



Courts and Tribunals Judiciary

**R (on the application of
WEST COAST RAILWAY COMPANY LIMITED)**

V

OFFICE OF RAIL AND ROAD

JUDGMENT SUMMARY

Important note for press and public: This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment is the only authoritative document. The judgment is a public document and is available online at <https://www.judiciary.uk/judgments/>

The references to (§[]) are to paragraph numbers in the judgment.

1. The Claimant, West Coast Railway Company Limited, is the largest operator of heritage train tours in the United Kingdom. It runs a number of well-known services. These include the Jacobite Steam Train from Fort William, which is known popularly as the “Hogwarts Express”, having featured in the Harry Potter films and described as ‘the greatest railway journey in the world’ (§1). The Defendant, the Office of Road and Rail (“the ORR”), is the safety regulator for Britain’s railways (§2).
2. The trains operated by the Claimant are predominantly Mark I vehicles which meet the “heritage” appearance required for many heritage train tours. Particular heritage features are hinged doors, known also as ‘slam doors’, and droplight windows. Hinged doors can be opened by anyone inside the train even when the train is moving. There is no central locking system whereby all doors are locked and unlocked simultaneously by a single individual from a central control point (§3).
3. The Claimant challenges the decision by the ORR declining to issue the Claimant with an exemption from the prohibition in the Railway Safety Regulations 1999 on the use of hinged doors without central door locking. The Claimant challenges the decision as unlawful on five grounds (§6):
 - i) The ORR misinterpreted the Railway Safety Regulations,
 - ii) The ORR unlawfully fettered its discretion,
 - iii) The ORR failed to take relevant considerations into account,

- iv) The ORR's decision was a disproportionate interference with the Claimant's right to the protection of property under Article 1, Protocol 1 of the European Convention on Human Rights,
 - v) The ORR's decision was irrational at common law given its disproportionate and draconian effect.
4. The Court has concluded that the claim fails (§97).
5. Underlying the present claim is a disagreement between the Claimant and the ORR as to whether the Claimant's arrangements for operating its secondary door locking system on its hinged doors provides an equivalent level of safety to a central door locking system (§37). It is apparent that the disagreement is deep seated and wide ranging (§38). In this context it is appropriate to restate the basic proposition that judicial review is not an appeal. It is not the function of the court in a judicial review claim to assess the merits of the decision for which judicial review is sought. The basic constitutional theory on which the jurisdiction rests confines the court to determining whether the decision was a lawful exercise of the relevant public function (§39).

Ground One (misinterpretation of the Railway Safety Regulations)

6. There is no evidence before the Court indicating that the ORR mistakenly considered that the Regulations imposed a time limit for compliance with Regulation 5. The evidence demonstrates the ORR regulating in accordance with evolving safety standards. There was no evidence before the Court to demonstrate that the ORR was using the regulatory prohibition to impermissibly regulate droplight windows (§46).

Ground Two (fettering of discretion)

7. The ORR's policy gives a strong steer that central door locking will be required but it nonetheless makes clear that ORR will consider granting an exemption from Regulation 5 where an applicant can "demonstrate that there are exceptional circumstances" (§50). Moreover, it is readily apparent from the decision letters that the ORR did not shut its ears to the application, despite the Claimant not having provided the necessary information to process the application (§51).

Ground Four (Article 1 Protocol 1 of the European Convention on Human Rights)

8. In oral submissions, ground 4 was advanced on behalf of the Claimant prior to ground 3 so the Court's judgment follows the same structure (§53).
9. The legislative prohibition on hinged train doors without central door locking came into force following a series of passenger fatalities and serious injuries. The Claimant contends that its method of operating its secondary door locking doors is safe but there have been several safety incidents on its trains which indicate otherwise, and the Claimant has not produced evidence of an investigation into the incidents or reflections on lessons learnt, to the satisfaction of the specialist safety regulator. In addition, the ORR does not consider the risk assessment produced to be suitable or sufficient to demonstrate that the Claimant's operations provide an equivalent level of safety as central door locking. As a specialist safety regulator, the ORR is entitled to a margin of appreciation in this regard. There is no less restrictive measure available. As matters currently stand, the general interest falls clearly in favour of the installation of central door locking (§82).

10. The legislative prohibition came into force over 18 years ago. The ORR has made clear its policy on exemptions to the charter heritage sector since 2019. Other smaller heritage train operators have invested in central door locking and have passed the cost onto customers. From their perspective the Claimant has gained an unfair competitive advantage in refusing to fit central door locking. The cost of retrofitting central door locking on the train services run daily by the Claimant falls comfortably below the notional economic value of preventing a fatality. The ORR has made clear that it is willing to allow a transition period for the retrofitting of central door locking as it has done with other operators, which would enable central door locking to be fitted out of season thereby avoiding loss of revenue. As other operators have done, the cost of retrofitting can be passed onto passengers by way of a modest price increase (§84).
11. Balancing the considerations summarised above the Court has reached the view that the restrictions imposed on the use of the Claimant's property are justifiable and the ORR's decision was not incompatible with A1P1 of the European Convention on Human Rights (§85).

Ground 3 (Failure to take account of relevant considerations)

12. The Claimant's application failed, primarily, because the ORR was not satisfied with the information provided, in particular the risk assessment, the absence of any evidence of ongoing monitoring and assessment of the competence of the staff operating the SDL [secondary door locking] and any apparent investigation into and reflection on the previous safety incidents. Having chosen not to provide the evidence that a regulator has made clear it requires, it is not open to the Claimant to criticise the regulator for failing to consider the information that the Claimant chose instead to put forward. In the circumstances, the factors cannot be said to be so obviously material that it was unlawful to fail to take them into account (§90).

Ground 5 (Irrationality)

13. The Court is not persuaded that the ORR's decision can be said to be, in any way, irrational. There is a legislative prohibition on hinged doors operating without central door locking. The specialist safety regulator was not satisfied that the Claimant had demonstrated its method of operations provided an equivalent level of safety. There is an evidential basis for the ORR's concerns, not least because there have been several safety incidents on the Claimant's trains. The Courts have recognised the need for judicial restraint where the issue under scrutiny falls within the particular specialism or expertise of the defendant public authority. The ORR's decision fell comfortably within its discretion (§94).