



Changes to Complaints Handling Guidance: a consultation

26 September 2017

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Executive summary

1. Where consumers are unable to reach a satisfactory outcome to their complaint, it is important that they can get redress in a way which is independent of the company. Research has shown that there is a wish on the part of consumers to have greater access to independent redress arrangements, and ORR's satisfaction research has identified that while performance across companies varies, there is generally a high level of dissatisfaction with rail companies' handling of complaints.
2. Transport Focus and London TravelWatch currently act as the appeals bodies for complainants who are unhappy with a rail company's response to their complaint. However, they have no formal powers to compel rail companies to act or compensate individual passengers and the only form of binding outcome for passengers is through the Courts (usually via the Small Claims Court).
3. The Rail Minister has been leading discussions regarding the introduction of voluntary binding Alternative Dispute Resolution (ADR) in the rail sector which builds upon the current advocacy arrangements. Rail Delivery Group (RDG), working with others as part of an Ombudsman Task Force, has developed proposals which they envisage will see an ADR scheme for rail passengers introduced on a voluntary basis in early 2018.
4. A new ADR scheme will change the way that rail companies deal with complaints, and require changes to be made to their Complaint Handling Procedures (CHPs). In this document we seek views on what those changes should be in the following areas:
 - It is important that consumers have a clear, understandable, and seamless pathway to a body with which it is easy to engage and which can provide independent redress. We seek views on whether this should be directly to the ADR scheme or via the existing consumer bodies.
 - Individual consumers need assurance that if the rail company cannot resolve the complaint to their satisfaction they can, after a set period, seek the assistance of the ADR scheme. The communication of the option to do so must be clear and understandable. We ask for views on the timing and substance of these communications.
 - It is important that consumers are given certainty about their ability to seek binding redress. In the absence of a statutory ADR scheme they will want assurance that arrangements are not only robust but enduring. Substantial progress has already been made by RDG on developing ADR proposals. We seek views on whether regulatory intervention is necessary to require membership of an ADR scheme.
 - Finally, we provide clarifications to the CHP guidance and set out our intention to require amendments to CHPs for example on timescales for responding to complaints to remove any possible misinterpretation or misunderstanding.

Background

Current rail sector arrangements

5. Transport Focus¹ is the independent, statutory body established to represent the interests of users and potential users of the railways. London TravelWatch² is the independent, statutory watchdog for transport users in and around London. One of their roles is to act as the appeals body for complainants who are unhappy with the rail company's response to their complaint.
6. In their appeals role, Transport Focus and London TravelWatch provide non-binding mediation, advocating on behalf of individual passengers. In dealing with passenger appeals they are unable to impose a binding decision on the rail company. They have no formal powers to compel rail companies to act or compensate individual passengers, and as a result cannot ensure that outcomes for individual consumers are consistent across or within rail companies.

Alternative Dispute Resolution

7. Government implemented the EU Alternative Dispute Resolution Directive (the Directive) through Regulations³ that came into effect 1 October 2015. The Directive required Alternative Dispute Resolution (ADR) to be available for any unresolved disputes but did not make use of ADR mandatory.
8. ADR schemes meeting the requirements of the regulations are certified by the relevant Competent Authority (Financial Conduct Authority, Legal Services Board, Civil Aviation Authority, Gambling Commission, Ofgem, Ofcom, and the Chartered Trading Standards Institute (CTSI), which certifies all schemes outside of these sectors). ORR is not a Competent Authority so an ADR scheme in the rail sector would fall to CTSI to certify. Binding ADR arrangements have become more widespread in both the regulated and non-regulated sectors; as at 11 September 2017 41 ADR bodies have been approved.
9. ADR schemes provide consumers with a free and independent means of complaints resolution whose decisions are binding on the company. Membership of an ADR scheme demonstrates to consumers a strong commitment to customer service and builds trust. Feedback loops from the scheme to companies should drive improvements in complaints handling and provide a learning opportunity to address issues and prevent complaints arising. ADR schemes also impose a financial incentive and discipline on members who can control the volume of cases going to the scheme via the effective handling of

¹ <https://www.transportfocus.org.uk/>

² <http://www.londontravelwatch.org.uk/home/>

³ <http://www.legislation.gov.uk/ukxi/2015/542/contents/made>

complaints. For regulators it provides an additional source of information about performance and emerging risks in the sector, and for consumer bodies data to inform their advocacy role.

Complaints handling satisfaction

10. We know that there is a demand from consumers for access to formal ADR in all sectors. The annual online Consumer Action Monitor⁴ omnibus survey suggests that 44% of consumers who complain would feel more confident in a company that offered access to a dispute resolution service such as an ombudsman scheme. The Which? consumer insight tracker also reveals that trust in the rail sector remains low; only 29% of people in the survey said they trusted train travel⁵.
11. The CHP guidance requires rail companies to provide a full response to 95% of complaints within 20 working days. In our annual consumer report Measuring Up⁶ 2016/17, we noted that 12 of 24 rail companies have failed to achieve this regulatory obligation consistently. Over the last year we have worked with rail companies to gain better insight into the passenger experience of making a complaint.
12. The survey we have carried out in conjunction with rail companies of passenger satisfaction with rail companies' complaints handling found that performance across the participating companies generally showed a greater level of dissatisfaction than satisfaction. In particular, in 2016/17 satisfaction with the complaints process was 31%, and satisfaction with the outcome was 29%. One important aspect to note is that how the way the complaint is handled affects how the passenger feels about the rail company with 55% feeling more negative about the rail company in the light of its handling of the complaint.

ADR proposal

13. The Government made a manifesto commitment to introduce a rail ombudsman, and the Rail Minister has been leading discussions regarding the introduction of voluntary binding ADR in the rail sector. RDG, working as part of an Ombudsman Task Force which also comprises Transport Focus, London TravelWatch, and ORR, has developed proposals which it envisages will see an ADR scheme for rail passengers introduced on a voluntary basis. The proposals build upon the advocacy arrangements operated successfully by Transport Focus and London TravelWatch.

⁴ <https://www.ombudsman-services.org/docs/default-source/cam/cam-2017-report.pdf?sfvrsn=4>

⁵ http://consumerinsight.which.co.uk/tracker/trust?search%5Bdate_from%5D=1707&search%5Bdate_to%5D=1607&search%5Bsort_by%5D=unsorted

⁶ http://orr.gov.uk/_data/assets/pdf_file/0007/25297/measuring-up-annual-rail-consumer-report-july-2017.pdf

Complaints handling procedures and guidance

14. Train and station licence holders are required by their operating licence to have Complaints Handling Procedures (CHPs) which have been approved by ORR. We provide guidance⁷ on what ORR will look for when exercising this approval role and when monitoring for continuing compliance. Changes to the CHP guidance and CHPs will be necessary to facilitate the smooth introduction of an ADR scheme.
15. We are also engaging directly with rail companies regarding their complaints handling performance. We are keen to raise the standards of those who are struggling to comply with the requirements of their CHPs and to share the good practices of those who perform consistently well. Driving improvements in rail companies' complaints handling in advance of the introduction of ADR will be key.

⁷ http://orr.gov.uk/_data/assets/pdf_file/0020/19370/complaints-handling-procedure-guidance-2015.pdf

Scope of the document

16. In this consultation we seek views on amending the CHP guidance, and therefore rail companies CHP's, to help facilitate the introduction of an ADR scheme. Our proposals support ORR's strategic objective of Better Customer Service. In particular:

- Chapter 1 - we ask for views on the organisation(s) to which consumers should be signposted when their complaint is unresolved;
- Chapter 2 – we set out options for a time limit for informing consumers of their right to go to the ADR scheme;
- Chapter 3 – we seek views on whether membership of an ADR scheme should be a requirement in CHP guidance and thus CHPs; and
- Chapter 4 - we set out clarifications to the existing CHP guidance and necessary amendments to CHPs unrelated to the ADR scheme.

17. Notwithstanding that chapter 4 sets out some other (non-ADR related) amendments we are considering to the CHP guidance, this consultation is not intended to serve as a wider review of the CHP. It also does not include matters relating to the scope of or eligibility to the ADR scheme itself; such matters are being discussed with the Ombudsman Task Force, and RDG propose to seek approval for the scheme from the Competent Authority. Approval requires the scheme to meet standards set out in the ADR Regulations referred to above.

18. ORR is not a named Competent Authority in the ADR Regulations. We are discussing with DfT and BEIS whether legislation may be brought forward to enable ORR to be a named Competent Authority in the Regulations. In the meantime, RDG propose to seek approval from CTSI as the Competent Authority for sectors where the regulator does not have that role under legislation. We intend to establish an effective working relationship with CTSI to provide effective monitoring of the functioning of the ADR scheme and ensure that it meets the high standards which consumers expect of it. We will also establish a strong working relationship with the ADR body and a detailed Memorandum of Understanding to facilitate an effective and cooperative working relationship.

Next steps

19. Responses to this consultation are invited by Wednesday 7 November 2017 and should be sent in writing or by email to:

Consumer Policy Team
2nd Floor
Office of Rail and Road
One Kemble Street
London
WC2B 4AN

Email: CHP@orr.gsi.gov.uk

Following consideration of the responses we will publish our decision and updated CHP guidance. We will also set out the timescale by which revised CHPs should be submitted for approval by ORR.

1. Chapter 1- Signposting unresolved complaints

Summary

- 1.1 In this chapter we set out options for inclusion in the CHP guidance of the appropriate organisation to which complainants should be signposted (the process of giving consumers information about independent assistance) if the rail company is unable to resolve the complaint to their satisfaction. We also explore the content of these communications to consumers.

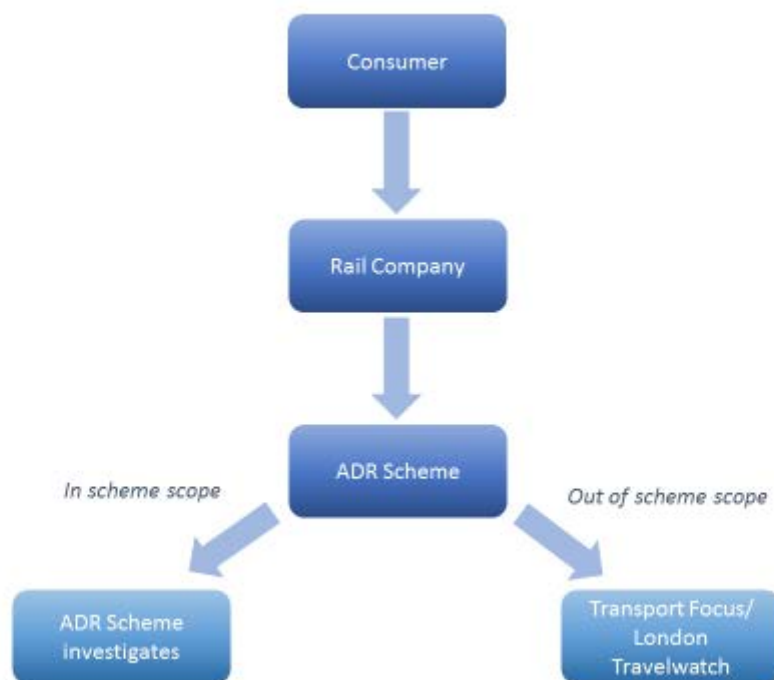
Introduction

- 1.2 The CHP currently requires the rail company to signpost the consumer to Transport Focus or London TravelWatch and ADR in their second substantive response to the consumer's complaint. As noted above, the ADR Directive required ADR to be available for any unresolved disputes but did not make use of ADR mandatory. However, it makes mandatory the requirement for traders to inform consumers about the existence of an ADR scheme even where they do not use one. Therefore, in the second substantive response rail companies provide information about Transport Focus or London TravelWatch as appropriate, and an ADR scheme that they do not use. This currently presents a confusing and conflicting picture of redress arrangements for rail passengers and does not make for a good customer experience.
- 1.3 It is important that consumers have a clear, understandable, and seamless pathway to a body which can provide independent redress and with which it is easy to engage. We set out below some of the options for doing so.

Option 1 - Signposting to the ADR scheme

- 1.4 The scheme proposed by RDG envisages that the rail company will inform the consumer, at the end of the appropriate time period (see chapter two), that they can ask the ADR scheme to investigate their complaint. The RDG proposal requires the ADR scheme to filter the complaints it receives from consumers; investigating those which fall within the scope of the scheme, and referring those which fall outside its scope to Transport Focus or London TravelWatch as appropriate. (As noted earlier, the scope is being discussed with the Ombudsman Task Force but we would expect there to be a broad role for the ADR scheme.) This signposting arrangement is illustrated in figure one below.

Figure one



- 1.5 This proposal provides for direct consumer access to ADR which is similar to the arrangements which exist in other sectors. If the consumer contacts the ADR scheme at the end of the appropriate time period, they are not required to take any further action; if their complaint falls outside of the scope of the scheme it will be referred seamlessly on to Transport Focus or London TravelWatch where appropriate. The signposting letter should include information about Transport Focus or London TravelWatch so that the consumer is aware of the possible onward referral.
- 1.6 However, this proposal relies on the ADR scheme to correctly filter those cases which are in scope and out of the scope of the scheme. It may also be confusing to those consumers who expect their complaint to be investigated by the ADR scheme and be subject to a binding decision on the rail company to find that it has been passed to Transport Focus or London TravelWatch. The swift acquisition of relevant sectoral knowledge by the ADR body will be key to ensuring that cases are handled appropriately.
- 1.7 There may be cases where one overarching complaint contains a number of issues, some of which fall within the scope of the ADR scheme and others which Transport Focus or London TravelWatch may look into. In these circumstances we would expect the relevant parties to agree a referral protocol for handling such cases so that the consumer clearly understands which organisation is investigating their complaint. The protocol will be necessary for all of the signposting options.

Option 2 - Signposting to the ADR scheme, and to Transport Focus and London TravelWatch

- 1.8 As with the option set out above, this alternative approach to signposting would provide the consumer with direct access to ADR where their complaint remains unresolved. The rail company would be responsible for signposting the consumer to the ADR scheme or Transport Focus or London TravelWatch. This would depend on whether the complaint fell within the scope of the ADR scheme (for example a complaint about a ticket being mis-sold) or out of the scope of the scheme and within Transport Focus' or London TravelWatch's remit (for example a complaint about how expensive the ticket was). This arrangement is illustrated in figure two.

Figure two

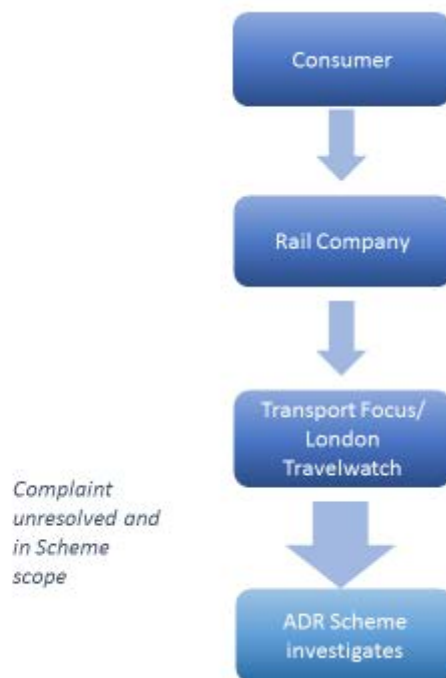


- 1.9 This process would provide the consumer with clarity regarding who the appropriate body is for dealing with their complaint and what type of resolution i.e. binding on the company or not, is available. However, it relies on the rail company to accurately identify which body is the correct one to signpost the consumer to. As noted in the option above, there may be cases where a some of the issues raised by the consumer fall within the scope of the ADR scheme whilst others fall within Transport Focus' or London TravelWatch's ambit. Care would need to be taken to ensure that these were accurately identified and that there was no perverse incentive to refer to Transport Focus or London TravelWatch rather than the ADR scheme; cases investigated by the latter are expected to incur a fee paid for by the rail company.

Option 3 - Signposting to Transport Focus and London TravelWatch

1.10 Transport Focus and London TravelWatch act as the appeals body for consumers who are unhappy with the rail company's response to their complaint. As noted above, rail companies currently signpost to these organisations as appropriate in their second substantive responses to complaints. An option could be a continuation of this approach with responsibility falling to these two bodies to signpost the consumer on to ADR where they have been unable to resolve the complaint to the consumer's satisfaction. This arrangement is illustrated in figure three.

Figure three



1.11 This option leaves the existing arrangements largely unchanged. Transport Focus and London TravelWatch would continue to act as the appeals body for consumers, mediating on their behalf with rail companies to seek a solution to their complaint. If they were unable to reach a satisfactory outcome, the consumer would have the option of referring the complaint to the ADR scheme.

1.12 This option would have the advantage of requiring minimal change to current practices and utilise the existing expertise of the two consumer bodies. However, it would mean that there would be two layers to the complaints resolution process and prevent consumers from immediately accessing the ADR scheme and its binding decision-making. This is different from the model that operates in other sectors and there is a potential risk of consumers dropping out of the process as it becomes

extended and they tire of it. It would also not appear to comply with existing rules for ombudsman schemes such as those approved by the Ombudsman Association.

Content of signposting letters

- 1.13 Research undertaken by the Ofcom Consumer Panel⁸ noted the importance of ensuring consumers are aware of their rights. As noted above, it is important that consumers have a clear, understandable, and seamless pathway to a body which can provide independent redress. Clear and unambiguous communication of whom consumers can approach for assistance, how they can do so, and what the body can provide will be key.
- 1.14 In 2016/17 rail companies received almost 540,000 complaints. Of these over 14,000 were signposted to Transport Focus or London TravelWatch, and more than 4,000 consumers made appeals to one of these organisations.
- 1.15 Only circa 5% of eligible complainants in energy contact the ombudsman. Research conducted by Ofgem⁹ to understand why shows that the quality of energy supplier communications has an impact on consumers engagement with the ADR scheme. In particular, concerns were expressed about the tone, layout, language, and personalisation of letters. Consumers were also unclear about what the ADR scheme was, its role and the types of complaint it handled, and its independence as well as the perception that it was too high level to consider their complaint.
- 1.16 It is not currently our intention to prescribe the content of these communications. Nevertheless, we would expect rail companies to draw upon the evidence from the research noted above and the consumer expertise of Transport Focus and London TravelWatch, and agree with the ADR scheme the detail of the signposting information to consumers. Seeking the assistance from the Plain English Campaign may be helpful.

Consultation questions

- Which of the three options set out above is most appropriate for signposting to ADR?
- Are there other approaches that we have not considered which may be preferable to those set out above?
- Is it necessary for ORR to set out in detail our expectations, and make these formal requirements, in the CHP of communications about the ADR scheme?

⁸ <http://www.communicationsconsumerpanel.org.uk/downloads/going-round-in-circles.pdf>

⁹ https://www.ofgem.gov.uk/sites/default/files/docs/2013/12/ofgem_gfk_complaints_to_ombudsman_services_energy_report_2013_0.pdf

2. Chapter 2 – Timescale for sending signposting letters

Summary

- 2.1 In this chapter we set out options for inclusion in the CHP guidance of the appropriate period of time rail companies should have in which to resolve complaints before the complainant is informed that they have the option of referring their complaint to the ADR scheme.

Introduction

- 2.2 It is fundamental that rail companies have the opportunity to resolve the consumer's complaint to reinforce the incentives on them to handle complaints effectively. Where they are unable to do so to the consumer's satisfaction, it is important that complainants have certainty and reassurance that they will not have to wait for an indefinite period to be able to access a means of independent investigation and redress.
- 2.3 The research conducted by Ofgem noted above into why few consumers refer their complaint to the energy ombudsman¹⁰, suggests one of the reasons is that consumers become worn out by the whole complaints process and disengage from it. Rail companies are currently required to signpost complainants to Transport Focus or London TravelWatch in their second substantive response to the complaint. There is currently no timescale associated with this in CHP.
- 2.4 There are a number of different timescales which could be applied to the point at which complainants should be signposted to the ADR scheme in the rail sector. This would replace the current process of signposting in the second substantive response (the current requirement to make a full response to 95% of complaints within 20 working days remains unchanged). The timescale would commence from the date the complaint was received by the rail company. If the complaint was not resolved to the consumer's satisfaction by the end of the requisite time period, signposting would take place regardless of whether there had been any previous correspondence from the company (for example because the rail company had a backlog of complaints).
- 2.5 We have set out below some of the options for a timescale for signposting consumers to the ADR scheme.

¹⁰https://www.ofgem.gov.uk/sites/default/files/docs/2013/12/ofgem_gfk_complaints_to_ombudsman_services_energy_report_2013_0.pdf

Option 1 - Signposting at eight weeks

- 2.6 The scheme proposed by RDG envisages that the time period for informing consumers that they may refer their complaint to ADR should take place eight weeks after the complaint has been received by the rail company. This will be a backstop and it is likely that rail companies will resolve most complaints before this point is reached. There will also be complaints where deadlock is reached prior to eight weeks. This is explored further in paragraph 2.11 below.
- 2.7 A maximum period of eight weeks appears to be a standard commonly adopted across many of the regulated sectors including Ofgem, Ofcom, and CAA. In respect of Ofgem and Ofcom, this time period has remained unchanged for a number of years since the ADR schemes started. However, it may be that the nature of the disputes in these regulated sectors dictates that this is the optimal time for period for signposting to ADR.

Option 2 - Signposting at six weeks or less

- 2.8 As noted above, a prolonged complaints experience can result in complainants disengaging from the complaints process and not exercising their right to take their complaint to an ombudsman service. One way of overcoming this may be to make the period before signposting happens as short as possible.
- 2.9 We are aware of one example in the energy sector where an energy supplier has voluntarily decided to signpost consumers to the ombudsman scheme at six rather than at eight weeks. A similar timescale of six weeks or less could be applied across all rail companies or by individual companies voluntarily i.e. the standard signposting timescale could be eight weeks but a rail company may choose to adhere to its own shorter timescale of six weeks. The latter could provide an opportunity to differentiate their service to, and build trust with, consumers.

Review in the light of evidence

- 2.10 One approach could be to adopt a 'wait and see' policy. Once the timescale for referring to the ADR scheme is established, it may be appropriate to consider reducing the time period in the light of experience in the operation of the scheme and the handling of complaints. For example, data could be collected from rail companies on the percentage of complaints closed at four weeks, five weeks, etc. Whilst rail companies may wish to, and may already do, collect data to monitor their own operational efficiency, consideration would need to be given to any possible additional regulatory burden that may result from a further data request.

Signposting when the rail company can do no more

2.11 There may be some complaints where the rail company will become aware before reaching the requisite time limit for signposting that they can do no more to resolve the issue to the consumer's satisfaction. This is known as deadlock. In those circumstances it will not be in either the company's or the complainant's interests to wait until the end of the set time period for signposting before doing so. The rail company should therefore send the signposting letter as soon as they know that deadlock has been reached.

Consultation questions

- What is the most appropriate point at which to signpost ADR? Eight weeks, six weeks, another period?
- Should we conduct a review of whatever time period is agreed? If so, at what point; after one year, two years, another period?
- If the time period should be subject to review, what metrics should we use to establish whether the time period remains appropriate or should be changed?
- Should individual rail companies be able to set their own signposting time limits as long as they are below the minimum agreed signposting standard?
- Should arrangements be introduced to allow signposting before the time period is reached i.e. deadlock?

3. Chapter 3 – Requirement to be a member of an ADR scheme

Summary

- 3.1 In this chapter we consider whether it is necessary for membership of ADR to become part of the CHP guidance and, in that way, become a requirement to be included in rail companies' CHPs. We also seek views on whether all rail companies should be members of an ADR scheme rather than just those who are members of RDG.

Introduction

- 3.2 Satisfaction with complaints handling varies between rail companies but is generally low, and trust in the rail sector remains at a low level. Nevertheless, as set out earlier, we know that providing consumers with access to a dispute resolution service has the potential to increase confidence in the sector.
- 3.3 The introduction of an ADR scheme in rail places passengers on a similar footing to consumers in other sectors. However, in contrast to some such as energy and telecoms, the rail scheme has not taken a statutory form but will instead be established on a voluntary basis.
- 3.4 It is important that passengers are given certainty about their ability to seek binding redress. In the absence of a statutory ADR scheme they will want assurance that arrangements are not only robust but enduring.

CHP requirement for membership

- 3.5 RDG has made substantial progress on developing the ADR scheme, responding positively to the talks that the Rail Minister has led, and as part of the Ombudsman Task Force. We understand from RDG that passenger rail companies are supportive of the ADR scheme RDG is developing and in principle these rail companies are committed to delivering it.
- 3.6 The proposed arrangements envisage that participation in the ADR scheme will be on a voluntary basis. The ADR scheme will have to meet the standards set out in the ADR Regulations as RDG propose to seek approval for the scheme from the relevant Competent Authority. Once a rail company agrees to become a member it is subject to the scheme rules including the binding nature of the ADR scheme decisions.
- 3.7 Membership of an ADR scheme demonstrates to consumers a strong commitment to customer service and builds trust. The information the scheme can provide should drive improvements in complaints handling within rail companies and across the

sector. Nonetheless, we recognise that whilst rail companies are committed in principle to delivering an ADR scheme, discussions between RDG and rail companies are continuing, and the costs involved in both setting up the scheme and for its ongoing maintenance have not yet been established.

- 3.8 As the ADR scheme is voluntary, there is the possibility that a rail company might decide not to join it which would make for a confusing picture for consumers or may decide to join and withdraw from it at a later point, if for example they were dissatisfied with its costs or decisions. We would expect the many positives that membership of an ADR scheme provides and the adverse reputational impact that non-participation or withdrawal might have, to make this unlikely. However, there is no statutory requirement for membership of an ADR scheme and it is also unlikely at the present time that legislation will be brought forward to require rail companies to be members of the scheme.
- 3.9 In other regulated sectors the relevant regulatory body plays a role in approving a statutory scheme and/or approving a scheme as a Competent Authority under the ADR Regulations. As noted earlier, there is no requirement in the rail sector to have a statutory ADR scheme and ORR does not have Competent Authority status.
- 3.10 In the absence of a statutory scheme, it may be that the inclusion of an equivalent requirement in the train operator licence (in the CHP licence commitment and therefore form part of operators' CHPs), would bring certainty to arrangements in the rail sector. A requirement to be a member of an ADR scheme approved by a Competent Authority under the ADR Regulations in CHPs would have a positive impact on consumer trust. However, amending the licence to require such membership would need either agreement from licence holders or to go through the licence change procedure, and such an approach could impose an additional cost burden on those rail companies who do not agree.
- 3.11 It is not clear at this time whether regulatory intervention is a necessary step. As noted earlier, RDG has already made significant progress toward developing an ADR scheme. Rail companies via RDG have indicated that they are committed to delivering a scheme which will be approved by a Competent Authority. Therefore, a proportionate approach at this stage may be to monitor arrangements as they develop and consider whether action is necessary to require membership of an ADR scheme in the licence in the light of whether RDG's self-regulatory approach is successful.

Inclusion of other rail companies

- 3.12 The voluntary ADR scheme proposals have been developed by RDG with passenger rail companies and it is envisaged that they will be the initial members. However, membership of an ADR scheme has a number of benefits many of which are

highlighted in this document that would be of benefit to other companies such as charter operators and station licence holders.

3.13 We therefore recognise that the ADR scheme proposals may be new to these companies and it may not be proportionate to require them to be members of the ADR scheme at its inception. Nevertheless, it is not clear to us why consumers making complaints to these companies should not be able to benefit from benefit from the protection access to an ADR scheme will bring either through voluntary membership or via the licence.

Consultation questions

- As substantial progress has been made voluntarily by industry on developing an ADR scheme, is it necessary to make membership of an approved ADR scheme a requirement in the licence (and reflected in CHP guidance and CHPs)?
- Are there any other approaches which could provide certainty in the ADR arrangements for consumers?
- What alternative safeguards are available to ensure that rail companies do not withdraw their membership from a scheme?
- Are there any reasons why charter operators and station licence holders should not join an ADR scheme?

4. Chapter 4 – Clarifications to CHP guidance and changes to CHPs

Summary

- 4.1 In this chapter we provide clarifications to the CHP guidance not related to the ADR proposals and set out our intention to require amendments to CHPs where we consider that these are necessary, to remove any possible misunderstanding or misinterpretation of the requirements.

Introduction

- 4.2 It is important that rail companies have a common and consistent understanding of the requirements of the CHP guidance, and that this can be reflected within rail companies CHPs.
- 4.3 Recent experience of how CHPs are working in practice has identified a number of areas where further clarification of the requirements of the guidance, and CHPs, is necessary.

Response times – 95% within 20 working days

- 4.4 The CHP guidance (para 3.31) makes it clear that rail companies must make a full response to 95% of all complaints within 20 working days. As noted above, this requirement remains unaffected by the introduction of an ADR scheme. It is important that approved CHPs accurately reflect these requirements so that complainants are clear on what to expect and rail companies acknowledge the clear regulatory requirements in this area. Therefore, to remove any possible misunderstanding or misinterpretation of this obligation, **in those instances where existing CHPs do not currently do so, we require rail companies to change the wording in their CHPs to accurately reflect the wording and ensure that they meet the requirements of paragraph 3.31 of the guidance.** We will expect this revised wording to be submitted for approval alongside the wider changes noted in this consultation document once these have been decided upon.

Response times – unexpected increases in complaints

- 4.5 The CHP guidance (para 3.34) makes clear that where a rail company receives a sudden or unexpectedly large increase in the volume of complaints, the requirement to make a full response to 95% of complaints within 20 working days may be replaced with an obligation to use reasonable endeavours to comply with them. The CHP guidance makes it clear that the rail company must inform ORR, Transport Focus and London TravelWatch when such a circumstance occurs: including the reason; the expected duration of the emergency timescales; the plans in place to

remedy the situation; the procedures in place to ensure that the quality of responses is maintained; and any steps taken to advise affected complainants.

- 4.6 **We expect rail companies to proactively contact Transport Focus, London TravelWatch, and ORR in accordance with the CHP guidance. ORR will take the level of proactive engagement and compliance with these requirements into account when considering what action may be appropriate to ensure complaints handling obligations are met.**
- 4.7 All rail companies will be affected by unplanned incidents during the normal day-to-day operation of their business. We expect companies to be resilient to such day-to-day events and able to respond accordingly to maintain performance at the required level.
- 4.8 The requirement to signpost consumers to the ADR scheme at the end of the requisite period (discussed in chapter 2) remains unchanged in these circumstances.

Compliance monitoring – reporting of performance of responses within 20 working days

- 4.9 One way in which ORR monitors the compliance with and effectiveness of individual CHPs is the collection of core performance data (CHP guidance para 4.1). This includes the reporting of the number and percentage of full responses to complaints within 20 working days.
- 4.10 We are aware that questions have been raised regarding the interpretation of what constitutes a ‘full response’. For the avoidance of doubt, this will be the rail company’s **first** substantive response which in its view, reasonably provides a full response to the consumer’s complaint.

Role of third party intermediaries in complaints handling

- 4.11 We are aware that consumers are increasingly making use of third party intermediaries to make their complaint. Rail companies’ responses to such contacts varies, with some rail companies dealing with the consumer via the third party and others choosing to contact the consumer directly rather than via the intermediary.
- 4.12 Third party intermediaries for complaints handling can provide an automated escalation prompt including to ADR. CHP guidance (para 3.8) requires the complaints handling process to be accessible to all. If a consumer has chosen to use a service provided by a third party in order to raise their complaint with the rail company, the basis on which the rail company has decided whether to accept the complaint or not is unclear. **We will therefore require rail companies to set out in**

their CHPs how they meet this accessibility requirement in their handling of complaints via third party intermediaries.

Second substantive response

4.13 The CHP guidance (para 3.41) requires the rail company to signpost the consumer to Transport Focus or London TravelWatch after they have received the second substantive response. ORR clarified this obligation in a letter dated 25 January 2017, making it clear that consumers should be signposted to these bodies in the second substantive response.

4.14 We are aware that some rail operators may still be following the requirements of the CHP guidance rather than the requirements set out in the subsequent letter of 25 January 2017. **For the avoidance of doubt, consumers should be signposted to Transport Focus or London TravelWatch in the second substantive response.**

4.15 In paragraph 2.4 of this consultation document we have set out that signposting to Transport Focus or London TravelWatch in the second substantive response will be replaced by a requirement to signpost to the ADR scheme at a set point in time. Until these arrangements are introduced the requirement to signpost in the second substantive response will remain.

Next steps

4.16 We will require rail companies to make the changes set out in paragraph 4.4 where they do not currently meet the requirements, and in paragraph 4.12. As noted in paragraph 19, we will set out the timescale for doing so when we publish the decision to this consultation.



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