



17 August 2018

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Dear Keith

Thank you for your email of 13 July 2018 in relation to the concerns raised by the RMT / TSSA trade unions in respect of Waivers to the London Underground Rule Book (the 'Rule Book').

The issue of Waivers to the Rule Book and the powers of the Senior Operating Officer have previously been raised by the two trade unions at LU's Health & Safety Forum in March 2018 and prior to that, at a number of Stations Health and Safety Tier 2 meetings, going back at least as far as May 2017. On each occasion, LU has provided written responses to the questions raised by the trade unions that I would be happy to share with you. While I have set out below LU's position on the issues you have raised, it might also help if Richard Jones and I came to see you, at your convenience, to explain how we in LU apply and oversee the Waiver process.

The trade unions assert that the Senior Operating Officer can only issue a Waiver once the following conditions have been met:

1. On the grounds of safety;
2. The Waiver is actually safer than the normal rule;
3. That they can only vary a rule slightly, not get rid of the normal rule; and
4. That it's only the Rule Book that can be waived, not any other document.

In response to these and your further points, the issuing of a Waiver to the LU Rule Book by a Senior Operating Officer is not limited to instances of safety alone, albeit it would be a very strong reason for one to be issued. Any alternative process defined by a Waiver must be safe. In fact, by design, there are no stated constraints applied to Senior Operating Officers in the use of Waivers as it is not possible to foresee every circumstance where one may be justified. The issue of 'safety only' introduces an unworkable constraint which in itself negates the importance of there being a full risk-based assessment of the wider issues under which a particular Waiver is to be considered in the first place.

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The CAP which introduced the role of the Senior Operating Officer was clear that the Waivers were not limited to safety related instances. They are used where normal controls are degraded and where maintaining customer service is acceptable where alternative controls to those in the Rule Book are risk assessed as acceptable and safe.

As such, a Senior Operating Officer is empowered and has the authority to waive or set aside any rule in the LU Rule Book where normal conditions are degraded, they believe appropriate at the time, where they consider it is acceptable and safe and where adequate risk mitigations and alternative arrangements can be put in place that are appropriate to the situation faced – and this may include maintaining customer service if an ‘acceptable and safe’ alternative is available. This is a point that was made clear in a letter from Jill Collis to John Leach dated 05 April 2018 on this very subject.

This may also mean that such decisions are considered at a network level. Any Senior Operating Officer must be satisfied that the specifics of the operational scenario and the mitigations that they have imposed sufficiently ameliorate the overall risk profile to an acceptable level. This is set out in the waiver documentation where all such decisions are recorded.

This is clearly something that is not undertaken lightly as a Senior Operating Officer has full accountability for the decisions that they make in these circumstances and for the consequences that may arise following these decisions. This is undoubtedly a key consideration of all Senior Operating Officers in reviewing requests for Waivers and goes some way to explain why the number issued remains very low. By way of context, during 2017/18, ten Waivers were requested, three were declined and seven issued. All Rule Book Waivers are published on the LU Intranet and open to scrutiny and each one is subject to peer review. I note your comments about ‘reputational risk’ and I agree that this is not adequate reason, in itself, to issue a Waiver. This specific issue has been addressed with the Senior Operating Officer cadre. Processes are in place to ensure that Senior Operating Officers do not over-step the mark and exceed their authority (for example where a Rule exists because of a regulatory requirement). It is also the case that prior to issuing a Waiver, the Senior Operating Officer is directed to take advice from relevant specialists, especially where this involves technical interventions.

The TU’s view that a Waiver can only be made if “the Waiver is actually safer than the normal rule” is not accurate. A Waiver can be made where the Senior Operating Officer considers it acceptable and safe as set out above. Should we consider that action introduced by a Waiver was safer than the normal rule, it is likely that we would change the rule.

The final specific point that has been raised with you relates to Senior Operating Officers only issuing Waivers against the Rule Book and not other documents. While not specifically referenced in their note to you, the ‘other document’ that the trade unions refer to in their complaint are the station Congestion Control and Emergency Plans (CCEPs) where Waivers have been issued, in some limited circumstances, when the minimum numbers as set out in the CCEP were not met at sub-surface stations. It is LU’s view that documents that are specifically enacted by the Rule Book (such as CCEPs) are vicariously part of the Rule Book and therefore, their terms can be waived. CCEPs are too numerous to be formally included in the Rule Book structure. This issue, when raised by the trade unions, exclusively relates to minimum numbers where in fact, the Senior Operating Officer is waiving the requirements of Rule 8.1 in Rule Book 11.

I hope that this clarifies the position on this matter and answers any concerns you may have had. If you require any further information, please do not hesitate to contact me.

If you would like to meet Richard and I to discuss further, please let me know and I will arrange a meeting.

Yours sincerely

Marian Kelly
Head of HSE LU