



OFFICE OF RAIL REGULATION

# Complaints handling procedures – a regulatory statement

July 2014

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# Complaints handling procedures: a regulatory statement

## Introduction

1. In October 2013, responsibility for the approval and monitoring of train and station operators' complaints handling procedures (CHPs) transferred from the Department for Transport (DfT) to the Office of Rail Regulation (ORR). Since then, we have been engaging with operators and consumer groups to understand how well the existing arrangements have been working to inform how we should carry out our role. We would like to thank all those who took part in this process<sup>1</sup>.
2. This statement is intended to give clarity to operators on the approach we intend to take to our role and the process for implementing this.

## Background

3. As the regulator, we see complaint handling as a core part of the passenger experience and vital to building and maintaining confidence in rail. With passengers paying a greater share towards the cost of the railway, through higher fares, it is all the more important that passengers – as customers – are able to have trust in their operators and feel that they will be taken seriously if they make a complaint.
4. Effective complaints handling demonstrates that operators have customers at the heart of their approach as well as a genuine commitment to meeting their needs. The information provided by complaints, as well as customer feedback more generally, enables operators to identify root causes of dissatisfaction and take action to improve the experience of customers.
5. Train and station operators' complaints handling procedures are regulated through their operating licences<sup>2</sup> to ensure that the interests of passengers are protected. In short, operators must establish and comply with a CHP approved by ORR, and ORR can require an operator to review its CHP and make reasonable adjustments.

## Policy objective

6. Our overall policy objective for complaints handling role is:

**To promote continuous improvement in passengers' experience of rail through operators proactively acting on feedback and complaints**

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<sup>1</sup> A summary of the key points raised at our workshop on 13 March 2014 is available at [www.orr.gov.uk/data/assets/pdf\\_file/0011/13988/dppp-chp-workshop-2014-03-13.pdf](http://www.orr.gov.uk/data/assets/pdf_file/0011/13988/dppp-chp-workshop-2014-03-13.pdf).

<sup>2</sup> This includes the corresponding conditions in any Statement of National Regulatory Provisions (SNRPs) of European licences. See [http://orr.gov.uk/data/assets/pdf\\_file/0011/2234/lic-passlic.pdf](http://orr.gov.uk/data/assets/pdf_file/0011/2234/lic-passlic.pdf) for a template CHP licence condition.

7. In particular, we want operators to:
- (a) resolve individual complaints, promptly and fairly, taking account of the reasonable interests of the complainant; and
  - (b) continuously improve, so that complaints and feedback are acted on by the operator so that in the medium term the root causes of complaints are addressed,
- and in doing so establish a culture that supports and encourages these objectives, embedding arrangements that effectively regulate themselves, and minimising the need for our direct involvement.

## High-level policy

8. Our engagement<sup>3</sup> with operators suggests that our policy objective is consistent with their aims too. Indeed, we have seen that a number of operators make significant efforts to ensure that they have an effective framework in place to understand and improve the experience of their customers. It has been encouraging to see complaints handling being recognised more broadly as being part of the approach to improving customer experience, and not just a process. Through our regulatory approach, we want to support and empower those operators that embody this outlook.
9. We therefore intend to adopt an approach to approving CHPs that focuses on the internal arrangements each operator has in place for monitoring, evaluating and improving its performance. It will be for operators to demonstrate that their arrangements underpin a customer-focused culture that will deliver positive outcomes for passengers.
10. We will then monitor whether these arrangements are delivering in practice by focusing on the outcomes that are being achieved. To enable this, we will work with stakeholders to establish a core data set of measures that operators will report against, including both quantitative and qualitative information. This information would be published, to provide transparency and a reputational incentive to operators.
11. This approach will empower operators and give recognition to those that are performing well. It will also enable us to identify where we need to carry out closer scrutiny of an operator to understand if there is an underlying problem with its arrangements.
12. We set out in more detail below how this will work in respect of the approval, monitoring and enforcement of CHPs.

## Our approach

### Approval of CHPs

13. When reviewing CHPs submitted to us for approval we will focus our scrutiny on the robustness of the internal procedures that operators have in place to manage complaints and feedback (rather than just on the customer-facing arrangements for making a complaint). We will want to understand whether the operator has arrangements in place

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<sup>3</sup> Both through our engagement on CHPs and also as part of our work in 2012-13 to understand how operators engage with their customers (see [www.orr.gov.uk/data/assets/pdf\\_file/0003/13989/passenger-engagement-report.pdf](http://www.orr.gov.uk/data/assets/pdf_file/0003/13989/passenger-engagement-report.pdf)).

that support a positive culture towards complaints and continuous improvement within its organisation.

14. We will be updating the existing guidance<sup>4</sup> to operators on how to produce their CHPs. As part of this, we will set out in more detail what we will expect to see when reviewing CHPs for approval. We expect this to focus on three main areas, as follows:
- (a) **Feedback method and response** – for example:
    - (i) accessibility and reach – in respect of the means available to passengers to provide feedback to the operator and the ease of doing so, taking account of the needs of all customers including those with different types of disability;
    - (ii) putting things right – how the operator demonstrates that it is listening and responding and is flexible to passengers’ needs;
    - (iii) acting fairly and proportionately – how the operator ensures objectivity; consistency and fairness;
  - (b) **People, processes and structures** – for example:
    - (i) how the organisation is structured to put its CHPs into place, including identified roles and the chain of accountability, and compliance by sub-contractors or other third parties working for the operator in any customer-facing role;
    - (ii) training programmes and communication strategies;
    - (iii) published service standards in respect of complaints handling;
    - (iv) reporting and review arrangements – how the operator assures itself of and measures the ongoing effectiveness of its arrangements, including internal criteria for assessing this and audit arrangements;
  - (c) **Culture** – for example:
    - (i) governance policy and leadership – including the degree to which the top team are engaged with the complaints handling system and the relationship between them and customer-facing staff;
    - (ii) how the top team ensures feedback is acted on and embedded into its strategies and approach as part of a commitment to continuous improvement;
    - (iii) the extent to which the consumer experience sits at the heart of the organisation’s vision and approach; and
    - (iv) the transparency of an operator’s procedures and reporting of its own performance and outcomes.
15. To provide transparency and assurance over our own consistency in reviewing different operators’ CHPs, we will produce and publish decision letters following approval applications along with any approved CHPs.

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<sup>4</sup> *Guidance on Complaints Handling* was published by the Strategic Rail Authority in 2005, and is available at [http://orr.gov.uk/data/assets/pdf\\_file/0004/4288/sra-complaints-handling.pdf](http://orr.gov.uk/data/assets/pdf_file/0004/4288/sra-complaints-handling.pdf).

## Monitoring and reporting

16. Rather than carrying out detailed annual reviews of operators our monitoring approach will be built around operators providing ongoing assurance that they have effective arrangements in place that are delivering good outcomes for their customers.
17. As mentioned above, we will work with stakeholders to develop a core data set of information that operators would then provide to us periodically. This would provide a consistent set of information comparable over time, enabling the identification of leading good practice across operators and a more robust means of identifying whether operators are achieving continuous improvement over time. We will develop this core data set collaboratively with stakeholders, drawing on existing practice and statistics already provided to ORR, to ensure that this is meaningful and useful. This will include a measure of customer satisfaction, recognising the feedback we received from operators on the need to focus on this. We would then publish the core data set information provided by operators on a regular basis.
18. We will report periodically, initially on an annual basis, on how all operators are performing. This will be informed by a range of evidence, including the core data set, other information published by operators, feedback from Passenger Focus, London TravelWatch or other relevant third parties, and any relevant research that we or others have commissioned. In producing these reports we will recognise those operators that are performing well and highlight good practice and innovative approaches amongst operators.
19. We recognise that it is not always appropriate to make like-for-like comparisons, given the varying circumstances of different operators and the possibility that the causes of complaint may not be within an operator's control. For this reason, it will be important for us to capture more of the context around the data to ensure this is represented fairly. Nonetheless, our expectation will be that operators should deliver continuous improvement against their own performance over time. Where we have concerns that this is not being achieved in the interests of customers, we would then discuss this with the operator concerned and potentially carry out closer monitoring.
20. We understand that, on their own initiative, some operators are already considering publishing information on their own CHP performance. We strongly welcome this initiative and the creation of the core data set should not discourage operators from doing this. Indeed, when approving and monitoring CHPs we will take account of meaningful transparency as an indication of cultural maturity.

## Implementing our approach

21. We will implement our approach in three stages:
22. The **first stage** (from now to December 2014) is as follows:
  - (a) **development of the core data set:** alongside this statement we are issuing a letter to stakeholders setting out the process for developing the CHP core data set. This includes some initial thoughts on what this might look like, invites comments and

proposes a working group to take this forward. We aim to finalise the core data set in time to enable this to be established by 1 April 2015;

- (b) **revision of the guidance to operators on producing CHPs:** we will seek views on changes to the guidance with the aim of publishing revised guidance by the end of 2014. In particular, we expect to include further details on how we will carry out our approval and monitoring role and our expectations of operators, including what we expect to see in respect of operators' internal arrangements as outlined above. We will clarify the principles of good complaints handling in the light of good practice in other sectors and address out of date aspects of the guidance and reflect technological developments and current practice, such as the use of social media. We will also look at clarifying the relationship between the public-facing element of the CHPs and Passenger Charter documents, following feedback from operators about duplication, and remove any unnecessary prescription; and
- (c) **promoting greater accessibility of complaints information through our website:** we will improve how we present information on CHPs on our website, including information on our approval process, performance (including the core data provided by operators), our periodic reports, CHP decision letters and approved CHPs.

- 23. The **second stage** (December 2014 to March 2015) will follow the publication of the revised guidance. At this point, we will ask operators to review their own procedures in light of the new guidance and the core data set with any material changes being submitted to us and approved by 31 March 2015.
- 24. The **third stage**, which we expect to begin on 1 April 2015, will mark full implementation, with the core data set established. We plan to report on performance within this first business year (by end of March 2016) based on what the core data and other evidence is telling us, and periodically thereafter, publishing this on our website.

## Interim arrangements

- 25. Those operators seeking approval of new CHPs ahead of the publication of new guidance should use the current guidance, but take account of this statement in terms of satisfying themselves that their processes, systems, structure and culture are capable of delivering ORR's overall policy objective of continuous improvement in passengers' experience of rail. See paragraph 14 above for the sort of factors that ORR would consider important in achieving this.
- 26. For existing operators, we issued a letter on 15 April 2014 stating that we were ending the practice of operators seeking annual re-approval of existing CHPs where no material changes have been made. If approval of material changes is required, operators should include: the feedback from the consultation that is required by their licence condition; a marked-up copy of their revised CHP; an explanation and justification of the proposed changes; and the impact on or outcomes for complainants or passengers.

## Regulatory impact

27. In terms of regulatory impact, we recognise that, depending on the information included in the core data set, there may be a need for operators to make some adjustments to the information that they collect on their own performance. As discussed above, it will be important that this information is meaningful and useful both to the operator and to ORR.
28. In terms of benefits from our approach:
  - (a) it recognises that operators may already have robust arrangements in place and provides for ORR to step back from more intrusive monitoring as operators establish (or demonstrate that they already have) robust CHP arrangements which regulate themselves;
  - (b) it should support a greater focus on outcomes for passengers and so lead to benefits for those who complain and for passengers more generally. Better complaints handling arrangements will also benefit operators, through having a good source of intelligence from complaints enabling them to make improvements to service quality, and reducing transaction costs from appeals on complaints; and
  - (c) it does not create any inconsistencies with the requirements under the EU Passenger Rights & Obligations Regulation (PRO)<sup>5</sup>. Article 27(3) of the PRO includes an obligation to produce an annual report on performance relating to complaints handling. This currently only applies to international operators, but later this year DfT will be consulting on whether the exemption for domestic operators should be lifted. Where the PRO applies, operators could include the core data set information in their annual report.

## Enforcement and interaction with other obligations

29. We want all operators to deliver their CHP obligations to a high standard consistent with our policy objective, using reputational incentives as far as possible. We are not setting specific targets and we will draw on a range of data when assessing an operator's performance and compliance with their licence condition.
30. Where there is evidence to suggest that an operator is at risk of not achieving good outcomes for passengers in respect of its CHP obligations, we will discuss this constructively with the operator concerned. We may then carry out more regular monitoring of that operator. This might include requiring additional information, carrying out an audit, or using our existing power within the licence to require an operator to conduct a review of its CHP and report its findings, potentially leading to changes to existing CHPs or practice. Ultimately, if an operator does not comply with its licence obligation, we would follow our enforcement policy<sup>6</sup>.

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<sup>5</sup> Regulation (EC) No. 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:315:0014:0041:EN:PDF>.

<sup>6</sup> Economic enforcement policy and penalties statement, July 2012, available at: [http://orr.gov.uk/data/assets/pdf\\_file/0018/4716/economic-enforcement-statement.pdf](http://orr.gov.uk/data/assets/pdf_file/0018/4716/economic-enforcement-statement.pdf).

31. We recognise that a number of operators have concerns around the potential for them to be subject to enforcement action by different authorities in relation to the same matter ('double jeopardy'), or be subject potentially to other obligations by different authorities (e.g. franchises). In such cases, if enforcement by ORR were a possibility, we would expect to discuss the issue with the other authority to avoid a situation where an operator faces conflicting obligations.
32. We also recognise the concern that a franchise authority, for example, may grant an operator a derogation in respect of a particular commitment, with ORR then taking enforcement action for non-compliance under the CHP licence condition. We consider this unlikely. However, should an operator find itself in the position that it is likely to be given such a derogation, it should make us aware of this at the time, so that we can discuss any issues with both them and the franchising authority.

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