



Office of Rail and Road super-complaint response report:

**Which? Super-complaint -
compensation arrangements in the
market for passenger rail services**

18 March 2016

Contents



Summary and recommendations	4
Our approach.....	4
Context	4
Conclusions and recommendations.....	5
Further issues.....	10
Timeline	11
1. Introduction and summary of super-complaint and ORR’s investigation	16
The super-complaint process	16
Context of ORR’s investigation.....	18
Information gathering.....	18
The structure of the response.....	20
2. Market and regulatory context and relevant industry developments	22
Introduction.....	22
Industry structure.....	22
Legal and regulatory framework	27
Compensation schemes	29
Recent developments.....	32
3. Market structure and incentives	38
Evidence and analysis.....	38
Conclusions	44
4. Market structure – the regulatory framework	45
Evidence and analysis.....	46
Conclusions	51
5. Awareness, information and advice	53
Evidence and analysis.....	54
Conclusions.....	66
6. The process for claiming compensation, the method of payment, and multiple schemes	69
Evidence and analysis.....	70

Conclusions.....	78
7. Compensation gap.....	83
Introduction.....	84
Evidence and analysis.....	85
Conclusions.....	96
Annexes.....	98
Annex A – Glossary.....	99
Annex B – Sources of evidence.....	103
Annex C – List of meetings held during investigation.....	105
Annex D – Relevant legislation.....	106
Annex E – Dates of Franchise Awards.....	107
Annex F - The Compensation Schemes.....	109

Summary and recommendations

1. On 21 December 2015 the consumer body Which? submitted a super-complaint to ORR entitled “*Compensation arrangements in the market for passenger rail services*”. We are required to publish a response to a super-complaint within 90 days.
2. The super-complaint concerns passengers’ awareness and experience of claiming compensation from Train Operating Companies (TOCs) as a result of train delays. Which? requested that we launch an investigation to address the following:
 - The extent to which TOCs are contributing to a low proportion of passengers securing their rights to compensation for delays;
 - The drivers of TOC behaviour, the pervasiveness of these drivers within the sector; and
 - Changes that are needed in regulation, and ultimately by TOCs, to ensure that passengers are aware of and are able to secure their rights to compensation.

Our approach

3. During the 90 day period we have looked at existing research, gathered detailed evidence from across the sector, examined TOC websites and social media and reviewed compensation claim processes. We also commissioned a large programme of primary research. This included carrying out 392 mystery shopping assessments across the country, reviewing TOC websites and claims processes, and having the Plain English Campaign review TOC written communications and claim forms. We have worked closely with Transport Focus to build on its current research into passenger compensation, developing the scope of its survey and expanding the sample to 8000 passengers.
4. We are grateful to all contributors for their willing engagement in this work, which has allowed us to consider the issues raised by Which? and determine whether, and if so what, action is appropriate in relation to these issues. The full list of stakeholders who have contributed to our investigation is set out at Annex C.

Context

5. According to Department for Transport (DfT) published data, the amount of compensation paid to passengers by TOCs has more than doubled over the last three

years¹. We have found no evidence to suggest that TOCs take steps to limit their exposure to compensation payouts by actively discouraging those wishing to seek compensation, for example, by taking steps to hide information or by making the claims process more difficult.

6. However, Which? has showed that what might be termed the “take up” rate - that is the proportion of passengers who are eligible for compensation against those who actually claim - is low. Our analysis supports this. If we look at this proportion measured by the value of claims relative to the total value of claims made, the picture is better, although further work is needed to firm up these numbers.
7. As Which? has noted, the development of technology, in particular automatic payment of compensation via smartcards, will improve how passengers will receive delay compensation in the future. However, the Which? super-complaint highlights the need for change to happen soon. Hence the more immediate question is what can be done now; which is an issue of pace.
8. We have considered the possibility of proposing major structural change in this area, such as moving responsibilities and obligations between franchise agreements and regulation through the passenger train licence. However, we do not agree that such a significant shift is currently needed to deliver change, or is practical in terms of ensuring that passengers can benefit from improvements in the short-term. If our recommendations do not deliver the required impact we would need to revisit this.

Conclusions and recommendations

9. Our assessment of the evidence during the course of our 90 day investigation has led us to conclude that action is needed to:
 - increase the number of passengers aware of their rights;
 - improve the information passengers receive, so they are more likely to claim; and
 - make the process for claiming more passenger-friendly.

¹ <https://www.gov.uk/government/publications/train-operating-companies-passenger-charter-compensation-between-2009-to-2015>

10. We need to ensure these changes make a difference not just in the short-term but over time, so we have also concluded that:

- there needs to be more systematic monitoring of whether passengers are seeing improvements and more claims are being made; and
- linked to this, and to improve trust in the system, there is a need for much greater transparency through improved data and the publication of this data.

11. We have some immediate concerns about the quality of information passengers are receiving on their rights from station and train staff. We are following these up now and may need to take further action.

12. Finally, we noted the limited extent to which TOCs undertook any evaluation of passenger awareness of compensation and whether any or all of the methods they choose to promote compensation is proving effective. We consider that for awareness strategies to deliver the most value TOCs need to undertake some further work on how best to target different groups of passengers – in terms of message content and how it is delivered.

13. We believe that our recommendations are balanced and evidence-based and we expect them to be adopted by the industry, but we will review our position in the light of whether the changes are successful.

14. Our key recommendations are outlined here and set out in more detail in **Table 1** below.

1. A co-ordinated national promotional campaign to increase passenger awareness

15. Payment of compensation and the cost of processing payments are direct costs to TOCs. Their incentives are focused on sales, service quality, reliability and punctuality. But compensation is an important right for passengers and corrects the balance when things sometimes go wrong.

16. A co-ordinated national promotional campaign would raise passenger awareness of delay compensation schemes and could promote these as a positive, passenger-

focused initiative to compensate passengers when things do not go to plan. Such a campaign should signpost passengers to TOC claim processes and be supported by a programme of enhanced training for station and train staff. This should form the basis of a pilot exercise from which future campaigns could be considered.

17. This campaign should take place in Autumn 2016. Thereafter we will undertake additional awareness research to assess whether the impact is sustained over time.

2. Clarification to the *Information for Passengers* Licence Condition

18. TOCs themselves have already included actions to improve compensation awareness in the industry's Passenger Information During Disruption (PIDD) action plan. This recognises that giving passengers good information about compensation in the event of a delay is accepted as an important component of the overall passenger experience (whether this information is given during or after the journey itself).

19. We recommend that this is reflected within the *Information for Passengers* licence condition. We will take this forward with TOCs but this could happen through a written acknowledgement by each TOC that this commitment forms part of the licence condition. Accepting this as an enforceable licence requirement will provide greater certainty that passengers will receive information regarding compensation schemes at the time of the delay itself. Where this is not the case we will take steps to ensure compliance in line with the published regulatory statement² that forms part of our enforcement policy.

20. We will complete this work in June alongside the publication of a revised regulatory statement.

3. More consistency in how and when passengers are given key information

21. Franchise agreements contain a mix of requirements on TOCs over how and when passengers should be made aware of compensation arrangements. Older agreements provide less detail while more recent ones specify requirements around e.g. making

² We will revise our Regulatory Statement (http://orr.gov.uk/_data/assets/pdf_file/0015/4353/passenger-information-regulatory-statement.pdf) to make it clear that the information requirement covers the full end to end passenger experience.

appropriate announcements to passengers on trains and at stations, and making compensation claim forms readily available to passengers.

22. We recommend that DfT and other franchising authorities review consistency across franchise agreements and where necessary provide guidance to TOCs on ensuring more regular promotion of compensation schemes at the time of the delay (e.g. greater use of on-train announcements). This should be accompanied by a more proactive approach to monitoring how this happens in practice.

23. In terms of our role, we expect the data collected on monitoring to be published in our annual consumer report to ensure transparency and drive further improvements.

4. Better information provision by station and on-train staff

24. Our mystery shopping exercise has highlighted a high proportion of cases where staff were either unable to provide basic information on compensation schemes or provided partial or inaccurate information. Where we have encountered such practices, we are taking immediate action with the companies concerned to agree on the changes which we consider need to be made.

25. We will also carry out further mystery shopping to assess the extent to which companies have responded to our recommendations and have taken steps to ensure that better information is available from station and on-train staff.

26. Where this work reveals clear evidence of breaches of consumer law by misleading passengers this could lead to enforcement action.

5. Clearer and simpler information on claim forms and websites

27. Prior to receiving the super-complaint we undertook our own review of TOC websites to identify areas where information was unclear or difficult to locate. We have built on this through our Plain English assessment of claim forms, written communications, website information and navigation for each TOC. This work has checked that information on compensation can be easily identified and quickly found. It has identified specific areas where further improvements should be made.

Following publication of this response we will provide our findings to each TOC and require them to make improvements to claim forms, website information and navigation by no later than July 2016, at which point we will check that the necessary changes have been made.

6. More customer-friendly processes for claiming compensation

28. While the overall process for claiming compensation is not overly difficult there are clear areas for improvement. A number of obvious barriers exist that can reduce the propensity of a passenger to progress a claim. These include (but are not limited to) the need to know to retain tickets at automatic ticket gates; a lack of awareness that other proof of purchase may be accepted; limited ability to aggregate multiple claims; and failure by some TOCs to offer online claims processes or downloadable forms.

29. We recommend that ATOC (Association of Train Operating Companies) publishes best practice for TOC claim processes and encourages the adoption of such practice.

30. We will undertake a further assessment of practices in this area and report on the steps that individual TOCs are taking in the short-term to introduce more passenger-friendly processes for claiming compensation. We will carry out this assessment in July 2016 and report on progress thereafter.

7. Improved monitoring and transparency of information

31. We are developing an annual consumer report to provide information about TOC and Network Rail performance in areas such as complaint handling and services for passengers requiring additional assistance. It will provide evidence for where further policy work may be required or where regulatory intervention may be necessary. But, it is also intended to raise standards by identifying best practice and act as a reference point to demonstrate industry progress over time. Our initial report will be published in April 2016 but we expect future reports to act as a focus for greater transparency of information on compensation. This will include information in the following areas.

- **Compensation gap** - We will carry out further analysis to estimate the *compensation gap*³ and will work with DfT, other franchising authorities and ATOC to consider how this information is produced and used.
- **New core data for compliance monitoring** – We will work to develop new core data to enable greater monitoring of how compensation arrangements are working for passengers. Initially this will include six new complaint categories for TOCs to report to us from 1 April 2016 to monitor the level and type of passenger complaints on compensation. This will help us to identify areas for future focus and improvement. We will also examine the potential benefits of introducing new, dedicated core data indicators to monitor the uptake and operation of individual TOC compensation schemes.
- **Awareness Research** – Following publication of our current joint research with Transport Focus on passenger awareness and experience of delay compensation schemes, we will work with Transport Focus to examine options for repeating this research at more regular intervals going forward.
- **Passenger Information During Disruption (PIDD) Satisfaction Survey** – ATOC should regularly publish the results of its PIDD satisfaction survey to show whether information on compensation is being actively provided by individual TOCs at times of delay.

Further issues

32. The full implementation of the Consumer Rights Act 2015 will have implications for how TOCs pay compensation and they will need to ensure (collectively and individually) that their policies and practices are amended so that passengers can receive compensation in ‘money’ and that rail vouchers do not remain as the default method of payment. They will also need to ensure that they are compliant with their legal obligations, including providing clear and timely information to passengers about their rights and the options available to them.

³ The difference between the number (or value) of claims that passengers could in theory choose to make for compensation and the number (or value) of claims actually made

33. The full results of our joint research with Transport Focus on passenger awareness and experience of compensation schemes will be published in the summer. We will use this to set an analytical baseline to ensure that progress can be tracked over time. This will allow us to check that tangible benefits are being delivered for passengers and, importantly, provide evidence for further action - or if relevant, enforcement action - where this is not the case.
34. Finally, there is some concern among stakeholders around the relationship between the Schedule 8 regime and the passenger compensation regime. In essence they have different purposes. The passenger compensation regime is aimed at passengers – providing compensation when their trains are delayed by more than a certain amount of time. The Schedule 8 regime compensates TOCs for the long run revenue losses from poor performance when that poor performance is caused by other TOCs or Network Rail.
35. It provides an incentive for each party to limit the delays they cause and it also affects how much companies bid for franchises. If a TOC was not protected from the financial impact of delays caused by other companies (which the affected TOC cannot control), bids may be lower and so impact on government funds.
36. In the medium term as part of our work on the 2018 periodic review we will consider whether the two regimes should be better linked, for example to adapt Schedule 8 so that the cost of compensating passengers is borne by the party that causes the delay, and what the overall impact of such a change would be.

Timeline

37. This is a balanced package of recommendations, based on evidence that should be judged as a whole. As the recommendations are implemented passenger awareness and understanding of compensation schemes should increase; there should be greater consistency in how and when they receive information; they should be able to easily source the information and the process of claiming compensation should be clearer and simpler.

38. The timeline below shows the key dates for further work. We have included in this an interim update on progress against these recommendations in December 2016 and we will provide a further and more detailed update in our annual consumer report in 2017



Table 1

FOCUS	PROBLEM	EVIDENCE SOURCE	OBJECTIVE	RECOMMENDATION	ACTION BY
General Awareness	<p>Low level of passenger awareness of rights</p> <p>Lack of incentive on TOCs to widely promote compensation</p>	<p>Transport Focus research 2013</p> <p>ORR research 2014</p> <p>Which? research 2015</p> <p>TOC responses to ORR information request</p> <p>Meetings with TOCs</p>	<p>More aware and engaged passengers who understand their rights and can actively choose to claim compensation when delayed</p>	<p>A co-ordinated national promotional campaign to increase passenger awareness, supported by enhanced training for station and train staff</p>	<p>TOCs (franchise & open access) & the Rail Delivery Group</p>
Reminders at time of delay	<p>Provision of information - other than during major disruption is often subject to judgement and discretion of staff</p> <p>Passenger information provisions in franchise agreements are inconsistent and often subject to self-assessment and reactive monitoring</p> <p>All reasonable endeavours conditions in franchise agreements not accompanied by guidance on interpretation</p>	<p>TOC responses to ORR information request</p> <p>DfT response to ORR information request</p> <p>Which? review of franchise agreements set out in the super-complaint</p>	<p>More consistent use of on-train announcements</p> <p>More consistent use of station announcements</p> <p>More consistently available information on trains and at stations</p> <p>A better customer experience</p>	<p>Greater proactive monitoring of more prescriptive franchise conditions</p> <p>Guidance on and monitoring of basic expectations where “all reasonable endeavours” conditions used</p> <p>Clarification that ORR interpretation of PIDD licence condition should include information provision on compensation</p> <p>Data collected on monitoring franchise requirements to be published in our annual consumer report to ensure transparency and drive improvements</p>	<p>DfT, other franchise authorities & ORR</p>
Quality of information after delay	<p>Information on websites can be hard to find</p> <p>Static information (posters, notices, leaflets) is not consistently available</p> <p>Staff provision of basic information on compensation</p>	<p>ORR and Plain English Campaign review of TOC websites</p> <p>ORR review of 392 mystery shops at staffed & unstaffed stations across GB</p> <p>Which? review of 102 mystery shops at staffed</p>	<p>Information that is easy to find, easy to understand, and empowers passengers to claim</p> <p>More accurate and helpful information from TOC staff</p>	<p>Implementation of Plain English improvements to claim forms, website information and website navigation</p> <p>Where the mystery shop has identified poor performance - action with the companies concerned to agree on the changes required</p> <p>Further mystery</p>	<p>TOCs & Open Access Operators</p>

FOCUS	PROBLEM	EVIDENCE SOURCE	OBJECTIVE	RECOMMENDATION	ACTION BY
	schemes is not always accurate or complete	stations in England and Wales		shopping to assess the extent to which better information is available from station and on-train staff.	
Process for claiming	<p>Potential barriers include e.g. knowing to retain tickets; automated barriers that retain tickets; policies on alternative proof of purchase are unknown</p> <p>Lack of ability to aggregate multiple claims</p> <p>Not all TOCs allow claims to be submitted online</p> <p>Not all websites provide downloadable claim forms</p>	<p>Transport Focus research 2013</p> <p>ORR review of TOC websites</p>	<p>Elimination of process barriers to increase the propensity of passengers to claim compensation by removing the level of effort required to make a claim</p>	<p>ATOC to publish best practice for TOC claim processes and encourage the adoption of such practice</p> <p>ORR will undertake a further assessment of practices in this area and report on the steps that individual TOCs are taking in the short-term to introduce more passenger- friendly processes for claiming compensation</p>	<p>TOCs (franchise & open access) ATOC ORR</p>
Monitoring & transparency	<p>Lack of key indicators around passenger awareness and compensation claims mean that significant change over time cannot be measured or (if necessary) addressed</p> <p>Individual TOC practices cannot be assessed in terms of good or poor practice and there is less opportunity to encourage behavioural change</p>	<p>Lack of data in the public domain</p> <p>No measure of compensation gap</p> <p>Lack of on-going commitment to passenger awareness research</p> <p>No available data on the number and type of passenger complaints regarding compensation</p> <p>Lack of published information from ATOC on passenger satisfaction with information provision during delay (including information on compensation</p>	<p>Increased transparency of industry performance in this area.</p> <p>Clear, useful information on the passenger experience.</p> <p>Evidence to monitor compliance with regulatory obligations.</p> <p>Easier identification of good and poor practice.</p> <p>Ability to track change across key indicators over time.</p>	<p>Compensation gap – we will carry out further analysis to estimate and monitor the take-up of compensation</p> <p>Awareness Research - we will work with Transport Focus with a view to repeating research on passenger awareness and experience of delay compensation schemes at more regular intervals</p> <p>New core data for compliance monitoring - to monitor how compensation arrangements are working. Initially to include 6 new complaint categories for TOCs to report to us from 1 April 2016. Consider introducing new, dedicated core data indicators to monitor the uptake and operation of TOC</p>	<p>ORR, Transport Focus, TOCs, ATOC</p>

FOCUS	PROBLEM	EVIDENCE SOURCE	OBJECTIVE	RECOMMENDATION	ACTION BY
		schemes)		<p>compensation schemes.</p> <p>PIDD Satisfaction Survey - ATOC should regularly publish results of their Passenger Information During Disruption satisfaction survey to show if information on compensation is being actively provided by individual TOCs at times of delay.</p>	

1. Introduction and summary of super-complaint and ORR's investigation

Summary and key information in this chapter

This chapter provides a summary of the super-complaint process, the issues raised in the Which? super-complaint and sets out ORR's approach to gathering evidence:

Key points

- 'Compensation Arrangements in the market for passenger rail services' submitted by Which? on 21 December 2015. Under the Enterprise Act 2002 once received, ORR has 90 days to respond;
- The issues set out by Which? include concerns that TOCs are failing to take adequate steps to proactively inform passengers of their rights, that the process of claiming and method of payment may be putting passengers off from claiming compensation and that features of the passenger rail markets may be contributing to this;
- In response, we have been gathering information from a wide range of sources including views from TOCs, governments and other franchising authorities and third party retailers through face to face meetings, workshops and information requests;
- We have also commissioned a range of research activities; including a mystery shop of advice by TOC staff at stations and on board trains, collaborated with Transport Focus on an 8,000 respondent compensation survey, undertaken a review of TOC compensation claims processes, and commissioned the Plain English Campaign to review TOC written communications.

The super-complaint process

39. A super-complaint is defined under section 11(1) of the Enterprise Act 2002 (EA02) as a complaint submitted by a 'designated consumer body' that 'any feature, or combination of features, of a market in the UK for goods or services is or appears to be significantly harming the interests of consumers'. The Consumers' Association

(Which?) is a designated consumer body and ORR is a specified regulator able to receive a super-complaint for the purposes of the EA02.⁴

40. Section 11(2) of the EA02 requires ORR, within 90 days after the day on which it received the super-complaint, to publish a response saying how it proposes to deal with the complaint, and in particular whether or not it has decided to take any action in respect of the complaint and, if it has decided to take action, what action it proposes to take. The response must state the reasons for ORR's proposals (section 11(3) EA02).
41. This document sets out ORR's reasoned response to the super-complaint entitled 'Compensation Arrangements in the market for passenger rail services' submitted by Which? on 21 December 2015.

Issues raised in the super-complaint

The Which? super-complaint⁵ focuses on passenger rail services in Great Britain and passenger compensation arrangements. In summary, Which? sets out that:

- Most delayed passengers do not apply for nor receive the compensation to which they are entitled, harming the interests of consumers and softening incentives to improve performance across the system;
- Features of passenger rail markets, including conduct by TOCs and the limited competition to franchise operators on many lines, contributes to these effects;
- TOCs do not take sufficient steps to make passengers aware of their compensation rights when they have been affected by delays; and
- There are unnecessary complexities in consumers' rights to compensation, and the processes for claiming and receiving compensation act as barriers to consumers accessing it.

The super-complaint identified the following areas that Which? considers ORR should address:

- The extent to which TOCs are contributing to a low proportion of passengers securing their rights to compensation for delays;

⁴ The Enterprise Act 2002 (Super-complaints to Regulators) Order 2003 is at <http://www.legislation.gov.uk/en/uksi/2003/1368/contents/made>

⁵ See full report: <http://www.staticwhich.co.uk/documents/pdf/super-complaint-to-the-office-of-rail-and-road-pdf-5-34mb-428633.pdf>

- The drivers of TOC behaviour, and the pervasiveness of these drivers within the sector; and
- Changes that are needed in regulation, and ultimately by TOCs, to ensure that passengers are aware of and are able to secure their rights to compensation.

Context of ORR's investigation

42. ORR has regulatory responsibilities covering a wide range of bodies and services necessary to deliver Britain's railway services, including ensuring that markets are working effectively to deliver good quality and good value services for customers. ORR's strategic objectives include supporting a better service for customers, promoting an increasingly dynamic and commercially sustainable rail sector and being a high performing regulator.
43. We want passengers to understand how long the delay must be before compensation may be due; what level and form of compensation to expect and what process they need to follow to make a claim. This process then needs to be clear and simple to follow and accessible to people with differing needs.
44. In addition to ensuring that information is generally clear and accessible, TOCs need to ensure that the information they provide, and their processes, take into account the needs of all customers including those with different types of disabilities. In practice this may mean supplying information in alternative formats such as Braille, large print or audio; offer assistance lines for Textphone or Minicom users; or reply in languages other than English.

Information gathering

45. In developing the response to the super-complaint, we have sought to establish how and when TOCs make passengers aware of their entitlement to compensation for train delays. To do this we have gathered evidence directly from TOCs (both franchised operators and open-access operators), and via our own primary research in the form of three large-scale research projects.
46. **Transport Focus compensation research.** The most established baseline on passenger awareness, attitudes, claim rates and experience of compensation

arrangements comes from research conducted by Transport Focus in 2013⁶, and was complemented by our own research in early 2014⁷⁸. Transport Focus intended to re-run their research in early 2016 to understand how the key metrics they examined previously had changed in the intervening period in light of some industry actions. We were supportive of this and recognised the value this timely insight would have in terms of informing our response to the super-complaint and our work in this area going forward.

47. However, the intended sample size of 3,000 would not deliver the level of detailed analysis we required to fully examine some of the issues we were considering as part of the super-complaint. As a result we have collaborated with Transport Focus on the project to boost the sample size to 8,000 respondents whilst retaining the original research design. The effect of this is to enable more detailed analysis into the areas that were of primary concern to us, in particular:

- deeper insight into the experiences of claimants;
- enable comparative analysis at individual TOC-level;
- enable comparative analysis at compensation scheme level; and
- test for more differences in awareness, attitudes or experiences at passenger level e.g. age, journey type, region, ticket type, general preferences, etc.

48. The fieldwork commenced in the week beginning 7 March 2016. We currently intend to publish some initial high-level findings in early May when the data becomes available with the full findings to be published by Transport Focus in summer 2016.

49. **Mystery shopping.** We have also commissioned mystery shopping research⁹ of TOC staff at stations and on trains to establish the quality and accuracy of the information they were providing to passengers upon request. The mystery shopping research also included an examination of the availability of leaflets, posters and claim forms, and

⁶ Transport Focus research, Understanding rail passengers - delays and compensation, July 2013. <http://www.transportfocus.org.uk/research/publications/understanding-rail-passengers-delays-and-compensation>

⁷ Report by Opinion Leader, commissioned by ORR (published Feb 2014): Rail passenger compensation and refund rights, <http://orr.gov.uk/publications/reports/rail-passenger-compensation-and-refund-rights>

⁸ We also drew upon the insight provided to us by Which? via the survey it used to inform its super-complaint

⁹ More information is provided in chapter 5 of this response report. A separate report is also available, see Annex B

other visual or written information that would help inform passengers about their compensation rights.

50. **TOC written communications and claims processes.** We then considered the process by which passengers can submit a claim for compensation. We have considered the ease with which this information can be found, the accuracy and clarity of the information and whether the process involves onerous or disproportionate requirements that may discourage customers from making a claim. We commissioned the Plain English Campaign¹⁰ to review TOC website information, leaflets and claim forms and assess whether customers have access to clear, concise and useful information on compensation arrangements.
51. We have also considered whether a lack of competition in the market is harming the interests of consumers and whether any harm is arising through complexity of the regulatory framework. We explore both issues by looking at existing commercial and regulatory incentives and by comparing outcomes and practices for comparable services outside of the franchising structure both within and outside the sector.
52. We have engaged extensively with a wide range of stakeholders, including government departments and other franchising authorities, TOCs, Network Rail, consumer bodies, trade associations, other regulators, ticket retailers, businesses offering compensation claim services, local representative bodies and members of the public. Full lists of evidence and contributing stakeholders are set out at Annexes B and C of this document. We are grateful to all contributors for their helpful engagement which has enabled us to consider the issues put forward by Which? and whether, and if so what, action is appropriate in relation to these issues.

The structure of the response

53. The remainder of this response is structured as follows:

Chapter	Content
Chapter 2	Provides a high-level summary of the structure of the market; regulatory context; the consumer protection and enforcement landscape and recent

¹⁰ See Annex B

Chapter	Content
	and on-going developments in compensation arrangements.
Chapter 3	Explores the extent to which the structure of the market for franchised passenger services is leading to weak incentives on TOCs to improve their conduct in relation to the promotion of and payment of passenger compensation.
Chapter 4	Explores the role of the franchise and the franchising authorities in incentivising TOCs to promote and pay compensation to passengers. This chapter also explains the objectives of Schedule 8 of the track access agreements between TOCs and Network Rail.
Chapter 5	Sets out ORR's analysis of the evidence in relation to low levels of passenger awareness, proactive information provision by the TOCs and the advice given to passengers by TOC staff.
Chapter 6	Examines the extent to which the process for claiming; the method of payment, and the number of schemes are contributing to a low proportion of passengers taking up their rights to compensation for delays.
Chapter 7	Examines the compensation gap.

2. Market and regulatory context and relevant industry developments

Summary of key information in this chapter

This chapter sets out:

- how the market for passenger rail services is structured, in particular the role of franchising authorities and the difference between franchise and non-franchise services;
- the legal and regulatory framework in which all TOCs deliver their services, focusing on those parts of the framework which are relevant to the payment of passenger compensation;
- the compensation schemes available and how they came about; and
- relevant developments that have a bearing on compensation schemes and TOCs' conduct.

Introduction

54. The railways have been largely privately operated for 20 years. However, many passenger services remain subject to regulation¹¹. This section outlines some of the main features of Britain's railways to provide some context to the different compensation schemes that exist and the legal and regulatory framework within which TOCs operate.

Industry structure

55. Government's role, through DfT and Transport Scotland, is to set the overall strategy for the railways. The government identifies the key infrastructure to develop and the performance expected of the railways. The government specifies how much public money it is willing to spend to support this strategy. ORR sets Network Rail's outputs

¹¹ The definition of 'regulatory' as in 'regulatory framework' should be considered as having a wide interpretation within this response to the super-complaint as including obligations in franchise and concession agreements, and, ORR intervention by way of licence or legal powers

and funding, drawing on the government's specification and Network Rail, under the scrutiny of ORR, develops plans to deliver these outputs.

56. The government and devolved administrations also play a role as franchising authorities, awarding franchises usually following a competitive bidding process. The franchise sets the performance and service standards that train operators must meet. ORR helps protect the interests of users and funders of railways. As a consumer and competition authority ORR is able to encourage fair trading and take action if passengers overall are being significantly disadvantaged. In addition, anyone operating railway services must be licensed by ORR. The licences contain obligations to ensure railways can offer an integrated service to passengers and freight customers, whilst ensuring fair access to Network Rail's tracks and other infrastructure.

57. The rail industry is made up of:

- **The network (track and related infrastructure, including the largest main line stations):** this is owned and operated by Network Rail¹². Network Rail derives its revenue primarily from charges levied on TOCs for access to its network and stations, and from a direct financial 'network grant' from government.
- **Train operators:** these include passenger TOCs, the majority of which have been granted franchises to operate by the government. Other TOCs including 'open access operators', are described below.
- **Providers of rolling stock:** TOCs typically lease rolling stock, primarily from three rolling stock companies that inherited rolling stock from British Rail on privatisation¹³.

58. The super-complaint and this response deal with TOCs and their relationship with passengers. Network Rail does not have this direct relationship with passengers and does not pay compensation to passengers in the event that delays and cancellations

¹² Although the mainline network is owned and operated by Network Rail, there are other networks owned and operated by other parties such as freight operators and other third parties

¹³ This remains true at the time of writing, although alternative procurement models have more recently been devised for new Thameslink and Intercity Express Programme (IEP) stock

are as a result of problems with the network. Similarly rolling stock companies have no direct relationship with passengers when problems arise due to problems with the trains. Network Rail and rolling stock companies are, therefore, out of scope of the super-complaint.

Franchised passenger TOCs

59. A rail franchise is a contract between government or a public authority and a TOC to run services within a specified geographic area or route for an agreed period of time.
60. Franchises are awarded through a bidding process where the franchising authority specifies the length of the franchise, service schedules and performance standards, and other requirements such as the compensation scheme that it considers should be in place for passengers within that franchise.
61. Bidders for the franchise will need to balance the costs of running the franchise against the revenue (from fares, car parking and retailing) that they expect to make.
62. The calculations on the costs and revenues result in bidders proposing to pay money to run the franchise (known as a premium) or setting out how much money they will need from the franchising authority (known as a subsidy) to meet the services the franchising authority has specified in the franchise. The successful bidder will satisfy the franchising authority that it can reliably meet the franchise requirements and offer the best overall package to government including on premium/subsidy payments.
63. Part of this calculation will include the potential cost to the franchisee of a compensation scheme which it might propose itself or is specified as part of the franchise Invitation to Tender (ITT)¹⁴. A typical calculation by a bidder of the cost of a scheme would include a forecast of the number of trains likely to be delayed in the relevant time bands based on historic performance and predicted service improvements, the predicted number of passengers likely to be affected, and the related passenger revenue increased year on year in line with RPI. Factors such as the propensity of passengers to claim refunds may also factor into any overall cost estimates.

¹⁴ For an example see <https://www.gov.uk/government/publications/east-anglia-franchise-2015-invitation-to-tender>

64. In its response to this investigation, DfT has advised that its own starting point for entering into the bidding process is to build a model based on the status quo (i.e. the compensation profile in a previous franchise) with any relevant adjustments necessary when it is introducing a new scheme. The outcomes of these calculations are not open between the bidder and DfT which means that there is no agreed assumption at the beginning of the franchise as to the likely cost of a scheme. As such neither the TOC nor DfT can trigger a review of the contract should compensation payments exceed or fall below the level assumed by either party¹⁵.
65. DfT has set out a timetable for the renewal of franchises, which aims to stagger the award of new franchise contracts. In 2016 three new franchise agreements will come into effect (East Anglia franchise, Arriva Rail North and First Transpennine Express).
66. The current Scottish rail franchises (ScotRail and Caledonian Sleeper) were both awarded in 2015 and are scheduled to run into the 2020s.
67. **Annex E** lists the franchise TOCs, including their owner group and a brief description of the services they operate.

Concession TOCs

68. A concession involves an agreement between government or a local authority and a TOC to supply rail services. The main difference from a franchise is that the TOC is paid a fee to run the service rather than relying on revenue from passengers or subsidy. Typically, revenue raised is passed back to the public body that appointed the concession. Concessions are usually very tightly specified, using incentive or penalty regimes (based on meeting certain targets) to encourage good performance. Examples of rail concessions are:

- **Merseyrail**, which runs services for Merseytravel, the body that manages integrated transport in and around Liverpool: and

¹⁵ Exceptions to this rule are the new Northern and TransPennine Express franchise agreements. These include provisions for Delay Repay underspend in relation to their annual budgeted amount being added to the Customer and Communities Improvement Fund (CCIF) and the GTR franchise where DfT bears the entire cost of the scheme

- **London Overground Rail Operations Limited** (LOROL) which runs services on six routes that, together, form an Outer London orbital network and **TfL Rail** (operated by MTR Crossrail) which runs services from Liverpool Street to Shenfield, both appointed by Transport for London (TfL).

69. Under LOROL and TfL Rail's concession agreements with TfL all compensation requests are administered by TfL. TfL also retains overall responsibility for the promotion of awareness of the compensation scheme by way of websites, social media and customer alerts.

Open access operators

70. Open access operators do not operate services under a franchise or a concession agreement but they are authorised by ORR to have access to the network on certain routes for a specified time. There are currently two open access operators, Grand Central (owned by Arriva UK) and First Hull Trains (a subsidiary of FirstGroup). These operate a small number of services on specified routes in competition to the franchisee on the East Coast main line. Together they represent less than 1% of passenger miles.

Other non-franchised TOCs

71. Other examples of non-franchised operation are Heathrow Express that runs services from Paddington to Heathrow Terminals, and Eurostar that runs services through the Channel Tunnel from London St Pancras to Paris and Brussels. Whilst we do consider Heathrow Express to be in scope of this super-complaint, we do not consider Eurostar to be within scope of our enquiries. This is due to the international nature of Eurostar services and the fact that the compensation terms it applies arise from European Regulation¹⁶ rather than domestic considerations. It operates within a different market where the conditions of competition are likely to vary from those that exist on the mainline domestic network. However, we have engaged with the company as part of this super-complaint for comparative purposes.

¹⁶ Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations

Legal and regulatory framework

72. The regulatory framework under which TOCs operate is a combination of rules and obligations from various sources, some of which are specific to the rail industry, and some of which apply to all consumer-facing industries.

Passenger train licence

73. Every TOC (whether franchised or open access) must hold a passenger licence, granted to it by ORR¹⁷. This licence contains a number of conditions, on different aspects of operating train services, and ORR is responsible for enforcing compliance with these conditions. Of relevance to the super-complaint are Conditions 3, 4 and 6:

- **Condition 3** provides that a TOC must be a party to and comply with industry arrangements in relation to, amongst other things, the selling of tickets at stations and conditions of carriage in respect of through tickets. Such arrangements sit within the Ticketing and Settlement Agreement (TSA), which is an arrangement to which all TOCs are parties, and which sets out the obligations, rules and processes for the retailing of train tickets.
- **Condition 4** imposes an obligation on TOCs to provide information to passengers to enable them to plan and make their journeys with a reasonable degree of assurance. Importantly this also applies when there is disruption to services.
- **Condition 6** imposes an obligation to establish and comply with a procedure for handling complaints from their customers.

Ticket and Settlement Agreement and the National Rail Conditions of Carriage

74. Franchised TOCs are required to be a party to, and comply with, the TSA as one of their franchise obligations. Open access TOCs must be a party to those arrangements as a matter of practicality in order to operate through the licence and sell tickets.

¹⁷ The Railway (Licensing of Railway Undertakings) Regulations 2005 require most people who want to operate trains in Great Britain (GB) to hold an appropriate European licence. A European licence holder operating in GB must also have and comply with a Statement of National Regulatory Provisions (SNRP). The SNRP sets out the conditions that are referred to in the text above

75. The TSA incorporates the National Rail Conditions of Carriage (NRCoC) as a schedule (Schedule 24). All TOCs are obliged to comply with those NRCoC by virtue of being a party to the TSA. The TSA and NRCoC are industry governed documents, so that amending them is a matter for TOCs themselves, although certain changes to the TSA, and all changes to the NRCoC, require the approval of DfT in order to have effect. As described later in this document, the NRCoC specify, firstly, the minimum compensation that TOCs must offer and, secondly, means of payment.

Consumer Protection Regulations

76. We are a designated enforcer of consumer law under Part 8 of the EA02, so we are a civil enforcer of the CPRs. This means that we consider how individual TOCs' own actions comply with the CPRs, and this will involve consideration of how TOCs are applying the NRCoC, being contractual terms between TOCs and consumers. We will also be a designated enforcer under Part 8 for the purposes of the Consumer Rights Act 2015 when that takes effect in relation to railway transport services. See section on relevant industry developments below.

Competition regulation

77. ORR is responsible for keeping the provision of railway services under review¹⁸. ORR is also responsible for monitoring competition in the rail services markets¹⁹. Where we identify issues in relation to competition or consumers in rail services markets, we have a number of tools to explore issues further, and, where appropriate, take action to address such issues. We have powers, in relation to railways services, to enforce legal prohibitions against anti-competitive behaviour²⁰ and to conduct formal market studies²¹.

78. In certain circumstances we are required to give 'primacy' to pursuing competition enforcement action. This 'primacy' duty does not arise in the context of this super-complaint, however in any event we consider, in this case, that it would not be more appropriate to deal with the issues raised by way of competition enforcement action

¹⁸ Section 69(1) of the Railways Act 1993

¹⁹ Regulation 30(1) of the Railways Infrastructure (Access and Management) Regulations 2005

²⁰ Under the Competition Act 1998 and the Treaty on the Functioning of the European Union

²¹ Market studies are examinations into the causes of why particular markets may not be working well, taking an overview of regulatory and other economic drivers and patterns of consumer and business behaviour. ORR may also undertake less formal enquiries into markets in the form of market reviews

and that for the reasons outlined in the remainder of this response, the appropriate approach is to adopt the recommendations set out in the summary and recommendations section.

Compensation schemes

79. The railway provides an essential service with over 4.5 million passenger journeys every day²². When there are significant delays to a passenger’s train journey or if their journey is subject to persistent punctuality or reliability problems, they may be entitled to compensation. The compensation provides redress for passengers - this is particularly important given that unlike many other sectors, rail passengers may be limited in their ability to ‘vote with their feet’ and may have to continue to use the service provided.
80. The qualifying criteria for, and level of, compensation a passenger is entitled to depends on the TOC they are travelling with. At a **minimum**²³, this compensation must meet the terms in the NRCoC, which allows compensation if a passenger’s journey is delayed for one hour or more. The exact terms of the scheme are set out in the table below.

Table 1.1: NRCoC compensation terms (delay of 1 hour or more)

Ticket held	Amount payable
Single ticket, or return ticket with delay on both the outward and return journey	50% of the price paid
Return ticket with delay on outward or return journey	50% of the price paid for the relevant portion of the journey
Season ticket	The discount or compensation arrangements in the relevant TOC’s Passenger’s Charter apply

²² <http://orr.gov.uk/statistics/published-stats/statistical-releases>

²³ In practice even those TOCs who are not subject to Delay Repay may offer more than these minimum standards

81. All franchised TOCs are required under their franchise agreement to have in place a Passenger's Charter, setting out the commitments that a TOC makes to its passengers.

82. All franchises signed since 2007 are required to comply with the Delay Repay compensation scheme as set out in the table below.

Table 1.2: Delay Repay compensation terms

Time delayed	Amount payable
Between 30-59 minutes	50% of the single fare
Between 60-119 minutes	100% of the single fare
120 minutes or more	100% of the return fare

83. Five franchised TOCs that do not currently provide compensation under the Delay Repay scheme are Northern Rail (Northern), TransPennine Express, South West Trains, Great Western Railway and Arriva Trains Wales. DfT plans to introduce Delay Repay on the new Northern and TransPennine Express franchises from April 2016. It is intended that Delay Repay will be introduced in the new South Western franchise from June 2017 and the new Great Western franchise from April 2019. The Welsh government will lead on procurement of the new Wales & Borders franchise – the decision on compensation policy in the new Wales & Borders franchise commencing in October 2018 has yet to be made.

84. In two cases, the Delay Repay compensation scheme has been introduced outside of the competitive tendering of a new franchise where opportunities arose.

85. These are:

- The introduction of Delay Repay as part of the Virgin Trains West Coast Direct Award from 1 April 2013; and
- The introduction of Delay Repay on Southeastern from 1 July 2011 when Delay Repay was secured by DfT as part of the remedy for a breach of the franchise agreement.

86. The non-franchised TOCs, Heathrow Express, Grand Central and First Hull Trains, offer at least the minimum compensation terms set out in the NRCoC. In detail:

Table 1.3: Non-franchised TOC compensation terms

Non franchised TOC	Compensation terms
Grand Central	Offers NRCoC terms.
First Hull Trains	Offers terms comparable with Delay Repay.
Heathrow Express	Offers a Delay Repay scheme triggered at 15 minutes with passengers becoming entitled to 50% of the Heathrow Express portion of the journey if a passenger is delayed by more than 15 minutes and 100% if the passenger journey is delayed more than 30 minutes.
As a helpful comparator (though outside of the scope of this super-complaint):	
Eurostar	Offers the terms set out in European legislation, where the maximum compensation for a delay or cancellation is 50% of the ticket price for a delay of one hour or more ²⁴ .

87. A full break down of all the current compensation schemes, including those offered under the concession agreements with TfL and Merseytravel can be found at Annex F.

²⁴ The EU's Rail Passengers' Rights and Obligations Regulation (EC 1371/2007) does not currently apply to domestic services. See DfT consultation on Regulation (EC) No. 1371 which closed on 23 December 2014, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/363551/141014_Passengers_Rights_and_Obligation_Consultation.pdf

Recent developments

88. The following section provides an explanation of the DfT's role in promoting automatic compensation following guidance that it issued in 2014 and an update on what changes have or are planned to occur as a result of that. The section also explains what we and the DfT are doing to ensure that the NRCoC are consistent with the Consumer Rights Act, in particular with regard to obligations around providing passengers with 'money' rather than vouchers. The section goes on to provide some background information on industry measures such as the ATOC Compensation Toolkit which has been in existence since 2013 and the Code of Practice on Retail Information for Rail Tickets and Services which has been in existence since 2015 and for completeness identifies and provides detail on those particular elements of the regulatory framework (the complaints handling guidance and passenger information during disruption) that have a bearing on TOCs' conduct in the promoting of passenger awareness of compensation.

Automatic compensation

89. DfT's Guidance on Passenger's Charter Compensation issued in 2014, which was shared with bidders for the recent Northern, TransPennine Express and East Anglia franchise competitions, recommends that bidders introduce a system to provide automated compensation for all delays eligible for Delay Repay for passengers who wish to 'opt-in' to this. Examples of this include:

- season ticket holders nominating their usual train to and from work and receiving compensation direct to their bank / season ticket accounts based on the performance of those trains; or
- the use of new technology to enable passengers with single and return tickets to be compensated direct based on the performance of the actual train they are using.

90. Such arrangements have not been part of the minimum requirements in recent ITTs, but bidders who include automated compensation arrangements in their bids may receive credit in the franchise evaluation process for exceeding the minimum compensation requirements set out in the ITT.

91. In line with the policy direction set by DfT, the following franchises now include automatic compensation arrangements:

- c2c have provided automatic compensation since 25 February 2016 for all passengers with a registered c2c Smartcard for delays from 2 minutes.
- Virgin Trains West Coast has provided automatic compensation to passengers who purchase Advance tickets through the operator's website or app and register their details since October 2015.
- The new Northern and TransPennine Express franchises will introduce from April 2017 automatic compensation where passengers buy an Advance ticket online from the operator's website and register their details.
- TransPennine Express will introduce from April 2017, and Arriva Rail North from December 2017, automatic compensation where passengers buy a season ticket online from the operator's website and register their details.
- Govia Thameslink Railway (GTR) is required under its franchise agreement to, on or before 30 April 2017, introduce a facility whereby holders of the GTR smartcard (currently known as 'The Key') will be notified of their eligibility to claim compensation.

Consumer Rights Act 2015 and the NRCoC

92. Compensation has traditionally been paid to passengers in the form of rail vouchers and this had been identified as a barrier to claiming compensation²⁵. However in July 2015 the NRCoC were amended to require that all TOCs had to offer compensation in the form of money on request.
93. ORR, DfT, and ATOC have been discussing further changes aimed at ensuring consistency between the NRCoC and the requirements of the Consumer Rights Act 2015. They require certain refunds to be paid without undue delay and in any event within 14 days, beginning with the day on which the TOC agrees the consumer is entitled to a refund, and using the same means of payment as used to buy the service, unless agreed otherwise by the consumer.

ATOC toolkit

94. In the summer of 2012, the Parliamentary Under-Secretary of State, DfT, wrote to ATOC asking for a report on the practical and affordable measures that might help

²⁵ *Passenger compensation and refund rights for delays and cancellations, report by ORR, 21 February 2014*, http://orr.gov.uk/_data/assets/pdf_file/0014/10670/passenger-compensation-and-refunds-report-2014-02-21.pdf

raise awareness of the compensation regime. The request was made in the light of concerns expressed by the Transport Select Committee and others in relation to compensation to passengers for delays.

95. As a result ATOC surveyed current TOCs' practices and discussed with its members possible improvements to existing arrangements. In fulfilment of a commitment made to the DfT, it developed the Compensation Toolkit ('the toolkit') for TOCs, outlining measures currently deployed by each TOC, with guidance on their practical experience, to encourage more widespread adoption on a voluntary basis where appropriate. ATOC also committed to further review compensation arrangements in the summer of 2014 and assess the extent to which further improvements can be made.
96. In February 2014, we published our report²⁶ on passengers' awareness of the rail industry arrangements for compensation for delays and refund rights, and the extent to which they exercise their rights under these arrangements. The report, based on research conducted in 2013, found low levels of awareness and take-up amongst passengers.
97. As part of ATOC's response to our report, it referenced the recently developed toolkit and reiterated its commitment to undertake, later in 2014, a further review of how TOCs communicate their compensation schemes to passengers, with the aim of assessing any improvements from initiatives that TOCs may have chosen to implement from the toolkit.
98. ATOC's subsequent report made to ORR in March 2015 reported that of the 19 TOCs that responded to the question, 13 viewed the toolkit positively with only two considering it not to be of help. One TOC had not made use of it but planned to incorporate it into its forthcoming review of its actions under PIDD. The report also identified a number of changes following introduction of the toolkit including promotion of compensation arrangements via the internet.

²⁶<http://orr.gov.uk/publications/reports/rail-passenger-compensation-and-refund-rights>

99. We have explored the awareness TOCs have of the toolkit during this super-complaint enquiry. Prior to receiving the super-complaint we undertook our own review of web-sites to identify any areas for improvement on the part of the TOCs. We wrote to TOCs with our findings on 17 and 18 December 2015. The responses to this letter form part of the evidence considered within this super-complaint response.

Code of Practice on Retail Information for Rail Tickets and Services

100. Following DfT's 'Rail fares and ticketing: next steps' report in 2013, we agreed to oversee the development of a Code of Practice ('the Code') on the provision of ticket information. The Code was published by ATOC in 2015²⁷.

101. The purpose of the Code is to promote best practice in meeting consumer law and industry standards and help ensure that ticket retailers give passengers a clear understanding of what level of service they can expect, whether from a ticket office, online, a ticket machine, or other self-service channels.

102. We indicated, during development of the Code, that while compliance with the Code would not guarantee compliance with the CPRs (since compliance is ultimately determined by whether passengers are being misled), non-compliance with the Code may signal failure to comply with the law and we would consider taking action in such circumstances. The Code sets out that relevant information at sale could include the arrangements for compensation when trains are delayed²⁸.

Complaints handling guidance

103. Licence holders should ensure that complainants are given compensation as a form of remedy if this is an appropriate option and equally the licence holders have the autonomy/discretion to go beyond the compensation thresholds should they wish to do so. Train and station licence holders are also required, by their operating licence, to have Complaints Handling Procedures (CHPs) which have been approved by ORR. In 2015 we published guidance²⁹ on what we will look for when exercising this

²⁷ http://www.atoc.org/download/clientfiles/files/publicationsdocuments/2015-03_retail_information_CoP.pdf

²⁸ This was supported by research conducted for ORR by London Economics, *Ticket Retailing Code of Practice, What Information is Relevant*, July 2014, http://orr.gov.uk/_data/assets/pdf_file/0008/14795/lse-ticket-retailing-code-of-practice-report-july-2014.pdf

²⁹ http://orr.gov.uk/_data/assets/pdf_file/0020/19370/complaints-handling-procedure-guidance-2015.pdf

approval role and when monitoring for continuing compliance. We set out at paragraph 3.46 of this guidance that where a complaint is about a train delay or cancellation, licence holders should, as a minimum, provide compensation in line with the NRCoC or, on terms agreed within their franchise.

104. We also state that licence holders should promote and raise awareness of compensation rights amongst passengers and state that we will look for ways in which licence holders are doing this as part of our routine work and also when approving CHPs. We continue to monitor for evidence of this as part of our approval process.

Passenger information during disruption

105. In 2012, ORR introduced a new condition on the provision of information for passengers into train operator and station licences³⁰. In 2014 we commissioned Passenger Focus (now known as Transport Focus) to undertake research to see whether passengers had noticed any improvement. In September 2014, its report³¹, raised concerns in a number of areas where it felt that improvements were not being seen by passengers. The industry took the actions from the report and developed its own action plan to address them. This was endorsed by the industry's National Task Force.

106. The action plan includes 50 recommendations (called industry actions) which TOCs (and Network Rail) have committed to deliver. Around half of the industry actions were due for delivery by mid-2015, some of them require changes to industry systems which will take longer. These included the need to:

- Provide accurate and timely information on TOC websites as quickly as possible to allow customers to plan accurate or revised journeys;
- Promote the services that allow passengers to check that their service is running on time before they get to the station (e.g. via text alerts);
- Increase passenger confidence in information by making manual announcements (at stations and on trains) during disruption;

³⁰ This endorsed ATOC's code of practice for passenger information during disruption, available from www.atoc.org

³¹ *Passenger Information when trains are disrupted*, Passenger Focus, September 2014 and available from <http://www.transportfocus.org.uk/research/publications/passenger-information-when-trains-are-disrupted>

- Ensure all staff on platforms and trains have access to the latest disruption information, which they can share with passengers;
- Provide explanations on the cause of delay and any knock on effects, and include estimates of incident duration in disruption messages.

107. Of the remaining actions, some are not due until 2019 because they require changes to industry systems which will take longer to implement. ORR and ATOC are monitoring the delivery of these remaining actions.

108. While the licence condition does not specifically refer to information on compensation the industry has proactively used the action plan to include actions on this:

- When a journey is delayed to the extent that compensation is payable, (in line with the Compensation Toolkit) operators should make reasonable effort to ensure information is available which makes it clear that passengers can make a claim.
- Claim forms for compensation should be made easily available to passengers – on trains and on stations, where practical, and on all TOC websites (with easily accessible, downloadable forms).

109. We have monitored the industry's progress and the pace of delivery against the action plan. All TOCs have now published their action plan on their website with an indication of progress of delivery. The ATOC Approved Code of Practice: Passenger information during disruption³² is to be updated to include completed actions so that such improvements are documented and will become standard for new franchises.

³² <http://www.atoc.org/latest-publications/>

3. Market structure and incentives

Summary and key conclusions in this chapter

This chapter explores the extent to which the structure of the market for franchised passenger services is leading to weak incentives on TOCs to improve their conduct in relation to the promotion and payment of passenger compensation.

We conclude that:

- TOCs are incentivised to improve performance (punctuality and reliability), increase passenger satisfaction and to reduce costs. The balance of these incentives may however result in:
 - relatively weak incentives to promote awareness of passenger compensation; but
 - stronger incentives to make claims processes as efficient as possible and to deal well with passengers making claims.
- Competition between train operators could play a useful role in providing additional pressure to promote compensation arrangements, but seems unlikely to be able to fully address all of the issues relating to compensation.

What the Which? super-complaint says

Which? identifies the structure of the market for franchised rail passenger services as a feature that leads to weak incentives on TOCs to improve their conduct in relation to passenger compensation. It argues that these weak incentives are caused by, in particular, a lack of competition between TOCs.

Evidence and analysis

110. We explored:

- the strength of factors encouraging TOCs to promote awareness of passenger compensation and to improve claims processes; and

- whether a lack of direct competition between TOCs contributes to what Which? consider are low levels of performance in terms of passenger compensation.

Promotion of awareness

111. Providing high standards of service quality matters to TOCs. They told us that their focus in terms of service is on the factors they consider passengers care about most, which are performance³³ and how they are treated during periods of disruption³⁴. The evidence points to this leading to TOCs treating passenger compensation as a lower priority given the cost involved because:

- drawing attention to compensation terms may undermine the messages that TOCs want to promote about their commitment to good performance; and
- during times of disruption TOCs focus on getting people to their destination rather than on what compensation may or may not be payable

112. One TOC said that the balance of information provision should be proportionate to each company, for example, where the percentage of trains delayed was small in comparison to the number of services run to time, a promotional campaign may be dis-proportionate. Another TOC stated that its passengers were not always interested in compensation. It reported that passengers would sometimes express the view that they would not pursue compensation as they understood “*that it was not [the company’s] fault*”.

One TOC said that it was not in the best interests of the company to promote compensation. It was a cost to the company and did not, in itself, improve performance which was the leading driver of passenger satisfaction.

113. We found no evidence to suggest that TOCs take steps to limit their exposure to compensation pay-outs by actively discouraging those wishing to seek

³³ For every minute of lateness, (that is, after scheduled arrival time), overall passenger satisfaction declines by one and a half percentage points. For commuters the decline in overall satisfaction decline is steeper, namely a three percentage point reduction per minute of lateness. *ORR and Transport Focus, November 2015 – Train punctuality: the passenger perspective*, http://orr.gov.uk/data/assets/pdf_file/0010/19846/train-punctuality-and-passenger-satisfaction.pdf

³⁴ Passenger Focus, Oct 2014 – *Rail passengers’ priorities for improvement*, <http://www.transportfocus.org.uk/research/publications/rail-passengers-priorities-for-improvements-october-2014>

compensation, for example, by taking steps to hide information or by making the claims process more difficult.

114. We asked TOCs if they had any internal targets or thresholds for compensation take-up. We found no evidence that such targets or thresholds exist. TOC responses indicated that a typical management response to rising numbers of claims was simply to ensure that sufficient money was available to compensate passengers and to fund the claims process. The cost of operating schemes can be significant where the volume of claims increase as a result of a major incident.
115. In times of disruption TOCs argue that they focus on giving accurate and timely information about train services so that passengers can plan and make journeys with a reasonable degree of assurance. Requirements on this issue are included in: TOCs' licences; an industry code of practice; and form part of an action plan agreed by TOCs.³⁵
116. TOCs stressed to us that during severe disruption their primary focus is on crowd control and moving people safely through stations, onto trains and subsequently onwards to their final destinations.

One TOC said that the priority for the majority of customers during delays is on how best they would get home safely and within a reasonable time and not so much on how much compensation they would be getting.

Improving claims processes

117. Research undertaken by the Ombudsman Service³⁶ in 2015 found that 75% of people would be likely to return to a company if a complaint they had was handled well. The evidence available to us suggests that TOCs, consistent with this research, focus their efforts on improving claims processes. This evidence includes:

- The incidence of voluntary payments provided by TOCs;

³⁵ In 2012, ORR introduced a new licence condition on the provision of information for passengers into train operator and station licences, see chapter 2 of this document

³⁶ Ombudsman Services' Consumer Action Monitor (CAM), from Ombudsman Services response to ORR's Call for Evidence

- Evidence of internal and published targets around the effectiveness of the claims process; and
- The cost of the claims process being a more significant driver of management behaviour than overall compensation value.

Voluntary (ex-gratia or goodwill) payments

118. TOCs suggested that they did make voluntary payment either in the form of non-cash compensation (such as flowers or chocolates); a rounding up of compensation entitlement to the nearest pound; or payment where the compensation (delay) threshold has not been quite reached.

119. One TOC said that it tended to err on the side of being over generous when compensating passengers for delay given the low average fare applicable to its services. Another TOC highlighted its provision of reimbursement of the taxi costs for passengers affected by a tree falling on the line which would have otherwise not been payable. One non-franchised operator stated that it would pay for the cost of passengers travelling on rival train services during major disruption even where the terms of its scheme do not provide for this.

Targets on handling claims

120. Some TOCs have targets which commit them to timescales for responding to compensation claims. The speed and efficiency with which a TOC can manage a claim will generally have a direct bearing on customer satisfaction. The speed of the process will also have a bearing on processing costs.

Processing costs

121. TOCs suggested the cost of processing a claim manually can be considerable. TOCs provided us with a number of estimates ranging between £1.80 and £39³⁷ per claim. A number of TOCs mentioned the costs associated with moving from payment in vouchers to payment by cheque³⁸ highlighting a number of additional processes this had required. In the case of one TOC, this was estimated as an additional £1.50 per claim.

³⁷ Estimates at the upper end of this range included relatively high shares of fixed costs such as case management systems

³⁸ In July 2015 the NRCoC were amended to require that all TOCs offer compensation in the form of money on request

122. Rising costs can be a powerful motivator for change and we have seen evidence of TOCs simplifying the process and introducing more automation to address rising costs which they said had resulted from increasing awareness and the movement from vouchers to cash. One TOC informed us that in response to increases in processing costs, it is currently working to develop a more automated system for processing Delay Repay which it expects to test shortly. It considers this will improve the customer experience when submitting on-line claims. Another TOC had moved to on-line methods for claiming compensation both to meet with passenger preference and because the previous telephone system had required a costly three contacts between the customer and the customer service team.

The role of competition

123. The extent of 'direct' competition faced by TOCs varies significantly by sector³⁹ (e.g. Intercity, regional and commuter) and company type (in particular long distance, where there is competition between open access and franchised).

124. Competitive markets typically see rival firms competing against one another to win business. Rivals seek to attract consumers through making competing attractive offers. Consumers benefit from this rivalry as it generally results in cheaper prices and better quality. Consumers may also benefit from businesses seeking to differentiate through offering superior terms and conditions.

125. In the high street retail sector, terms of sale can be a significant factor in increasing customer loyalty and satisfaction. A 'no-quibble' refunds or replacement policy can positively differentiate one retailer from another. In sectors such as transport, however, the promise of future travel is typically not a perfect substitute for a planned journey. In transport markets, it is less clear how much importance consumers place on the ability to gain a refund for all or part of your journey should it be delayed or cancelled. It is an important but not critical part of the decision to buy a ticket in the first place⁴⁰.

³⁹ See for example <https://www.gov.uk/government/news/cma-signals-route-for-greater-rail-competition>

⁴⁰ See http://orr.gov.uk/_data/assets/pdf_file/0008/14795/lse-ticket-retailing-code-of-practice-report-july-2014.pdf

126. As stated above, the evidence available suggests that TOCs' focus is on the key factors which they think customers care about (other than price). These are: performance; and, giving people the information they need to get to their destination during periods of disruption. Although greater competition could prompt an increased focus on compensation, it is less clear whether this would be sufficient to address the issues we have identified. We looked at drawing comparisons with situations where there is greater direct competition, to see whether standards in relation to passenger compensation are higher.

Comparison with the airline sector⁴¹

127. Airlines operate in a sector where there is keen competition between rival carriers, which has delivered significant benefits to passengers in terms of choice and value-for-money. The experience in aviation also shows how different companies can adopt different policies and approaches to customer care, and the extent to which they choose to comply with the prevailing legislation without regulatory intervention.

128. However, competition has been supplemented by significant legislation, monitoring and enforcement by the regulator. Air passenger compensation rights have been secured by European legislation⁴² and the European Courts have needed to intervene to ensure that the regulations are adhered to, in particular to ensure that airlines do not interpret the regulations so as to unfairly limit the scope for passengers to claim. At a domestic level, the industry regulator, the Civil Aviation Authority, has had to take action to secure undertakings⁴³ from airlines to ensure that compensation is being paid properly.

⁴¹ We have characterised European aviation markets as being typically characterised by effective competition since the widespread liberalisation that took place in the 1990s (e.g. see *The Benefits from Competition: some illustrative UK cases*, DTI economics paper No. 9, 2004). We consider that this characterisation is broadly reasonable, whilst recognising that, as set out in merger case law (see COMP/M.5440 Lufthansa/Austrian Airlines; COMP/M.5335 Lufthansa/SN Airholding; COMP/M.5364 Iberia/Vueling/Clickair; COMP/M.3280 Air France/KLM; COMP/M.3770 Lufthansa/Swiss; COMP/M.5747 Iberia/British Airways; COMP/M.6447 IAG/BMI). Airline competition is not homogenous, but rather takes place on a city pair basis

⁴² Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights

⁴³ See, for example, <http://www.caa.co.uk/News/CAA-action-leads-to-airlines-changing-policies-and-means-passengers-will-get-better-support-in-the-future/>

Comparison with non-franchised operators

129. Long distance open access operators face competition from franchised TOCs.

However, these operators do not offer compensation terms in excess of those offered by franchised TOCs, with one open access operator limiting its compensation terms to the required minimum standards. We also see no significant better practice in the way that open access operators promote awareness of compensation and/or help claimants through the claims process. We identified similar results for Eurostar where the compensation terms adopted are the minimum required by European law⁴⁴.

Conclusions

130. We are of the view that direct competition can provide strong incentives to improve service quality and as such may have the potential to prompt an increased focus on compensation. However, it is less clear whether competition – on its own – would sufficiently address the issues with passenger compensation.

131. In broad terms we consider that there are currently limited market incentives to encourage TOCs to promote awareness of compensation schemes. We consider there may however be market-based incentives for TOCs arising from factors such as improving passenger satisfaction and cost savings to improve the process for making a claim.

⁴⁴ Rail Passengers' Rights and Obligations Regulation (EC 1371/2007)

4. Market structure – the regulatory framework

Summary and key conclusions in this chapter

This chapter explores the role of the franchise and the franchising authorities in incentivising TOCs to promote and pay compensation to passengers. In doing so we look at the extent to which consumers' interests play a part in the franchise bidding process and how TOCs are expected to deliver their franchise obligations around compensation. This chapter also explains the objectives of Schedule 8 of the track access agreements between TOCs and Network Rail. We conclude that:

- consumer requirements are given sufficient attention in the franchise bidding and award process; and
- regulation by way of licence would not be any quicker at responding to new technological developments which could benefit consumers.

However there are potential weaknesses due to:

- a lack of consistency in what TOCs are obliged to do, with some earlier franchises only containing '*all reasonable endeavours*' provisions for the promotion of awareness which are difficult to interpret, measure and, therefore, enforce;
- the reliance on TOC self-audit and a reactive response to monitoring compliance with these franchise terms which may result in a non-systematic approach to introducing improvements over time; and
- a lack of transparency in the obligations of TOCs that may be contributing to passengers not exercising their rights or applying pressure for change.

Also,

- Schedule 8 is designed to incentivise Network Rail and operators to minimise the delay they cause, and to compensate operators for their losses.
- as part of our work on the 2018 periodic review⁴⁵, we will consider whether to adapt Schedule 8 so that the cost of compensating passengers is borne by the party that causes the delay and what the overall impact of such a change would be.

⁴⁵ORR is preparing for reviews of Schedules 8 and 4 of the track access contract between Network Rail and TOCs (the performance and possessions regimes, respectively) for the 2018 periodic review of Network Rail (PR18). A recent consultation on this closed in November 2015, more information can be found on the following link: http://orr.gov.uk/_data/assets/pdf_file/0003/19776/pr18-reviews-of-schedules-4-and-8-of-track-access-contracts-2015-11-13.pdf

What the Which? super-complaint says

Which? argues that franchise agreements are not the appropriate means by which to deliver consumer rights and basic service standards because:

- consumer requirements will not be given sufficient attention in the bidding and award process, as well as in on-going monitoring and enforcement;
- contractual mechanisms do not allow franchising authorities to respond quickly to new technological developments which could benefit consumers;
- the high degree of variability between franchises makes it harder for consumers to understand their rights; and
- ORR also has a duty to protect the interest of consumers. A lack of clarity about where the responsibility for protecting consumers' interest sits may hinder the delivery of a timely and effective response to consumer harm.

Which? also considers the fact that the level of compensation determined under Schedule 8 is not linked to the level of compensation paid to passengers, but relies on estimates of the long-term impact of these delays on passenger demand and TOC revenues. Which? considers this may lead to a disincentive on TOCs to pay compensation to passengers.

Evidence and analysis

The role of the franchise in securing consumer rights and basic service standards

132. As explained in detail in chapter 2, the current compensation terms available to passengers have been primarily driven by legislation or some form of regulatory or government intervention. The minimum standard of compensation which is contained in the NRCoC must be adhered to by all TOCs on the national rail network as a result of an obligation that sits within franchise agreements and each TOC's licence.

133. Franchising authorities have secured more generous terms than the minimum standards through including obligations about passenger compensation in franchise agreements. DfT, for example, has gradually introduced improved compensation

terms by decreasing the time threshold at which payment becomes available and is now considering potential improvements to the Delay Repay scheme⁴⁶.

134. Improvements in the claims process have also been initiated as part of the franchise 'direct award' process⁴⁷. As part of the East Midland Trains (EMT) Direct Award commencing on 18 October 2015, DfT required that improvements in the Delay Repay claim process were made to enable passengers to, for the first time, make claims electronically as well as by post.
135. Our review of the evidence submitted to us by TOCs found that 'one-off' compensation schemes might be introduced by TOCs in response to exceptional levels of poor performance and that TOCs have an incentive to improve the claims process. However, wholesale change would be unlikely to be considered by TOCs unless in response to franchising authority requirements. Affordability plays a key role in this consideration as well as the limited incentives on TOCs to focus on this element of their service. We discuss these incentives in the previous chapter.
136. It is not self-evident that the imposition of technological change would be any better facilitated by moving requirements about passenger compensation from franchise agreements to ORR licences. We have a number of duties that we have to weigh when exercising our functions. The protection of the interests of consumers⁴⁸ has to be balanced against other duties such as the need to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance, and to have regard to the funds available to the Secretary of State⁴⁹.
137. DfT has postponed the introduction of Delay Repay in some franchises due to the possibility that a significant number of passengers would lose out from the removal of season ticket refunds available under existing passenger charter schemes. The same factors would also need to be considered in any approach taken by ORR.

⁴⁶ See the Chancellor's 2015 Autumn Statement: "*Commuters will also soon be able to claim compensation from their rail tickets if their train is more than 15 minutes late*"

⁴⁷ See, for example, <http://researchbriefings.files.parliament.uk/documents/SN01343/SN01343.pdf>

⁴⁸ Section 4(1)(c) of the Railways Act 1993 'Otherwise to protect the interests of users of railway services'

⁴⁹ Section 4(5)(c) of the Railways Act 1993 'have regard to the funds available to the Secretary of State for the purposes of his functions in relation to railways or railways services'

Monitoring and enforcement of franchise terms

138. Franchisees are contractually obliged under their franchise agreements to provide compensation to passengers in accordance with the NRCoC and their Passenger's Charter. All franchise agreements require franchisees to pay the compensation for delays which passengers are entitled to.
139. New franchise agreements entered into since 2014 have been strengthened as part of DfT's requirements to ensure that franchisees do more to communicate to passengers their entitlement to compensation. These franchise agreements require that TOCs take certain steps to make passengers aware of their right to claim compensation including by making appropriate announcements to passengers on trains and at stations and by making compensation claim forms readily available to passengers.
140. Recent ITTs in relation to the Northern, TransPennine Express and East Anglia franchises, set out DfT's requirements, which are more specific than '*all reasonable endeavours*':
- To actively and consistently promote awareness of passengers' rights to claim compensation; and
 - To make the claims process swift and simple including through the introduction of technology.
141. Although there is no parallel '*all reasonable endeavours*' condition within the Transport Scotland franchises, there is a requirement to provide detailed information in areas such as the number of claims, reasons for compensation, rejected claims, etc. This information is analysed and reviewed through franchise performance meetings with ScotRail and the Caledonian Sleeper. Similarly DfT has required a number of TOCs to report compensation payments made to passengers under their management accounts⁵⁰ and has published this information⁵¹ for the 2009/10 to 2014/15 financial years⁵¹.

⁵⁰ Govia Thameslink Railway, CrossCountry, East Midlands Trains, London Midland, Virgin Trains East Coast, Southeastern, Abellio Greater Anglia, Virgin Trains West Coast, c2c

⁵¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/455184/toc-compensation-2009-2015.pdf

142. Transport Scotland has also advised that it oversees a Passenger Disruption Working Group (PDWG), at which passenger-facing issues that arise during unplanned disruption are raised and actions taken. This group includes senior officials from ScotRail, Caledonian Sleeper, Network Rail and Transport Focus. Transport Scotland has told us that visibility of the Delay Repay compensation scheme has been highlighted at these discussions and that this has resulted in positive action, including more prominent use of customer information screens and additional training for gateline staff.

DfT has intervened on the part of the passenger to ensure that:

- the NRCoC are amended to enable passengers to receive compensation for a delay or cancellation in cash if they request this instead of rail vouchers;
- the rules on cash versus vouchers were correctly applied following an August 2015 investigation by Moneysaving expert that discovered that First Great Western (FGW) passengers were paid less in cash than they would have received in rail vouchers; and
- the formula used to calculate the amount of compensation issued to annual season ticket holders was consistent across all TOCs.

143. We note, however, that although there is limited evidence to suggest that the franchise is not the appropriate tool to deliver passenger-focused benefits, there are potential challenges for enforcement resulting from three areas:

- first, a lack of consistency in what TOCs are obliged to do, with some earlier franchises only containing “*all reasonable endeavours*” provisions for the promotion of awareness which are difficult to interpret, measure and, therefore, enforce;
- secondly, the reliance on TOCs to self-audit and a reactive response to monitoring compliance with these franchise terms which may result in a non-systematic approach to introducing improvements over time; and
- finally, a lack of transparency in the obligations on TOCs that may be contributing to passengers not exercising their rights or applying upward pressure for change when TOCs fail to deliver against these stated obligations.

The role of Schedule 8

144. We explain in the previous chapter how TOCs' primary focus on other aspects of service quality, and that performance, rather than compensation, appears to be a stronger driver of customer satisfaction.

One TOC said [we] focus on train performance as an indicator, rather than compensation profiles, as it gives us a more reliable reflection on trains/places to target, allowing us a proactive approach for improvement.

145. There are a suite of measures that incentivise both Network Rail and TOCs to limit the delay they cause on the railway. As well as compensation payments, these include:

- regulated performance targets for Network Rail;
- franchise obligation performance targets for franchised TOCs;
- published performance comparisons between TOCs; and
- Schedule 8 of the track access contracts between Network Rail and TOCs

A concession TOC was keen to stress that the performance regimes in place within its contract with TfL provided an overriding incentive to provide regular and punctual services, *far greater* than the incentives provided in relation to passenger compensation.

146. It is intended that the performance regime as a whole, of which Schedule 8 is a part, should provide the industry with the right balance of incentives to deliver the best levels of performance across the network together with delivery of specific minimum service standards.

147. As well as incentivising TOCs and Network Rail to limit the delay they cause, Schedule 8 has an additional function of compensating TOCs for the long run revenue losses from poor performance when that poor performance is caused by other TOCs or Network Rail. It provides an incentive for both to limit the delays they cause and it also affects how much companies bid for franchises. If a TOC was not protected from the financial impact of delays caused by other companies (which the

affected TOC cannot control), bids may be lower with an impact on government funds.

148. While the current compensation paid to TOCs under schedule 8 is intended for the sole purpose of holding them neutral to the non-controllable revenue risk that they face as a result of delay caused by Network Rail or other TOCs, it has been suggested that TOCs could be required to pass on the monies paid under the Schedule 8 regime directly to passengers, or, at least, to reserve those monies solely for the purpose of passenger compensation. This proposal would amount to a significant change in the purpose of the current regime and would be likely to result in more conservative franchise bids, and consequently lower premiums and higher subsidies from government, in light of the higher risk premiums in bids (reflecting the fact that TOCs would be expected to bear significant revenue risk that they are not able to control).
149. The practical difficulty of adding a passenger compensation component to Schedule 8 is low, but it would be hard (under the current system) to ensure that it is accurate (i.e. that what the 'polluter' pays reflects the actual compensation liability).
150. The infrastructure to do this (i.e. the 'STAR' model) already exists as part of Schedule 8, so in that respect it would be possible to add on a passenger compensation component. However, based on the way Schedule 8 and passenger compensation currently work, it would be hard to guarantee that the numbers matched up well with the compensation amounts. The particular problems are (a) that Schedule 8 is designed to pay out on a per minute basis, whereas passenger compensation only pays out at particular thresholds (e.g. 30 mins, 1 hour), and (b) that the level of compensation depends on the fare. These are surmountable obstacles, with averaging, but they will make it harder to introduce and less accurate. It might be easier to change the passenger compensation schemes to a per minute basis but that would raise a further set of issues.

Conclusions

151. On the basis of the information gathered we consider that the franchising authorities take a keen and active interest in the role of compensation in protecting the

passenger interest. On this basis, protecting the interests of consumers, through for example, passenger compensation through the imposition of franchise obligations could be considered to be appropriate. However, we have identified some inconsistencies in franchise obligations around the promotion and payment of compensation, notably in relation to: proactive monitoring and enforcement by franchise authorities, and, transparency and understanding of what TOCs are obliged to do under the franchise.

152. There is some concern among stakeholders around the relationship between the Schedule 8 regime and the passenger compensation regime. In essence they have different purposes. In the medium term, as part of our work on the 2018 periodic review, we will consider whether the two regimes should be better linked. One possibility that might be appraised is the potential for Schedule 8 to be adapted so that the cost of compensating passengers is borne by the party that causes the delay.

5. Awareness, information and advice

Summary and key conclusions in this chapter

This chapter sets out the results of our research into the steps that TOCs take to make passengers aware of their rights to compensation. In summary:

- We found little evidence of widespread or proactive activity by the TOCs to improve the general levels of passenger awareness of compensation schemes. More specific practices varied significantly between TOCs;
- Most TOC websites provide information on compensation but more can be done, for example, ensuring all the relevant information is on a single webpage, and that this information is clearly labelled and easy to find;
- There is a lack of universal and consistent use of websites, social media, and announcements to inform passengers of their compensation rights;
- Few TOCs proactively hand-out claim forms to passengers during or following a disruption; and
- We found that in only 30% of cases did TOC staff provide mystery shoppers with all the information they needed to make a claim.

What the Which? super-complaint says

The Which? super-complaint identified three key issues relating to passenger awareness of their compensation rights and the activity of TOCs in relation to passenger awareness of their rights. Specifically failure of :

- TOCs to make passengers aware of their rights;
- TOCs to take adequate steps to proactively inform passengers of their rights; and
- Station staff to provide passengers with accurate information.

Evidence and analysis

The extent to which TOCs make passengers aware of their rights

153. The following section sets out our findings on how TOCs make passengers aware of their compensation rights on a day to day basis i.e. not in response to a particular incident. To consider this issue we:

- asked a number of questions of TOCs⁵² about what steps they take to raise passenger awareness of their compensation rights on a standing basis, including at unstaffed stations;
- conducted our own review of TOC websites, and claims processes⁵³;
- asked the Plain English campaign to review compensation information on websites, claim forms and leaflets⁵⁴; and
- commissioned a specialist research agency to mystery shop TOC staff to understand what information is made available to passengers on trains and at stations about their compensation rights⁵⁵.

154. In total we conducted 392 mystery shops covering 22 TOCs⁵⁶ operating across Great Britain, examining two primary aspects of information provision:

- first, the availability of written compensation information made available at staffed and unstaffed stations and on trains; and
- secondly, compensation information provided by staff upon request.

⁵² The information from TOCs is presented as 22 TOCs as TfL provided information on behalf of both LOROL and TfL Rail (MTR Crossrail).

⁵³ The ORR review of TOC websites and claims processes was carried out for all 23 TOCs during the first two weeks of February 2016.

⁵⁴ The Plain English Review covered all 23 TOCs.

⁵⁵ The mystery shopping report produced by Perspective Research/ESA Retail is published alongside this document

⁵⁶ GoviaThameslink Railway (GTR) is one of the 22 TOCs covered by the mystery shop. Their four brands were sampled separately. Serco Caledonian Sleeper was not included in the mystery shop sample due to the unique nature of their service which presented practical barriers to evaluating their service in a manner that was consistent and comparable with other TOCs. Also they do not manage any stations.

155. The results of our research are summarised below. The results on the second aspect of the mystery shopping research, namely the performance of staff in response to a request for information, form a separate section at the end of this chapter.

General

156. Most TOCs pointed to information on compensation being available on their websites and on printed leaflets available at stations. In addition to this six TOCs told us that they have produced compensation-related posters for posting at stations. Eight TOCs referred to compensation terms being promoted by way of their Passenger's Charters which can be found on websites, and at stations.

157. There was minimal evidence of any systematic attempt by the TOCs to evaluate the success of their various methods for raising awareness. In summary:

- one TOC had commissioned an evaluation of the effectiveness of its information campaign. This found a significant increase in awareness levels in response to the campaign, but awareness levels fell once the campaign stopped suggesting the need to repeat awareness promotion activities to ensure that immediate gains are sustained over time;
- three TOCs said they use either direct feedback from passengers, staff, and stakeholders, or an online panel;
- two TOCs said they use the National Rail Passenger Survey⁵⁷; and
- one TOC said that it used the number of claims as a benchmark for whether or not its communications were effective.

TOC websites

158. Websites are a primary source of information for passengers, as well as being a route through which many TOCs will accept compensation claims. As part of our research, we have reviewed the accuracy, consistency, and completeness of information provided on TOC websites, as well as commissioning the Plain English Campaign to conduct their own, independent, appraisal.

159. **Signposting:** All TOCs have links on their homepages that can be followed to access compensation information. However, there is a great deal of variation

⁵⁷ <http://www.transportfocus.org.uk/research/national-passenger-survey-introduction>

between TOCs in where the relevant links to compensation information are located, e.g. 'Contact Us', 'About Us', 'Customer Service', etc. The positioning may not always be clear to passengers and they may have some trial and error in where they choose to look. In some cases the information is clearly referenced on the homepage and we consider this an example of good practice in terms of signposting.

160. Two TOCs provide links to relevant information that can only be located on the secondary tabs at the bottom of the homepage, which is likely to be less obvious to passengers. For one TOC, a passenger would need to download the Passenger's Charter to find the information, which we consider would not be immediately obvious for the average potential claimant.
161. **Standardisation of terms:** There is also some variability in how the links to compensation-related information have been labelled. For example, of the 15 delay repay TOCs, nine label the link using 'delay repay' or a variant of it, e.g. 'Delay Repay Compensation', 'Delay Repay Form', etc. The remainder have used alternatives such as 'Claiming Compensation for a Delay', 'Compensation Form', 'Refunds' and, in one case, 'Passenger Charter'. Greater standardisation of terms should make it easier for passengers to recognise and locate relevant information.
162. **Navigation:** In most cases, there is a relatively clear pathway to find compensation-related information where this information is provided on the TOC's website. On all TOC websites, all users can access the relevant information within three clicks of the homepage⁵⁸, if they know where to go. However, the ambiguity in where the initial link appears in some cases could mean that passengers are initially unclear how to proceed to access compensation information.
163. A further concern is that most TOCs do not provide all the necessary information on a single webpage. As a result, passengers are required to navigate to different areas of the website in order to find all the information they need. For example, in many cases we found that the claim form was not on the same page as related compensation information. The effect of this is that it demands additional effort by the passenger to navigate to different areas of the website in order to find all the

⁵⁸ 14 TOCs offer the information in two clicks; two TOCs offer the information in a single click.

information and forms they need. It would be simplest for passengers if all claim related material were provided in a single, easy to find location.

164. **Quality of information:** While all TOCs provide information on their website about the compensation provisions for passengers holding single or return tickets who have incurred delays, a small number of TOCs failed to provide clear information on the level of compensation offered or the length of delays that are eligible for refund. Six TOCs did not clearly specify what the arrangements were with regard to season tickets and how compensation is calculated for this group of passengers.
165. As part of the Plain English Campaign's review of TOC written communications, they suggested a number of common improvements that could be made to TOC websites. This mainly focused around their preference for more use of everyday language and for content to be clearer and more concise.
166. Key information in this context includes: the thresholds at which compensation will be paid; the level of compensation; any differences between season tickets and non-season tickets (including how compensation is calculated, and when and how it is paid); and any exclusions from liability.

Information provision at stations and on trains

167. We asked TOCs about the measures they take to ensure that passengers using unstaffed stations have access to information about their compensation rights.
168. Two TOCs told us that they will send staff or volunteers to unstaffed stations in response to certain disruptions and if resources allow. Another TOC said that it has funded information screens at unstaffed stations managed by other TOCs, which are used to provide information to passengers.
169. Nineteen TOCs rely on passengers getting information from compensation related posters, welcome posters, or information provided to passengers whilst they are still on board the train.
170. Our mystery shoppers were instructed to look around the station or on the train for any visual information, in the form of posters, signs, notices or leaflets regarding

compensation arrangements for delays. This type of information was observed at 30% of staffed stations and at only 14% of unstaffed stations. It was found to be present on 30%⁵⁹ of trains.

171. Where information was available it was generally in the form of leaflets or posters. Upon examination of the content, 91% of the mystery shoppers said that they believed the information available was sufficient to inform them as to when they would be entitled to claim compensation and the same proportion (91%) for how to claim. This suggests that when the written information was available, it was generally considered to be useful to a potential claimant. This is consistent with our findings immediately below.

Accuracy and consistency of information between information methods

172. We also examined whether the information TOCs provided to passengers on websites, posters, and on their Passenger's Charters was compliant with the applicable compensation scheme and found:

- all published compensation policies to be consistent with the terms of the applicable compensation scheme;
- no instances where a TOC was found to be providing inaccurate written information to passengers; and
- although there was no inconsistency between websites; leaflet and Passenger's Charter information, there were several instances where helpful information was included on the Passenger's Charter that was not provided on the website, such as detail on restrictions around the payment of cash.

The extent to which TOCs proactively inform affected passengers of their rights to compensation

173. For this section we explored with TOCs the methods they use to make passengers aware of their rights during times of disruption such as banners on websites; social media; or by making announcements on trains and/or at stations. Our findings are set out below.

⁵⁹ Caution due to low base size 30% equates to 3 of the 10 trains that were mystery shopped. Staffed station based size =330. Unstaffed station base size = 52

Use of websites and social media

174. Websites and social media⁶⁰ are used by most TOCs (Table 5.1).

175. With the exception of three TOCs, all publish some level of information relating to delays (in addition to running live departure boards) on their websites. Ten TOCs will also link this disruption information with claim forms or information on how to claim.

176. While some TOCs report post disruption information on their website once a service is delayed by 10 minutes, for six TOCs the website update trigger will be a delay of 30 minutes or if a Customer Service Level 2 (CSL2)⁶¹ has been declared. The most frequently cited prompt for providing delay and compensation information on websites or via twitter is a CSL2.

177. The three TOCs that said that they do not usually use their website to specifically identify trains where passengers may be entitled to compensation. The potential for fraud and due to journey complexity are cited as reasons for this.

Table 5.1 Providing delay and compensation information via their websites and Twitter – number of TOCs

Information provided via website		Information provided via Twitter	
Delay information where compensation may be due	Link to or information on compensation	Delay information where compensation may be due	Broadcast information on compensation
86% (19/22)	45% (10/22)	64% (14/22)	55% (12/22)

178. All TOCs run Twitter accounts and will provide information to passengers on delays and compensation in response to individual tweets. Fourteen TOCs said they will provide information regarding on-going delays via Twitter. Once in broadcast mode

⁶⁰ The most commonly used form of social media for this purpose is Twitter, see e.g. https://twitter.com/Se_Railway

⁶² This term describes the enhanced mobilisation that enables delivery of enhanced information and associated TOC-specific customer service requirements during major delays/disruption

(see below), the TOCs will tweet information on the disruption and 12 TOCs will tweet about compensation – such as providing links to web pages about compensation or links to compensation forms.

179. The 14 TOCs who use Twitter will go into ‘broadcast mode’ once a CSL2 incident (or CSL1 in the case of one TOC) has been declared or once a delay has reached 30 minutes. One TOC will also move to broadcast if they see an uplift in tweet numbers. Another will (although reportedly not always) tweet passengers who may have experienced a delay during peak time earlier that day or the day before with information regarding compensation.
180. The use of a clear trigger such as a CSL2 to update websites or broadcast messages to passengers is positive. However, there may be occasions where there are lesser levels of disruption but where passengers would equally benefit from information on their compensation rights.

Emails and text message alerts

181. In addition to websites and Twitter, a number of TOCs also use both email and text messages, although these are primarily used to contact passengers who have pre-registered to receive alerts or who have bought their tickets through the TOC they are travelling with. Sixteen TOCs said they may contact their customers by email, of these nine said they may also send text messages to customers.
182. Three TOCs said they email certain passengers (for whom they have contact details) after a delay and to notify them of their entitlement to compensation and two TOCs said that they have the ability to contact customers by email retrospectively but it is unclear to us from the evidence to what extent they do so in practice.

On-board trains

Announcements

183. We asked TOCs whether, during a delay, they use on train announcements to make passengers aware of their compensation rights and/or the eligibility to make a claim, and if so: who made the announcements, under what circumstances do they do so, and if they audit this in any way.

184. Across both Driver Only Operated (DOO)⁶² services and staffed trains, 20 out of 22 TOCs report that they will or may make some form of an announcement during disruption, but not all will mention compensation, or do so consistently. More detail is provided below.

Table 5.2(a) Delay and compensation announcements made on staffed services – number of TOCs

Staffed services	
Delay announcements made	Of which: Compensation is mentioned (some discretionary)
18	13

Table 5.2(b) Delay and compensation announcements made on DOO services – number of TOCs

Driver Only Operated services	
Delay announcements made	Of which: Compensation is mentioned (some discretionary)
8	3

185. As set out in Table 5.2(a), the majority of TOCs operating staffed services (18 TOCs) told us that they make announcements on trains, with 13 TOCs saying that the announcement may include compensation information. Only two TOCs, however, undertake audits (for example, in the form of mystery shopping) of how their staff exercise their discretion to make announcements. Another TOC said it is planning to start mystery shopping during 2016.

186. The most common trigger for an on-board announcement is similar to that which triggers a website or Twitter announcement, i.e. a 30 minute delay or declaration of a CSL2 incident. Eight of the 13 TOCs who said that their announcements may, or will, include a reference to compensation, reported that they would do so in response to a CSL2. While positive that a number have a clear trigger, the use of CSL2 again

⁶² Driver Only Operated services account for around a third of all GB train services. Not all TOCs operate DOO services or any staffed services, hence the denominators in these two tables

raises questions around the provision of announcements at lesser levels of disruption.

187. For two TOCs we have no evidence that they make announcements regarding either delays or compensation on their services. Although in the case of one of these, this is to reflect the nature of their overnight service.

188. Eight TOCs said they make delay announcements on their DOO services but only three of these said they may include a message regarding entitlement to compensation.

Provision of claim forms and collecting passenger details

189. Eleven TOCs said they hand out either claim forms or information cards on board trains during disruption. Although six do it at the discretion of on-board staff.

190. Eight TOCs stated that they may collect contact details from passengers on board delayed services, the extent to which they were able to do so depend on the type of disruption or numbers of passengers and staff on board.

191. Three TOCs said they use this contact information to process claims automatically. The remainder said they use the contact details to send out claim forms.

Table 5.3 Collection of passenger details and processing compensation claims – number of TOCs

Collection of passenger details	Of which: Automatically process compensation
36% (8/22)	14% (3/22)

At stations

192. We asked TOCs whether they make announcements at stations, or used information boards to notify passengers that they may be entitled to compensation as a result of a particular delay. We also asked them if they handed out claim forms at the station if a service has been delayed.

193. Six TOCs reported that they did make announcements about compensation at stations as a matter of standard practice. Some TOCs do not make station

announcements as they do not manage the stations. Seven TOCs said that they used information boards.

194. Twelve TOCs said that they may also hand out claim forms at stations in response to a delay, but it was only the standard practice of one TOC who would hand out forms if the service was delayed by 45 minutes or more.

Table 5.4 TOCs who make announcements in stations, use information boards or hand out claim forms to promote passenger awareness of their rights – number of TOCs

Make station announcements on compensation	Use information boards	Hand out claim forms	
		Total	Of which: provision is discretionary
27% (6/22)	32% (7/22)	55% (12/22)	50% (11/22)

The extent to which station staff are providing accurate information about compensation

195. Whether on board the train, at the gateline, ticket office, or responding to tweets, TOC staff play a key role in informing passengers of their rights. ORR asked the TOCs to provide details of training on compensation rights and how they evaluated the knowledge held by staff.

196. With the exception of one TOC, all reported to provide some element of training that covered compensation. Frontline train and station staff, and customer service teams are the most likely staff to receive training on compensation. The single TOC that reported not to undertake any formal training, stated that to educate and familiarise new staff, it provided them with a copy of its Passenger’s Charter and the NRCoC.

197. Induction courses that include an element on compensation were used by 13 TOCs to train their staff. Ten TOCs also ran separate training courses for either customer service teams or staff involved in cash handling that covered compensation. Seven TOCs reported to run refresher training, this varied from happening three times a

year to once every two years. Two TOCs stated that they planned to run refreshers from March 2016.

198. Out of the 15 TOCs who evaluate staff knowledge, seven used mystery shopping, ad hoc tests or set assessments and five used the appraisal process.

199. We also asked TOCs to provide details of what steps they took to ensure advice given by third parties was accurate. All except two took no substantial action. One TOC undertook mystery shopping of advice given at stations that it did not run but which were served by its train services. The other TOC relied on the Certificate of Rail Agent Competency (CORAC) exams to ensure that agents provided accurate advice to its customers.

The results of the mystery shopping research exercise

200. Our mystery shopping was the primary research we used for assessing the provision of information from TOC staff to passengers at stations and on board trains. The mystery shoppers were tasked with investigating how TOC staff responded to customer enquiries regarding delay compensation. This involved making requests for four key pieces of information a potential claimant is likely to need to know if they are considering a making a claim, namely:

- the delay threshold for compensation;
- the level of compensation payable;
- whether compensation was available in cash (or in vouchers which could be exchanged for cash); and
- how to make a claim.

201. **The delay length threshold for compensation.** 74% of staff asked provided the mystery shoppers with accurate information regarding the minimum delay length required by their TOC for a compensation claim to be eligible. 8% provided the mystery shoppers with inaccurate details on this point, while the remaining 18% were unable to answer.

202. **The level of compensation payable.** 51% of staff asked provided accurate information regarding the proportion of the ticket cost that the mystery shoppers

might receive as compensation. 16% of staff provided inaccurate information on this matter, with 33% providing no answer/did not know.

203. This means almost half (49%) of mystery shoppers went away without accurate information on the percentage they would be refunded on the price of their ticket. Although just over half of staff were deemed to have provided the mystery shopper with an accurate response, this figure was boosted by 21% through the inclusion of those staff who responded simply by providing a leaflet or claim form containing the necessary information.
204. The group of 10 mystery shoppers who made their enquiries on the train particularly stood out however, as none of these received accurate information in response to this aspect of their enquiry.
205. **Whether compensation was available in cash or cashable vouchers.** 45% of staff correctly advised the mystery shoppers that they could receive the compensation in the form of cash, or that they could exchange vouchers for cash. While 28% of staff wrongly advised the mystery shoppers that cash payment was not possible (or that vouchers could not be exchanged for cash). 27% of staff were unable to answer this aspect of the enquiry.
206. **Whether the claimant was told how to make a claim.** Mystery shoppers were asked whether during their enquiry they were provided with information on how to go about making a claim. Only in 5% of cases was the mystery shopper not provided with this information (meaning a success rate of 95%). Almost three quarters (73%) of mystery shoppers said they were spontaneously advised how to make a claim during their enquiry, while a further 22% said they were advised this after they had prompted⁶³.
207. **Overall** we found that 30% of mystery shoppers were given full and accurate information across all four areas of enquiry. Performance at industry level (all 22 TOCs sampled) on this measure was generally disappointing, but the results also varied significantly by TOC. The top three performing TOCs provided full, accurate

⁶³ 76% of those who were informed about how to make a claim were also provided with a claim form

information to the mystery shoppers on 58% to 69% of occasions. The three worst performing TOCs did not provide any mystery shopper with full and accurate information, i.e. scored 0% for their sampled mystery shops.

208. The industry level results are based on a large and robust base size of mystery shops and so can be considered to be reliable. This therefore presents an accurate, yet concerning, picture of passengers' experience in trying to access information from TOC staff. The performance at individual TOC level is also concerning. The TOC level analysis is based on much smaller base sizes and so must be treated with some caution⁶⁴. Nonetheless, while no TOC was found to have performed well in this exercise, it is clear that the failure of staff to provide this basic information to passengers is much more common, or widespread, for some TOCs than it is for others.

Conclusions

209. Research from Transport Focus, ORR and Which? has found low reported levels of passenger awareness of their rights. The survey Which? undertook to inform their super-complaint was more recent however, and has suggested that passenger awareness may have improved since the Transport Focus and ORR research was conducted in 2013. Our joint research with Transport Focus is currently underway (outlined in chapter 1). The larger and more targeted sample sizes that we are using will be able to definitively verify this and report on the significance of any change since the previous baseline was set in 2013.

210. Despite previously reported low levels of awareness, however, there would appear to be a low or otherwise inconsistent level of activity in the three areas discussed above namely:

- in providing information on a static or standing basis on the compensation terms available and the process for making a claim;
- in providing information in response to an incident; and
- in training frontline staff.

⁶⁴ For example, where some TOCs scored 0% this does not mean that none of their staff were able to provide this information to passengers. Our mystery shop merely provides a limited snapshot of their staff's performance as observed by our mystery shoppers.

211. In particular we have identified areas for improvement as follows:

- Websites were generally a good source of information but could be improved by having better signposting; one or two click access to compensation claim forms; and having all relevant information in a single location.
- Our mystery shoppers sometimes struggled to find relevant information at stations and on trains; even where available, the posters or leaflets were sometimes difficult to find.
- Written material such as leaflets and posters were found to be accurate and a good source of information and held some information that could usefully be replicated on websites such as details on restrictions around the payment of cash.
- Most TOCs used websites and social media to report delays but there was inconsistency amongst TOCs as to whether these methods would also be used to provide information about compensation. Greater use of these media could potentially create greater awareness amongst passengers particularly if used for a greater volume of incidents rather than confined to serious disruption.
- There was significant variance between TOCs as to whether or not compensation announcements were made on trains, and where announcements are made they tend to be at the discretion of on-board staff. We recommend greater use of standard protocols to address the inconsistencies arising from the exercise of discretion, and to address some of the resource challenges associated with delays. We recommend greater use of automated messaging. For DOO services, where safety is a concern, announcements could be made on the approach to a station.
- Greater use could be made of the PA system and information boards at stations. This could be at the beginning or end of a passenger journey depending on the level of severity of the incident and the extent to which delay is likely to occur on individual services.
- Our mystery shop research showed staff awareness and knowledge to be low and this could have an impact on passenger awareness and understanding and affect their propensity to claim compensation. TOCs need to address this by way of training and in the information that they make available to their staff on a day-to-day basis.

212. Finally, we noted the limited extent to which TOCs undertook any evaluation of passenger awareness of compensation and whether any or all of the methods they choose to promote compensation is proving effective. We consider that for awareness strategies to deliver the most value TOCs need to undertake some further work on how best to target different groups of passengers – in terms of message content and how it is delivered.

6. The process for claiming compensation, the method of payment, and multiple schemes

Summary and key conclusions in this chapter

This chapter explores a number of issues in relation to the process for claiming compensation, the method of paying compensation, the existence of multiple schemes, and the impact this has on passengers' awareness and take-up of compensation for delays. We conclude that:

- The information that TOCs require of passengers to make a claim for compensation appears to be necessary and proportionate;
- But, there are a number of areas where improvements should be made:
 - improving information provision to passengers about TOC processes and requirements;
 - more use of downloadable forms, on-line and automated claims processes;
 - a move away from vouchers as the default means of payment.
- Our evidence gathering has also enabled us to identify a number of other detailed areas of best practice that would make the process of claiming compensation easier and quicker for passengers.

What the Which? super-complaint says

The Which? super-complaint identified that the process of claiming compensation could act as a barrier to claiming. Specifically:

- the information and evidence that passengers are required to provide;
- the physical process of making a claim and the lack of automation;
- limitations around vouchers as a form of compensation, including; the impact of vouchers as the default means of compensation; information about the alternatives and flaws in the claims process that make it more difficult for passengers to select an alternative to vouchers.
- the existence of multiple compensation schemes, both of which are relatively straightforward, but the time it is taking to move to a single scheme for all journeys means that a degree of complexity will continue for several years.

Evidence and analysis

The process of making a claim

213. With regard to the information and evidence that passengers are required to supply when making a claim, the NRCoC provide⁶⁵ that, to qualify for compensation, a passenger must state *“the **timetabled departure time of the train** or trains you intended to use for the journey”* and that *“you **must provide a ticket** or other authority to travel which was valid for that journey. A Train Company will allow you to retain a ticket for this purpose.”*
214. In addition to this, TOCs also require passengers to provide their personal/contact details, as well as the origin and destination stations of the journey concerned, and the length of the delay they experienced.
215. We have seen no evidence, either in the super-complaint itself, or in the information we have gathered while investigating the complaint, to suggest that these requirements are unnecessary or unjustified.
216. However, this is not to say that passengers may not find the provision of this information burdensome, or that it does not deter some passengers from claiming, and that more could not be done to make these requirements clearer and easier to understand and to help passengers through the process.

Information requirements

217. Amongst the information that TOCs require passengers to provide when making a claim is information about their journey and the delay they experienced. This requires passengers to know who they were travelling with and what service they were on, including the scheduled departure time.
218. While this information will be relatively easy for some to provide, such as those travelling on advance tickets or those who regularly travel on the same service, this could be less easy for those who do not travel regularly, travel on the same service, or do not complete their claim immediately.

⁶⁵ Condition 42(e)

219. We asked TOCs whether they provide historic information on delayed services, for example, on their websites, and what they do if a passenger is not able to provide the information they require.
220. TOCs told us that they do not provide historical information about delayed services. The reason given for this was that it would expose them to fraudulent claims, as anyone holding a valid ticket for that service could make a claim, whether they were on that service or not. It is almost impossible for TOCs (in the absence of smart card technology or where the ticket is linked to a specific service, for example) to verify whether the passenger was in fact on that service.
221. Most TOCs told us that, where a passenger cannot provide the exact information they require, they will either make an assumption about the service the passenger was on based on the information they have provided, or they will contact the passenger and ask them questions to help identify the service. However, TOCs do not generally advertise or promote this in the information they provide about compensation. This may deter passengers from claiming because they do not think they have the necessary information.
222. In this context it is worth noting that, while TOCs do not provide historic delay information, this data is available and third parties such as Delay Repay Sniper⁶⁶ have entered the market to provide services, to which passengers can subscribe, that will provide them with the details of trains that were delayed on a given route and assist them in making a claim.

Evidence requirements

223. As mentioned above, the NRCoC state that train companies will allow passengers to retain their ticket for the purpose of claiming compensation. This raises a number of issues:

- What do TOCs do to make passengers aware of the need to retain their ticket?
- What do they do to ensure that passengers are able to retain their ticket, particularly where there are automated barriers? and

⁶⁶ <http://www.delayrepaysniper.com/>

- What do they do if a passenger does not have their ticket when they come to claim compensation – for example, if it has been retained by a barrier or they have lost it?

224. With regard to **what TOCs do to make passengers aware of the need to retain their ticket**, our research⁶⁷ suggests that, other than on TOC websites and claim forms, this information is not obviously promoted, including in times of disruption. There is a risk, therefore, that passengers who are less familiar with the claims process may not be aware of this requirement.

225. With regard to **what TOCs do to ensure that passengers are able to keep hold of their ticket**, particularly where there are automated barriers, we asked TOCs what their practices are.

226. There were a variety of approaches to informing passengers, with two TOCs telling us that their Passenger's Charter refers to their gateline policy and two more mentioned that conductors or station staff would inform passengers or that they had notices to this effect at their barriers.

227. In some other cases, TOCs said that they would consider opening barriers on a case-by-case basis, for safety reasons for example.

228. The majority of responses suggested that the onus is on the passenger and that staff would open the barriers/allow passengers to retain their ticket if they requested this for the purpose of claiming compensation.

229. We also asked TOCs what they do if a passenger can't provide their ticket. While our research suggests that TOCs do not make this clear on their claim forms or websites, virtually all TOCs told us that they would accept an alternative proof of purchase, such as: a receipt; a reservation; an e-ticket screen image; a ticket collection reference number or a bank or credit card statement.

⁶⁷ Responses from TOCs to our information request and review of TOC websites and claim forms

The physical process

230. Currently, the main ways by which a passenger can make a claim are either by filling out a paper form by hand and returning this in the post, or by some form of online mechanism.

231. These online mechanisms vary slightly across TOCs in the way they operate:

- eighteen TOCs provide a process that allows claims to be completed and submitted via their website⁶⁸ (including by uploading a photocopy or scan of the relevant ticket);
- five provide an online form but this requires passengers to download it and complete by hand; but
- twelve TOCs, although they may provide an online process, do not also provide a downloadable form on their website.

232. In most instances, by whatever means, passengers have to submit a separate claim for each incidence of delay. Only four TOCs allow for passengers to make claims for multiple journeys in one claim. In three instances, this is limited to a maximum of five journeys, although one TOC allows claims for up to 10 journeys to be submitted in one go.

233. Furthermore, all of these processes require a passenger to complete and submit a claim following a delay. There are only two examples where compensation has been automated to the extent that it is paid directly to passengers without the need for them to submit a claim.

Examples of automated compensation

Virgin Trains

In October 2015, Virgin Trains introduced an automated Delay Repay system⁶⁹ for passengers travelling on Advance tickets purchased through its website or app. The

⁶⁸ In the case of one TOC, this process was limited to season tickets of one month or longer and in the case of one other, the submission of the online form was completed by email

⁶⁹ <https://www.virgintrains.co.uk/about/media-room#/pressreleases/virgin-trains-introduce-industry-s-first-automatic-delay-repay-system-1227929>

system calculates the money due to a customer in the event of a delay and automatically pays the compensation directly onto the card they used to make their purchase.

c2c

In February 2016, c2c went live with its system of automated delay reply⁷⁰ for those passengers who bought their tickets on a c2c Smartcard. They will now automatically receive money back, into their c2c online account, whenever they experience delays of more than two minutes.

234. We asked other TOCs about their plans to introduce automated processes and the challenges involved in doing so. The main challenges of introducing such systems, apart from the cost, relate to the difficulties of being able to link the passenger, the journey, and the payment details.

235. Automation is considerably easier where the following apply:

- passengers are travelling on an Advance ticket that is specific to a particular service;
- passengers are touching in and out with a smart card; and
- passengers' payment details are directly linked to a ticket, such as where a ticket has been purchased directly from a service provider or where a dedicated account exists.

236. However, in the absence of smart card technology, where a passenger is travelling on an open ticket, such as an Anytime, Off-Peak or season ticket, and where they may have brought this from a third party (where the retailer and service provider are different) then this is more problematic – both in terms of the ability to link the passenger with a specific journey and with their payment details.

Method of compensation

237. Historically, the NRCoC have provided that compensation for delays is paid in rail travel vouchers⁷¹. While some passengers are content to receive their compensation

⁷⁰ <http://www.c2c-online.co.uk/tickets-and-fares/c2c-smartcard/automatic-delay-repay/>

⁷¹ See, for example, Condition 42(b) of the 20 May 2012 version, http://www.nationalrail.co.uk/static/documents/content/NRCOC_200512.pdf

in this form, vouchers have certain limitations, in particular on how and where they can be used.

238. For example, with the exception of some train company specific vouchers, they can generally only be used to buy train tickets – they cannot be exchanged for money – and they cannot be used to buy tickets online or at a ticket vending machine (although they are accepted by TOCs across the network). This means that they are not an effective method of compensation for all passengers.

239. Our previous research⁷², and that of Transport Focus⁷³, found that this has an effect on passengers' propensity to claim compensation and many would prefer to receive compensation by other methods, particularly by way of a bank transfer or refund to their credit card, if that method was what they used to pay for their ticket.

240. Our research also supports the other issues raised by Which?, that a proportion of vouchers are not redeemed against new ticket purchases and that they have an expiry date.

241. The estimates we were given by TOCs during the research we did for our 2014 report⁷⁴ on compensation suggested that the percentage of vouchers issued redeemed against new ticket purchases ranged between 55% and 85%. TOCs' responses to the questions we asked them in preparing this response showed that vouchers are only valid for 12 months, although a number of TOCs did tell us that they would re-issue vouchers if passengers contacted them to request this.

Vouchers as the default and information about alternatives

242. Although the NRCoC were amended in July 2015 to provide for compensation in 'money', this is only on request. For a passenger to receive compensation in this way, they must therefore either know that this is an option and remember to ask for money when submitting a claim or, for some TOCs, go to the effort of exchanging the

⁷² <http://orr.gov.uk/publications/reports/rail-passenger-compensation-and-refund-rights>

⁷³ <http://www.transportfocus.org.uk/research/publications/understanding-rail-passengers-delays-and-compensation>

⁷⁴ http://orr.gov.uk/_data/assets/pdf_file/0003/10668/passenger-compensation-refund-rights-aug-2013.pdf

voucher for money at a staffed rail station. So despite the fact that the NRCoC were amended in July last year to provide compensation in 'money' on request, vouchers remain the default.

243. Our review of websites, supported by the responses we received from TOCs, shows that the 'money' options that are offered are limited, with TOCs generally only offering either a cheque or their own vouchers which can be exchanged for cash at one of their ticket offices, as an alternative to the traditional national rail travel vouchers.

244. While these methods have the advantage over traditional vouchers, in that passengers are not limited to spending compensation received in this way on train tickets, they are not as simple as paying the compensation directly to a passenger's bank account or credit card might be. For example, they still require passengers to go to a bank to cash their cheque, or to a ticket office to exchange their voucher for cash.

245. However, in responding to our information request, TOCs pointed to a number of difficulties associated with paying compensation to a bank account or credit card, which included:

- that they may not have sold the ticket in the first place – it may have been sold by another TOC or a third party retailer – so they would not have the original payment details; and
- difficulties associated with handling of such details and linking these with the original purchase, related to the Payment Card Industry Data Security Standard (PCI DSS) and money laundering.

246. In addition, whatever alternatives are offered, these need to be effectively communicated to passengers so that they are aware of the options available to them – this is particularly important where vouchers remain the default.

247. If the alternative options are not made clear to passengers then there is a risk that those who do not claim because they are put off by vouchers will continue not to

claim, and those that do claim but would prefer to receive compensation in 'money' will continue to be disappointed.

The ability to choose the method of compensation

248. Which? also noted that many TOCs are yet to update their claims forms, adding to the difficulty of receiving compensation in 'money' rather than vouchers. They note that the steps required to access compensation in money reduce the likelihood of passengers doing so, and mean that the flaws in voucher compensation outlined above are likely to continue to have an impact.

249. As well as making sure passengers are aware of the options available to them, TOCs also need to ensure that their processes provide an adequate means by which passengers can indicate their preference. Our research suggests that this is not always made clear at present, particularly where old printed claims forms are being used which have not been updated to reflect the changes, but also on some websites.

Multiple compensation schemes

250. The substance of the compensation arrangements and how these are rolled out is a matter for franchising authorities, such as DfT, Transport Scotland, and the Welsh Government.

251. As set out earlier in this report, five franchised operators do not currently provide Delay Repay compensation – Northern Rail (Northern), TransPennine Express, South West Trains, Great Western Railway and Arriva Trains Wales. However, DfT plans to introduce Delay Repay on the new Northern and TransPennine Express franchises from April 2016.

252. It is also intended that Delay Repay will be introduced in the new South Western franchise from June 2017 and Great Western franchise from April 2019. As announced by the Rail Minister in November 2014, it is expected that the Welsh government will lead on procurement of the new Wales & Borders franchise – the decision on compensation policy in the new Wales & Borders franchise commencing in October 2018 has yet to be made.

Conclusions

The process of making a claim

253. We know from our previous research that uncertainty as to whether a claim will be successful, confusion around the process, and the length of time passengers think it will take; all have an impact on their propensity to claim⁷⁵.

254. In this context, and given the issues and information set out above, it is incumbent on TOCs and others to do more to reduce these barriers to claiming.

Information and evidence

255. With regard to the information and evidence requirements that TOCs place on passengers, there are a number of areas where improvements should be made. In addition to the issues identified elsewhere in this report about the ease of access to, and clarity of, information:

- TOCs should do more to make passengers aware, before they come to make a claim, of key requirements, such as the requirement to provide their ticket as proof of purchase and certain details of their journey, in support of a claim (particularly where they do not provide some of the information that passengers require, such as the details of delayed services). Reference to these requirements could be included, for example, in announcement about compensation during times of disruption;
- Linked to this, TOCs should do more to ensure that passengers know that they can ask gateline staff to let them retain their ticket for the purpose of making a claim;
- TOCs should do more to publicise the assistance they will provide to passengers in helping them make a claim, including where they will accept other forms of evidence than those stipulated, such as alternative proof of purchase – and in what circumstances (for example, if the ticket has been retained by a barrier at an un-staffed station).

⁷⁵ See para. 3.23 and Table 1 in our 2014 report on compensation and refund rights, http://orr.gov.uk/_data/assets/pdf_file/0014/10670/passenger-compensation-and-refunds-report-2014-02-21.pdf

The physical process

256. With regard to the process of making a claim, and with a view to reducing the burden on passengers, there are also a number of areas of best practice where improvements could be made, these include:

- TOCs should ensure that they have processes in place that suit the needs of their customers - for example, in addition to the paper claim forms that are available at stations, all TOCs should work towards having both an on-line process for claiming (for all ticket types), where passengers are able to submit claims, including by uploading a scan/photograph of their ticket (or other proof of purchase), as well as a downloadable claim form that can be submitted by post or email;
- Where passengers are able to complete a claim form online, it would be helpful if this could be linked to an account, for example, so that certain fields on the claim form are automatically filled (e.g. where a passenger is making a regular journey, such as with a season ticket, this should be linked to the form so that personal and journey details are entered for them);
- TOCs' processes should enable passengers to submit multiple claims under one form, rather than having to complete an entire form for each claim;
- TOCs should work towards further automation of their processes where possible – so that compensation is paid automatically to passengers without the need for them to make a claim at all. This is obviously easier depending on the type of ticket involved and where this was purchased from – but it should be relatively straightforward in some cases – such as for Advance tickets purchased directly from the service provider; and
- TOCs/ATOC should work with third parties to explore options for improving the service to passengers, including by looking at the potential for retailers to provide compensation where they are not the provider of the train service, and developing innovative technological solutions.

The method of payment

257. As an effective form of compensation, vouchers have clear limitations. They can generally only be spent on train tickets and they can only be used at certain points of sale.

258. The revisions to the NRCoC in July last year were a step forward, in terms of offering passengers a ‘money’ alternative – but the benefit of this was limited by the range of alternatives offered and the communication of these to passengers.

The Consumer Rights Act 2015 and changes to the NRCoC

259. However, TOCs’ policies and practices will need to be further amended to ensure compliance with the Consumer Rights Act 2015 (CRA), when the relevant provisions come into force.

260. The CRA includes provisions covering the sale of goods, services, digital content and unfair contract terms, among other things. While much of the CRA came into force in October 2015, the provisions relating to the sale and supply of services in the public transport sector are not due to come into force until later in 2016.

261. These provisions require services to be provided with “reasonable care and skill”. Where this is not the case, the consumer is entitled to a remedy. Remedies include repeat performance and a reduction in price.

262. As DfT recognised in its October 2015 consultation, Applying the Consumer Rights Act 2015 to the rail, aviation and maritime sectors⁷⁶, “In the transport sector, a consumer would not normally be able to require repeat performance as completing the performance of the service in conformity with the contract would be impossible: the consumer would never be able to travel again at the time and on the date they were supposed to. So the right to a price reduction will always be the relevant remedy.”⁷⁷

263. In this context, the CRA provides that, where a consumer is entitled to such a price reduction, a refund “*must be given without undue delay, and in any event within 14 days beginning with the day on which the trader agrees that the consumer is entitled to a refund*”⁷⁸ and that “***the trader must give the refund using the same means of***

⁷⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/471935/consumer-rights-act-consultation-document.pdf

⁷⁷ Para. 1.14, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/471935/consumer-rights-act-consultation-document.pdf

⁷⁸ Section 56(4), Consumer Rights Act 2015

payment as the consumer used to pay for the service, unless the consumer expressly agrees otherwise.⁷⁹

264. In light of the coming into force of these provisions of the CRA, and concerns about the effectiveness of vouchers as a means of redress, we have been working closely with both ATOC and DfT over recent months to discuss further changes to the NRCoC.

265. In its response to us on the super-complaint, ATOC has confirmed that, in line with the CRA, TOCs will give customers the right to refunds in cash and the NRCoC will be further amended to make cash the default method of payment.

266. While this commitment is welcome, TOCs will need to ensure that their practices are brought into line with the CRA as and when it comes into force. This includes having systems in place to provide payments to passengers in the same form as that in which the purchase was made. TOCs will also need to make sure passengers are fully aware of, and able to exercise, their options.

Changes to train company practice

267. As mentioned above, it will be necessary for TOCs to do a number of things to ensure compliance with the CRA:

- **First, they will need to ensure that they have processes in place to be able to pay compensation to passengers in all forms in which payment is accepted for the purchase of train tickets.** Given what we have said above about the TOC paying the compensation not necessarily being the same company that sold the ticket, and the requirements relating to PCI DSS and money laundering. We will discuss further with ATOC and individual TOCs the implications of this and how they can be managed. However, our expectation is that TOCs should ensure that they have processes in place to provide compensation in all necessary forms, unless there are legal barriers which prevent them from doing so.

⁷⁹ Section 56(5), Consumer Rights Act 2015

- Secondly, **they will need to raise awareness of the new arrangements and how they will pay compensation**, so that passengers know that ‘money’ is available and what this entails, so that they are not put off claiming and can make an informed choice about their preferred method.
- Thirdly, **they will need to ensure that the various choices clearly set out in their claims processes** so that passengers can indicate their preference.

268. We will be monitoring this closely to ensure that policies and practices comply with the revised conditions, the CRA, and the unfair and misleading commercial practices provisions of the Consumer Protection Regulations.

Multiple schemes

269. By April 2016, there will only be three TOCs who are not on the Delay Repay scheme, and by June 2017 there will be only two.

270. While the continued existence of multiple schemes may be a source of confusion for some passengers, we have not looked at the extent of this problem. It is likely however, that any impact of this can be mitigated by TOCs addressing the issues around information and awareness identified elsewhere in this report.

7. Compensation gap

Summary and key conclusions in this chapter

Which?'s super-complaint pointed to survey evidence on the possible magnitude of what it termed a 'compensation gap', i.e. the difference between compensation that is due and compensation that is paid, and argued that ORR should carry out further work in this area. This chapter considers the available evidence on this issue and in particular describes some new analysis that we undertook during our investigation and how this compares with earlier evidence. In summary:

- We have obtained a range of estimates of the compensation gap that are broadly consistent with the estimates including those cited in Which?'s super-complaint.
- A number of important caveats apply to our estimates, which reflect the short timescales and incomplete information available to us.
- Given these caveats, we have been reluctant to place undue weight on any particular estimate, and have not included in this report any data relating to individual TOCs.
- A notable finding is that estimates of the compensation gap calculated based on the **monetary value** of pay-outs are considerably smaller than estimates based on the **volume**, i.e. number of pay-outs.

What the Which? super-complaint says

Which?'s super-complaint argued that: *"...ORR should conduct... analysis of the total amount of compensation that TOCs owe for delays and the compensation actually paid out. This baseline figure could then be updated periodically to enable improvements to be tracked."*

The super-complaint referred to four different available estimates of the proportion of the payout ratio, ranging between 12% and 34% and with a simple average of approximately 24%:

- **2013 Transport Focus survey** – Transport Focus, *"... surveyed 500 passengers who had been delayed by 30 minutes or more in the last six months... for their last delayed journey... Only 12% said they had made a claim for compensation"*.
- **2013 ORR survey** – 11% of eligible passengers said that they 'always' or

‘usually’ claimed compensation.

- **2015 Which? survey** - Which? research carried out in November 2015 found that, “only 34% of passengers delayed by 30 minutes or more on their last journey said they claimed compensation”.
- **2015 announcement of Virgin Trains automatic delay repay scheme** - Virgin introduced the industry’s first automatic delay compensation scheme, applying only to passengers buying Advance tickets through Virgin’s own website or app. As summarised in the super-complaint, “Virgin estimates that £3.8m will be paid out in the first year of the scheme, of which only £1m would have been paid out under the previous arrangement”⁸⁰. In other words, for this single TOC and ticket type only, Virgin estimated that prior to automation it had been paying out just over a quarter (26%) of the compensation due to passengers.

Introduction

271. In this chapter we use the following terminology, all of which could apply either to an individual TOC or an aggregated group of TOCs:

- *Compensation paid out* - the volume (number) or monetary value of compensation claims actually paid out by TOCs in practice during a particular period of time;
- *Compensation due* - the amount of compensation that TOCs would pay out if every passenger were to successfully claim on every occasion that they were eligible to do so;
- *Compensation gap* – the difference between compensation paid out and compensation due; and
- *Payout ratio* – the ratio of compensation paid out to compensation due.

272. We would not⁸¹ expect to see a pay-out rate at, or even close to 100%, i.e. to see all potential compensation being claimed and paid out. This view reflects the preliminary research that we carried out into the take-up of compensation in other transport markets, namely aviation and cross-channel rail travel⁸². We were told that payout

⁸⁰ <https://www.virgintrains.co.uk/about/media-room#/pressreleases/virgin-trains-introduce-industry-s-first-automatic-delay-repay-system-1227929>

⁸¹ In the absence of significant technological developments such as the universal roll-out of automatic compensation

⁸² Through interviews with the CAA and Eurostar, as described in chapter 3 of this document

rates in these markets are currently considerably lower than 100%, notwithstanding the fact that these markets are characterised by effective head-to-head competition⁸³ and also by regulatory requirements that mandate payouts that are relatively high (in terms of absolute monetary value) by the standards of GB passenger rail travel⁸⁴.

273. During our investigation we considered the possibility of establishing a ‘benchmark’ range for the payout ratio and hence compensation gap, based on situations in which broadly comparable products are sold and where the compensation schemes are recognised as working relatively well. We concluded, however, that this could not readily be achieved, at least within the relatively short statutory timescales of our super-complaint response. This is partly because of difficulties in identifying suitable benchmarks and also because of the complexities inherent in estimating the total compensation that is due within an industry, as described, in the case of GB rail travel, in the remainder of this chapter.

274. We agreed, however, with Which?’s argument that it is important for us to gain a better understanding of size of the compensation gap, and as such conducted a review of the available evidence as well as undertaking our own analysis as described in this chapter.

Evidence and analysis

Previous estimates of the compensation gap

275. The introduction to this chapter summarises, as per Which?’s super-complaint, a range of survey and other evidence concerning the potential magnitude of the compensation gap. Further estimates will be available upon the publication of Transport Focus/ORR joint research, which is scheduled for spring/summer 2016.

276. Another relevant information source is Transport Focus’s bi-annual National Rail Passenger Survey (NRPS)⁸⁵. Question C714 collects information on whether passengers made a compensation claim following a delayed journey or complaints about TOCs’ service. Between Spring 2011 and Autumn 2015 the proportion of

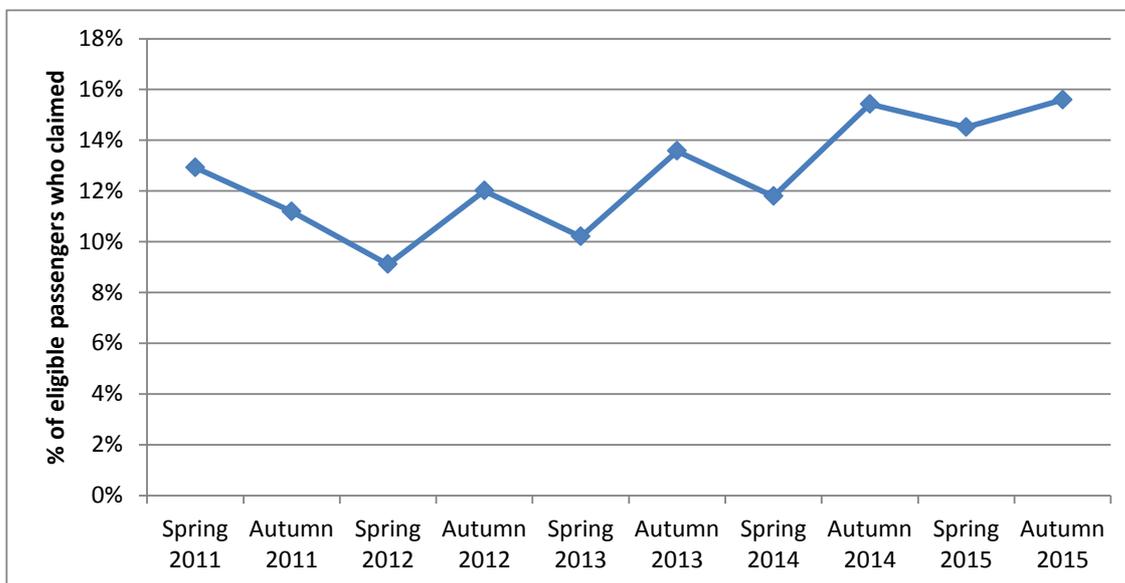
⁸³ See chapter 3 of this document

⁸⁴ See chapter 5 of this document

⁸⁵ See <http://www.transportfocus.org.uk/research/national-passenger-survey-introduction>

eligible passengers who did make a claim ranged from 9% to 16%, with an apparent slight upward trend⁸⁶ as shown in the figure below.

Figure 7.1 – NRPS survey results, proportion of eligible passengers who claimed, 2011-2015



High level approaches and data sources

277. The compensation gap can be estimated in a number of different ways, e.g.

- Estimates could be produced in both volume (i.e. based on the number of potential claims) and value (i.e. based on the financial value of potential claims) terms; and
- The ratio could be estimated on either of the following bases:
 - ‘bottom-up’, i.e. estimated by focusing on the payouts made and compensation due on a sample of trains that had been subject to cancellation or significant delay; or
 - ‘top-down’, i.e. estimated with reference to the TOC-level statistics on payouts and delays faced by TOCs.

278. TOCs told us that they do not routinely carry out estimates of the compensation gap.

279. All estimation methods involve an element of challenge and limitations, in particular (see terminology above):

⁸⁶ And possibly, for reasons that we did not consider in any depth, also tending to be higher during the autumn surveys

- Compensation paid out - many TOCs told us that they do not retain records of the compensation claims that they receive or pay out on with respect to specific services (i.e. the records they have do not link the claim to the specific delayed service), thereby limiting the potential for bottom-up estimation; and
- Compensation due – other than in the case of Advance tickets⁸⁷, without smart ticketing solutions TOCs are unable to routinely record the number of passengers using specific services, other than through the use of survey methods. Because of this, any approach to estimating compensation due must be reliant on either bespoke surveys (particularly in the case of bottom-up estimation) or modelled average passenger loadings (particularly in the case of top-down estimation).

280. Given the first of these two issues we focused our efforts on top-down analysis. Our analysis primarily related to railway periods 2014/15 period 9 to 2015/16 period 8, i.e. from mid-November 2014 to mid-November 2015, referred to for simplicity as ‘2015’ for the remainder of this chapter. It was relatively straightforward for us to collect information from TOCs on compensation paid out for this period⁸⁸. For compensation due, however, we had to rely on a series of estimates, as detailed in the paragraphs that follow.

281. A top-down estimate of the compensation due during a year requires estimates of all of the following (see the flow chart below):

- The number of trains that were subject to lateness and/or cancellations of sufficient magnitude to trigger passenger eligibility for compensation. This information should also cover the extent to which delays were eligible for compensation, since for some TOCs (those not on delay repay), delays due to external causes (such as weather, trespass, vandalism) are not eligible for compensation;

⁸⁷ In 2014/15 Advance tickets accounted for 4% of franchised passenger journeys and 15% of franchised passenger revenue. These proportions are higher for InterCity and long distance open access operator. Source - ORR Data Portal. <https://dataportal.orr.gov.uk/displayreport/report/html/fa63ce11-efe6-4605-8ab6-682df00207ce>. These relatively low proportions meant that we did not explore the possibility, referred to in Which?’s super-complaint, of arriving at estimates that applied only to Advance tickets, since the wider applicability of such estimates might be compromised

⁸⁸ Although (see below) TOCs were unable to supply us with details of the refunds that they paid out to passengers who decided not to travel when faced with cancellation or delay

- The number of passengers who were aboard (or, in the case of cancelled trains, had been planning to board) each of the affected trains; and
- For value based measures of compensation due, the fares that were paid by these passengers.

282. With respect to each of these, during our investigation:

- We obtained data from Network Rail which provided details of every instance during 2015 whereby a scheduled train service passed through a network monitoring point/station in one of the delay bands specified by passenger compensation schemes, i.e. 30-59 minutes, 60-119 minutes, and more than 120 minutes.
- We asked Network Rail to provide us with two datasets, the first of these being for incidences of ‘significant delay’, i.e. delays of 30-120 minutes. The second dataset covered the ‘deemed minutes’ of lateness that result from cancelled services⁸⁹. Network Rail calculates the deemed minutes of delay that passengers experience are based on a multiple of 1.5 times⁹⁰ the service frequency on a route (e.g. a service cancellation might cause the passengers of a service that runs once every 4 minutes to be delayed by 6 minutes each, meaning that they would be unlikely to be eligible for compensation, whereas cancellations of services that run once every 20 minutes or less are much more likely to cause significant delay, and mean likely to be more eligible for compensation).
- We combined this data with modelled passenger numbers (by train and by stop) from other industry information sets⁹¹ in order to estimate the number of passengers who were affected by each of the incidences of delay covered by the Network Rail dataset.
- In order to enable us to arrive at value-based measures of the payout ratio and hence the compensation gap, we also obtained data on average yields (i.e. passenger revenue per journey) from other industry sources⁹².

⁸⁹ See, for example, <http://www.networkrail.co.uk/about/performance/>

⁹⁰ The multiplier of 1.5 has been agreed between Network Rail, TOCs and ORR as reasonable and is used for calculating compensation due between Network Rail and TOCs

⁹¹ We derived passenger train load information from data held within MOIRA

⁹² We calculated our average yields using calculations were based on revenue and journey and revenue data from MOIRA for financial year 2014/15

Preliminary analysis

283. Before attempting to estimate the compensation gap, we carried out a preliminary analysis of TOCs' compensation schemes compared with the volume and value of compensation payments made by TOCs (and hence average payouts).

284. We focused initially on delays of 30-59 minutes, since these account for a large majority (over 80%) of significant (i.e. 30 minutes or more) delays. For these delays of 30-59 minutes, TOCs' compensation schemes typically commit them to paying out a sum equal to 50% of the value of a single fare or of the relevant portion of a return fare or season ticket.

285. Given the figures outlined in the previous paragraph, if delay claims tended to be for journeys that, in terms of price, were about average for each TOC, we would expect to see the average value of claims to be a little more than half of each TOC's average fare. We found, however, that the average compensation payment paid out by each TOC tended to be considerably higher than (on average over double the level of) individual TOC fares⁹³. Given the short timescales available to us we did not discuss these differences with TOCs during our investigation but considered the following two explanations:

- passengers are more likely to claim in the case of higher fares, or, put another way, some passengers choose not to submit what would be relatively low-value claims;
- a significant number of the claims made by passengers are for multiple journeys on a single claim form, e.g. because single passengers have been delayed more than once in the same month and/or because groups of passengers travelling together decide to submit a single compensation form to cover all of their claims. Many TOCs told us that they did not keep records that would enable us to identify the number of delayed journeys for which that passengers had claimed successfully (as opposed to the total number of claims).

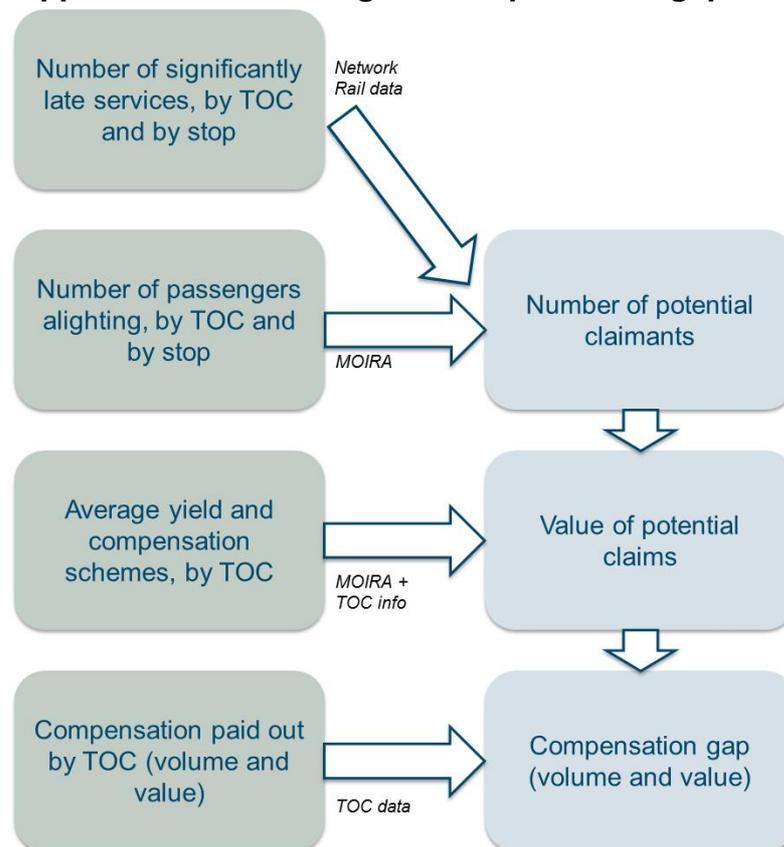
⁹³ More precisely, average compensation payouts were more than twice the level of TOC average yields, i.e. TOC fare revenue divided by the total number of passenger (one-way) journeys

286. This finding has significant implications for volume-based surveys (such as the 2013 Transport Focus survey and 2015 Which? survey as summarised above) that record the proportion of passengers who make claims, implying that even surveys which accurately reflect the proportion of the volume of potential claims paid out by TOCs may significantly underestimate the proportion of the value of potential claims that is paid.

Our approach to top-down estimation

287. The datasets we relied on are summarised earlier in this chapter and in the Figure below, in which input data is shown on the left hand side and calculations on the right hand side.

Figure 7.2 – our approach to estimating the compensation gap



288. Network Rail supplied us with data on significant delays in a format as summarised in stylised form in the Figure below. We have used this stylised form so as to present the information in a way that is readily understandable to readers and does not identify any particular TOC. In this illustrative table, as with tables supplied to us by

Network Rail, each row details the number of times during a year that a particular service arrived late at a particular monitoring point on the network.

Figure 7.3: Stylised format of Network Rail performance data – frequency of lateness at within a single delay band, e.g. 30-59 minutes

Row	Service	Station	Instances p.a.
i	0800_AtoE_Sundays_TocX	A	0
ii	0800_AtoE_Sundays_TocX	B	4
iii	0800_AtoE_Sundays_TocX	C	6
iv	0800_AtoE_Sundays_TocX	D	8
v	0800_AtoE_Sundays_TocX	E	10
...

289. In the figure above each row lists the number of times over the course of a year that a particular train was 30-59 minutes late when passing through a particular monitoring point, e.g.:

- All of rows i-v in this illustration refer to a service run by 'TOC X' between stations A and E, leaving station A at 08:00, via intermediate stations B, C, and D on Sundays;
- Row iii shows that this hypothetical 08:00 service was 30-59 minutes late passing through station C on 6 separate occasions, i.e. on 6 different Sundays.

290. The full data set supplied to us by Network Rail included such information for every service that was subject to significant delay during 2015, amounting to many thousands of records in total when split into lateness and deemed minutes, for all time periods within 2015, and for all delay bands.

291. The data did not include details of the average number of passengers on each service, although an estimate of such information is available within other industry models⁹⁴. To this end we downloaded a large number of MOIRA timetables, for each TOC, relating to 2015. Within the timescales of our investigation we were unable⁹⁵ to arrive at comprehensive estimates by service of average passenger numbers by

⁹⁴ MOIRA is a rail industry model. It includes train load information and has been used over a number of years to assess impacts of timetable changes.

⁹⁵ More precisely, we were unable to do this in a fashion that was both robust and capable of being quickly repeated in the future if our results were to be updated and monitored over time

stop, e.g. returning to the previous Figure, for the 0800 A to E Sunday service run by TOC X, the average modelled number of passengers who alight at each of stops A to E. Instead, we were obliged to rely on, by TOC and by day, the average number of passengers alighting at each stop across all services (i.e. at all times of day, so in the previous figure not just on the 0800 A to E service, but all other services which pass through these stations on Sundays). We arrived at estimates of the number of passengers affected by delays of 30-59 minutes by, for each row, multiplying each of the numbers in the final column by the average number of passengers who, by TOC, alight at each of the stations.

292. These estimates have limitations. Possibly the most important of these is our inclusion of the deemed minutes of cancellation (see above) within our estimates of the impact on passengers. Passengers facing cancelled⁹⁶ services in practice may, rather than experiencing delay, decide not to travel, either before buying a ticket (if they have advance notice of a cancellation) or even after they have bought their ticket, via a refund. TOCs were unable to provide us with data on the number of passengers who had obtained refunds for this reason. Our inclusion of deemed minutes had the effect of systematically overstating the level of compensation due, and hence the level of the compensation gap.

293. Other limitations to the accuracy of our approach result from a range of considerations including but not limited to the following:

- **Average numbers of passengers per train** – as explained above, our calculations assumed that delays affect services where the number of passengers alighting at each stop is average for each TOC. This simplification could, for example, lead to underestimation of the number of passengers affected by significant delay where significant delay disproportionately affects the peak. On the other hand, in the event that passengers find out about the delay before travelling they may (like those facing cancelled services – see above) decide not to travel, and either not purchase a ticket or obtaining a refund.

⁹⁶ And potentially also significantly late

- **Average yields**⁹⁷ – we calculated value-based estimates of compensation due using the average yield for each TOC rather than the actual prices paid by delayed passengers;
- **Ticket types** – we were obliged to make a number of assumptions regarding ticket types, e.g.:
 - *Season tickets* – passenger charter TOCs did not provide us with details of the season ticket discounts that they had offered due to delay. This meant that we were obliged to make assumptions regarding the proportion of season ticket holders on significantly delayed services in order to exclude them from our estimate of compensation due. We assumed that these proportions were in line with the average (by volume or value) for each TOC⁹⁸;
 - *Return tickets* – some TOCs, particularly delay repay TOCs and for the longest delays, pay out compensation based on the value of both legs of a return ticket. In order to model this we assumed that the proportion of delayed passengers who use return tickets was in line with the average (by volume or value) for each TOC.
- **Cause of delay** – some TOC compensation schemes (notably those on passenger charter rather than delay repay) do not pay out for certain causes of delay (e.g. due to external factors that are outside the control of the industry)⁹⁹. We assumed that, for every TOC, delay incidents were caused by factors in the same proportions as at a whole industry level¹⁰⁰.
- **Missing data** – in some instances (e.g. due to systems issues) TOCs were unable to supply us with particular pieces of data (e.g. compensation for a particular month). In such instances we were obliged to make estimates, e.g. using averages for other months.

294. Taken together, these considerations mean that our results have to be interpreted with a significant degree of caution.

⁹⁷ Here we refer to yield is a measure of fares revenue per passenger journey

⁹⁸ Based on MOIRA revenue and journey data

⁹⁹ Such as extreme weather, trespass, and vandalism

¹⁰⁰ Source: Network Rail performance data

Our results and the full range of available estimates

295. The results summarised below are based on our analysis of the complete datasets (on compensation both paid out and due) that we were able to obtain from a total of 18 TOCs, namely the two intercity open access operators (Hull Trains and Grand Central) and the 16 national franchised operators¹⁰¹.
296. As described earlier in this chapter, ORR's own estimates rested on a large number of assumptions and simplifications. In particular:
- Our treatment of cancellations (see above) has the effect of systematically overstating the level of compensation due, and hence the level of the compensation gap;
 - Other assumptions lead to estimation errors (in uncertain directions). Notable examples of these are listed earlier in this chapter.
297. More generally, it is also important to note that, whilst we held at least brief discussions with most TOCs concerning aspects of our information request and intended approach, we did not, in the available timescales, have an opportunity to discuss details of our approach and results.
298. Given the above we have, first, been reluctant to place disproportionate weight on our own estimates of the compensation gap and have rather presented them here as forming part of a range of estimates alongside the other available evidence. Secondly, in the light of the caveats outlined above, and the key differences that exist between TOCs (e.g. in terms of average fares, performance levels, and the generosity of their compensation schemes) we did not consider that it would be appropriate for us to publish any estimates relating to individual TOCs.
299. As noted earlier in this chapter, the average value of compensation paid out by the TOCs tends to be high relative to the average fares paid by TOC passengers. It follows from this that we would expect value-based estimates of the compensation gap to tend to paint a more optimistic picture (i.e. a smaller compensation gap) of claim rates than volume-based figures.

¹⁰¹ i.e. excluding concessions such as Merseyrail and LOROL

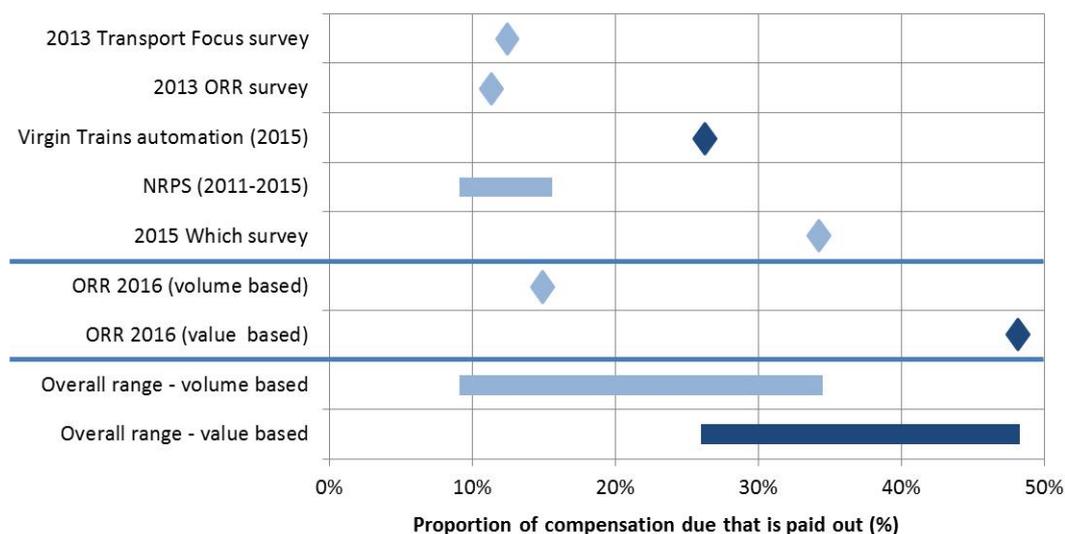
300. As noted above we calculated both volume and value-based estimates of the pay-out ratio. Given our treatment of cancellations (see above), these figures arguably represent lower bounds for the proportion of due compensation that is paid out by TOCs, although (see above) our results depend on a number of other assumptions that may bias results in uncertain directions:

- Our volume-based estimates are most directly comparable with the survey evidence summarised at the beginning of this chapter. Our estimates varied considerably between TOCs. For individual TOCs we found that, in extreme cases, fewer than 10% and more than 40% of potential claims were paid out during 2015. We were unable to fully explain these differences although found some evidence of a higher pay-out ratio amongst TOCs with higher average fares. Overall, we found that around 15% of potential claims are paid out, i.e. a proportion falling within perhaps the middle of the range implied by earlier survey evidence.
- Value-based estimates, which are most directly comparable with Virgin Trains' estimates of the proportion of compensation that went unpaid prior to automation, indicated a significantly higher proportion of potential compensation being paid out. Overall we found that around 48% of the potential value of claims was paid out, i.e. over three times our estimate of the proportion of the value of claims. A difference between our volume- and value based estimates is consistent with the high average claim size referred to earlier in this chapter. Notwithstanding, however, the potential for upward bias in our estimates (see earlier in this paragraph) we interpreted our value-based estimate with caution given the other uncertainties in our approach and the fact that it is significantly higher than the other value-based estimate available from the Virgin Trains automation in 2015.

301. The full range of available evidence is summarised in Figure 7.4 below, in which lighter shaded areas correspond to volume-based estimates and darker ones to value-based estimates. The full ranges shown within Figure 7.4 are wide:

- The full range of volume-based estimates is 9-34%. Overall it seems fairly likely to us that around 80% or more of potential claims go unclaimed; but
- As explained earlier in this chapter, value-based estimates are suggestive of a considerably smaller compensation gap.

Figure 7.4 - Range of payout ratio estimates



Conclusions

302. In our view it was not necessary for us to arrive at precise estimates of the compensation gap in order for us to conclude on the issues set out in Which?’s super-complaint. Furthermore, given the data and methodological issues inherent in estimating the compensation gap, some important caveats apply to the estimates that we were able to arrive at within statutory timescales. Indeed, even with extended timescales it would be a very expensive exercise to calculate a fully precise estimate of the compensation due as (unlike airlines and Eurostar) the rail industry does not know how many people are travelling on a specific delayed train.

303. In this chapter we have nonetheless presented estimates of the proportion of compensation due that is paid out in practice. Our analysis yielded results that were of a comparable magnitude to the other existing estimates including those cited in Which?’s super-complaint. When calculated using the same method and dataset, as with our 2016 analysis, estimates of the compensation gap based on the value of payouts were suggestive of a considerably smaller compensation gap than estimates based on the volume of payouts.

304. In the remainder of this document we summarise our overall conclusions and recommendations. Within these we include a commitment to working with the industry to agree a set of indicators that will show how the take-up of compensation is changing over time (“further analysis to estimate the compensation gap”). Such

indicators could be based on (a potentially improved version of) the methodology that we employed during our investigation or, potentially, simpler indicators such as the total value of claims by TOC, indexed in order to reflect changing passenger numbers, fares levels, and overall performance levels.

Annexes

Annex A: Glossary

Annex B: List of key supporting documents - reports, reviews and information considered as part of this investigation

Annex C: stakeholder engagement & list of meetings held as part of investigation

Annex D: Relevant legislation

Annex E: Franchise table

Annex F: Description of the compensation schemes

Annex A – Glossary

Association of Train Operating Companies (ATOC) – The Association of Train Operating Companies (ATOC) is an incorporated association owned by its members. It was set up by the train operating companies, formed during privatisation of the railways under the Railways Act 1993. As well as being the official voice of the passenger rail industry, it also provides its members with a range of services that enable them to comply with conditions laid on them in their franchise agreements and operating licences. These include the National Rail Enquiry Service (NRES) and Railcard marketing. ATOC's principal activities include assisting members to co-operate on developing and managing projects that benefit passengers and to promote the advantages of the rail network.

Cancellations and Significant Lateness (CaSL): This is the percentage of passenger trains that have been cancelled (in part or in full) and/or arrived at their final destination late by more than 30 minutes.

Customer and Communities Improvement Fund (CCIF) – CCIF is an annual fund designed to address issues that customers and stakeholders have raised with TOCs during consultations. TOCs must propose schemes to the DfT for approval, with the objective of providing tangible benefits and improvements for passengers and other users. Examples of such schemes could include improving accessibility to stations and the information provided during disruption.

Complaints Handling Procedure (CHP) – Train and station operators are required by their operating licences to establish and comply with a procedure for handling complaints relating to licensed activities from customers and potential customers. This procedure is known as the 'complaints handling procedure' (CHP). The CHP is approved and monitored by ORR.

Customer Service Level 1/2 (CLS1/2) –service disruption thresholds. CSL2 describes the enhanced mobilisation that enables delivery of enhanced information and associated TOC-specific customer service requirements during major delays/disruption. Each train company defines its own level of service disruption, taking into account such factors as service frequency/number of passengers along with passenger feedback/research.

Concession –an agreement to supply rail services between government or a local authority and a TOC. The main difference from a franchise is that the TOC is paid a fee to run the service rather than relying on revenue from passengers or subsidy. Revenue raised is typically passed back to the public body that appointed the concession.

Certificate of Rail Agent Competency (CORAC) - ATOC's online training qualification for travel agents.

Disabled People's Protection Policy (DPPP) – Train and station operators are required by their operating licences to establish and comply with a Disabled People's Protection Policy (DPPP), approved by ORR. A DPPP sets out, amongst other things, the arrangements and assistance that an operator will provide to protect the interests of disabled people using its services and to facilitate such use.

Franchise – the right to run specified services within a specified area for a specified period of time, in return for the right to charge fares and, where appropriate, to receive financial support from the franchising authority.

Network Rail – Network Rail is responsible for running, maintaining and developing Britain's rail tracks, signalling, bridges, tunnels, level crossings and many key stations.

National Rail Conditions of Carriage (NRCoC) – the NRCoC set out passengers' rights and any restrictions of those rights, when travelling on the rail network. They set out a minimum level of service passengers are entitled to expect.

National Rail Passenger Survey (NRPS) – the NRPS is a survey carried out by Transport Focus. Transport Focus consults more than 50,000 passengers a year in order to produce a network-wide picture of passengers' satisfaction with rail travel. Passenger opinions of train services are collected twice a year from a representative sample of journeys, enabling overall satisfaction and satisfaction with 30 specific aspects of service to be compared over time.

Open Access Operator – Open access passenger train operators are those who operate services purely on a commercial basis, i.e. not under either a franchise or a concession agreement. These are companies who identify an opportunity to run a service which is not currently being provided, and they apply to the Office of Rail and Road (ORR) for the necessary track access rights and to Network Rail for train paths in the timetable. Open access passenger operators include Hull Trains and Grand Central.

Passenger Information During Disruption (PIDD) – In 2012, ORR introduced a new condition on the provision of information for passengers into train operator and station licences. The purpose was to ensure that passengers could receive appropriate, accurate and timely information about train services so they can plan and make journeys with a reasonable degree of assurance. ATOC subsequently published a code of practice and operators published their own local plans to show how they would comply with this. To ensure the code is delivering benefits for passengers, and to address issues highlighted in the report, ORR has worked with the rail industry to develop a list of improvement actions to ensure passengers get the information they need when services are disrupted, at the right time, and through appropriate channels.

Public Performance Measure (PPM) – This is the main rail industry measure of operational performance for all passenger services and is a key performance metric for evaluating the overall punctuality and reliability of train services. A train is defined as on time if it arrives within five minutes of the planned destination arrival time (within 10 minutes for long distance services).

PR18 - Periodic Review 2018 is our assessment of what Network Rail must achieve for the next five year period, the money it needs to do so, and the incentives needed to encourage delivery and outperformance for the period from April 2019 to March 2024, i.e. for control period 6 or CP6.

Railway Undertaking (RU) – In the context of licensing, any private or public undertaking the principal business of which is to provide rail transport services for goods and/or passengers, with a requirement that the undertaking must ensure traction.

Statement of National Regulatory Provisions (SNRP) – The Railway (Licensing of Railway Undertakings) Regulations 2005 require most people who want to operate trains in Great Britain (GB) to hold an appropriate European licence. A European licence holder operating in GB must also have and comply with a Statement of National Regulatory Provisions (SNRP).

Transport Focus – Transport Focus (previously Passenger Focus) is the independent transport user watchdog. It is structured as an executive non-departmental public body, sponsored by the DfT. Its mission is to get the best deal for passengers and road users.

Transport for London (TfL) – TfL is the local government organisation responsible for most aspects of London's transport system.

Train Operating Company (TOC) – A train operating company (TOC) is a company operating passenger trains on the railway system of Great Britain.

Ticketing and Settlement Agreement (TSA) – the TSA sets out the various arrangements between the operators relating to the carriage of passengers and the retailing of tickets. It is divided into various chapters, each dealing with a separate aspect of retailing, carriage and settlement. TOCs are required by their franchise (where they have one) and by their licence to be party to, and comply with, the TSA.

Annex B – Sources of evidence

Which? super-complaint to ORR 21 December 2015 - full report:

<http://www.staticwhich.co.uk/documents/pdf/super-complaint-to-the-office-of-rail-and-road-pdf-5-34mb-428633.pdf>

Understanding rail passengers - delays and compensation, report by Passenger Focus, 16 July 2013

<http://www.transportfocus.org.uk/research/publications/understanding-rail-passengers-delays-and-compensation#>

Passenger compensation and refund rights for delays and cancellations, report by ORR, 21 February 2014

http://orr.gov.uk/_data/assets/pdf_file/0014/10670/passenger-compensation-and-refunds-report-2014-02-21.pdf

Rail passenger compensation and refund rights research, report by Opinion Leader for ORR, August 2013

http://orr.gov.uk/_data/assets/pdf_file/0003/10668/passenger-compensation-refund-rights-aug-2013.pdf

National Rail Conditions of Carriage, 19 July 2015

<http://www.nationalrail.co.uk/static/documents/content/NRCOC.pdf>

ORR and Transport Focus, November 2015 – Train punctuality: the passenger perspective, http://orr.gov.uk/_data/assets/pdf_file/0010/19846/train-punctuality-and-passenger-satisfaction.pdf

Passenger Focus, Oct 2014 – Rail passengers' priorities for improvement,

<http://www.transportfocus.org.uk/research/publications/rail-passengers-priorities-for-improvements-october-2014>

Rail delay compensation mystery shopping – Report of findings by ERS Retail and Perspective Research Services for ORR, March 2016,

http://www.orr.gov.uk/_data/assets/pdf_file/0009/21105/rail-delay-compensation-mystery-shopping-findings-report.pdf

Review of TOC compensation information and claims processes. Report by Collaborate Research for ORR, March 2016,

http://www.orr.gov.uk/_data/assets/pdf_file/0010/21106/review-of-toc-compensation-information-and-claims-processes.pdf

Plain English assessment of compensation information provided by train-operating companies. Report by the Plain English Campaign for ORR, March 2016.

http://www.orr.gov.uk/_data/assets/pdf_file/0011/21107/plain-english-assessment-of-toc-compensation-information.pdf

ORR information requests submissions provided by individual TOCs (as listed in annex C)

ORR information request submissions provided by Governments (DfT, Transport Scotland)

Meeting notes from TOC and stakeholder meetings (see annex C for list)

ORR call for evidence responses including:

Network Rail, Transport Focus, London TravelWatch, TravelWatch (NorthWest), Ombudsman Services, Social Market Foundation, a number of responses from individual train users, Campaign for Better Transport

Third party meetings and information; including Delay Repay Sniper Resolver

Annex C – List of meetings held during investigation

Organisation	Date of meeting
ORR Industry briefing	14 January 2016
London Overground	20 January 2016
TfL	20 January 2016
Chiltern Railways	21 January 2016
Virgin Trains	21 January 2016
South West Trains	21 January 2016
Cross Country	21 January 2016
London Midland	22 January 2016
Arriva Trains Wales	25 January 2016
First Hull Trains	25 January 2016
East Midlands Trains	26 January 2016
Great Western Railway	26 January 2016
Abellio Greater Anglia	26 January 2016
Heathrow Express	26 January 2016
Grand Central Railway	26 January 2016
c2c	26 January 2016
Eurostar	27 January 2016
Southeastern	27 January 2016
First Transpennine Express	27 January 2016
Campaign for Better Transport	27 February 2016
Merseyrail	28 January 2016
The Trainline	27 February 2016
Virgin Trains East Coast	28 January 2016
Northern Rail	28 January 2016
ScotRail	29 January 2016
Govia Thameslink Railway	1 February 2016
Caledonian Sleeper	5 February 2016
Delay Repay Sniper	2 February 2016
Resolver	4 February 2016
Civil Aviation Authority	5 February 2016
Department for Transport	Engagement throughout investigation
Transport Focus	Engagement throughout investigation
London TravelWatch	Engagement during investigation
Association of Train Operating Companies (ATOC) & Rail Delivery Group (RDG)	Engagement throughout investigation
Which?	Engagement throughout investigation
Transport Scotland	Engagement throughout investigation

Annex D – Relevant legislation

Competition Act 1998 – <http://www.legislation.gov.uk/ukpga/1998/41/contents>

Enterprise Act 2002 – <http://www.legislation.gov.uk/ukpga/2002/40/contents>

Enterprise and Regulatory Reform Act 2013 –
<http://www.legislation.gov.uk/ukpga/2013/24/contents/enacted>

Consumer Protection from Unfair Trading Regulations 2008 –
<http://www.legislation.gov.uk/uksi/2008/1277/contents/made>

Regulation (EC) No. 1371/2007 – <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32007R1371>

Railway (Licensing of Railway Undertakings) Regulations 2005 –
<http://www.legislation.gov.uk/uksi/2005/3050/made>

Consumer Rights Act 2015 –
<http://www.legislation.gov.uk/ukpga/2015/15/contents/enacted>

Railways Act 1993 – <http://www.legislation.gov.uk/ukpga/1993/43/contents>

Railway Infrastructure (Access and Management) Regulations 2005 –
<http://www.legislation.gov.uk/uksi/2005/3049/contents/made>

Annex E – Dates of Franchise Awards

TOC	Parent	Franchise Start	Routes
Abellio Greater Anglia	Abellio	February 2012	Inter City and commuter services from London to East Anglia. Regional services in East Anglia. <i>New franchise starts October 2016 – operator not yet announced</i>
Arriva Trains Wales	Deutsche Bahn	December 2003	Services within Wales and along the England-Wales border. Inter-urban services to and from Wales
c2c	National Express	November 2014	Commuter services from London to Southend and south Essex
Caledonian Sleeper	Serco	April 2015	Sleeper services between London and Scotland
Chiltern Railways	Deutsche Bahn	March 2002	Commuter and regional services from London to Buckinghamshire and the West Midlands
CrossCountry	Deutsche Bahn	November 2007	Inter City services from Birmingham to Stansted Airport, Nottingham, Cardiff, Aberdeen, Penzance, Manchester and Bournemouth
East Midlands Trains	Stagecoach Group	November 2007	Inter City services from London to Sheffield and Nottingham. Regional services in the East Midlands
Govia Thameslink Railway	Go Ahead and Keolis	September 2014	Thameslink services across London; Southern and Great Northern commuter services; Gatwick Express services
Grand Central Railway (Open Access)	Deutsche Bahn	December 2007	Inter City services from London to Bradford and Sunderland
Great Western Railway	First Group	April 2006	Inter City and commuter services from London to the Thames Valley and the West. Regional services in the West
Heathrow Express (Open Access)	Heathrow Airport Holdings	June 1998	Premium services between London and Heathrow Airport
Hull Trains (Open Access)	First	September 2000	Inter City services between London and Hull

TOC	Parent	Franchise Start	Routes
London Midland	Go Ahead and Keolis	November 2007	Commuter services from London to the West Midlands. Commuter and regional services to, from and within the West Midlands. <i>New franchise starts November 2017 – bidding not yet underway</i>
London Overground	Deutsche Bahn and MTR Corporation	November 2007	Commuter services within London to parts of Hertfordshire. <i>New franchise starts November 2016 – operator not yet announced</i>
Merseyrail	Serco and Abellio	July 2003	Commuter services across Merseyside
MTR Crossrail	MTR Corporation	May 2015	Commuter services between London and Shenfield
Northern Rail	Serco and Abellio	December 2004	Regional services across northern England. <i>New franchise starts April 2016 – operated by Deutsche Bahn</i>
ScotRail	Abellio	April 2015	Regional and commuter services across Scotland. Some cross-border services to England
South West Trains	Stagecoach	February 2007	Commuter services from London to south and south west England. Local trains on the Isle of Wight. <i>New franchise starts July 2017 – bidding not yet underway</i>
Southeastern	Go Ahead and Keolis	April 2006	Commuter services from London to Kent and Sussex. High speed services on HS1
TransPennine Express	First and Keolis	February 2004	Inter City services across northern England. Routes are centred on Manchester. <i>New franchise starts April 2016 – operated by First Group</i>
Tyne and Wear Metro	Deutsche Bahn	April 2010	Light rail services on Tyneside
Virgin Trains East Coast	Stagecoach and Virgin	March 2015	Inter City services from London to north east England and Scotland
Virgin Trains West Coast	Virgin and Stagecoach	March 1997	Inter City services from London to Birmingham, Manchester, Liverpool, north Wales and Scotland

Annex F - The Compensation Schemes

NRCoC

Ticket held	Amount payable
Single ticket, or return ticket with delay on both the outward and return journey	50% of the price paid
Return ticket with delay on outward or return journey	50% of the price paid for the relevant portion of the journey
Season ticket	The discount or compensation arrangements in the relevant TOC's Passenger's Charter apply

Delay Repay

Time delayed	Amount payable
Between 30-59 minutes	50% of the single fare
Between 60-119 minutes	100% of the single fare
120 minutes or more	100% of the return fare

For season tickets, compensation is calculated using the proportional daily single ticket price of the ticket held. The calculations of the cost of the single ticket for this purpose must be no less generous than:

- Annual: $1/464 \times$ total ticket price
- Quarterly: $1/120 \times$ total ticket price
- Monthly: $1/40 \times$ total ticket price
- Weekly: $1/10 \times$ total ticket price

Other arrangements

Franchises that have not been competitively let since 2007

There are a small number of TOCs that do not offer Delay Repay and the franchises has not been re-let competitively since 2007. In these cases, the Passenger's Charters for these franchises contain separate compensation arrangements for:

- passengers with season tickets valid between 1 month and 1 year based on poor performance discounts and optional Void Days; and
- passengers with single, return and weekly season tickets based on delays to individual journeys.

TOC operating under these conditions

- Northern
- TransPennine Express
- South West Trains
- Great Western Railway
- Arriva Trains Wales

Open access operators

The non-franchised operators, Heathrow Express, Grand Central and First Hull Trains offer at least the minimum compensation terms set out in the NRCoC and for Eurostar the terms set out in European legislation. First Hull Trains offers terms comparable with Delay Repay. Heathrow Express offers a Delay Repay scheme triggered at 15 minutes with passengers becoming entitled to 50% of the Heathrow Express portion of the journey if a passenger is delayed by more than 15 minutes and 100% if the passenger journey is delayed more than 30 minutes.

TFL Concessions

The concession agreements between London Overground (LOROL) and TFL Rail (MTR Crossrail) with TFL set out delay compensation arrangements.

A delay of 30 minutes or more – Transport for London's Service Delay Refunds scheme

If a customer experiences a delay on London Overground of 30 minutes or more, they may be entitled to a Service Delay Refund. The value of the refund will be the single fare for the journey the customer was delayed on.

A delay of 60 minutes or more

If a passenger is were delayed on London Overground or TfL Rail services and arrives more than 60 minutes late, the refund may be calculated as set out in the NRCoC if the value of the refund will be greater than the Service Delay Refund scheme.

For the NRCoC scheme, the value of the refund will be calculated as follows:

- 50% of the price paid for a single ticket or journey using pay as you go (where the payment method is Oyster, contactless payment or other valid smartcard)
- 50% of the price paid for the relevant portion of a return ticket (a return ticket is treated as two portions)
- 50% of the price paid for the relevant journey for a season ticket (a season ticket is treated as valid for two journeys on each weekday during the period of validity)

Merseyrail

Merseyrail holds a concession agreement with Merseytravel. Since 2008 Merseyrail has operated the following arrangements

Daily single and return tickets:

- Passengers travelling solely on Merseyrail services: 100% refunds on daily singles and returns for delays of thirty minutes or more.
- Passengers delayed on the network but travelling further: 20% refund of ticket price
- Compensation is generally not provided if the delay is caused by matters outside the control of the rail industry, for example acts of vandalism or security alerts.

Weekly, monthly and annual season tickets:

- Weekly season ticket holders may receive compensation of at least 20% of the purchase price, depending on the number of delays. For both monthly and annual season tickets refunds are offered once the ticket has expired depending on performance figures:
 - 5% of the purchase price of the expired ticket is payable if PPM is below 92%.
 - 10% of the purchase price of the expired ticket is payable if PPM is below 90%. If PPM falls below 90%, the passenger is entitled to 10% of the purchase price of the expired ticket.



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