to schedule driver hours under EU rather than Domestic regulations. Because many operators/drivers undertake a mix of work other than Rail Replacement during a week, the requirement to comply with both EU and Domestic hours reduces scheduling efficiency and will have a further impact on the willingness of operators to supply vehicles.
- **Supplier Safety Concerns:** In discussing the potential impacts of PSVAR introduction on Rail Replacement, suppliers have raised concerns around the need to ensure wheelchairs carried are crash tested and the various restrictions this will place on some users.

Infrastructure challenges:

We note that the full introduction of PSVAR on Rail Replacement would, in effect, mirror the current situation on heavy rail whereby vehicles serving pick up points would be accessible, however the stops they serve may not be.

Due to the temporary and sometimes unplanned nature of Rail Replacement, it is often necessary to create temporary pick up points at stations (particularly larger rail heads) which would otherwise not be used as stopping points. At some smaller or rural stations, pick up points are at the roadside or some distance away from the station due to the practical space and safety constraints of the road network. This may mean a PSVAR compliant vehicle may not be able to safely pick up or set down customers at a station pick up point.

Due to the timescales for response, we have not been able to fully assess the individual impact on our served stations however we note that the current guidance does not consider this implication, nor the adjustments which may be considered reasonable in order to meet the spirit of the requirements in allowing customers to plan and travel with confidence.

Potential Improvements to the accessibility of Rail Replacement services:

The below options are intended to provide a practical set of suggestions based on the current supply within the market as outlined above. In each case, we are willing to work with the ORR to better scope and define the options and the timelines in which they could be practically delivered. We also recognise that a 'one size fits all' approach may not work in all cases due to the varying nature of the routes we serve.

Option 1: Review of accessible supply by route:

It is clearly our preferred option to look to supply PSVAR compliant vehicles wherever possible. We would suggest this is best done on a route-by-route basis to assess whether switching to using buses rather than coaches with immediate effect may be practical. We would also look at the local/regional supply of coaches available and would welcome a discussion on the best way to prioritise supply to maximise the accessible journey opportunities for customers.

Option 2: Multi vehicle departures:

On some busier routes, we currently run multiple vehicles per departure. We would propose that in this scenario we seek to prioritise offering a PSVAR compliant vehicle on each departure in order to create an accessible journey option across the timetable with the longer term aim of full compliance on all vehicles on that departure.

Option 3: Accessible standby vehicle provision:

It is already common practice during planned operations to put additional 'standby' vehicles at stations to allow for additional capacity where passenger numbers are high or to cover mechanical faults. Our discussions with ARR indicate that there is a supply of smaller vehicles (fewer than 22 seats) which meet the standards for PSVAR. This would allow us to use limited supply as well as improving the accessible journey options from stations on an 'on demand' basis to create accessible journey options for customers.

Option 4: Network Planning:

Working with Network Rail and ARR may allow us to review and amend some rail heads on pre-planned work order to improve the journey opportunities for accessible travel. Practical examples of this include shortening the possession limits/the distance between railheads to allow for buses to be used instead of coaches or looking to move customers shorter distances to parallel routes for train connections.

In proposing this, we note that some major work is planned over 12 months in advance and that minor work for the first quarter of 2020 is already planned. As such the lead time for review and introduction of this solution may be significant.

Option 5: Supplier Behaviour:

We recognise that we have a responsibility to positively influence and encourage our supply chain to move towards full compliance and can influence the speed with which this is done. A number of ARR suppliers recognise that Rail Replacement makes up a significant percentage of their business and have indicated a willingness to work with ARR to improve the supply of vehicles within the market.

We will continue to look to work with ARR to assist operators in complying with the requirements of PSVAR, however a certainty around the way forward is required before we seek to ask suppliers, the majority of whom are SME's or sole traders, to make significant investment in their vehicle fleets.

Stephanie Tobyn
Deputy Director
Railway Markets & Economics
Office of Rail and Road

By email to: ATP@orr.gov.uk

Dear Stephanie,

Accessible Travel Policy – Legal Advice on the Applicability of the Public Service Vehicles Accessibility Regulations 2000 (PSVAR)

Thank you for your letter of 30 September 2019 inviting us to comment on the applicability of PSVAR to rail replacement services. Your letter initially requested a response by 5pm on Friday 11 October 2019, but you confirmed last week an extension of the deadline to Friday 18 October 2019.

We have considered, and agree with, First Rail Holdings Limited's (FRH) response to your letter of 30 September which sets out comments and concerns which are common to us and other train operating companies (TOCs) owned by FirstGroup. We adopt and echo FRH's response here.

In addition to the overarching comments and concerns in that response, we have set out in this letter further detail on rail replacement services specifically in relation to South Western Railway (SWR).

We strive for all our passengers to be able to access and enjoy our rail services. If there is disruption to those services we work hard to provide appropriate alternative transport wherever we can reasonably do so. Our Disabled Persons Protection Policy (DPPP) (developed in consultation with disability groups and approved by ORR) sets out our approach to providing accessible services in the event of disruption.

In practice, during disruption we contract with bus and coach operators to provide rail replacement services (as we do not own rail replacement buses or coaches or employ bus or coach drivers ourselves). We request that PSVAR-compliant vehicles are provided wherever available, however, it is the plain reality of the bus and coach industry today that there are simply not enough PSVAR-compliant vehicles available to us to provide fully PSVAR-compliant rail replacement services.

To illustrate, the table in Appendix 1, attached at the end of this letter, shows the use of PSVAR-compliant buses and coaches against the total number of rail replacement journeys in the last twelve months (by period).

These figures do not show local variation within our franchise where a greater or lesser number of PSVAR-compliant vehicles may be available. For example, whether we have used buses had engineering work been taking place in the London area where we are more likely to procure PSVAR-compliant buses rather than works on the West of England line where we would use coaches.

Where we cannot provide PSVAR-compliant rail replacement buses or coaches, we will arrange taxis for passengers who require an accessible option. We always trust colleagues on the ground to discuss the best travel solution with the customer. Where a taxi is arranged, the passenger (with accompanying travellers) will often be taken directly to their final destination, rather than just to the end station named on their train ticket. We believe that by mandating all customers to use PSVAR compliant vehicles may negatively impact on the customer experience of customers with hidden disabilities. For example, some customers with autism may prefer to use the Quiet Coach on our train services. Unfortunately, no rail replacement coach or bus has this option, so we feel that colleagues on the ground should have the choice to provide a taxi for this customer so as to provide a quiet journey environment.

It is essential we understand the standard to which we must operate. The provisional legal advice enclosed with your letter of 30 September goes against nineteen years of the industry's understanding that PSVAR does not apply to rail replacement services. If it is correct, it has significant consequences for our operation.

In terms of impact of major engineering work, we would face issues every weekend if this legislation were implemented, so the consequences are grave. Our rail replacement operations are significantly larger than many operators and in order to move our passengers, especially on winter weekends, we can often require c.100 buses across our network for non-major engineering work.

We need to be able to source enough buses and coaches to provide adequate rail replacement services to minimise the impact of these planned disruptions on the public. If we can only use PSVAR-compliant vehicles, then we cannot provide a full rail replacement service. We will only be able to provide a severely restricted rail replacement service, depending entirely on the number of PSVAR-compliant vehicles which our bus and coach contractors can provide. This is deeply unsatisfactory and will severely damage the public's view of the railway.

The current infrastructure at SWR stations across the network can severely restrict the use of PSVAR vehicles, as a significant number of stations do not have PSVAR-compatible temporary rail replacement bus/coach stops. PSVAR-compliant low-floor buses still require a raised kerb at stations in order to be fully accessible. That is, even if we could operate 100% PSVAR-compliant rail replacement services (which, as explained above, we could not), we would still be unable to provide fully accessible rail replacement services because bus/coach stops are not compatible at a number of stations. Even stations that do have suitable bus/coach stops, we find these are already in use by local bus service providers and are not able to be used during major rail replacement operations. Major infrastructure enhancements across the SWR network will be required to ensure PSVAR vehicles can be fully utilised.

This is an important issue for us and the wider industry, and it is essential it is considered carefully to avoid severe unintended consequences. Please do not hesitate to contact me if it would help to provide any further detail on the matters in this response.

We look forward to working with ORR on the next phase of its development of the ATP Guidance.

Yours sincerely,



Andy Mellors
Managing Director

Appendix 1

Metric description	2018 19								2019 20				
	P6	P7	P8	P9	P10	P11	P12	P13	P1	P2	P3	P4	P5
1) For each rail period, how many unique rail replacement vehicles (buses and coaches) were used due to planned disruption?	497	1043	1040	647	601	502	843	710	354	501	510	333	275
1a) How many <u>unique</u> rail replacement buses were used during planned disruption?	294	421	464	331	337	306	458	381	129	249	312	199	175
1b) How many <u>unique</u> rail replacement coaches were used during planned disruption?	203	622	576	316	264	196	385	329	225	252	198	134	100
Of the total (metric 1) how many were PSVAR compliant?*	294	421	464	331	337	306	458	381	129	249	312	199	175
Of the rail replacement bus total (metric 1a) how many were PSVAR compliant? *	294	421	464	331	337	306	458	381	129	249	312	199	175
Of the rail replacement coach total (metric 1b) how many were PSVAR compliant? *	0	0	0	0	0	0	0	0	0	0	0	0	0

Stephanie Tobyn
Deputy Director
Railway Markets & Economics
Office of Rail and Road

By email to: ATP@orr.gov.uk

Dear Stephanie

Accessible Travel Policy – Legal Advice on the Applicability of the Public Service Vehicles Accessibility Regulations 2000 (PSVAR)

Thank you for your letter of 30 September 2019 inviting us to comment on the applicability of PSVAR to rail replacement services. Your letter initially requested a response by 5pm on Friday 11 October 2019, but you confirmed last week an extension of the deadline to Friday 18 October 2019.

We have considered, and agree with, First Rail Holdings Limited's (FRH) response to your letter of 30 September which sets out comments and concerns which are common to us and other train operating companies (TOCs) owned by FirstGroup. We adopt and echo FRH's response here.

In addition to the overarching comments and concerns in that response, we have set out in this letter further detail on rail replacement services specifically in relation to TransPennine Express.

We strive for all our passengers to be able to access and enjoy our rail services. If there is disruption to those services we work hard to provide appropriate alternative transport wherever we can reasonably do so. Our Disabled Persons Protection Policy (DPPP) (developed in consultation with disability groups and approved by ORR) sets out our approach to providing accessible services in the event of disruption, reflecting a process which has been refined over the past two decades, and responding to the requirements as set out in our Franchise Agreement:

Schedule 1.2

- 6.2 *The Franchisee shall use all reasonable endeavours to provide or secure the provision of alternative transport arrangements to enable passengers affected by any disruption referred to in paragraph 6.1 to complete their intended journeys in accordance with this paragraph 6.2. In particular, the Franchisee shall use all reasonable endeavours to:*
- (a) *ensure that such alternative transport arrangements are of reasonable quality, of a reasonably similar frequency to the Passenger Services included in the Timetable which such arrangements replace and reasonably fit for the purpose of the journey to be undertaken;*
 - (b) *transport passengers to, or as near as reasonably practicable to, the end of their intended journey on such Passenger Services, having particular regard to the needs of any disabled persons and, where appropriate, making additional arrangements for such disabled persons to complete their intended journey;*
 - (c) *provide adequate and prominent publicity of such alternative transport arrangements in advance, subject, in the case of unplanned disruption, to the Franchisee having sufficient notice of such disruption to enable it to provide such publicity;*
 - (d) *provide sufficient alternative transport capacity for the reasonably foreseeable demand for the disrupted Passenger Services; and*
 - (e) *ensure, if any planned disruption overruns, that there is a reasonable contingency arrangement for such alternative transport arrangements to continue for the duration of such overrun.*

In practice, during disruption we contract with bus and coach operators via our road transport agent, First Travel Solutions, to provide rail replacement services (as we do not own rail replacement buses or coaches or employ bus or coach drivers ourselves).

Recognising the requirements set out in our Franchise Agreement, we request vehicles which best replicate the experience customers enjoy on our train services. We request PSVAR-compliant vehicles, however it is the plain reality of the bus and coach industry today that there are simply not enough PSVAR-compliant vehicles available to us to provide fully PSVAR-compliant rail replacement services, and so we must rely on coaches as the available vehicles within the market, or risk stranding customers.

To illustrate, the table in Appendix A shows the use of PSVAR-compliant buses and coaches against the total number of rail replacement journeys in the last twelve months (by period). It is also estimated that just 5% of the private hire coach and bus market is PSVAR-compliant, meaning that of the 2,492 vehicles operated in the last 12 months, a maximum of 125 could have been PSVAR compliant, if they had been available at the time they were needed. Even at this rate, with an average seat capacity of 50, this would have meant only 6,230 of 124,600 customers who used rail replacement vehicles could have been conveyed, stranding over 115,000 customers.

The figures in Appendix A do not show local variation within our franchise where a greater or lesser number of PSVAR-compliant vehicles may be available. For example, the supply of vehicles in general, be they coaches or buses, is extremely low in Carlisle, requiring vehicles to be sourced from as far away as Glasgow, Newcastle or Preston.

Where we cannot provide PSVAR-compliant rail replacement buses or coaches, we will always arrange taxis for passengers who require an accessible option. Where a taxi is arranged, the customer (with accompanying travellers) will often be taken directly to their final destination, rather than just to the end station named on their train ticket.

It is essential we understand the standard to which we must operate. The provisional legal advice enclosed with your letter of 30 September goes against nineteen years of the industry's understanding that PSVAR does not apply to rail replacement services. If it is correct, it has significant consequences for our operation.

In particular, there are significant planned engineering works within our franchise, which will require major track possessions over the next few years. These include:

- **Transpennine Route Upgrade**

The most significant upgrade works to take place on the main route between Manchester and Leeds for generations, this engineering is currently expected to be undertaken between 2020 and 2026, with services affected for 39 of 52 weeks per year. Whilst exact details of the works and programme are yet to be determined, there is an expectation of heavy reliance on rail replacement services to keep customers moving between smaller towns along the Manchester to Leeds route whilst this section of the railway is closed and train services take diversionary routes.

- **Northern Powerhouse Rail**

Alongside the Transpennine Route Upgrade, additional works to enable greater capacity, improved line speed and other improvements to increase the connectivity and reliability of rail services in the North, engineering works will take place across all TransPennine Express routes, requiring possessions and closures where rail replacement transport will be necessary to keep customers moving.

- **High Speed 2**

With Manchester Piccadilly, Manchester Airport, Leeds and Sheffield all identified as High Speed 2 terminal locations, there is an expectation of enabling works being required which will affect existing rail infrastructure, as has been seen at London Euston.

- **Other Possessions**

In total, in the next year, TransPennine Express will be affected by over 600 individual possessions, taken by Network Rail in order to undertake essential maintenance works. Whilst many of these are timed to cause minimal disruption to customers, such as midweek nights, they still require a provision of rail replacement vehicles.

We need to be able to source enough buses and coaches to provide adequate rail replacement services to minimise the impact of these planned disruptions on the public, whilst still enabling these essential upgrade and maintenance works to be undertaken. If we can only use PSVAR-compliant vehicles, then we will be unable to provide sufficient levels of rail replacement service to meet customer demand and therefore our franchise requirement. We will only be able to provide a severely restricted rail replacement service, depending entirely on the number of PSVAR-compliant vehicles which our bus and coach agents can source. This will severely damage our ability to provide the level of journey opportunity capacity demanded by our contract and required to support the economy of the North of England.

This is an important issue for us and the wider industry, and it is essential it is considered carefully to avoid severe unintended consequences. Please do not hesitate to contact me if it would help to provide any further detail on the matters in this response.

We look forward to working with ORR on the next phase of its development of the ATP Guidance.

Yours sincerely



Louise Ebbs
Strategy Director

Response to ORR consultation: Applicability of the Public Service Vehicles Accessibility Regulations 2000 (PSVAR)

Transport Focus welcomes the review of this matter regarding the Accessible Transport Policies. This brief submission simply summarises our existing research/evidence. We look forward to contributing to ORR's subsequent consultation in more detail.

We are not in a position to set out a legal opinion, though we welcome the fact that ORR has published the legal advice which it has received on the applicability of PSVAR.

Research which Transport Focus has undertaken in recent years into major infrastructure improvements' alternative road service provisions shows a preference from some passengers for coaches over buses in some circumstances (see Appendix). Clearly, we can interview only those passengers who have chosen to travel at such times of disruption and typically that may well involve a significantly lower proportion of disabled passengers. The surveys record whether the passenger describes himself as disabled or not but the numbers of such passengers are too small for meaningful analysis.

In recent qualitative (and, as yet, unpublished) research based on 12 focus groups, rail passengers likely to be affected by replacement road services also express a preference for coaches over buses but at the same time acknowledge that suitable provision has to be made for disabled passengers on all replacement services. Some passengers argue that a coach is more appropriate for longer-distance journeys as it is more comfortable and offers on-board toilet facilities, more akin to a train, and that buses are more attuned to shorter journeys.

However, a case study as part of this research also set out one disabled passenger's preference for a bus over a coach as the seating layout and provision of priority seating allows a choice of seat and the ability to stretch one's legs.

In addition, Transport Focus's Accessibility Forum held on 9th October ran four workshops looking at different aspects of service disruption: alternative road transport provision in the cases of planned and unplanned disruption featured in these. The general consensus was that accessible transport must be provided on all such occasions, though it was agreed that during unplanned service disruption (e.g. infrastructure or train breakdown) the provision of accessible vehicles may be harder to arrange.

Appendix A

Users' views on rail replacement services

In recent years Transport Focus has conducted a number of survey research exercises in connection with major rail infrastructure improvement projects such as the London Waterloo rebuilding, Derby resignalling¹ and Brighton Main Line improvements² and the recent closure of London King's Cross over the August Bank Holiday³. The main aim of these projects has been to assess passenger awareness of the work and whether comms activity is meeting their information needs. These projects have involved several waves of research in the months before the works to track how awareness and attitude change over time. We have also conducted a final wave of research during the works in which we have additionally monitored passengers' experience of the works and any alternative travel arrangements.

Both Derby and Brighton involved extensive rail replacement services; (Waterloo used rail replacement services only on the Chessington branch.) In the course of our final waves of research we interviewed passengers who had chosen still to travel during the works and the associated disruption, some of whom used a rail replacement service as part of their journey. The research uses an intercept approach (as used on the *National Rail Passenger Survey*) where questionnaires are handed out to passengers at affected stations, on selected trains, or where relevant waiting for or alighting from rail replacement services. Clearly, we are able to interview only those who chose to travel; we have no information from those who chose not to travel, whether by train or a rail replacement service. In the questionnaire we ask rail replacement service users to state whether that service involved a bus (single- or double-decker) or a coach.

In terms of overall satisfaction with their journey on the day (during the works), users of the rail replacement services give noticeably higher ratings when a coach is used rather than a bus:

% very/fairly satisfied (Base size in brackets)	Non-RRS users	Coach RRS users	Bus RRS users
Brighton Main Line	47% (531)	59% (36*)	45% (131)
Derby	69% (1,050)	71% (277)	63% (162)
London King's Cross	62% (292)	76% (46*)	63% (24*)

* caution – low base

¹ See <https://www.transportfocus.org.uk/research-publications/publications/derby-resignalling-works/> for full report.

² See <https://www.transportfocus.org.uk/research-publications/publications/brighton-main-line-improvement-project-the-passenger-perspective/>.

³ As yet unpublished.

Interestingly, it can be seen that coach user satisfaction in Derby (where a large proportion of coaches were used) is marginally above that for passengers who did not use a RRS; for Brighton and London King’s Cross it is markedly higher but with quite small samples.

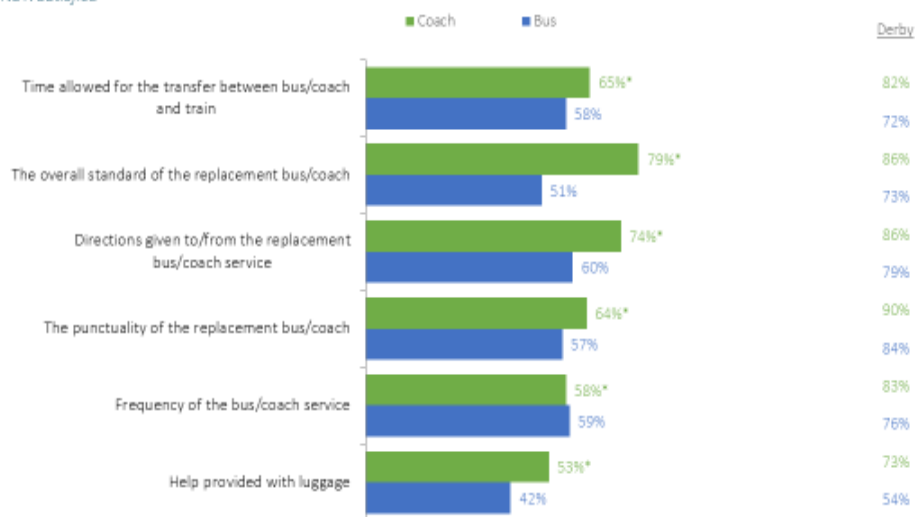
This same preference is reflected in the way rail replacement users rate various aspects of the service (see chart overleaf). It should be noted that, reflecting the balance between buses and coaches that were used on the two projects, the numbers of bus users (Derby) and coach users (Brighton) are quite small, however the pattern is clear.

Satisfaction with rail replacement service

Generally passengers were more satisfied with coaches than buses as a means of rail replacement. Passengers were most satisfied with the overall standard of the replacement bus/coach and least satisfied with help provided with luggage

Based on all passengers who used a rail replacement service (excluding don't know/no opinion)

NET: Satisfied



*Low base size warning



Q22 Thinking about when you caught or changed to the replacement bus/coach, how satisfied were you with the following? Base: All passengers who used a rail replacement service, Balcombe - Coach (36) Bus (131), Derby - Coach (231) Bus (144)



The surveys record whether the passenger describe themselves as having a disability, however the numbers of such passengers are too small for meaningful analysis. Hence these numbers must be used with caution when assessing the views of passengers with a disability.

In recent qualitative research (as yet unpublished; based on twelve focus groups) rail passengers likely to be affected by line closures also express a preference for coaches over buses – at the same time acknowledging that provision has to be made for disabled passengers on all replacement services. It also sets out a case study showing one disabled passenger’s preference for a bus over a coach as the seating layout and provision of priority seating allows a choice of seat and the ability to stretch one’s legs.

There is a preference for a rail replacement coach over a bus

However, passengers have some reservations which will need to be overcome before the coach is seen as a viable alternative to the train

- **A coach is seen as the least bad option.** Coaches are seen as having higher capacity than the bus, and the availability of toilets is helpful.
- Some argue that the coach is more appropriate for long-distance travel – without the need to interchange – and that buses could be used for shorter journeys.
- However, coaches and buses alike can suffer from a certain **stigma** as being stifling, uncomfortable and slow. The challenge will be to position them as a **pragmatic** way to travel given the circumstances.
- Passengers expect that appropriate provisions will be made for those with disabilities on all replacement services.

It's probably needed, coach, just for the amount of people. The coach would be the first option, surely.

Leisure

People would be cheesed off if they pay for a train ticket and they end up on a coach that takes twice as long.

Leisure

Case Study: Vulnerable Passenger (Arthritis)

This passenger prefers buses to coaches from an accessibility standpoint. The large step from pavement to coach is usually too high for her to negotiate, and finds that coach drivers can be unhelpful compared to bus drivers. Priority seating on buses, as well as the variety of different seating arrangements, allows her to stretch her legs while sitting, and meets her needs considerably more effectively than a coach.



Stephanie Toby
Office of Rail and Road

By email

Victoria Square House
Victoria Square
Birmingham
B2 4DN

11th October 2019

Dear Stephanie

VIRGIN TRAINS response to the Legal Advice on the Applicability of the Public Service Vehicles Accessibility Regulations 2000 (PSVAR)

Thank you for getting in touch around the provision of Rail Replacement vehicles and how this links to the Public Service Vehicle Accessibility Regulations (PSVAR) compliance legality.

As you are aware the West Coast Franchise is due to change hands on the 8th December and we have a meeting set up as part of the mobilisation process with First Trenitalia to discuss the provision of PSVAR compliant vehicles.

We believe strongly in providing great customer experience and therefore look to ensure all our customers can reach their end destination safely and with as minimum disruption as possible. Which is why our policy during disruption, planned or unplanned, is to provide accessible taxi's to those customers with mobility needs.

There are some areas that are outside of our control which must be acknowledged. The bus/coach industry is unregulated and as such, the purchase of PSVAR compliant vehicles is a wholly commercial decision. This means that there may be shortages of vehicles especially in times of disruption when more than one Train Operating Company (TOC) will be looking for vehicles to assist with onward travel. Which is why we work with a range of transport operators to ensure that customers reach their destinations.

By providing only PSVAR compliant vehicles, we will significantly reduce the available pool of vehicles we can draw from. If the above does happen, we may end up in a position where we are unable to provide any rail replacement transport other than taxis. This will leave thousands of customers stranded for prolonged periods of time and will put customers with disabilities, both physical and hidden, at risk who may be in crowded environments and unable to plan their onward journey.

Thank you for taking the time to read our response and we look forward to hearing from you.

Yours sincerely

A handwritten signature in black ink, appearing to read "G. Williams", with a long horizontal stroke underneath.

Gareth Williams

Head of Sustainability
Virgin Trains - West Coast Mainline

Sent via email: ATP@orr.gov.uk

11 October 2019

Dear Sirs,

West Midlands Trains Response – Legal Advice on the Applicability of the Public Service Vehicles Accessibility Regulations 2000 (PSVAR)

West Midlands Trains provides rail services across the West Midlands and London Northwestern network, serving over 175 destinations and catering for both interurban and commuter services.

We welcome the opportunity to respond prior to the re-issue of the consultation document by the ORR. We also welcome the focus and discussion of the ways in which we can seek to ensure that our Rail Replacement provision is accessible to all and wish to play an active part in this process. Our Rail Replacement Provision is delivered by Abellio Rail Replacement (ARR) who we have consulted with in preparing this response.

ARR are one of the UK's largest supplier of Rail Replacement vehicles for both planned and unplanned disruption to our services. In common with other providers, and due to the flexible and ever-changing vehicle/route requirements, ARR uses a large network of sub-contracted vehicles from a wide-range of providers (currently c.550 operators) across the Group with circa 150 operators across the WMTR franchise area. This requirement and the supplier fleets varies across our network in response to the different routes they support.

We have some concerns over the both the suggested timeline for the implementation of PSVAR on Rail Replacement services and the serious safety and operational ramifications of doing this on January 1st 2020. We would note that we have already asked ARR to bring forward securing vehicles for some services due to operate after this date and therefore swift clarity for our customers, supplier and ourselves would assist us in preparing to move forward.

In outlining both our current brief assessment of the market and our concerns below, we are not seeking to suggest that the challenges posed by the introduction of PSVAR to Rail Replacement are insurmountable. We have therefore also taken the opportunity to present a range of potential positive options which would allow us and other TOCs to comply with the spirit in which we believe the proposed changes, and indeed the ORR's wider aim of ensuring the railway is more accessible and equitable for all, can be achieved.

Current State of the Market:

In 2018, ARR provided around 38,500 vehicles across the UK on Planned and Unplanned Rail Replacement duties¹. ARR provided 6,500 duties to West Midlands Trains in 2018, with volumes expected to be similar in 2019.

The fleet profile used by ARR varies considerably by route and across the different regions in which we operate, however, we have a significant reliance on the use of coaches. In 2018, 80.5% of all UK Rail Replacement Duties (planned and unplanned) were operated by a coach, 12.2% by small vehicle (8-16 seats) and just 7.3% by bus.

ARR have undertaken an assessment of the current availability of vehicles within the supply chain. They currently estimate that between 3 and 5% of coaches (over 16 seats) within their suppliers' fleets meet the requirement for accessibility as set out in PSVAR. There are some of our routes/regions where it is appropriate to use buses which already meet the existing PSVAR requirements for Public Service Vehicles.

It is our view that there simply is not capacity within the current market of supply to meet the demand which will be created from January 1st 2020, nor is there time for the market to adapt to this requirement before that date. In our further response below, we have sought to provide a snapshot of the more detailed challenges and impacts of implementing PSVAR on Rail Replacement Coach services.

Safety/environmental challenges:

We have serious concerns that the potential implementation of the requirements impacts directly upon both our safety and security responsibilities. It would be negligent of us not to assess and validate the impact of the changes resulting from implementation and we believe that it is necessary to take the time to properly consider these. It is clear to see that there would be increased risk to employees, passengers and public in a scenario in which the PSVAR regulations were implemented whilst the supply chain is unable to meet the volumes demanded by ARR and ourselves.

The increase in crowding that would result from reduced supply raises the security risk and would potentially invalidate the current approach legislated by the National Rail Security Programme. It is our view that this will require a risk review lead by the Department for Transport, Land Transport Security, British Transport Police (BTP) and Centre for the Protection of National Infrastructure colleagues.

¹ ARR define a duty as a collection of journeys undertaken by a vehicle during a day so the number of journey legs will vary within a single duty.

Additionally, the management of disruption, already a concern for the ORR, BTP, Trades Unions and ourselves would suffer a significant increase in safety risk resulting from the behaviour of passengers denied an acceptable level of service.

Assessment of this potential is required to establish what may be done to manage that risk acceptably within 'As Low as Reasonably Possible' (ALARP) principles. It is unlikely that effective risk controls can be implemented in the timescales proposed.

Operational challenges arising from the introduction of PSVAR on Rail Replacement:

- **Availability:** As discussed above, it is our view there simply are not enough compliant coaches in operation to source for our entire engineering works programme. We believe ARR's assessment of the market is likely to be representative of the UK as a whole. As such, it is unlikely that seeking capacity from elsewhere in the UK will be an option, particularly during major, multi-TOC operations or at peak times of the year.
- **Distance:** We run a wide variety of different routes and coaches are a practical choice for a number of reasons including passenger comfort, toilet facilities, luggage capacity and journey speed (noting many journey times are already longer than the equivalent journey by rail).
- **Tachograph Regulations:** A concern raised by ARR suppliers is around the use of tachographs. On longer distance routes, these would be required as well as requiring operators/ARR to schedule driver hours under EU rather than Domestic regulations. Because many operators/drivers undertake a mix of work other than Rail Replacement during a week, the requirement to comply with both EU and Domestic hours reduces scheduling efficiency and will have a further impact on the willingness of operators to supply vehicles.
- **Supplier Safety Concerns:** In discussing the potential impacts of PSVAR introduction on Rail Replacement, suppliers have raised concerns around the need to ensure wheelchairs carried are crash tested and the various restrictions this will place on some users.

Infrastructure challenges:

We note that the full introduction of PSVAR on Rail Replacement would, in effect, mirror the current situation on heavy rail whereby vehicles serving pick up points would be accessible, however the stops they serve may not be.

Due to the temporary and sometime unplanned nature of Rail Replacement it is often necessary to create temporary pick up points at stations (particularly larger rail head station with accessible facilities) which would otherwise not be used as stopping points. At some smaller or rural stations, pick up points are at the roadside or some distance away from the station due to the practical space and safety constraints of the road network. This may mean

a PSVAR compliant vehicle may not be able to safely pick up or set down customers at a station pick up point.

Due to the timescales for response, we have not been able to fully assess the individual impact on our served stations however we note that the current guidance does not consider this implication, nor the adjustments which may be considered reasonable in order to meet the spirit of the requirements in allowing customers to plan and travel with confidence.

Potential Improvements to the accessibility of Rail Replacement services:

The below options are intended to provide a practical set of suggestions based on the current supply within the market as outlined above. In each case, we are willing to work with the ORR to better scope and define the options and the timelines in which they could be practically delivered. We also recognise that a 'one size fits all' approach may not work in all cases due to the varying nature of the routes we serve.

Option 1: Review of accessible supply by route:

It is clearly our preferred option to look to supply PSVAR compliant vehicles wherever possible. We would suggest this is best done on a route-by-route basis to assess whether switching to using buses rather than coaches with immediate effect may be practical. We would also look at the local/regional supply of coaches available and would welcome a discussion on the best way to prioritise supply to maximise the accessible journey opportunities for customers.

Option 2: Multi vehicle departures:

On some busier routes, we currently run multiple vehicles per departure. We would propose that in this scenario we seek to prioritise offering a PSVAR compliant vehicle on each departure in order to create an accessible journey option across the timetable with the longer term aim of full compliance on all vehicles on that departure.

Option 3: Accessible standby vehicle provision:

It is already common practice during planned operations to put additional 'standby' vehicles at stations to allow for additional capacity where passenger numbers are high or to cover mechanical faults. Our discussions with ARR indicate that there is a supply of smaller vehicles (fewer than 22 seats) which meet the standards for PSVAR. This would allow us to use limited supply as well as improving the accessible journey options from stations on an 'on demand' basis to create accessible journey options for customers.

Option 4: Network Planning:

Working with Network Rail and ARR may allow us to review and amend some rail heads on pre-planned work order to improve the journey opportunities for accessible travel. Practical examples of this include shortening the possession limits/the distance between railheads to allow for buses to be used instead of coaches or looking to move customers shorter distances to parallel routes for train connections.

In proposing this, we note that some major work is planned over 12 months in advance and that minor work for the first quarter of 2020 is already planned. As such the lead time for review and introduction of this solution may be significant.

Option 5: Supplier Behaviour:

We recognise that we have a responsibility to positively influence and encourage our supply chain to move towards full compliance and can influence the speed with which this is done. A number of ARR suppliers recognise that Rail Replacement makes up a significant percentage of their business and have indicated a willingness to work with ARR to improve the supply of vehicles within the market.

We will continue to look to work with ARR to assist operators in complying with the requirements of PSVAR, however a certainty around the way forward is required before we seek to ask suppliers, the majority of whom are SMEs or sole traders, to make significant investment in their vehicle fleets.

In taking this approach we are embracing the compliance issue, but we trust have helpfully outlined some of the key factors and clarifications needed to facilitate that compliance. Working within our rail replacement contract process, tackling compensation arising through line blocks and appreciating those factors within the bus industry that are beyond our control are all key considerations.

Option 6: Enabling Innovative solutions

As part of our current integrated transport and accessibility work in the WMT franchise, we have been carefully considering the role and potential for community transport organisations to become more proactively involved providing access to rail services, both in terms of 'steady state travel services' but also playing a contributory role towards planned rail replacement solutions. The comprehensive study and consequent workshop has involved over 80 identified providers of accessible transport across our network and brought together those wishing to look actively at how they can support their local rail services and provide site specific solutions.

The first stage of this work is now complete, and we are now moving into a feasibility/planning stage to enable pilots to be set up to connect rural and other poor connected communities and new developments with rail schemes.

Whilst there is a wider debate ongoing re the overall 'status' of CT providers and the key requirements of Section 19/22 permitting, nevertheless this is a form of accessible transport that we believe has a stronger role to play in connecting people to rail, and we are looking to maximise the opportunities for that to happen.

Therefore any solution going forward needs to allow this type of innovative work to come forward in a timely manner and to enable the community transport sector to form part of longer term solutions in providing the vehicle mix and local accessibility that is sometimes needed.

Operated by West Midlands Trains

We plan to meet with both DfT and ORR to outline our approach once we are able to demonstrate the full cycle of planning and introduce a test location.

The framework of the Equality Act and the DfT Inclusive Transport Strategy

Finally, we would point to the relevance of the Equality Act and the overall intention of the Act to 'advance equality of opportunity' across all protected characteristic groups.

Put into this context it is very important that the emerging requirements do not adversely impact across the wider equality groups (e.g. older people, pregnant mothers, gender etc) at the expense of the mobility access for those with very specific needs. If we look at the overall intentions of the DfT Inclusive Transport Strategy, plus the intentions of the Act, and the demographics of those customers accessing our West Midlands and London Northwestern rail services, this does mean that the current rail replacement approach requires some rethinking for it to be workable.

As a Train Operating Company we fully support the principle of making the door to door journey as inclusive as possible, but the solution must not impose negative impacts on a greater percentage of the protected characteristic groups (e.g. through lack of access to a toilet on a journey, ability to use a seat belt, comfort levels for older people etc).

Consideration should therefore be given as to how appropriate alternative accessible transport can more fully meet customers' requirements in the spirit of the Equality Act.

Should you wish to confer on this further please do not hesitate to contact myself or our Integrated Transport and Accessibility Manager (). Who will be happy to explain our response in more detail.

Yours sincerely,



Andrew Camp
Commercial Director