

Fao Gordon Herbert
Office of Rail Regulation
One Kemble Street
London
WC2B 4AN
Email: networkregulation.enquiries@orr.gsi.gov.uk

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Re: Consultation Document - *A greater role for ORR regulating passenger franchisees in England & Wales*

I'm grateful for the opportunity to respond to this Consultation and broadly support the "Government commitment to turn the rail regulator into a powerful passenger champion". I commend the Minister and ORR for bringing forward these Regulatory Proposals for consultation. I wish to make a number of specific observations and also to offer responses to ATOC's contribution to the Consultation.

1. The current arrangement allows Train Operating Companies (TOCs) to adopt wide ranging policies of self-regulation. Evidentially, the TOCs are inconsistent in comparison with each other in their policies and are, regrettably, inconsistent within their own jurisdiction in the application of those policies. As stated, Passenger Focus lacks statutory power and evidentially lacks regulatory will. All three of these are failings which affect passengers and which the Regulatory Proposals may positively address.
2. The current arrangement places TOCs outwith the scope of valued Consumer Legislation, notably the 1999 Unfair Terms in Consumer Contracts Regulations and by default, regulation by the DfT at present does not extend to the application of this or any comparable or equivalent regulation of the Terms and Conditions of Carriage. I am not persuaded by the statement in the Introduction to the Proposal (2.2) that ORR "regulates . . . TOCs through . . . consumer law". The application of Consumer Legislation to passenger Rail services would bring several benefits to passengers, including much-needed clarity in ticketing, consistency with passengers' expectations from other sectors and consistency in law with practice and precedent from other sectors.
3. Question 2 invites comments on a reference framework against which regulatory changes might be assessed. The current arrangement has led to a close working relationship between the Department, ATOC and its industry partners which has failed to achieve transparency and accountability and has provided only the merest opportunities for scrutiny. The Regulatory Proposal would erode that established 'convenience' and permit improved scrutiny. I strongly advocate a reference framework which quantifies transparency and accountability. In practice these could be quantified and assessed through trivial administrative procedures surrounding policy change, publication, consultation, monitoring and evaluation.
4. The close working relations (in 3. above) have permitted the focus of industry policy and practice to become directed towards self-sustainability and away from passengers' interests and services. The regulatory Proposals would permit that focus to be better balanced towards the interests of the

industry and passenger alike. This imbalance has been abundantly and increasingly apparent during the past 15 years. Accountability to the Regulator is a viable solution.

5. Turning to the two main strands of Chapter 5 (*the monitoring and enforcement of train service performance; and the monitoring and potential enforcement of TOC responsibilities in respect of service quality standards.*), it is untenable to persist with the present dual-regulatory framework where the every-day consequential losses are nearly all borne by passengers (e.g. Delay Attribution resulting in rural connecting services leaving almost empty before the busy but delayed mainline service arrives, the costs accruing and the lack of onward connections). What has arisen is a fragmentation of responsibility and blame attribution which, in itself, must be an expensive burden to administer, and whose focus is internal and not a focus on the passenger. (The same consequence falls on freight operators, though I understand that this may be outwith the scope of this consultation). I support the RVFMS conclusion that consolidation of industry regulation will benefit industry deliverables overall, and I further expect that those in turn will benefit passengers as a consequence.
6. The Performance improvements anticipated by the Licence Condition “*to secure punctuality and reliability of services for the carriage of passengers by railway so as to satisfy the reasonable requirements of passengers and funders, including potential passengers and potential funders.*” is welcome. This directly addresses the loss of passenger-focus in service policies and practice which (I believe) has arisen from the fragmentation of the regulatory framework.
7. In specific response to question 10 (“*Do you agree that the regulation of punctuality and reliability performance should be brought together in one place? Could this proposal work and what refinements could be made?*”) I respond ‘Yes’ but wish to expand the scope of the Proposal to include scrutiny of the full range of Conditions, Guides, Maps, Easements and Byelaws to ensure consistency, transparency, accountability and, where changes may be sought, to include consultation.
8. It is a credit to the industry’s heritage that its legislative framework is largely 125 years old (with extant elements of the 1840 still applicable) and operates successfully in the modern age. However, that legislation and the myriad of ancillary Conditions, Guides, Maps, Easements and Byelaws are extraordinary in their complexity and are not all available to passengers (nor understood fully by staff). It can be hoped that the Regulatory Proposals will address this maze of primary legislation, secondary legislation, Case Law, Guidance, Conditions and the professional competencies in those documents by staff for the benefits of passengers, staff and enforcement bodies alike.
9. It has been a disappointing theme during privatization that TOCs and their Association have adapted, altered added and removed Conditions, Regulations, Services, Easements (and introduced ‘Negative Easements’) without adequate Consultation, if any. I urge the Department and ORR to reconsider the Regulatory Proposals to embrace the challenge of ensuring that any changes affecting passenger services are subject to full and adequate Consultation which actually involves passengers. Perhaps the

scope of 5.30 – 5.31 (and Question 13) could be clearer in assuring passengers that “transparency” of performance extends to “transparency” in changing services and Conditions.

10. Notwithstanding the above responses to Chapter 5, I welcome the pragmatic approach suggested by 5.21 which appears to favour a constructive analysis and study of possible remedies in preference to mere blame and penalties.
11. I am not qualified to respond to Question 14 (“*What would need to be set out in guidelines to ensure credibility and consistency of reporting against service quality measures and transparency for passengers?*”) but wish to support the underlying intention implied by the Question and welcome the acknowledgement that the industry has lost some credibility by passengers arising, in part at least, from a fragmented regulatory framework.
12. The ‘Scope’ of change in respect of Network Rail e.g. passenger information (3.3) is very welcome. Whether the ‘Scope’ extends to industry tendering and contracting is unclear. I have profound disappointment in the lack of accountability and transparency in ticket software contracting by ATOC and the Department and would wish this to be captured by the Regulator.

In respect of ATOC’s response to the Proposals:

13. A recurring theme in the Association’s reply is the feared cost of the Regulatory Proposals and that it is a cost which will disadvantage passengers. No evidence is provided for this view (other than an unsubstantiated comparison with unspecified other sectors). It is to be expected that the Regulatory Proposals will deliver benefits to passengers, (perhaps including the removal of some overcharging or reductions in unused sold tickets), and whilst there may be short-term costs to the industry in adopting new administrative policies and practices, it is reasonable to assume that any lasting overhead costs are at such a modest level that they can be offset by the simplicity, accountability and transparency and their consequential benefits to passengers and public’s confidence in rail Operators – a confidence greatly lacking today.
14. The feared increased cost by ATOC is inconsistent with the expected reduction in internal costs (e.g. inter-company delay attribution administration and cross-charges) in favour of more consistent and coherent inter-company operation which delivers better passenger performance (see example in 4 above where connecting services may not connect, passengers are provided with taxis and trains travel empty) and better value for money, to passengers and to taxpayers.

I hope these responses are helpful.
Kind Regards



Dave Cross