Responses to consultation on changes to complaints handling guidance – February 2018

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

23rd November 2017

Dear Consumer Policy Team,

Re: Changes to Complaints Handling Guidance consultation

Thank you for the opportunity to respond to the consultation on Changes to the Complaints Handling Guidance issued on 26th September 2017.

Arriva Trains Wales is committed to improving our complaint handling for our customers. Improvements in a number of areas have been realised this year that support this aspiration.

We believe a workshop held by ORR will assist in ensuring the industry has a clear understanding of requirements around Complaint Handling Procedures and reporting.

Please see the below our answers to each question that has been asked as part of the consultation process:

- Which of the three options set out above is most appropriate for signposting to ADR?

We believe option 1 is the most appropriate option. Providing a route to the Ombudsman that is reflective of other industries is sensible, and it is the most straightforward option for our customers. Options 2 and 3 are more complex for both the company and the customer.

- Are there other approaches that we have not considered which may be preferable to those set out above?

None that we have been able to provide better than what is already suggested.

- Is it necessary for ORR to set out in detail our expectations, and make these formal requirements, in the CHP of communications about the ADR scheme?

Arriva Trains Wales/
Trenau Arriva Cymru Ltd
St. Mary's House
47 Penarth Road Cardiff
CF10 5DJ

www.arrivatrains.wales

We do not believe this is necessary. We will write our own signposting text which will draw on the previous interaction with the customer so that it is bespoke for their case . However, some best practice examples would help support this and provide some degree of consistency across the industry.

- What is the most appropriate point at which to signpost ADR? Eight weeks, six weeks, another period?

We should signpost to the Ombudsman at the point where we have reached a deadlock with the customer. This will be at different times dependent on the customer's frequency of response or the complaint reason. If a timescale is needed then I would opt for eight weeks but this could be restrictive to the customer as we wouldn't want anyone to have to wait for a specific time period before being able to contact the Ombudsman. In our experience, it can sometimes be quickly apparent that we are not going to be able to agree with the customer's view and we would therefore offer them the ability to contact Transport Focus (or to be the Ombudsman) sooner than 20 working days but never on a first resolution letter.

- Should we conduct a review of whatever time period is agreed? If so, at what point; after one year, two years, another period?

Yes, a review of this will be needed given that it is a significant change in how we operate now. I would prefer a review after 12-18 months so that we can discuss any additional costs or changes to working practices that the introduction of the Ombudsman may bring.

- If the time period should be subject to review, what metrics should we use to establish whether the time period remains appropriate or should be changed?

Possible metrics that could be used to assess whether the time period is appropriate are; customer feedback, the volume of appeals due to the time limit rather than a deadlock letter, the Ombudsman's feedback.

- Should individual rail companies be able to set their own signposting time limits as long as they are below the minimum agreed signposting standard?

Yes. We should be able to signpost when we feel appropriate as per our previous answer.

- Should arrangements be introduced to allow signposting before the time period is reached i.e. deadlock?

Yes. We should be able to signpost when we feel appropriate to support an enhanced customer experience.

- As substantial progress has been made voluntarily by industry on developing an ADR scheme, is it necessary to make membership of an approved ADR scheme a requirement in the licence (and

reflected in CHP guidance and CHPs)?

We believe that all TOCs should be a member of the scheme. This will ensure the Ombudsman is used by all parties in the same way. It will also ensure that all TOCs *et al.* will remain signed in to the scheme in future years but we do not think this should be made mandatory. This would delay the introduction of the scheme.

- Are there any other approaches which could provide certainty in the ADR arrangements for consumers?

Widespread advertising of the new scheme will obviously generate interest and understanding amongst those that will potentially use it, encouraging customers to seek out their own information and contact the Ombudsman.

- What alternative safeguards are available to ensure that rail companies do not withdraw their membership from a scheme?

We believe that the reputational risk of withdrawing from the scheme would make it hard for any TOC to do so, once they are enrolled.

- Are there any reasons why charter operators and station licence holders should not join an ADR scheme?

We would hope that they see it as beneficial to join the scheme so that the industry is joined up in offering this, although I do not know of any of their commercial arrangements so cannot comment further.

We believe that, to improve the customer experience, the requirement to signpost to a non-existent ADR scheme should be removed from the CHP and that flexibility is given so that we can continue to engage with the customer to resolve their complaint instead of having to signpost to Transport Focus in the 2nd substantive response.

Yours sincerely,

Barry Lloyd
Head of Customer Experience
Arriva Trains Wales

ORR Consultation on changes to complaints handling guidance

October 2017

1) The Associated Society of Locomotive Engineers and Firemen (ASLEF) is the UK's largest train driver's union representing approximately 20,000 members in train operating companies and freight companies as well as London Underground and light rail systems.

2) As a union - working in collaboration with the government, TOCs and other stakeholders – we aspire to deliver a high quality passenger rail service which is reliable, frequent, fast, comfortable and clean. The way complaints are handled affects how people feel about the public transport services they use and it is important that passengers are put before profit, and made to feel valued. We believe that is only right that consumers who are unable to reach a satisfactory outcome to their complaints should be able to get redress independently of the company, so we welcome the government's commitment to introduce a rail ombudsman for unresolved disputes.

3) Transport Focus and London TravelWatch currently act as the appeals bodies for passengers who are unhappy with a rail company's response to their complaint. However, they have no formal powers to compel rail companies to act and the only form of binding outcome for passengers is through the Courts. Evidence shows that this system regularly fails complainants and the consequence is that trust in the rail sector is low. In 2016/17 satisfaction with complaints outcomes was just 29%. Current Complaints Handling Procedure guidance requires rail companies to provide a full response to 95% of complaints within 20 working days but ORR statistics show that last year 12 of 24 rail companies failed to consistently achieve this regulatory obligation. It is not surprising that consumers would feel more confident if they had access to an independent dispute resolution service.

4) The introduction of an ombudsman scheme would be a positive development – if done properly. However, we have concerns about the fact that the proposals for the introduction in

2018 of a rail sector ADR (Alternative Dispute Resolution) for rail passengers are being developed by an Ombudsman Task Force consisting of the Rail Delivery Group, Transport Focus, London TravelWatch, and the ORR. The RDG representatives are bound and accountable to TOCs and their stakeholders before the interests of passengers. On the other hand there is no representative of an employee stakeholder group sitting on this body to advise about the best way of dealing with complaints about train and platform staff (e.g. from passengers experiencing problems boarding trains). This is an oversight since it is the staff who have direct contact with passengers who are often best placed to identify problems and possible ways of supporting staff to avoid complaints arising.

5) It is ASLEF's view that if a passenger's complaint is unresolved, it would be best for them to be signposted directly to the ADR scheme rather than via the consumer bodies that currently act as the appeals bodies for complaints (Transport Focus and London TravelWatch) and ideally the time limit for informing consumers of their right to go to the ADR scheme should be reduced to 6 weeks or less. One of the frustrations experienced by customers is that the current system is too slow and confusing, so adding an additional layer to the existing system would only lengthen and further complicate the process.

6) It is our opinion that complaints handling should be regulated by an independent authority and that it should be a requirement in CHP (Complaints Handling Procedures) guidance that all rail companies be members of the ADR scheme. We therefore question whether the introduction of a voluntary ADR scheme goes far enough. The resolutions of the ARD will be binding on the company, but the fact that signing up to the scheme is optional and that membership is not a legal requirement demonstrates that the companies are still in control, and are unlikely to be truly held to account.

7) The current proposal is that, until the ORR is named as the Competent Authority, the CTSI will provide monitoring of the functioning of the ADR and will ensure that it meets the standards which consumers expect of it. In order to genuinely raise standards and improve current practice, however, we consider that a system should be in place for recurring failures on behalf of the companies to be referred to the government. The government should then investigate and ensure that TOCs' incompetence and ongoing problems within the industry are dealt with or – failing that - review their franchise contract.

8) The high level of dissatisfaction with rail companies' handling of complaints needs to be taken seriously. If the introduction of an ADR scheme and amendments to guidelines for rail companies on complaints handling procedures are to be worthwhile, they must go far enough to bring about a genuine change to a failing system. Otherwise there will be very little benefit in making the changes other than tokenistically being seen to be taking action.

Mick Whelan
General Secretary
ASLEF

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

Via email to : CHP@orr.gsi.gov.uk

Dear ORR

Changes to Complaints Handling Guidance: a consultation

Introduction

I am writing in response to in your consultation exercise of 26 September 2017 on proposed changes to ORR's complaints handling guidance for passenger operators in the main line rail industry.

The comments which follow are purely my own, and are sent in an individual capacity as a life-long user of rail services. But they are necessarily informed by my former role as a senior officer of London TravelWatch, an organisation for which I now act only in a very limited part-time advisory capacity relating exclusively to safety issues. I am no longer involved in any way with formulating London TravelWatch's policy towards Alternative Dispute Resolution (ADR), and the comments which follow are entirely my own.

I was so involved, however, during the period in late 2014/early 2015 which preceded the coming into force of the ADR Directive. At that stage, I was part of the London TravelWatch team which was in discussions with the Department for Transport, the (then) Office of Rail Regulation and the (then) Department of Business, Innovation and Skills. I was deeply disappointed that London TravelWatch's proposal for the creation of an ADR scheme for rail users based on the model of the Bus Appeals Body was not adopted at that stage, and I am glad that – albeit thanks to a ministerial rather than a regulatory or industry initiative – the matter has returned to the live agenda.

Consultation questions : Chapter 1

Which of the three options set out above is most appropriate for signposting to ADR?

I strongly favour the third option, i.e. a three-stage approach comprising an initial complaint to the operator, followed by (if necessary) a mediation/conciliation stage managed by the relevant consumer body, followed by (again, only if necessary) an adjudication/arbitration stage provided by an independent ADR scheme.

I believe that the advantages of this arrangement would be :

(a) That there would be the least disruption to the current arrangements, with the majority of appeals continuing to be resolved on the existing basis.

(b) That the consumer bodies would continue to benefit in their broader representational role from the insight into users' concerns that complaint-handling provides for them.

(c) That the influence of the consumer bodies would be strengthened because of the additional incentive to reach a settlement based on their reasonable proposals which would be provided to the operators by the knowledge that, if they decline to do so, they in turn will have to bear the cost of a possible further appeal to the ADR scheme.

(d) That the function of determining which unresolved cases are within the scope of the ADR scheme, and could be referred to it for decision, would be performed by expert bodies with long experience of the issues but no vested interest in whether the matter is the subject of further appeal or, if it is, in the outcome.

(e) That the transition from one stage of the complaint-handling process to the next would be automatic (subject to the appellant's continuing consent), so that appellants would not face possible confusion regarding the options open to them.

Your consultation document states, as possible objections to this model that *"This is different from the model that operates in other sectors and there is a potential risk of consumers dropping out of the process as it becomes extended and they tire of it. It would also not appear to comply with existing rules for ombudsman schemes such as those approved by the Ombudsman Association."*

I would argue, in response, that

(a) The model is not unique, as it would closely replicate the arrangements already operating successfully in (e.g.) the regulated water industry.

(b) The risk of consumers dropping out can be combated by suitable administrative procedures – e.g. the operators and/or the consumer bodies can themselves offer to refer cases to the next stage, subject to the appellant's agreement, rather than leaving it to the individual to take the matter forward if they have sufficient determination to do so.

(c) The model rules for ombudsman schemes are not necessarily immutable, if (as I suspect) they were drawn up to meet the requirements for introducing ADR in other industries in which no consumer bodies with a mediation/conciliation function already existed.

(d) An advantage of the sequential rather than parallel involvement of the consumer bodies and the ADR scheme is that it would avoid replicating the risk of confusion and consumer detriment created by the current situation in which London TravelWatch and the Local Government Ombudsman have overlapping remits vis-à-vis users of Transport for London's services, with inconsistent (but not mutually exclusive) terms of reference, which has resulted in sub-optimal outcomes for some complainants.

(e) Although the ADR Directive does not explicitly provide for a three-stage process, nothing in the Directive excludes it. Paragraph 3 of Article 2 states that *"Member States may maintain or introduce rules that go beyond those laid down by this Directive, in order to ensure a higher level of consumer protection."*

(f) Some issues which might otherwise become the subject of complaints under the procedures proposed are already covered by provisions of the EU's Rail Passengers' Rights Directive. Under the regulations giving effect to this in British law, Transport Focus and London TravelWatch are the designated complaint handling bodies for aggrieved

passengers, and the ORR as the ultimate enforcement body has a role analogous in some respects to that of an ombudsman. To the best of my knowledge, no particular difficulties have arisen in the operation of this three-stage model.

Are there other approaches that we have not considered which may be preferable to those set out above?
None that occur to me.

Is it necessary for ORR to set out in detail our expectations , and make these formal requirements, in the CHP of communications about the ADR scheme?

Experience has shown that there is an inconsistent level of compliance by operators with their obligations under the existing CHP guidance, and the industry showed no interest in embracing ADR until its hand was forced by the DfT. My inclination would therefore be not to give it the benefit of the doubt and to be as prescriptive as necessary in the requisite licence conditions.

Some commercial entities in other sectors regard complaints as valuable free market research, and are keen to learn the lessons they offer, but most rail operators have local monopolies and show very limited responsiveness to users' wishes until their hands are forced by means of licence or franchise obligations.

Consultation questions : Chapter 2

My role as a policy adviser to London TravelWatch was generally to provide technical input into its responses to complaints rather than to assume direct responsibility for handling them. I am therefore on less familiar ground in responding to questions about target timescales. However, my instincts suggest the following answers.

What is the most appropriate point at which to signpost ADR? Eight weeks, six weeks, another period?

If, as I have argued. ADR should be a long-stop option used only in the more problematic cases which have already been considered twice by the operator (i.e. both at the initial complaint stage and at the subsequent conciliation/mediation stage), six weeks should be quite sufficient time in which to establish whether the latter process is likely to achieve an acceptable outcome or whether the "nuclear option" of referral to the ADR body is the only way in which a resolution is achievable.

Should we conduct a review of whatever time period is agreed? If so, at what point; after one year, two years, another period?

It is always good practice to review the effectiveness of new procedures. If a review after one year leads to the conclusion that there is insufficient evidence and experience from which to draw conclusions, its recommendation could be to defer the exercise for a further 12 months or for whatever further period then seems appropriate.

If the time period should be subject to review, what metrics should we use to establish whether the time period remains appropriate or should be changed?

It seems logical to establish what proportions of cases have been closed within (say) weekly time bands and what proportion remain unresolved when the deadline is reached. It would then be necessary to examine the nature of these residual cases to discover whether they have common attributes which have made them particularly difficult to progress, and whether moving the deadline in either direction would have any beneficial effect.

I suspect that many of them may turn out to be complaints about policy rather than performance, and are therefore likely to fall outside the scope of an ADR scheme in any event.

Should individual rail companies be able to set their own signposting time limits as long as they are below the minimum agreed signposting standard?

I see no particular grounds for objecting to this, if individual operators wish to earn brownie points by doing so – and, indeed, no way of preventing them from doing so if they so choose.

Should arrangements be introduced to allow signposting before the time period is reached, i.e. deadlock?

Yes, of course. As soon as it is clear that a referral to the ADR scheme (or, indeed, to the passenger bodies at the previous stage) is needed to resolve the matter, nothing is to be gained by deferring this.

Consultation questions : Chapter 3

As substantial progress has been made voluntarily by industry on developing an ADR scheme, is it necessary to make membership of an approved ADR scheme a requirement in the licence (and reflected in CHP guidance and CHPs)?

Yes. If the RDG (and ORR) is serious about its support for this scheme, it will want to ensure that all of its members offer their passengers the same rights. "Substantial progress" may have been made, but I understand that some train operators (e.g. London Overground and Eurostar) have already stated that they will not participate. This will be incomprehensible to passengers, especially those making through journeys (quite possibly with through tickets) involving some operators which are in the scheme and some which are not.

Are there any other approaches which could provide certainty in the ADR arrangements for consumers?

None that are immediately apparent that would provide the same certainty as a CHP requirement.

What alternative safeguards are available to ensure that rail companies do not withdraw their membership from a scheme?

None that are immediately apparent, unless RDG is prepared to make this a condition of membership.

Are there any reasons why charter operators and station licence holders should not join an ADR scheme?

None that are immediately apparent, and since most train operators are also station operators, passengers would be legitimately angered if these companies were in the scheme for some of their functions but out of it for others (where both qualified for inclusion). Similarly, it would be a legitimate cause of annoyance if some station operators were excluded in circumstances in which others are not.

If charter operators are to be included, the three-stage model I have advocated would involve bringing them within the scope of the passenger bodies, which is not currently the case, but I see no objection in principle to doing so. As providers of a commercial service, albeit on a modest scale, they should be willing to accept the same obligations towards their clients as any other retail business.

If you require amplification of any of these points, please let me know.

Yours sincerely

John Cartledge

Chilternrailways
by arriva

Chiltern Railways ICC
Merton Street
Banbury
OX16 4RN

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

Friday 24th November 2017 – BY EMAIL

Dear Consumer Policy Team,

RE: Changes to Complaints Handling Guidance

Thank you for the opportunity to respond to this Consultation in regards to the Changes to Complaints Handling Guidance. Please can you ensure that all consultation documents are shared with us as per the established practice. This consultation was not received directly from the ORR which therefore led to a request from the RDG for an extension to the deadline for responses.

Please see below our responses as requested.

Chapter 1 – Signposting unresolved complaints

We are in agreeance that the current signposting towards an ADR scheme is very confusing for customers and does not deliver a good Customer Experience. We support the introduction of an ADR Scheme, however we are concerned about the costs that will be imposed on us in delivering this.

Q. Which of the three options provided for in the consultation is most appropriate for signposting to ADR?

We believe that Option 1 is the preferred option as it reduces the level of confusion for the customer due to them being directed to one place. This option delivers a consistent message to the customer and allows an independent review of the appeal.

Q. Are there any other approaches that we have not considered which may be preferable to those set out above?

No, we have not identified any other approaches.

Q. Is it necessary for ORR to set out in detail expectations, and make these formal requirements, in the CHP of communications about the ADR scheme?

It is not necessary for the ORR to formalise the content for the letters for each TOC, however it would be beneficial if the ORR produce some guidance and examples to ensure that there was a level of consistency within the industry. Chiltern Railways are happy to work with the ORR to produce this guidance.

Chapter 2 - Timescale for sending signposting letter

We agree that it is important that the TOC is given enough time to allow them to have the opportunity to resolve the complaint prior to them having to refer to the ADR Scheme. The current process of having to refer on the second substantive response can at times cause further confusion for a customer as they are still in dialogue with us but we are having to signpost even if at that stage it is not relevant.

Q. What is the most appropriate point at which to signpost to ADR? Eight weeks; six weeks; another period?

Currently we work towards our SLA of 90% of correspondence to be responded to in 10 working days and 95% in 20 working days and we would like these SLAs to remain.

If we are now to refer to an ADR after a fixed period of time we will need to make adjustments to our current system as this is not something that is currently monitored or reported on. This brings a significant change to the way in which we currently operate.

We believe that 8 weeks would be a reasonable length of time, however we would anticipate that it would be very rare that cases would be in dispute and "open" for this length of time.

With regards to response times, currently response times are calculated based on working days and when the correspondence is with a TOC. Therefore, if a response is sent to a customer requesting further information we would "Stop the clock" as at this point it is outside of our control. Once the customer responds the clock is the started again. This is in line with the guidance that was issued by ORR "*Reference guide for complaints and CHP/DPPP indicators data reporting*". Chiltern had to implement system changes in order to operate in this way and would like to see this way of working remain as it is deemed to be the fairest measure for responses.

In discussions with the ORR we understand that the eight week timescale will be calculated by a method different to that used for the 20 day turnaround. The eight weeks will be a straight forward eight calendar weeks from the date on which the complaint was received. In order to operate in this method we would need to update our systems and process, there would be a cost to us in order to comply with this new way of working.

There is the requirement for clear guidance where a complaint has not breached the 20 day SLA but has exceeded the 8 week referral point, due to the customer not responding. The expectation is that the ADR scheme would refer the customer back to the relevant TOC to allow adequate opportunity for resolution.

Q. Should we conduct a review of whatever time period is agreed? If so, at what point; after one year, two years, another period?

Yes as with any new way of working I believe a review is necessary and would expect this to be annually to ensure that the ADR scheme is delivering against expectations. The review should also include an analysis of the financial impact on each TOC as a direct result of this being introduced.

Q. If the time period should be subject to review, what metrics should we use to establish whether the time period remains appropriate or should be changed?

We would like to see a breakdown in the referrals that have been made and the reason for the referral as this would indicate whether the 8 week deadline is appropriate or not. It would be useful if this could be broken down per period so that we are able to pinpoint to particular events that could have caused a backlog in the Customer Relations department.

Q. Should individual rail companies be able to set their own signposting time limits as long as they are below the minimum agreed signposting standard?

Yes, operators should be able to set their own signposting limits based on their current performance against the 10 and 20 day SLA. This enables the TOCs to ensure that they are offering a great customer experience.

Q. Should arrangements be introduced to allow signposting before the time period is reached i.e. deadlock?

Yes, we should be able to signpost to the ADR scheme at any point during the Complaints Handling Process as making the customer wait a certain amount of time delivers a poor customer experience.

Chapter 3 - Requirement to be a member of an ADR Scheme

Q. As substantial progress has been made voluntarily by industry on developing an ADR scheme, is it necessary to make membership of an approved ADR scheme a requirement in the licence (and reflected in CHP guidance and CHPs)?

No, this should remain a voluntary scheme.

Q. Are there any other approaches which could provide certainty in the ADR arrangements for consumers?

It is feasible that the government could introduce significant changes to the statutory role of Transport Focus to enable it to perform ADR for the industry and give binding redress. We recognise that the timescales for such a legislative change would delay the introduction of ADR for the industry.

Q. What alternative safeguards are available to ensure that rail companies do not withdraw their membership from a scheme?

If we become a member of the scheme it would be within our best interest to remain as a member and would not deliver a positive message to our customers if we were to withdraw from the scheme.

Q. Are there any reasons why charter operators and station licence holders should not join an ADR scheme?

We believe that the scheme should be available to all operators and Station Licence holders to ensure that all customer complaints are managed and addressed consistently.

Yours Sincerely,

Lucy Wootton
Contact Centre Manager

Dear consultation

There needs to be a consistent and binding forum for rail passengers to complain. Especially given the current disintegration of services under Govia control. Detailed points include:

- A “Fit and proper person” test, as already required in many business and public sector environments, should be introduced for the trusted “Ombudsman” role and ADR providers.
- Chartered Trading Standards Institute (CTSI) must implement ongoing monitoring of ADR bodies, rather than rely on an annual review. This should include checking that statements made in the media are true and that the company’s accounts properly reflect the ombudsman’s performance.
- CTSI, Department for Business, Energy, Industrial Strategy (BEIS) or Ombudsman Association (OA) should provide a means by which the public can lodge complaints about ADR providers and develop procedures by which the relevant body can take the necessary action.
- The rail ADR/ombudsmen schemes must be established appropriately, effectively and properly.
- It should be compulsory for rail companies to join the ADR/ombudsman scheme.

Thank you

Helen Cornish

CrossCountry
5th Floor, Cannon House
18 Priory Queensway
Birmingham B4 6BS
crosscountrytrains.co.uk

Office of Rail and Road,
Consumer Team

By Email

15 November 2017

Dear Marcus

Changes to Complaints Handling Guidance: a Consultation

Thank you for your giving us the opportunity given to provide feedback as part of the consultation process and our response to the questions raised are detailed below for your consideration.

Signposting unresolved complaints

Question 1 – Which of the three options provided in the consultation is most appropriate for signposting to ADR?
Option 1 would be our preferred option as by signposting, where appropriate, to one central appeals body provides a more streamlined and less confusing process for the customer. The initial independent assessment of the complaint, to identify who the most appropriate organisation is to deal with the issues raised, will also ensure that the consumer confidence in the appeals scheme is increased as well as providing more insight into any policies or processes which are driving dissatisfaction at both a TOC and Industry level.
We understand that as part of the procurement exercise, how (and when) communication to the end user will be an area for the supplier to satisfy. It is very important that confirmation on which relevant body the appeal has been assigned to and progress updates are provided in order to ensure a customer-focused experience.

Question 2 – Are there any other approaches that we have not considered which may be preferable to those set out already?
There are no other alternatives which have not already been explored or included in the consultation document.

Question 3 – Is it necessary for ORR to set out in detail expectations, and make these formal requirements, in the CHP if communication about the ADR scheme?
With regards to operators joining the scheme, it would be helpful to better understand what the impact of individual companies or owning groups deciding not to join the proposed voluntary scheme and how that would affect those other operators who do wish to participate.
We do not believe that a formal requirement for the content of letters is required, as much of this is already understood by operators as part of the ADR regulations. By working alongside colleagues

from rail companies, we are confident that a collaborative approach could be adopted to produce a best practice guide.

Timescale for sending signposting letters

Question 1 – What is the most appropriate point at which to signpost to ADR? Eight weeks; six weeks; another period?
Whilst our average response times consistently fall within 10 days, we recognise that there are occasions when complaints take longer to resolve. This is often as a result of a more detailed investigation being required, or where we are awaiting a response from the customer in order to process their complaint with us.
From recent conversations with colleagues from the ORR, we understand that the existing requirement to refer to the appeals body on the second substantive response will be reviewed and so therefore eight weeks or at 'deadlock' seems the most appropriate point to signpost the customer, informing of their options.
We would also like to clarify that our current calculation for responding to complaints, involves 'stopping the clock' when a case is awaiting information or tickets from the customer (in accordance with CHP guidance). If the eight weeks is to be determined as straightforward calendar week, then consideration should be given to those cases which have triggered the determined threshold but where the case has been with the customer awaiting details for a prolonged period of time. We propose that guidelines issued captures that these cases should be referred back to the rail company for action, ensuring that they have adequate time to resolve the complaint satisfactorily.
It is worth noting that any decision may require us to reconfigure our existing systems which may have an impact on us, both in terms of time and resource, as well as financial. We would therefore request that this be considered when communicating dates these potential changes become effective.

Question 2 – Should we conduct a review of whatever time period is agreed? If so, at what point; after one year, two years, another period?
It would be a sensible approach to review the timescales and if they are still appropriate and so would suggest after one year initially, moving two bi-annually moving forward. This would enable both ORR and rail companies to reflect on the impact these changes have had and to agree the effectiveness of the scheme moving forward, ensuring the needs of the customer are met.

Question 3 – If the time period should be subject to review, what metrics should we use to establish whether the time period remains appropriate or should be changed?
A review of the percentage (in addition to the total number) of appeals submitted and a breakdown of how many of these were referrals as a result of the time limit being met versus those referred as part of deadlock should be completed. It would also be helpful to consider any extenuating circumstances which could have impacted volumes of disputes received (and any breaches of the timescale agreed, where applicable).

Question 4 – Should individual rail companies be able to set their own signposting time limits as long as they are below the minimum agreed signposting standard.
We do not envisage that we would reach a point of 8 weeks where we would be required to refer customers to the scheme, as our response rates consistently fall within this timescale, and so we

believe that our signposting is likely to be done at 'deadlock' point primarily. In order to ensure consistency across the industry, and to avoid confusion for customers, it does not seem appropriate for individual operators to have a different published referral time for the proposed ADR scheme. We believe it would be more appropriate for any changes to be agreed at the review points decided in Q2.

Question 5 – Should arrangements be introduced to allow signposting before the time period is reached, i.e. deadlock?
Yes. To ensure a speedy resolution and an affective appeals scheme for customers, it is important that referrals can be made at the point where we have exhausted our Complaints Handling Procedure. It does not seem appropriate to expect the customer to wait until the maximum time period has passed before they can submit an appeal and does not reflect good Customer Service from a CrossCountry perspective.

Requirement to be a member of an ADR scheme

Question 1 – As substantial progress has been made voluntarily by the industry on developing an ADR scheme, is it necessary to make membership of an approved ADR scheme a requirement in the licence (and reflected in CHP guidance and CHPs)?
Consideration needs to be given as to the impact on DfT and ORR (as well operators), if making membership of the proposed scheme mandatory. We do not believe that given the support this scheme has already generated that it is necessary to mandate it as part of licence conditions.

Question 2 – Are there any other approaches which could provide certainty in the ADR arrangements for consumers?
An alternative option would be to give Transport Focus/London TravelWatch increased responsibility, effectively enabling it to perform ADR for the industry and give binding redress. This however would require significant change to their existing role and the legislative changes this would require may potentially delay the introduction of an ADR scheme.

Question 3 – Are there any reasons why charter operators and station licence holders should not join an ADR scheme?
Our opinion is that the ADR scheme should be applied consistently across the industry, again so as to avoid any confusion for the customer. Consideration on the financial and resource impact this may have on the above would however need to be given if this were to be implemented.

In summary, we would like to assure you that we are committed to improving the overall customer experience and so welcome the opportunity to work with you in order to achieve this, across the entire industry.

Kind regards,

Andrew Cooper
Managing Director

Dear Sir or Madam

I note that you have kept the consultation about the proposed rail ombudsman as quiet as possible – but the role, as long as it isn't a person who has links to the rail industry, is vital. The fact that the ORR is committed to doing nothing for passengers, which the ORR has shown by its absolute failure to do anything about the scams that the companies like Govia operates of which you are fully aware, is part of the problem that perhaps an ombudsman would redress. Of course, you will ensure that the person appointed will not be a representative of passengers but a person who can be relied upon not to rock the boat – but we can fight that situation.

At the moment we have the example of Govia using penalty fares legislation not to impose a penalty fare – worth £20 to Govia – but to take a name and address and then send a threatening letter demanding £250 *for our expenses* if someone doesn't pay immediately. The Department for Transport regards this as entirely acceptable behaviour – because of the cosy relationship between Govia and the DfT – and look at the way they awarded Govia a management contract (calling it a franchise) without competition. This scam is absolutely abhorrent, uncontested that it happens (the DfT merely said it wouldn't intervene but didn't deny it was happening) – and there is no-one – certainly not the ORR – standing up for passengers.

Secondly the so-called Independent Penalty Fares Appeals service (IPFAS) – a Govia department which makes money for its executives personally every time a penalty fare appeal is turned down as the DfT has confirmed in writing – is unaccountable, works apparently on *strict liability* terms when it comes to passengers, but not when it comes to Govia and the other rail companies. I know you have been alerted to this by me, and refused to do anything about it, apparently happy that an appeals organisation that is supposed to be independent and *seen to be independent* is actually just part of Govia. The DfT has lied about the status of IPFAS – calling it *an arm's length subsidiary*, though even that would be illegal – to try to cover up the scandal, and perhaps an ombudsman would be able to hold the DfT, you and the companies to account.

The so-called independent Transport Focus – ex-Passenger Focus, and the name change says it all – is funded entirely by the DfT, the DfT uses an illicit backdoor to force Passenger Focus to toe the line – I have the email trail where the DfT approaches Passenger Focus illicitly while admitting it shouldn't, and it avoids doing anything that might upset the rail companies and the DfT, because they are fearful of losing their jobs – is a complete waste of money and it has NEVER done anything to support passengers which has resulted in any improvement.

Passengers are being scammed on a daily basis, the DfT, the ORR, Transport Focus and every other body just allow the scams to continue, and it is time that decency, honesty and integrity are applied to the scandal that is going on – so that passengers can obtain a proper redress.

I trust that you will acknowledge this email and print it in the report.

Regards

(Dr) Paul Davies

By email to : CHP@orr.gsi.gov.uk

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

24 November 2017

Dear Sirs

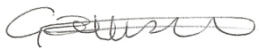
Changes to Complaints Handling Guidance: a consultation. Response from East Midlands Trains

This letter is in response to the ORR Consultation regarding changes to Complaints Handling Guidance published on 26 September 2017.

We have worked closely with the Rail Delivery Group over the preparation of their response and support the submission that they have made.

We look forward to hearing the outcome of the consultation and we will submit a revised Complaints Handling Procedure in light of the republished guidance at the appropriate time.

Yours Faithfully



Gemma Allanson

Head of Customer Information and Customer Service Centre
East Midlands Trains

24 November 2017

Customer Policy team
Office of Rail and Road
One Kemble Street
London
WC2B 4AN

First Rail Holdings Ltd
4th Floor
Capital House
25 Chapel Street
London NW1 5DH
www.firstgroupplc.com

Dear Consumer Policy Team,

I am writing as the representative of FirstGroup, in response to the 'Changes to Complaints Handling Guidance: a consultation' published on Monday 25th September 2017.

We welcome the opportunity to contribute to the consultation and broadly agree with the response provided on behalf of all TOC's by the Rail Delivery Group but have made specific comments on behalf of all FirstGroup TOC's (Great Western Railway, South Western Railway, TransPennine Express and Hull Trains).

Chapter 1 – Signposting unresolved complaints

Which of the three options set out above is most appropriate for signposting to ADR?

We feel that option 1 – (signposting to the ADR scheme) represents the most appropriate option for signposting as it provides the consumer with the confidence their complaint will be considered and triaged by an independent body, rather than the TOC.

Are there other approaches that we have not considered which may be preferable to those set out above?

No, we can think of no other approaches that may be preferable to those options set out within the consultation.

Is it necessary for ORR to set out in detail our expectations, and make these formal requirements, in the CHP of communications about the ADR scheme?

Yes, the ORR should provide clarity on the expectations for each TOC and this should be built into the guidelines regarding Complaints Handling Policy. It is right this requirement is formally set out to avoid any misinterpretation.

Chapter 2 – timescale for sending signposting letters?

What is the most appropriate point at which to signpost ADR? Eight weeks, six weeks, or another period?

We feel 8 weeks is the most appropriate timeframe for signposting to ADR if we are unable to reach a resolution to the complaint. It provides sufficient time for the complaint to be investigated and for more than one substantive response to be sent to the complainant.

We would seek guidance on any potential penalties for not adhering to this timescale.

First Rail Holdings Limited.
Registered in England and Wales number 05154485. 50 Eastbourne Terrace, Paddington, London, W2 6LG.

We would also expect the ADR provider to be able to direct customers back to the TOC if they have not been able to fully respond to the complainant through no fault of their own (for example, if a customer receives one substantive response & then sits on that response until the 8-week window has passed and goes straight to the ADR provider).

Should we conduct a review of whatever time period is agreed? If so, at what point: one year, two years, another period?

Yes, a review of the time period would be appropriate & we feel this should occur after one year, or slightly longer, following the scheme's commencement. This should provide enough time for the scheme to bed in and to overcome any issues related to that commencement.

If the time period should be subject to review, what metrics should we use to establish whether the time period remains appropriate, or should be changed?

Measuring customer satisfaction with the process would seem an appropriate metric to review if 8 weeks is optimum. As well as using that measure to gain a view on how effective the 8 week window should be, it could also feed into a larger continuous improvement review of the scheme in its entirety.

Also, assessing TOC's ability to provide two substantive responses within that 8 weeks should be considered i.e. how many disputes have been referred to the ADR provider because the 8 weeks has been exceeded, rather than a deadlock being reached?

Should individual Rail Companies be able to set their own sign posting time limits as long as they are below the minimum agreed signposting standard?

Aside from the deadlock scenario (discussed below), no, TOC's should not be able to set their own time limits to ensure consistency across the industry.

Should arrangements be introduced to allow signposting before the time period is reached? I.e. deadlock?

Yes, if it is clear there is an issue that can't be resolved between the TOC and the complainant, TOC's should have the ability to signpost to the ADR provider before the 8-week window has expired. It should be clear that TOC's must have provided at least two substantive responses before coming to the view that a 'deadlock' has been reached.

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

As substantial progress has been made voluntarily by industry on developing an ADR scheme, is it necessary to make membership of an approved ADR scheme a requirement in the licence (and reflected in CHP guidance and CHPs)?

We feel that all TOC's should hold membership of the scheme and that should be enforced by the ORR as otherwise it would devalue the objectives of the industry in being seen to be 'fair and reasonable' when dealing with customer complaints. We appreciate that this could potentially delay the schemes introduction but have concerns regarding the effectiveness of the scheme if not all TOC's join.

In principle FirstGroup support the establishment of an ADR process. However, as the full costs of the scheme have yet to be established we cannot give a binding commitment at this stage that we will join the scheme.

Should other TOC's have a differing view it is important the ORR understands those concerns and, as much as possible, takes those views into consideration to ensure full membership.

Are there any other approaches which could provide certainty in the ADR arrangements for consumers?

We can think of no other approaches that would give consumers certainty for ADR arrangements other than full membership.

What alternative safeguards are available to ensure that rail companies do not withdraw their membership from a scheme?

We can think of no alternative safeguards to ensure membership other than the DfT taking 'not being a member' into consideration when reviewing any bidder's commitment to their prospective customers when assessing franchise bids. An effective safeguard would be for the DfT to make it a requirement in future franchise competitions.

Are there any reasons why charter operators and station licence holders should not join an ADR scheme?

The main reason we can see for not joining the ADR scheme would be concerns regarding the potential cost each TOC would incur. Something that it is difficult to take a clear view on as those costs are yet to be established.

Also, consideration should be given for Open Access Operators who work under a different cost model than franchised operators.

Yours sincerely

Hugh Clancy
Commercial Director - Rail

Great Northern | GX GATWICK EXPRESS | SOUTHERN | ThamesLink

Marcus Clements

ORR

By email

23rd November 2017

Dear Marcus,

GTR response to the ORR Consultation on CHP handling

Over the past two years GTR has dealt with unprecedented volumes of customer contact against a background of a new franchise, major transformation programmes and significant IR issues creating high levels of customer dissatisfaction and incoming contacts.

Despite these very real and tangible challenges GTR customer relations (CR) has consistently met its SLAs, has seen limited material increase in contacts to either Transport Focus or London Travelwatch or seen any increase in customers choosing to pursue a legal claim. GTR has worked hard during high and volatile contact volumes to maintain SLAs and to attempt to deliver a suitable response to its customers despite the challenges outlined above.

GTR has been working closely with RDG, more specifically around procurement of the new supplier and direct involvement with the Taskforce, to support in mobilising the Rail Ombudsman roll out. While GTR supports the broad objective, concerns remain around;

- Funding - both set up and ongoing,
- Impact on head count within existing senior CR teams – specialist individuals will be required to provide suitable support,
- Voluntary nature of inclusion in the scheme, the original intent being that all TOCs and providers of train services (e.g. London Overground) and Network Rail would have to join for the scheme to deliver the intended consumer benefit,
- This links directly to early conversation regarding the fact that the ombudsmans should provide the consumer benefit of an independent resolution route in the event of deadlock, however we would not be supportive of TOCs voluntarily joining the scheme having their existing liability scope extended. To this effect the National Rail Conditions of Travel should be ensure to be supportive of this intent.
- Potential exemptions in those participating,
- Potential essential changes to CRM systems which may require considerable investment or be impracticable/impossible to introduce.

It is noted that the formal governance process for agreeing the detail of these critical points is via the RDG Customer Boards and the above points have yet to be referred back to this board.

GTR has reviewed the wider industry reply issued by RDG and is in general agreement with the response and approach taken and therefore we do not repeat the points raised in that with any variance detailed below.

Chapter 1 – Signposting unresolved complaints

GTR feel that signposting and the options being considered may create an element of customer confusion. Regardless of the option that is finally implemented any confusion may manifest in negativity towards the TOC rather than the logistics of the scheme. It is crucial that any customer facing messaging here is standardised and agreed by TOCs and if either watchdog falls behind or is in backlog then this is clearly fed back to the customer through an agreed process.

GTR agrees with the RDG proposal that 'option1' is the preferred choice.

There is an obvious benefit in the decision about who deals with the complaint made independently of the rail industry - otherwise the decision making process itself could raise complaints. If the consumer wants to go to the ombudsman, they still can and the ombudsman would still have to make the decision about whether it could deal with the case. This could lead to lower levels of satisfaction with the complaints process. It doesn't resolve issues with complaints which cover both schemes, the ombudsman and watchdogs will still have to decide how to deal with these collaboratively.

Chapter 2 - Timescale for sending signposting letters

GTR broadly agrees with the RDG suggested approach although it is unclear why a specific timeframe for the collation of material or complete resolution of a complaint is seen as a goal for TOCs to achieve. Many customers take weeks or indeed months to either reply to requests for additional information or to revert back expressing their dissatisfaction with a reply. The CRM system currently in use at GTR could not be configured easily or at all to keep in abeyance cases where we believe the customer may come back to us or open for a defined period.

Signposting to the Ombudsman should be made as simple and straightforward as possible while also providing the TOC with the opportunity to review an on-going case – usually by a more senior person. TOCs are determined to ensure their team respond correctly to customers and building in an opportunity to review when a customer is dissatisfied and then offer the 'signpost' is a basic principle of how we operate. The vagaries of customer's response time or their determination to proceed are difficult to attach a timeframe to and

the proposed options appear complex and difficult to logistically introduce given the multiple CRMs in use by TOCs.

GTR would propose that the current way of working is maintained **except** when customers have made a clear statement that they are disappointed with a reply or how their case has been handled. In such cases the inclusion of a date by which we expect to have heard back from the individual should be issued in 'the deadlock letter' which will sum up our position and should signpost to the Ombudsman.

One area that GTR feels merits further discussion across the industry is the growth in those cases we would have previously described as 'frivolous'. Unfortunately, frivolous or vexatious as a description no longer captures the persistent or oppressive nature of many customers who are not just 'difficult' but who make request for answers to lists of questions, call just before end of service every day or whose tone and approach is designed to cause disruption**.** These individuals take considerable time to deal with, time that could be better employed with genuine and meaningful enquiries.

GTR is committed to improve all aspects of complaint handling and supports the approach so far. Furthermore we would appreciate the opportunity to take part in a workshop to facilitate further discussion and drive the consistent approach required to make the Ombudsman scheme a success.

Yours

Kerri Ricketts
Head of Customer Experience and Engagement

Hello,

I welcome a truly Independent Ombudsman who has true and effective powers. As a long term Southern Rail passenger who has a £5k season ticket I am sick of the difficulty in claiming delay repay a terrible website to use that takes 4 weeks to get a payment back from, constant cancellations, short formed carriages and delays. Not to mention the forthcoming 36th strike day....how can you guarantee the following:

If a Rail Ombudsman is to be effective it must be truly independent and its performance closely monitored by Government. Those running it should have passed a 'fit and proper person' test and be fully accountable to the public, as well as to the rail companies."

I would be interested to know

Also there has hardly been any media notice of the consultation, were you trying to keep it quiet for a reason?

With kind regards,

Emma Hasler

Marcus Clements
Senior Manager, Consumer Policy & Compliance
Office of Rail & Road
One Kemble Street
London
WC2B 4AN

London Midland
102 New Street
Birmingham
B2 4HQ

24th November 2017

Dear Marcus

London Midland response to ORR's consultation on Changes to Complaints Handling Guidance

We draw your attention to the submission made by the Rail Delivery Group dated 22 November 2017, on behalf of its membership. London Midland has contributed to the formation of its submission and is fully supportive of its overall position.

More specifically to London Midland; we wish to raise the following key points for your consideration as part of the consultation:

Rail ADR scheme tender
As the RDG led tender of the Rail ADR scheme is currently underway, we ask ORR to note that as the project is still in development, there remains a possibility that the scope of the Rail ADR scheme may change and it could cause a requirement for further consultation of industry partners or in ORR's consultation response document; clarifying the interaction between the Rail ADR tender process and its final conclusions. We trust ORR will provide a sufficient period to implement any required changes.

Membership of Rail ADR and enforcement
In response to question 4 of section 3 on page 21 (*As substantial progress has been made voluntarily by industry on developing an ADR scheme, is it necessary to make membership of an approved ADR scheme a requirement in the licence (and reflected in CHP guidance and CHPs*))?

Making membership of the approved Rail ADR scheme a requirement in the licence would have the effect of making it mandatory and as this is a voluntary scheme developed by the industry, we consider membership should evolve as an example of industry best practice and a high standard to achieve as opposed to forced participation. Should, after a period of time and reflection on the success of the scheme, revisions be required to the Rail ADR scheme, this will be easier to achieve if membership remains voluntarily instead of working within the confines of amending licences.

There are also impacts on franchised passenger operators in their obligations to the Department for Transport as part of their franchise agreements, most notably in amending Passenger Charters (which require DfT approval) and current version of the Complaints Handling Procedure.

London Midland did not note any explicit proposals regarding an enforcement regime of the Complaints Handling Procedure and clarity on this is welcomed. As we note above, including membership in a passenger operators' licence has the effect of making participation mandatory but while it remains voluntarily; we do not consider it reasonable to place an increased risk of regulatory sanctions on TOCs that participate in a scheme that seeks to benefit the passenger.

If you have any questions regarding London Midland's response, please feel free to contact my colleague Anita Smith, Customer Relations Manager .

Yours sincerely

Kelly Henshall
Head of Franchise Management & Development

Consumer Policy Team
2nd Floor
Office of Rail and Road
One Kemble Street,
London, W2B 4AN

Our Ref:
Your Ref:

7th November 2017

Dear Sir / Madame,

Changes to Complaints Handling Guidance – a consultation

Thank you for the opportunity to comment on this.

London TravelWatch is the statutory consumer watchdog representing the interests of passengers in the London Railway Area, and all aspects of Transport for London's operations such as buses, underground, DLR, trams, strategic roads and the congestion charge. We welcome the proposed extension of the Alternative Dispute Resolution (ADR) process to the rail industry as this will strengthen the hand of passengers in relation to disputes with Train Operators.

For this process to work for passengers, it needs to be easy to understand, clearly signposted, timely and result in a better outcome. We have particular concerns about how this proposal would impact on the wider transport network in and around London..

The rail industry is a particularly complex inter-related operation, of which passengers will not always have a complete understanding of its' nuances and different responsibilities. In London, where over 70% journeys nationally occur, this is further complicated by the multi-modal nature of most journeys and the operations of TfL which will not be part of this ADR scheme. Many of the appeal complaints that we receive often contain different elements some of which relate to TfL and others to train operators, but for the passenger it also part of a single journey experience. Signposting of the process of complaints is therefore of prime importance.

Consultation questions

A. Which of the three options set out above is most appropriate for signposting to ADR?

London TravelWatch favours the adoption of ***option three***, whereby London TravelWatch and Transport Focus are signposted from the train operator, and then the complaint is either managed by them or passed on to the ADR scheme if appropriate.

This would have a number of advantages thus :-

i. The London TravelWatch and Transport Focus staff are highly experienced and competent as to which complaint falls with which transport operator. They would know if a case needed referring to a non participating transport operator even if it appeared otherwise. This would prevent further delay to the handling of the passenger's complaint.

ii. The system would remain largely unchanged so there would be no requirement for either the transport operator or the ADR service providers to understand the complexity of some cases and to whom they should be referred.

iii. Option three would ensure that from the start of the scheme passengers would have a seamless complaints system managed by experienced staff.

iv. The ADR scheme will be able start taking cases and be effective at an earlier date as they will not hindered by trying to work out what complaint goes to whom.

v. The transport operators system will stay how it is now without further unnecessary changes.

vi. That London TravelWatch and Transport Focus would continue to benefit in their broader representational role from the immediate insight into users' concerns that complaint-handling provides for them, and enable them to act in a timely manner to ask questions relating to public policy and operating practices at an early stage.

vii. That the influence of both consumer bodies would be strengthened because of the additional incentive on operators to reach settlements on appeal cases based on reasonable proposals, rather than a formal ADR approach. This would help in providing timely responses to appeal cases and reduce the overall cost of the schemes operation.

viii. Questions from passengers as to why the ADR services are not applicable or accessing London TravelWatch and Transport Focus following an ADR investigation, will fall to the watchdogs to explain. As the ADR scheme attracts a fee, London TravelWatch and Transport Focus will have to create robust recording process to explain why a case was forwarded to the ADR service.

Option One also has a number of advantages but has a risk of introducing an element of delay and confusion into the existing system. The advantages can be summarised as follows:-

i. The passenger will be signposted immediately to the binding ADR scheme.

ii. If the complaint falls within the scope of the scheme, the complaint pathway will be straight forward and uncomplicated for the passenger.

iii. The passenger will not be required to take any further action as if their complaint is not within the ADR scheme scope, their complaint will be passed to London TravelWatch or Transport Focus.

However, there are a number of down sides to this option that can be summarised as follows:-

London passengers

i. The ADR service would have to know if any part of the journey falls outside of the scope and therefore understand how the complaint will be handled.

ii. There could be delays to the complaint investigation until it is understood if the ADR have any scope with the complaint and the transport operator.

iii. Delays of this nature will be difficult for the passenger to understand and therefore, not in keeping with the purpose to introduce the ADR scheme.

All passengers

iv. The scope of the ADR scheme is still unclear but it may be that a larger proportion of complaints fall outside of the scope. In this situation, it would not be beneficial for the complaint to be sent via the ADR scheme

v. Passengers of those transport operators not participating in the scheme are unlikely to understand why their complaint cannot be handled by the ADR process

vi. The staff at the ADR service would have to quickly become experienced at knowing which cases or which parts of cases need investigation by non-participating members. Any errors could potentially affect and cause further delay to the handling of a passenger's complaint.

Option two, whereby train operators would refer appeal complaints either to the ADR scheme or if outside its' scope to London TravelWatch or Transport Focus is not favoured by us as this would rely heavily on the transport operators' knowledge to signpost to the correct body, and these bodies customer service staff becoming experts on which complaints are within scope of the ADR scheme and those that are not. It also adds a significant delay risk for consumers if operators have insufficient knowledge and could harm the scheme's reputation from the start if passengers were misdirected.

The complexity of the London part of any journey will add further complexity to this. Our experience of train operators under the existing arrangements would suggest that this would be difficult to achieve in any consistent pattern, particularly as customer service staff tend to have a very high turnover and so there would need to be constant level of training involved. The London element of journeys adds further complexity.

B. What is the most appropriate point at which to signpost ADR? Eight weeks, six weeks, another period?

ADR will in this case be the final stage in any appeal process, which will have already been a lengthy process for the passenger. We would therefore be keen to minimise the impact on passengers, and so a six week period to complete an appeal process is likely to be sufficient. Referral to ADR or the consumer bodies should be done at the second substantive response stage i.e. when the final response is sent.

C. Should we conduct a review of whatever time period is agreed? If so, at what point: after one year, two years, another period?

It is always good practice to review the effectiveness of new procedures, and so we would recommend a review of the whole process of ADR once implemented at least 12 months after full implementation.

D. If the time period should be subject to review, what metrics should we use to establish whether the time period remains appropriate or should be changed?

We would recommend establishing what proportions of cases have been closed within say weekly time bands and what proportion remain unresolved when the deadline is reached. Looking at the nature of these residual cases would therefore show up any common attributes that need addressing.

E. Should individual rail companies be able to set their own signposting time limits as long as they are below the minimum agreed signposting standard?

London TravelWatch has no objection to this.

F. Should arrangements be introduced to allow signposting before the time period is reached i.e deadlock?

There is no advantage to be gained from deferral of signposting to the next stage in an appeal process.

G. As substantial progress has been made voluntarily by industry on developing an ADR scheme, is it necessary to make membership of an approved ADR scheme a requirement in the licence (and reflected in CHP guidance and CHPs)?

Voluntary progress has been made, but this needs to be backed up by its' inclusion in the regulatory process for the future. This is to avoid the possibility of some or all National Rail train operators withdrawing from the scheme if they deem it to be too expensive to operate or they have a disagreement over its' operation..

H. Are their any other approaches which could provide certainty in the ADR arrangements for consumers?

None that London TravelWatch is aware of.

I. What alternative safeguards are available to ensure that rail companies do not withdraw their membership from a scheme?

Please see answers to questions above.

J. Are there any reasons why charter operators and station licence holders should not an ADR scheme?

None immediately apparent, although for charter operators these are not currently within the scope of London TravelWatch and Transport Focus activities and therefore this would need a change of licence conditions for these operators to allow this to happen.

If you have any queries on our response please do not hesitate to contact me.

Yours sincerely,

Tim Bellenger
Director – Policy and Investigation

.

Merseyrail response to consolation on CHP changes

C**hapter 1**

Which of the three options set out above is most appropriate for signposting to ADR?

We believe option 1 is the preferable. We believe that this will provide a single 'front door' to the ADR process that is simple for customers to understand, have confidence in and will provide a single point of oversight for the industry.

Are there other approaches that we have not considered which may be preferable to those set out above?

We do not believe there are any options that has not been considered.

Is it necessary for ORR to set out in detail our expectations, and make these formal requirements, in the CHP of communications about the ADR scheme?

We do not believe this will be required. Merseyrail has an existing CRM system led process for signposting in the 2nd substantive response which can easily be amended to reflect the new arrangements. We do however believe it would be wise for the members of the scheme to agree a common form of words in agreement with the scheme provider to ensure consistency and to ensure consumers are advised of their rights.

Chapter 2

What is the most appropriate point at which to signpost ADR? Eight weeks, six weeks, another period?

We believe an 8 week period, in line with ADR processes in other sectors is most appropriate. We have arrived at this position having considered the existing timescales related to handling complaints (20 working days for a first response and typically a further 10 working days for a second). When transmission time is considered we believe 6 weeks would be too ambitious at this stage. Also, given the potential customer take up of the new ADR is still not known, it would be hard for us to agree to a more ambitious target in the absence of substantive data.

We would also like to see a 'stop the clock' provision built into this timescale to account for situations where we need to ask customers for the further information, tickets etc. Meaning that the 8 weeks does not include this period of time. We also believe that the timescale should only start when the case reaches the TOC responsible for the journey.

Should we conduct a review of whatever time period is agreed? If so, at what point; after one year, two years, another period?

That being said, we would support a review after 2 years to ensure the scheme is delivering outcomes in a timely fashion.

If the time period should be subject to review, what metrics should we use to establish whether the time period remains appropriate or should be changed?

We would suggest a customer satisfaction survey be undertaken periodically during the two years with a benchmark agreed by TOC's using the satisfaction figures from other sector ADR's as a benchmark.

Should individual rail companies be able to set their own signposting time limits as long as they are below the minimum agreed signposting standard?

We have no objection to this in principle, although believe this requires further detailed consideration. It would seem somewhat perverse that customers in different parts of the country receive different experiences in terms of ADR.

Should arrangements be introduced to allow signposting before the time period is reached i.e. deadlock?
We believe this is definitely needed. As is the case now, Merseyrail will continue to attempt to resolve customer complaints as early as possible. In the spirit of this, where this proves impossible we will look to signpost the customers to ADR at the earliest opportunity.

Chapter 3

As substantial progress has been made voluntarily by industry on developing an ADR scheme, is it necessary to make membership of an approved ADR scheme a requirement in the licence (and reflected in CHP guidance and CHPs)?
We don't believe this will be required . As is acknowledged in the consultation, TOC's have made significant progress in establishing the ADR and we see no reason that this would change when it comes to implementation.

Are there any other approaches which could provide certainty in the ADR arrangements for consumers?
We do not believe there are any options that has not been considered.

What alternative safeguards are available to ensure that rail companies do not withdraw their membership from a scheme?
Whilst we don't believe it is required to mandate TOC's to be part of the scheme, we would suggest that it does form part of 'best practice' guidelines with relation to CHP's going forward.

Are there any reasons why charter operators and station licence holders should not join an ADR scheme?
Clearly the scheme is a work in progress and until all the final details are in place this is a hard question to answer. Broadly speaking however we do not see any reason why Merseyrail would not wish to take part in the scheme

From: Mr P Nalpanis

Chapter 1

- Which of the three options is most appropriate for signposting to ADR?
  Response: Option 1 or Option 3 are both acceptable as they do not involve the rail companies in deciding which route (ADR or TF/LTw) is appropriate. Option1 is marginally preferable to Option 3 as it would enable a complaint to be handled directly by ADR if considered within scope.
- Are there other approaches that we have not considered which may be preferable to those set out above?
  Response: If I am not happy with an insurance company I can go direct to the FOS. There should be no need for TF/LTw, whose decisions are non-binding. ADR is all that is needed.
- Is it necessary for ORR to set out in detail our expectations, and make these formal requirements, in the CHP of communications about the ADR scheme?
  Response: Yes, otherwise rail companies may not communicate effectively with customers about ADR.

Chapter 2

- What is the most appropriate point at which to signpost ADR? Eight weeks, six weeks, another period?
  Response: Four weeks would be appropriate, so that the matter does not drag on for the customer (who will see a longer period as deliberate delay by the rail companies).
- Should we conduct a review of whatever time period is agreed? If so, at what point; after one year, two years, another period?
  Response: Possibly, but only if it would lead to the time period being reduced.
- If the time period should be subject to review, what metrics should we use to establish whether the time period remains appropriate or should be changed?
  Response: Complainant feedback, obtained by survey if necessary.
- Should individual rail companies be able to set their own signposting time limits as long as they are below the minimum agreed signposting standard?
  Response: Consistency is beneficial for complainants.
- Should arrangements be introduced to allow signposting before the time period is reached i.e. deadlock?
  Response: Definitely. Once there is deadlock, it should immediately be possible to seek ADR and rail companies should be required to advise complainants of this.

Chapter 3

- As substantial progress has been made voluntarily by industry on developing an ADR scheme, is it necessary to make membership of an approved ADR scheme a requirement in the licence (and reflected in CHP guidance and CHPs)?
  Response: Yes. Complainants need consistency across the industry and need to know there is one ADR scheme available. Even the TF/LTw distinction is unhelpful.
- Are there any other approaches which could provide certainty in the ADR arrangements for consumers?
  Response: No; consistency is what's needed.
- What alternative safeguards are available to ensure that rail companies do not withdraw their membership from a scheme?
  Reponse: Rail companies should not be able to withdraw their membership.
- Are there any reasons why charter operators and station licence holders should not join an ADR scheme?
  Station licence holders should join. For charter operators, it should depend on whether they are fully commercial companies or charities (e.g. preservation/heritage groups). Even for fully

commercial companies, it may be the case that a charter train may be delayed due to Control's prioritising scheduled trains in times of disruption or may lack facilities that would be expected on modern rolling stock due to the rolling stock used (e.g. heritage stock). Hence it's not membership of an ADR scheme that is important but how the charter operator is viewed by the ADR scheme – different criteria may need to be applied. For charities, different criteria again may be required

Chapter 4

Comment on "Response times – unexpected increases in complaints": this should not be used by rail companies as an excuse to delay responding to complaints simply because of major disruption on a single day; they should have sufficient resources to handle complaints in such circumstances. Only when major disruption is prolonged should it be acceptable for response time targets to be missed.

Network Rail’s response to ORR’s consultation on changes to complaints handling guidance

24 November 2017

Executive Summary

Network Rail agrees that it is important that consumers have a clear, understandable and seamless pathway to a body which can provide independent redress following customer dissatisfaction with internal complaints handling. Network Rail is therefore supportive of an approach that signposts consumers to information which clearly and consistently explains options available when engaging with organisations that are members of a rail Alternative Dispute Resolution (ADR) scheme and organisations that are not.

Network Rail believes that ORR's guidance should focus on encouraging rail companies to achieve a positive outcome from its communications with consumers, rather than prescribing how a company communicates with its customers. We believe this will help to deliver an optimum experience in complaint handling resolution. Should ORR prescribe too rigidly how rail companies communicate with customers the knock on effect could limit the flexibility of rail companies to engage appropriately with their consumers and also restrict innovation in the industry's approach to communication with consumers.

Network Rail is supportive of ORR identifying and recognising best practice across the industry, and its efforts to create an environment where rail companies strive to raise standards in complaints handling. We agree with ORR that rail companies should use relevant research from other sectors to develop communications in line with best practice, to provide consumers with information consistent with the nature of their complaint.

We do not believe that ORR should pre-empt the introduction of the ADR scheme with a presumption that regulatory intervention will be required to gain membership, achieve desired benefits for consumers or stop rail companies from withdrawing membership. We believe that ORR should take a risk based approach to regulation in this area and only consider the need for formal regulatory intervention if market failure is identified and the industry fails to act. ORR should assess the rate of voluntary uptake of the scheme and review whether mandating membership is a proportionate response to the risk ORR is trying to manage. We propose that ORR should consider whether mandatory enrolment will deliver a more positive result for consumers.

Network Rail agrees with ORR's view that consumers should be granted the same protection at all stations, and believe that there are various methods to achieve this. It is important to recognise that Network Rail is a public sector body, which impacts its policy position regarding the payment of ex-gratia compensation. Network Rail does not routinely make ex-gratia payments to consumers and would require special approval from Department for Transport and HM Treasury to make any special payments under the terms of Managing Public Money. We believe that ORR should consider Network Rail's position when determining whether regulatory intervention is required to provide protection to consumers at stations.

Network Rail also proposes that ORR should take a risk based approach to the regulation of Station Licence holders. Only a small sub-section of all the contact received by Network Rail relates to its management of stations and would therefore be relevant to the ADR scheme. In 2016/17, the total number of contacts received by Network Rail was approximately 125,000, 11 per cent of which related to managed stations, and only two per cent of which were complaints about managed stations. Of the 2,490 complaints that we did receive about managed stations, we only received contact from Transport Focus and London TravelWatch 18 times.

Network Rail is actively working with the industry to consider our position and continue to offer protection for consumers. With regard to ORR's guidance, we propose that ORR should consider whether a regulatory requirement for Network Rail to be a member of the ADR scheme is a proportionate response to the magnitude of concerns about our handling of managed station complaints.

Question 1 (Chapter 1):

Which of the three options set out above is most appropriate for signposting to ADR?

Network Rail agrees that it is important that consumers have a clear, understandable and seamless pathway to a body which can provide independent redress whenever this is required and is appropriate. It is therefore vital that consumers are provided with information which clearly and consistently explains which processes are relevant to organisations that are members of the ADR scheme, and processes relevant to organisations that are not part of the ADR scheme. ORR's consultation sets out three options for the appropriate organisation for rail companies to signpost complainants to if a complaint cannot be resolved internally.

We support the first option in ORR's consultation, as proposed by RDG, whereby members of the ADR scheme would inform complainants that they can request the independent scheme to investigate their complaint, if it has not been resolved to their satisfaction. The ADR scheme would then filter the complaints that are received to identify and investigate cases (or parts of cases) which are within the scope of the scheme, and refer those outside of scope to Transport Focus or London TravelWatch.

We recognise that this process would rely on the ADR scheme to correctly identify which cases are within the scope but we believe that the scheme would be best placed to determine which complaints are in scope and which are not.

Consumers should be able to trust that their complaint is going to be investigated fairly and by an appropriate organisation, therefore we believe it is important for the filtering process to be undertaken by the independent ADR scheme. This will enable a smoother transition for member rail companies, as it will not require each organisation to introduce new processes and capabilities to correctly filter cases and refer them to the correct organisation.

The consultation suggests that it may be confusing for consumers, who expect their complaint to be investigated by the ADR scheme with a binding decision, to find that it has been passed to Transport Focus or London TravelWatch. Network Rail believes that clear communication will minimise the risk of confusion for consumers, and agrees with ORR's proposal that relevant parties should agree to a referral protocol.

We propose that the industry should consider how additional protocols are incorporated into existing materials to provide a single, transparent source of information for consumers. Member rail companies should clearly explain the role of the ADR scheme when signposting and the ADR scheme should make it clear which aspects of the complaint are within scope and which have been passed to another appropriate organisation.

We recognise that decisions or recommendations from Transport Focus or London TravelWatch do not have the same binding status as a decision from the ADR scheme. However, we believe that Transport Focus and London TravelWatch's management of appeals will allow them the opportunity to negotiate with rail companies and secure commitment to an appropriate resolution before providing a final response to the complainant. This will provide the consumer with confidence that the rail company is going to act on all decisions and recommendations included in the final response from the appropriate investigating body. For this reason, we believe that the ADR scheme could co-ordinate with London TravelWatch or Transport Focus to co-ordinate a single response, which clearly communicates the status of each decision.

Although we support member rail companies referring cases to the ADR scheme to be filtered, there is a risk that this removes the opportunity to seek independent review of complaints without a cost for using the ADR scheme. If consumers have low levels of trust in rail companies, they may not trust that a decision from a rail company is fair and seek redress through the ADR scheme. However the independent review the consumer seeks could be provided by Transport Focus or London TravelWatch before additional costs are incurred.

Network Rail does not support option two, which would require each member rail company to determine which complaints are within the scope and which are not, and to signpost to the ADR scheme, Transport Focus or London TravelWatch respectively.

There is a risk that consumers may not feel that the filtering process has been undertaken correctly and fairly by the rail company. Where a complaint from a consumer includes multiple issues, the rail company may be required to direct parts of the complaint to different organisations. This could result in the consumer receiving multiple responses to one complaint, as there would not be one organisation (aside from the rail company) in a position to co-ordinate the response. We do not believe that it would be appropriate for the rail company to co-ordinate the response to an appeal which has been independently investigated.

While Network Rail supports option one, we can also see the benefits of option three whereby member rail companies would continue to signpost to Transport Focus or London TravelWatch, and any unresolved complaints that are in scope would then be further signposted on to the ADR scheme. This would mean that where Transport Focus or London TravelWatch have not been able to resolve an issue to the consumer's satisfaction, there would still be a further stage through which to seek redress and reach a full and final decision for the consumer. However, we do recognise that this would lengthen the process for consumers to receive a fair and satisfactory conclusion to their complaint, and may not be compliant with the Chartered Trading Standards Institute's interpretation of the ADR directive. For this reason, Network Rail recommends option one.

Question 2 (Chapter 1):

Are there other approaches that we have not considered which may be preferable to those set out above?

We ask that ORR notes the risks we have highlighted and considers how the signposting process can be flexible and effective for all parties. This could be through encouraging the use of Transport Focus or London TravelWatch appeals or mediation where the consumer is willing. This would provide an opportunity to reach a resolution without additional cost. The consumer could still access the ADR scheme directly if they were not confident that they would reach a satisfactory conclusion via Transport Focus or London TravelWatch.

Question 3 (Chapter 1):

Is it necessary for the ORR to set out in detail our expectations, and make these formal requirements, in the CHP of communications about the ADR scheme?

Network Rail agrees that it is important for consumers to fully understand their right to independent redress, whether that is through an existing passenger body or, for organisations who are members, an ADR scheme. Network Rail supports consumers being provided with clear information about their options and what they can expect from all rail companies, regardless of whether they are members of an ADR scheme. We do not believe that it is necessary for ORR to prescribe detailed requirements of signposting letters.

Network Rail believes that guidance from the ORR should focus on encouraging rail companies to achieve a positive outcome from its communications with consumers, rather than prescribing how a company communicates with its customers. We believe that this will deliver an optimum experience in complaint handling resolution. Network Rail is supportive of the ORR identifying and recognising best practice across the industry, and believes that this helps to create an environment where rail companies strive to raise standards in complaints handling. We agree that rail companies should use relevant research from other sectors to develop communications in line with best practice, to provide consumers with information consistent with the nature of their complaint.

Question 4 (Chapter 2):

What is the most appropriate point at which to signpost to ADR? Eight weeks, six weeks, another period?

We agree that it is important for rail companies to have a reasonable opportunity to resolve a consumer's complaint in the first instance. ORR's consultation sets out two options for the appropriate timescale for signposting complainants towards an alternative body if their complaint has not been resolved to their satisfaction by the rail company; eight weeks and six weeks.

We recognise that the current arrangement, whereby signposting letters are triggered solely by the completion of an action (within the second substantive response to a complaint) could result in consumers waiting an unnecessary amount of time before they can access independent investigation.

The options ORR has proposed relate solely to timescales after which rail companies should signpost towards Transport Focus, London TravelWatch or, where relevant, the ADR scheme. These options do not recognise that complaints could be at different stages within the company's own process when a specific time period elapses, and that the overall timescales associated with the process cannot be wholly controlled by the rail company. For example, if a rail company has provided an initial response within four weeks of receiving a complaint, and the complainant has responded two weeks later, the company could be undertaking a second, thorough review of the complaint within the next two weeks (eight weeks since the original complaint was received). If a consumer received a signposting letter while they believe a second review is ongoing, this may cause confusion for consumers and lead to an unnecessary duplication of work for the consumer, rail companies and alternative resolution body.

Applying a timescale alone would also fail to provide clarity on which complaints should be referred to an alternative body. For example, if an initial response has been provided by the rail company within four weeks and no further communication is received from the complainant within eight weeks, it would not be clear whether the rail company should assume that the complainant is satisfied with the response, or send a signposting letter after six or eight weeks anyway. An alternative option to consider is that options and timescales are made clear to the consumer within the initial acknowledgement from the rail company.

Network Rail believes that, when agreeing on timescales for sending signposting communications it would also be important to recognise exceptional circumstances. If a rail company is unable to provide an initial response to a complaint within the requisite time period, for example where there is a backlog of complaints, it is unlikely that the rail company would have available resource to send signposting communications to all affected complainants. Sending these communications could also result in cases being referred to an alternative body even where the rail company would be able to resolve the complaint simply and effectively when the backlog is cleared.

We believe that the point at which a rail company signposts a complainant towards an alternative body for investigation should be based on both actions and timescales. We propose that where it is clear that a complaint has not been resolved by the initial response (i.e. a rail company has received a follow up communication from the complainant), the rail company should have a reasonable opportunity to undertake a review of the complaint. The second substantive response should then be sent within four weeks of receiving follow up communications, and should contain signposting information as relevant. If the second review has not been concluded, we suggest that rail companies should provide a progress update to the complainant, including signposting information. This would mean that a consumer would not have to wait indefinitely to be signposted, but would not create an unreasonable expectation of rail companies by including the time taken for the consumer to respond within the referral timescales.

We believe that where rail companies have concluded their second review of a complaint and provided signposting within less than eight weeks, ORR should recognise this as best practice.

Question 5 (Chapter 2):

Should we conduct a review of whatever time period is agreed? If so, at what point; after one year, two years, another period?

Network Rail would support ORR reviewing the timescales, and all elements of the CHP guidance to ensure maintain it continued to be fit for purpose and reflects best practice.

We suggest that in relation to the timescales specifically, ORR undertakes a review after two years to allow operators and the ADR scheme sufficient time to embed processes, and reflect any benefits gained from the scheme, unless there is a significant cause for earlier review.

Question 6 (Chapter 2):

If the time period should be subject to review, what metrics should we use to establish whether the time period remains appropriate or should be changed?

We believe that, as far as possible, ORR should aim to use existing metrics such as consumer satisfaction with the complaints handling procedure to establish whether the time period remains appropriate or should be changed. ORR could then assess whether this is effectively representing consumer's satisfaction with the time period, before determining whether there is a requirement for more in depth analysis. Network Rail believes that reporting requirements should be proportionate and relevant to the overall priorities of consumers and the industry. It is also important that metrics used provide comparability between organisations that are members of the scheme and those that are not.

Question 7 (Chapter 2):

Should individual rail companies be able to set their own signposting time limits as long as they are below the minimum agreed signposting standard?

We believe that regulation should encourage rail companies to strive to continue to improve processes and services for consumers. Rail companies are responsible for managing their relationship with consumers therefore ORR's guidance should allow flexibility for rail companies to tailor their approach to complaints handling as appropriate to stakeholders and individual business models. While we accept that ORR might include minimum standards for signposting time limits, we believe that ORR's monitoring should emphasis recognition of best practice to encourage rail companies to continue to raise the standards of service delivery.

Question 8 (Chapter 2):

Should arrangements be introduced to allow signposting before the time period is reached i.e. deadlock?

Network Rail agrees with the concept of deadlock arrangements. As described in our response to question four, we believe that the point at which signposting happens should be related to both actions and timescales. Therefore, where a process has been exhausted, a rail company should be able to signpost towards alternative bodies without waiting for a specific time period to elapse.

We would recommend that ORR's guidance makes an allowance for how member organisations would manage frivolous and vexatious complaints. Certain cases are likely to reach a point of deadlock early if the rail company is not able to take the specific action that the complainant has requested. When the point of deadlock is reached in these cases, we do not believe that rail companies should encounter additional costs each time a complainant contacts the ADR scheme.

Question 9 (Chapter 3):

As substantial progress has been made voluntarily by industry on developing an ADR scheme, is it necessary to make membership of an approved ADR scheme a requirement in the licence (and reflected in CHP guidance and CHPs)?

We believe that ORR should take a risk based approach to regulation in this area. We believe that ORR should only consider the need for formal regulatory intervention if a market failure is identified and the industry fails to act. ORR should not pre-emptively mandate membership before assessing the rate of voluntary uptake of the scheme. It should also review whether mandating membership to the scheme would be a proportionate response to the risk that ORR is trying to address. ORR is unlikely to be able to obtain an accurate view of whether mandating membership is necessary before rail companies have had the opportunity to partake voluntarily, so as to assess whether membership of the scheme is delivering the desired results for consumers.

Network Rail believes that ORR can review rail companies' management of the complaints handling process on a case by case basis and use regulatory tools to support the industry to make improvements where

possible. For example, ORR can make use of reputational incentives by highlighting best practice and areas where rail companies are not performing in line with expectations. Recognising the comments above, we do not currently believe that there is a strong case for making membership of an approved ADR scheme 'a requirement in the licence'.

Question 10 (Chapter 3):

Are there any other approaches which could provide certainty in the ADR arrangements for consumers?

We believe that the most effective way in providing certainty for consumers, is for the ADR scheme itself to demonstrate its value to all parties. Where members are benefitting from feedback from the scheme and are able to continue to incorporate best practice principles into their processes to improve their delivery of service to customers, the scheme will be appealing for rail companies to join.

Question 11 (Chapter 3):

What alternative safeguards are available to ensure that rail companies do not withdraw their membership from a scheme?

We do not believe that ORR should pre-empt the introduction of the scheme with presumptions that rail companies will withdraw membership. We suggest that the ORR observes and assesses the success of the scheme under voluntary arrangements before introducing regulatory requirements that may be unnecessary.

Question 12 (Chapter 3):

Are there any reasons why charter operators and station licence holders should not join an ADR scheme?

Network Rail agrees with ORR's view that consumers should be granted the same protection at all stations, and believes that there are various methods to achieve this. We believe that ORR should consider the most appropriate methods as the more detailed arrangements of the ADR scheme are confirmed.

It is important to recognise that Network Rail is a public sector body, which impacts its policy position regarding the payment of ex-gratia compensation. Network Rail does not routinely make ex-gratia payments to consumers and would require special approval from Department for Transport and HM Treasury to make any special payments under the terms of Managing Public Money. We believe that ORR should consider Network Rail's position when determining whether regulatory intervention is required to provide protection to consumers at stations.

Network Rail also proposes that ORR should take a risk based approach to the regulation of Station Licence holders. Only a small sub-section of all the contact received by Network Rail relates to its management of stations and would therefore be relevant to the ADR scheme. In 2016/17, the total number of contacts received by Network Rail was approximately 125,000, 11 per cent of which related to managed stations, and only two per cent of which were complaints about managed stations. Of the 2,490 complaints that we did receive about managed stations, we only received contact from Transport Focus and London TravelWatch 18 times.

Network Rail is actively working with the industry to consider our position and continue to offer protection for consumers. With regard to ORR's guidance, we propose that ORR should consider whether a regulatory requirement for Network Rail to be a member of the ADR scheme is a proportionate response to the magnitude of concerns about our handling of managed station complaints.

As currently drafted, the proposed rules of the scheme extend the CHP guidance to include claims under Equality Act 2010, which currently fall within the jurisdiction of the Claims Allocation and Handling Agreement (CAHA). For the sake of clarity and avoidance of double compensation it is important to ensure that there is no duplication between schemes.

Marcus Clements
Office of Rail and Road
One Kemble Street
LONDON
WC2B 4AN

22nd November 2017

Daniel Edwards
Head of Customer Experience
Northern House
9 Rougier Street
YORK
YO1 4HT

Dear Marcus,

Consultation on changes to complaints handling guidance

I am writing following your request for comments on the consultation opened on the 26th September regarding potential changes to complaints handling guidance.

This letter is to confirm that Northern is fully supportive of and has contributed to the letter sent by John Horncastle from the Rail Delivery Group on the 22nd November 2017. The response from the Rail Delivery Group should be considered as the response to this consultation from Northern.

I look forward to working with you in implementing any changes that are agreed.

Yours faithfully,

Daniel Edwards
Head of Customer Experience

Ombudsman Services
3300 Daresbury Park, Warrington WA4 4HS.
www.ombudsman-services.org

Emailed to: CHP@orr.gsi.gov.uk

Office of Rail and Road
1 Kemble Street
Westminster
London
WC2B 4AN

9th November 2017

Dear Sir/Madam

Changes to Complaints Handling Guidance: a consultation

I write in response to your consultation on changes to Complaints Handling Guidance.

About Ombudsman Services:

Established in 2002, The Ombudsman Service Ltd (TOSL) is a not for profit private limited company which runs a number of discrete national ombudsman schemes across a wide range of sectors including energy, communications, and property. Each scheme is funded by the companies under our jurisdiction and our service is free to consumers. We currently have in the region of 10,000 participating companies. Last year we received 246,274 initial contacts from complainants and resolved 72,652 complaints. The company currently employs more than 600 people in Warrington and has a turnover in excess of £30 million.

We are 'Good for Consumers and Good for Business'.

For consumers, we offer a free and accessible way of resolving complaints, with a focus on swift, impartial resolutions based on principles of fairness. We also use the insights and data we gather through our casework and other sources to help bring about wider improvements which deliver benefits to all consumers, not just those who have turned to us for help.

For businesses, we help resolve disputes with customers in a fast and non-adversarial way, helping with customer retention and brand loyalty. We go beyond individual complaints to find broader trends which can be a source of innovation. We also use our expertise help companies identify opportunities for improvement, which can sharpen competitiveness and help build reputation.

Ombudsman Services
Good for consumers – Good for business

Ombudsman Services
3300 Daresbury Park, Warrington WA4 4HS.
www.ombudsman-services.org

Ombudsman Services' Comments:

Ombudsman Services (OS) welcomes the current plans to introduce an ombudsman scheme to the rail sector and supports the work that the ORR is doing to help facilitate this process.

OS's Consumer Action Monitor is an annual survey of over 2000 consumers undertaken by ICM. This comprehensive research on consumer redress and activism gives us insight into consumer attitudes to the goods and services they buy and use. The survey is now in its fourth year and we intend to continue to repeat it annually, allowing us to identify emerging trends.

The 2017 research (undertaken in January 2017) indicates that British consumers had 55 million complaints in 2016, equating to 2.8 complaints per head of the population. The infographic below shows the number of complaints by sector and, as you will note, Public Transport was the fourth most complained about consumer sector in the UK in 2016, with a total of 5.5m complaints made, equating to 10% of all consumer complaints made last year.

In most consumer sectors, when a complaint is not resolved satisfactorily, consumers can choose to 'vote with their feet' and many will either use the company less often that they did previously, or will stop using the company altogether. In fact, our research shows that only 8% of people would be likely to return to a company if a complaint was handled badly.

In the Public Transport sector however, due to the nature of the services being provided, the above is not always an option for customers and there will be many cases where passengers are forced to continue using a particular company despite being unhappy with how their issues have been handled. In the rail sector in particular, our 2017 CAM research found that 20% of passengers are simply resigned to poor service. This is concerning; when customers begin choosing to suffer in silence, not only does this risk leading to unaddressed consumer detriment on a large scale, but industry also loses the opportunity to learn from consumer complaints and improve as a result.

It is our view that a strong system of ADR in the rail sector would ensure that passengers have the confidence to raise issues in the knowledge that they can have their complaint reviewed by an independent third party should the company fail to resolve matters appropriately. An ombudsman in particular would also ensure that the redress provider works closely with the industry to feed back instances of poor complaint handling and help drive improvements in customer service. An ombudsman can also use the data and insights it gathers from escalated

complaints and from other sources to identify emerging issues and work with the industry and the regulator in a preventative manner, to tackle problems before they become systemic.

As the ORR will be aware, the All-Party Parliamentary Group (APPG) on Consumer Protection recently commissioned MoneySavingExpert.com to carry out a study on the effectiveness of ombudsmen. The final report, published in November 2017, talks about the distinction between ombudsmen and ADR and states that unlike other ADR providers *"ombudsmen may work with complained about organisations in order to help them address issues that are leading to complaints. Wider than this, some ombudsmen also work with regulators and other stakeholders in order to work to address systemic issues."*

As the consultation document points out, the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 requires ADR bodies to be certified by a relevant Competent Authority. While we acknowledge the key role that CTSI plays as the overarching Competent Authority in non-regulated consumer sectors, our experience as a multi-sector ombudsman tells us that the ombudsman model of ADR works most effectively when there is close collaboration between the industry regulator, the ombudsman and relevant consumer bodies.

In the energy sector in particular, OS's 'tripartite' model of working with Ofgem and Citizens Advice, has allowed us to ensure there is a joined up approach between regulation, redress, advice and advocacy. While each organisation has its own distinct role to play, all share an in-depth knowledge and understanding of the sector, and we have seen how collaborative working between bodies with the same sector-specific focus can be effective. It is therefore our view that, where an industry regulator exists, it is appropriate that this body acts as the Competent Authority for the sector and on this basis we believe that ORR should be the Competent Authority for an ombudsman in rail.

In the remainder of our response, we provide answers to the specific questions raised in the consultation document.

Chapter 1: Signposting unresolved complaints

Which of the three options set out above is most appropriate for signposting to ADR?

Are there other approaches that we have not considered which may be preferable to those set out above?

We would suggest that, of the three options outlined in the consultation document, Option 1 would make the clearest system of signposting for rail passengers. While it is obviously important that passengers are made aware of the services provided by London TravelWatch (LTW) and Transport Focus (TF), it is our view that signposting to multiple bodies is likely to cause confusion amongst passengers which may ultimately act as a barrier to complaining.

However, we note that in all three scenarios, the process follows a linear path whereby both passengers and rail companies deal exclusively with one another for the initial part of the complaint journey, usually without any external advice or support from a third party. Once the complaint reaches a certain point in this process, in this instance after the second substantive response has been issued by the company, the

company then informs the passenger of the availability of the ADR scheme and/or LTW and TF. However, the complainant is still unable to fully access these services at this stage. If the rail company subsequently fails to resolve the complaint satisfactorily, access to the ADR scheme or LTW/TF then becomes available to the passenger, as illustrated by the red line in **Figure 1** below. In many cases the complainant may drop out of the process at this point, leaving unaddressed consumer detriment. Where the complainant opts to take the matter further, their complaint would usually be resolved either by the ADR scheme or mediated by LTW or TF. However, it is likely that the relationship between the passenger and the company will be severely damaged by this stage.

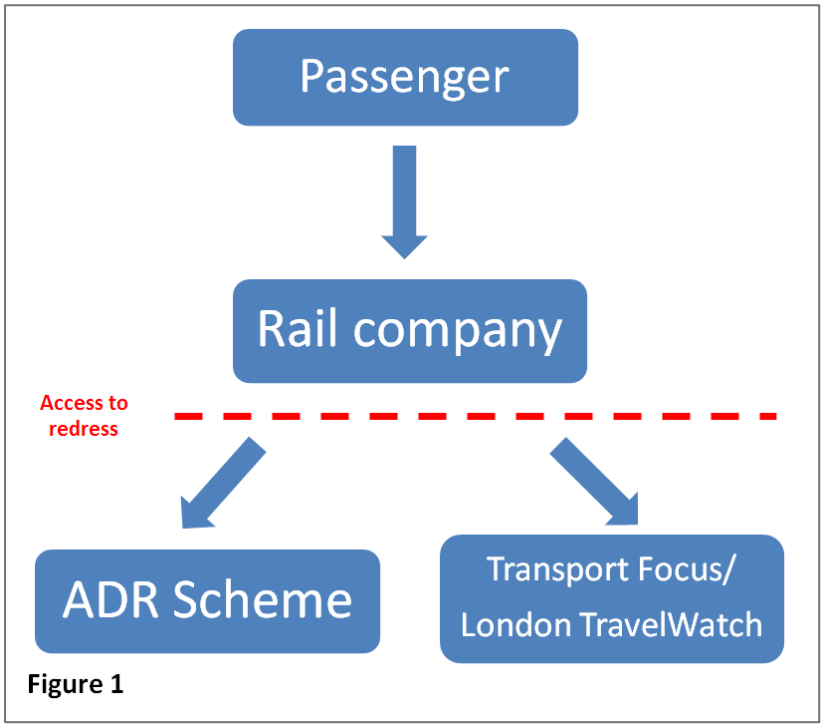


Figure 1

It is worth taking a step back and thinking about how an ideal system would work. In our view, some of the key features of an optimal complaints process in the rail sector would be:

- Support for both passengers and companies during the process when issues arise.
- Access to advice and advocacy from the start to prevent matters from escalating where possible.
- Straightforward access to redress at the earliest possible opportunity.
- Use of data for prevention, identifying systemic issues and enforcement.

Figure 2 below shows what, in our view, an ideal complaints system would look like in the rail sector. In this model, as soon as an issue arises, passengers would access a single complaints platform which is shared by rail companies, the ombudsman scheme and the advice and advocacy bodies. Passengers would have immediate access to advice and information regarding their issues, which may help to resolve some matters before they become complaints. Where the passenger chooses to complain, this would be submitted to the rail company via the same platform.

During the complaints process, not only would passengers have continued access to advice and support, the company would also be able to access information about the ombudsman's decision making principles, so that they can assess their approach and try to resolve matters before they reach ADR. There are also opportunities to utilise technology to predict which complaints would have a strong likelihood of reaching the ombudsman through artificial intelligence and machine learning. Such cases could be flagged with rail companies and the ombudsman, who would work together to try to resolve complaints earlier in the process, which would help with customer satisfaction and trust in the company. When large scale issues arise, an ombudsman can also intervene at this point in the process and work with the company to prevent cases from reaching ADR. The case study at the end of this section demonstrates how this approach is been put into action in the energy sector.

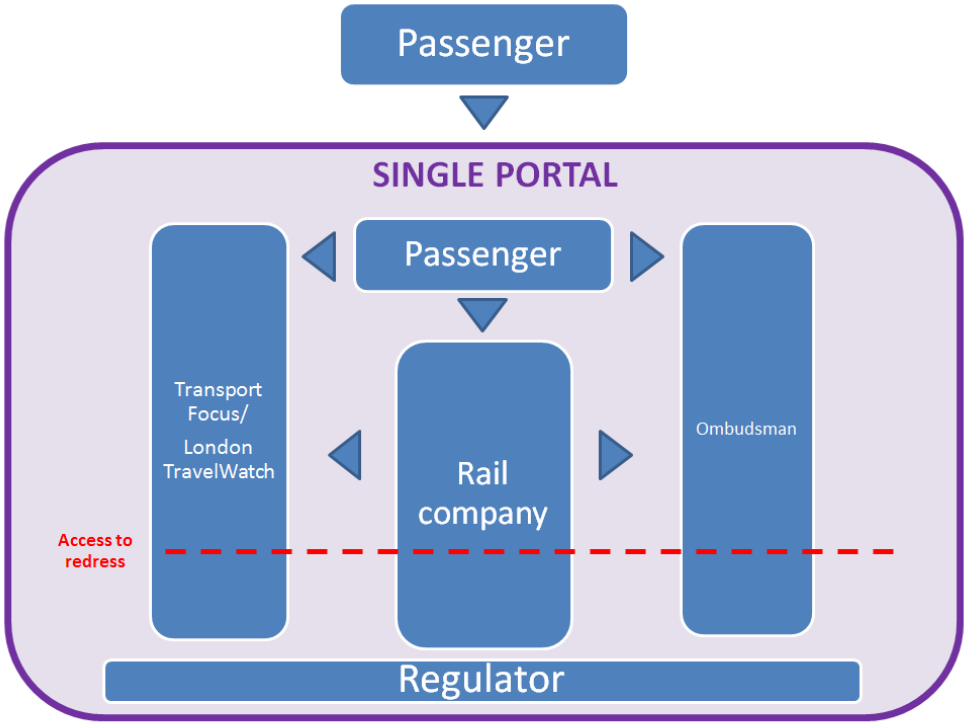


Figure 2

In cases where the company is unable to resolve matters for the passenger, the complainant would have the same right to redress. However, by the time the complaint reaches this point, as illustrated by the red line in **Figure 2,** there will have already been involvement from the various organisations including opportunities to have resolved matters at an earlier stage.

Where ADR is appropriate, we believe that an automated escalation to the ombudsman via the platform would provide the most straightforward consumer journey. As well as being more a more efficient system with lower handoff costs between organisations, this would also help prevent instances of passengers dropping out of the process and thereby assist in building trust in the sector by ensuring that consumer detriment is being addressed.

Another key advantage of this model is, of course, that all of the data is held in one place rather than being fragmented across different systems and organisations. As more complaints are handled through the platform and this pool of data builds, this could create further opportunities around the use of technology to predict and prevent issues. The advice and advocacy bodies would also be able to utilise this data in their work, and the industry regulator would also have access to information from the platform to assist with regulation and enforcement. This model would provide a simple, straightforward complaints system for passengers and provide a greater synergy between advice, advocacy, regulation and redress.

Of course, we recognise that there are a number of practical obstacles which would need to be overcome in order to implement this type of system; in particular the ability to build a platform capable of fulfilling the requirements of this model, and a considerable level co-operation from the various organisations to operate on a common platform.

OS has been working with a technology partner to begin developing this type of platform in our existing ombudsman work and we believe that this could be employed effectively in the rail sector. The most challenging aspect of this model would no doubt be encouraging train companies to use the same platform. However, even if this proves impracticable, we believe there are still opportunities to develop a consumer-centric complaints portal which rail companies could signpost to and which the ADR scheme, TF and LTW could all use. This would still allow passengers and industry to benefit from many of the key principles outlined in the above model.

Case study: Supporting a large communications provider to resolve complaints at an early stage

During 2017, OS embarked on a pilot project with one of the large communications providers. The provider wanted to embed changes to their internal process to improve complaint handling at an earlier stage with a view to reducing consumer detriment for all customers, not just those who complained.

OS and the provider agreed that it would be beneficial for OS to provide more advice and guidance to the company as it handled complaints through its complaint handling procedure. To this end, OS set up a technical helpdesk which the provider's agents could contact if they wanted a view as to how the complaint was likely to be investigated if it was brought to OS. OS also developed a series of online guidance documents which the provider could access to understand the principles OS would apply to common types of complaint. We analysed the requests for advice we received via the helpdesk and added guidance to assist with common advice requests.

This approach helped to better align the provider's approach to complaints to that of the ombudsman. In some cases, the provider changed their approach to a complaint after accessing the helpdesk or online guidance. And when the provider felt they had handled the complaint in a reasonable way, they could refer customers to the online guidance to demonstrate this.

This new approach gave us a greater influence on how complaints are dealt with at a far earlier stage – before we previously would have become involved. It has also allowed us to have a wider impact on the experience of consumers who might not have used our service.

Is it necessary for ORR to set out in detail our expectations, and make these formal requirements, in the CHP of communications about the ADR scheme?

As the consultation document points out, the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 place certain obligations on companies to signpost to ADR. However, these are very much minimum requirements, and we would expect to see rail companies going above and beyond these obligations in order to do the right thing by their passengers and facilitate access to ADR where appropriate.

Unfortunately, as the 2015 Which? super-complaint into rail compensation highlighted, industry-led approaches can often lead to inconsistencies across the industry both in terms of the quality of information provided, and the ways in which different companies communicate this information to their passengers. This risks leading to a situation whereby a passenger's chances of accessing their consumer rights can vary significantly depending on which company they use.

We note that in the ORR's response to the Which? super-complaint, it was acknowledged that "there are currently limited market incentives to encourage TOCs to promote awareness of compensation schemes". We believe that the same is likely to be true of companies' propensity to promote awareness of ADR. The ORR's response went on to say, "We consider there may however be market-based incentives for TOCs arising from factors such as improving passenger satisfaction". In our experience, the value placed on improving customer satisfaction varies significantly from company to company so this alone is unlikely to drive consistency across the sector in terms of signposting to ADR.

To help limit some of these risks, OS would be in favour of the ORR setting some specific minimum requirements for train companies, to ensure that information on ADR is being communicated consistently across the industry. However, we would suggest that this is only worthwhile if the obligations placed on companies go beyond the minimum requirements already in place via the ADR Regulations.

Chapter 2: Timescale for sending signposting letters

What is the most appropriate point at which to signpost ADR? Eight weeks, six weeks, another period?

As ORR will be aware, EU Directive 2013/11/ EU on Alternative Dispute Resolution for Consumer Disputes (the Directive) only specifies that, before escalation to ADR, the consumer must first have attempted "to contact the trader concerned in order to discuss his complaint and seek, as a first step, to resolve the matter directly with the trader". The Directive does not stipulate a specific time period after which the consumer can escalate to ADR. However, as the consultation document points out, in the majority of UK consumers sectors where ombudsman and other types of ADR bodies exist, 8 weeks is the most commonly adopted timeframe.

While OS's current schemes largely work to this 8 week time period, we do have voluntary arrangements in place with several companies whereby they allow us to accept complaints after 6 weeks. Broadly speaking, we believe that any arrangements which allow consumers to escalate to ADR at an earlier stage are positive. As noted in the consultation document, Ofgem published a review in 2013 looking at why relatively few eligible consumers choose to access the energy ombudsman, and this highlighted that many consumers become worn out by the length of the complaints process and disengage from it. This

sentiment has been echoed in other research, including Citizens Advice's July 2016 report 'Understanding Consumer Experiences of Complaint Handling' which found that one of the key barriers to using ADR was not wanting to spend any more time on the complaint.

Based on this evidence, OS would be keen to see the rail sector setting an example for other sectors by going beyond the standard 8 week timeframes adopted elsewhere and aiming to signpost passengers to ADR at 6 weeks or less.

Should individual rail companies be able to set their own signposting time limits as long as they are below the minimum agreed signposting standard?

OS broadly supports the concept of allowing companies to set their own time limits provided that this is never any longer than 8 weeks from when the complaint was first raised. As mentioned above, this is something we have experience of in the energy and communications sectors, where we have seen this work effectively. As well as the obvious advantages for consumers, the shorter ADR timeframes provide companies with an incentive to resolve complaints faster which can impact positively on their customer satisfaction scores and customer retention. Companies can also use the shorter timeframe as a differentiator against competitors to demonstrate to their customers that they are committed to excellent customer service. We therefore believe that a framework which allows rail companies to voluntarily signpost to ADR earlier in the process would be desirable.

We would caution however that that the ADR scheme should not become a secondary complaints handler for the company. If it appears that a business is allowing complaints to escalate to the ADR scheme quickly because this is less expensive than dealing with them in-house, then the ADR scheme should take steps to address this to ensure that it is only dealing with those cases which are appropriate for ADR.

Should arrangements be introduced to allow signposting before the time period is reached i.e. deadlock?

OS notes that the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 state:

*"*19(2)*Where a trader has exhausted its internal complaint handling procedure when considering a complaint from a consumer relating to a sales contract or a service contract, the trader must inform the consumer, on a durable medium—*
(a) that the trader cannot settle the complaint with the consumer;
(b) of the name and website address of an ADR entity which would be competent to deal with the complaint, should the consumer wish to use alternative dispute resolution; and
(c) whether the trader is obliged, or prepared, to submit to an alternative dispute resolution procedure operated by that ADR entity."

OS would interpret points (a) and (b) as meaning that businesses should issue a deadlock letter and signpost to ADR at the point that it is clear that the complaint cannot be directly resolved by the parties, regardless of the period of time that has elapsed. We would therefore suggest that the issuing of deadlock letters is an obligation on companies signed up to use an approved ADR scheme.

More generally, OS sees many cases where there is a fundamental disagreement between the consumer and the company, and it will often be clear early in the process that a resolution will not be reached. In such cases we believe it is entirely appropriate to allow the ADR scheme to consider the issues at the earliest possible opportunity, rather than allowing more time to elapse unnecessarily for the consumer.

We believe that escalating deadlocked cases to ADR can also be beneficial to businesses. Deadlocked cases often provide valuable insights which an ombudsman in particular can utilise by working with companies to help prevent such cases from escalating in the future. In instances where the ombudsman upholds the consumer complaint, the ombudsman may discuss their decision making principles with the company to ensure there is an alignment of thinking on future complaints. On occasions where the complaint is not upheld, the ombudsman's feedback may focus on how the company can manage the complainant's expectations more effectively or about how the company communicated their decision reasoning. To make this possible, it is important that the ombudsman is able to differentiate deadlocked cases from complaints which the company has simply been unable to resolve within the necessary timeframes.

Chapter 3: Requirement to be a member of an ADR scheme

As substantial progress has been made voluntarily by industry on developing an ADR scheme, is it necessary to make membership of an approved ADR scheme a requirement in the licence (and reflected in CHP guidance and CHPs)?

What alternative safeguards are available to ensure that rail companies do not withdraw their membership from a scheme?

OS fully supports the industry-led approach to establishing an ombudsman scheme in the rail sector and notes the progress that has been made by the Rail Delivery Group and the Ombudsman Task Force to help bring this about.

As a multi-sector ombudsman, OS has experience of operating both in industries where ADR is mandatory and in sectors where participation in ADR is entirely at the companies' discretion. In our experience, making voluntary ADR work effectively can be extremely difficult. In many cases, even where businesses see the value of ADR, the choice of whether or not to use this often comes down to a straightforward monetary decision. As the ORR may be aware, in August 2015, OS launched the Consumer Ombudsman, offering redress in non-regulated sectors. While the scheme has seen substantial interest from consumers, there has unfortunately been low engagement by business. In the first 12 months of the scheme, over 20,000 consumers used the portal to make complaints about almost 3,000 different businesses. However, only a small number of businesses were willing to participate and consequently just under 100 cases were taken to a decision. This reflects the low level of engagement by business where redress is not mandatory.

Even where companies choose to sign up to voluntary ADR, the non-mandatory nature of the relationship can often make it difficult for the ADR scheme to carry out its function effectively, for example around the enforcement of decisions. Voluntary arrangements also often mean that only parts of particular industry are signed up to ADR while other parts are not. For an ombudsman scheme in particular, where there is a focus on using data and insights to help improve industry standards, it is difficult to carry out this role with access to only part of the picture.

Ombudsman Services
3300 Daresbury Park, Warrington WA4 4HS.
www.ombudsman-services.org

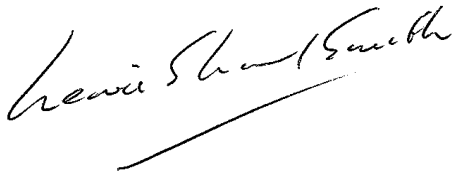
While the engagement from the rail industry is an encouraging sign that rail companies will opt to sign up to the ombudsman, there is obviously a risk that some companies may choose not do this, particularly once the discussions move onto what the scheme is likely to cost. As well as placing the individual passengers of these companies at a disadvantage, this would create a confusing landscape for all rail passengers, with uncertainty around which parts of the sector are covered by the ombudsman and which are not; this risks undermining the ombudsman's newly established role in the sector from the outset.

On this basis, OS would be in favour of making membership of an approved ombudsman scheme a requirement in the licence. In respect of alternative safeguards to ensure that rail companies do not withdraw their membership from the scheme, we would suggest that companies must sign up to the ombudsman for substantial period of time to demonstrate a commitment to making the ombudsman scheme work effectively in the sector. Also, in our experience, the establishment of a long-term relationship between the ombudsman and the business is essential, as short-term arrangements would not allow the ombudsman sufficient time to work with the company and effect positive change.

Are there any reasons why charter operators and station licence holders should not join an ADR scheme?

It is our view that a sector ombudsman should cover the entire consumer journey and on this basis OS is broadly in favour of including charter operators and station licence holders in the ADR arrangements for the sector.

I trust that this answers your queries in full, but if you have any further questions please don't hesitate to get in touch again.



Lewis Shand Smith
Chief Ombudsman and Chief Executive, Ombudsman Services

Queen Margaret University
CONSUMER DISPUTE RESOLUTION CENTRE

Consultation Response:

The Office of Rail and Road's "Changes to complaints handling guidance"

Introduction

The Consumer Dispute Resolution Centre at Queen Margaret University welcomes the opportunity to respond to the Office of Rail and Road's call for evidence on the complaint handling guidance that will surround the creation of a new Rail Ombudsman. We confirm that we are happy for our response to be made public.

Our primary interest and expertise is in the area of consumer redress, but we also have a wider interest in consumer policy issues, and carry out consultancy work in this area. We are particularly concerned with issues of consumer detriment and dissatisfaction, and provide training for those who deal with these across all sectors. Based in Scotland, we work with ombudsman, complaints, consumer and redress organisations across the UK and internationally. Our research centre includes staff members with expertise and experience from across the spectrum of dispute resolution, including private and public-sector Ombudsman schemes.

We welcome the creation of a Rail Ombudsman, and consider that this move presents a fantastic opportunity for the sector to improve the experiences of rail users, limit consumer detriment, and raise standards of service.

Overall we feel that the consultation document has given good consideration to the wide-range of areas that will be critical for the good-functioning of an Ombudsman within the sector. We support the creation of statutory Ombudsman schemes across consumer sectors, which we consider will help to address the issues that have arisen in relation to poor practice and consumer detriment, provide access to justice, and increase active participation in the market.

One important issue which is not discussed within the consultation paper is the complaint types which might be considered to be outside the remit of the Rail Ombudsman. We accept that there are areas where Ombudsman involvement may not be within the realm of wider public interest, both in general and regarding the rail sector specifically. However, without knowledge of the complaint types which are being considered, we are unable to comment with this in mind. We note that the scope of the scheme is currently under discussion with the Ombudsman Task Force. Given our experience in this area, we would welcome the opportunity to provide further assistance at a later stage, if that would be helpful.

Chapter 1

- **Which of the three options set out above is most appropriate for signposting to ADR?**

The most appropriate option would be to utilise the ADR scheme as a signposting function, as illustrated in Option 1. This is our preferred option for two main reasons, which are also highlighted within the consultation document. Firstly, there is a potential conflict of interest in allowing train company staff to triage and refer unresolved complaints to either the Ombudsman, or London Travel Watch/Transport Focus. As we understand it, only a referral to the Ombudsman would result in a further charge being made to the train company, and this fact by itself might lead consumers to call into question the impartiality of the process. Secondly, consumers may be deterred from pursuing their complaint if a further layer of administration was provided, which would require additional time and effort.

In addition, we would expect an ADR scheme to have the necessary specialist knowledge to identify and correctly refer appropriate complaints on to Transport Focus or London Travel Watch. If such referrals were left to train companies, it is more likely that inappropriate referrals will be made, which will cause additional frustration and stress for consumers.

In line with the Ombudsman Association (OA)'s Schedule 1 to the Rules[1], Criteria for the Recognition of Ombudsman Offices (OA Schedule 1) Section B 1 (f), it is stated that the Ombudsman alone, or someone acting in their authority, must have the power to determine whether a case falls within their jurisdiction. This aspect, arguably, precludes the use of Options 2 or 3, whereby the train company or the Conciliation Bodies may determine whether an individual complaint would satisfy the eligibility criteria of the scheme. We would also recommend the use of Option 1 on the basis that, should a number of complaints not fall within the Ombudsman's Terms of Reference, it will be able to gather data on these ineligible complaints and begin discussions, where necessary, with relevant stakeholders regarding the broadening or revision of these terms, if it considers that unnecessary consumer detriment is caused by this prescriptiveness.

As the consultation paper notes, direct access to ADR as set out in Option 1 is similar to the arrangements that exist in other sectors. Under OA Schedule 1 B 3 (c) (ii), it is stated that an Ombudsman Scheme should normally be directly accessible

[1] OMBUDSMAN ASSOCIATION. 2017. *Schedule 1 to the Rules: Criteria for the Recognition of Ombudsman Offices*. [online]. Available at: http://www.ombudsmanassociation.org/docs/OA-Rules-Schedule-1.pdf

by members of the public, except where this is prevented by law. In our opinion, utilising any other option presented aside from Option 1 might raise concerns regarding the scheme fulfilling this principle.

We also agree that ensuring complainants are able to access the Ombudsman in a timely manner is critical to ensuring uptake of the service, and that complainants do not tire of the complaints process before obtaining satisfactory resolution. To extend the process more than is necessary would interfere with the purpose of the scheme, to remedy consumer detriment, by providing a barrier to accessibility.

- **Are there other approaches that we have not considered which may be preferable to those set out above?**

The consultation paper does not include any detail about the nature of the proposed scheme, including the processes which will be used. Consumer Ombudsman schemes often incorporate non-adjudicatory methods of dispute resolution into their suite of dispute resolution methods available to case handlers. However, in this particular case, non-adjudicatory methods are already provided by two schemes, London Travel Watch and Transport Focus. Whilst we would recommend that the Rail Ombudsman utilise informal methods, as many other Ombudsman schemes do, we consider that for efficiency purposes, and so that existing expertise can be put to the best possible use, it might be beneficial to consider the utilisation of the existing non-adjudicative functions as part of the wider Rail Ombudsman process, instead of creating new non-adjudicative processes for use within the Ombudsman scheme.

The benefits of the use of non-adjudicatory methods in dispute resolution have been well documented by dispute resolution scholars and professionals. It is considered to be beneficial for circumstances where maintenance or improvement of the relationship between the parties is important, where the circumstances surrounding a complaint are not too complex, and where a quick resolution would be beneficial. However, where a technical determination is required, where one or both parties have become entrenched or intractable, or where there is a need for inquisitorial investigation of the facts of a case, a more adjudicative method is required to ensure that consumer detriment is properly remedied, and opportunities for service improvement are identified[2]. Being able to select the right type of process for the individual dispute at hand is an important overall benefit of the use of a flexible ADR or Ombudsman scheme[3], and will be more satisfactory for consumers than a rigid, overly-formal system which will already be provided by the courts.

[2] GILL, C., WILLIAMS, J., BRENNAN, C. and HIRST, C. 2014. *Models of Alternative Dispute Resolution (ADR): A report for the Legal Ombudsman*. [online]. Available at: http://www.legalombudsman.org.uk/downloads/documents/research/Models-Alternative-Dispute-Resolution-Report-141031.pdf

[3] SANDER, F. E. A. and ROZDEICZER, L. 2006. Matching Cases and Dispute Resolution Procedures: Detailed Analysis Leading to a Mediation-Centred Approach. *Harvard Negotiation Law Review.* Vol 11, No 1, pp 1- 41.

The functions operated by London Travel Watch and Transport Focus, as conciliatory, non-binding bodies, are not dissimilar to the ‘mutually agreeable’ or ‘early resolution’ settlement approaches utilised by other consumer Ombudsman schemes. With the potential of complaints being referred to a binding dispute resolution process existing in the background, we consider that it is possible that these conciliatory processes will function more effectively, with more engagement from train operators.

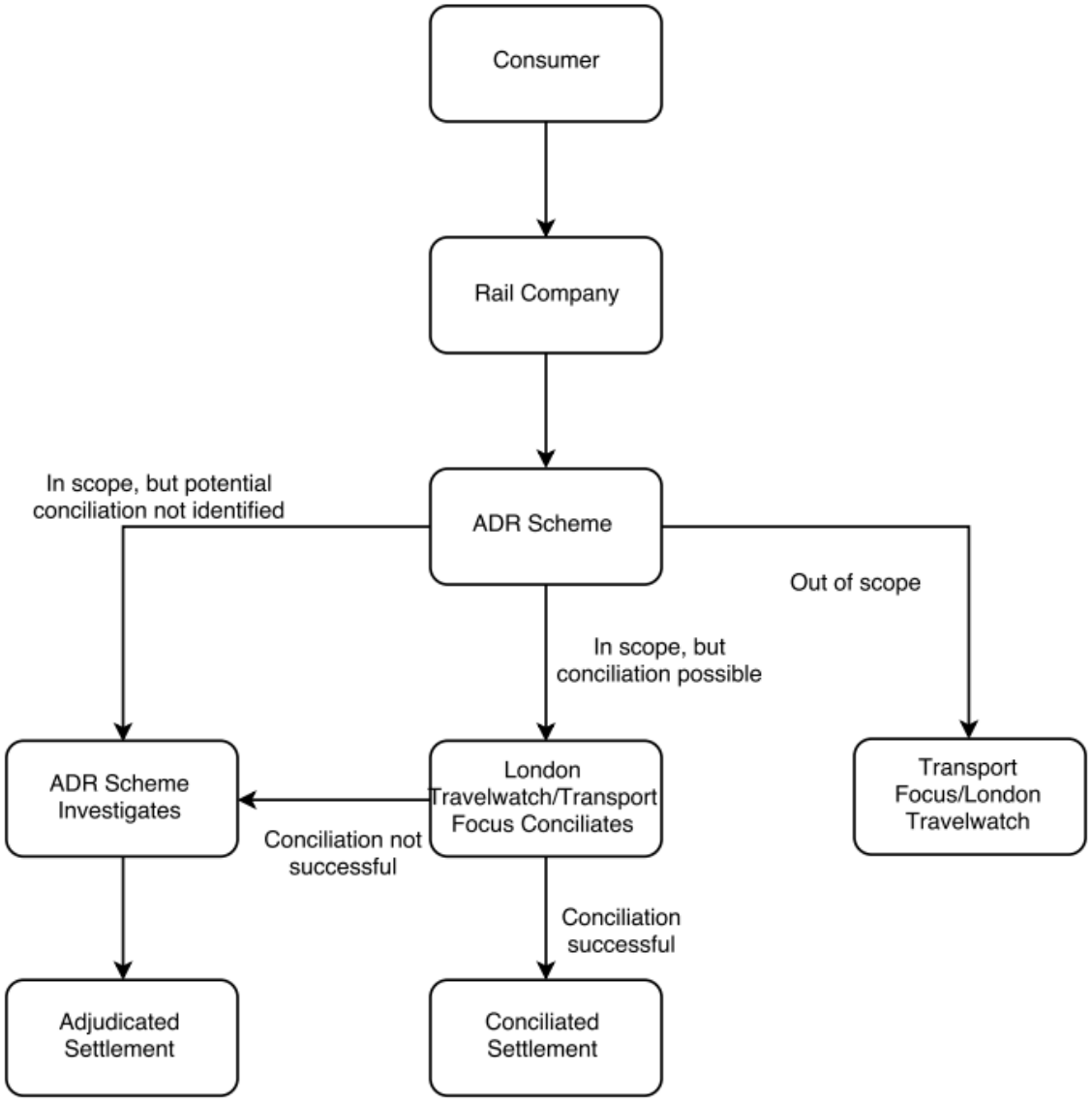
As a result, it might be beneficial to consider incorporating the existing conciliation functions of the two schemes within the wider umbrella of the proposed Rail Ombudsman, rather than introducing an additional conciliation function within the Ombudsman. This would avoid the additional and unnecessary confusion associated with a complaint being deemed outside the Terms of Reference of the Ombudsman, and so unsuitable for investigation. Instead of being advised that they were being passed to a further organisation, they could simply be advised that an attempt would be made to conciliate, but that the complaint would not be considered for investigation.

In addition, the conciliatory functions might be used to conduct ‘early resolution’ in complaints where it is deemed practical. Though there may be issues with ensuring that the aspects of these functions met the rigorous independence requirements of the Ombudsman Association also, it would prevent the need to duplicate a conciliation function across the three separate organisations. It would also allow the experienced staff carrying out the conciliatory functions, already at London Travel Watch and Transport Focus, to provide reports and guidance on complaints to the Ombudsman staff who would investigate following any failed attempts at conciliation.

In order to incorporate these functions, it would be important that a formal process for identifying in which cases a conciliation settlement might be more suitable than a full investigation was established, and that Ombudsman staff conduct this assessment for reasons of both impartiality, and perceptions of impartiality.

Largely, this function would remain exactly the same as the first option, as presented above, with the distinction between the conciliation function and the Rail Ombudsman blurred in favour of a clearer description of the type of dispute resolution process that was going to be utilised in the specific complaint, reinforced by an established triage process where necessary.

For an illustration of this idea, please see the below diagram:



- **Is it necessary for ORR to set out in detail our expectations, and make these formal requirements, in the CHP of communications about the ADR scheme?**

In short, yes. It will prove difficult for train companies to establish new procedures and processes for interacting with the new Ombudsman, and in addition it would be necessary to train staff to follow these. ORR should therefore be as clear and prescriptive as possible in its guidance on how the train companies should signpost consumers to the scheme, and should also seek to ensure that there is no confusion as to the train company's obligation to do so.

Further to this, the OA Schedule 1 B 3 (c) refers to the accessibility requirements of Ombudsman members, which states that the right to complain to the Ombudsman must be adequately publicised by the bodies that are subject to its investigation. OA Schedule 1 B 3 (b) also states that the Ombudsman should expect those subject to

investigation to have accessible and fair internal complaints procedures. Before being able to access the Rail Ombudsman, a consumer will need to have exhausted the internal complaint system of the train company. If the poor operation of the complaint system itself has caused consumer detriment, the Ombudsman will have a role in investigating allegations to that effect, and coming to a decision.

Providing clear and concise instructions to operators, sometimes referred to in other sectors as a Code of Conduct for complaint handling, or Service Standards, will allow the Rail Ombudsman to clearly measure its decisions against these standards, ensuring consistency. Further to this, clearly published standards will ensure that train companies are able to understand the requirements put upon them, which will prove useful in terms of understanding any adverse decisions taken against them. Where necessary, such standards will also allow train companies to make the improvements necessary to their services in order to meet those standards.

Failure to notify a complainant about their ability to utilise an Ombudsman scheme in the event of non-resolution of a complaint can also constitute detriment. With a clearly laid out Code of Practice or set of Service Standards regarding complaint timescales, which can be published and advertised centrally, complainants will be able to understand their rights without the involvement of a train company. If a train company is unable to respond to a consumer complaint within the timescale, it will help ensure they still know where to go.

While it is technically possible to provide less prescriptive guidance to train companies, that incorporate the requirements laid out by the OA, we would strongly recommend that this avenue not be chosen. Research which we recently carried out for Citizens' Advice found that problems experienced with the accessibility of Ombudsman Schemes includes a lack of information regarding the existence of a scheme, its remit, and when a consumer is able to contact it[4].

Being prescriptive about what information a train company should provide to consumers is therefore critical in ensuring clarity about the role and function of the Ombudsman, and ensuring consumer accessibility, critically at the moment their complaint becomes operational. However, it will also ensure that train companies have clear information about what is expected of their complaint handling function. This will ensure both that there are measurable requirements that the Ombudsman can use to hold them to account, and that the rail company is fully aware of these expectations, and that failure to meet them may result in an award being made.

This will be especially necessary when considering our answers to the questions in chapter 3.

[4] GILL, C., CREUTZFELDT, N., WILLIAMS, J., O'NEILL, S. and VIVIAN, N. 2017. *Confusion, gaps, and overlaps: A consumer perspective on alternative dispute resolution between consumers and businesses.* [online]. Available at: https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Confusiongapsandoverlaps-Original1.docx.pdf.

Chapter 2

- **What is the most appropriate point at which to signpost ADR? Eight weeks, six weeks, another period?**

Without further specific research into the types of complaints experienced by train companies, and how long it might take to reasonably investigate and provide a 'final decision' in the circumstances, it is difficult to advise on the length of time which train companies should be given to resolve a complaint before the cases could be automatically forwarded to the rail ombudsman. It is important to ensure that the right balance is struck between allowing train companies sufficient time to adequately investigate and resolve complaints and ensuring that matters are dealt with as quickly and possible to avoid stress, frustration and delay for those who complain.

We consider that a 'wait and see' approach would be appropriate, but that in the meantime suggest that a 6-week period should be set as the time limit for complainants to be able to bring their complaints to the Ombudsman. This time period could then be reassessed if train companies perform well, but raise specific types of case where they can justify an investigation and handling period exceeding 6 weeks, appropriately backed up by evidence gathered from across the sector during the initial phases of Ombudsman operation.

We believe this shorter time period is justified because the longer a complaint is left unresolved, the more likely it is that the initial issues reported will become compounded by the passage of time. While the normal industry standard is 8 weeks, this generally relates to complex products and services, such as energy supply and financial products and services. Without a wide understanding of the types of complaints received by train companies, it is difficult to reach a definitive conclusion, but we would imagine that complaints will often relate to incidental purchases and events, as opposed to more drawn-out, costly, and detrimental experiences that occur in other sectors. There is also a danger in setting a generous time limit, as this might encourage train companies to use the figure as a 'target' as opposed to a measure of last resort that, ensures consumer complaints do remain outstanding for an unreasonable amount of time.

In short, we recommend as short a timeframe as is feasible to allow for the train company to investigate and resolve complaints it receives. We would anticipate that the amount of time required will be lower in this sector than the standard 8-weeks allowed in most other consumer sectors.

- **Should we conduct a review of whatever time period is agreed? If so, at what point; after one year, two years, another period?**

It would be advisable to regularly review the time period, once more data is gathered, to meet the overall goal of ensuring that unresolved complaints are passed to the Ombudsman as soon as possible. Initially it would be advisable to keep a

close eye on the way in which train companies are handling the prescribed timescales, to ensure that they do not overtly interfere with the proper handling of complaints, while also ensuring that train companies are encouraged to handle complaints as swiftly and as effectively as possible.

- **If the time period should be subject to review, what metrics should we use to establish whether the time period remains appropriate or should be changed?**

The complaints received by train companies may well be varied in terms of complexity. Defining accurate metrics in order to review the overall timescale provided for their resolution will require adequate complaint definitions to be drawn up, average handling times to be assessed, and data collected to measure adherence to these times. Such data will also be very useful in assessing the good-functioning of complaint handling systems at train companies.

However, a simpler method might be used to provide a rule-of-thumb assessment of whether the allotted timescale is functioning correctly. In terms of assessing whether a train company has been afforded enough time, this could be:

$X + (Y-X) \leq Z$

X= Mean time taken to provide a stage 2 response or deadlock a complaint.

Y= Mean of the highest 20 percent of times recorded to provide a stage 2 response or deadlock a complaint.

Z= Timescale allotted before signposting to Ombudsman required.

This measurement would not be useful if a train company simply began issuing a large number of ‘deadlock’ notices to consumers, informing them that they would be able to take their complaint to the Ombudsman, without conducting any meaningful investigation into the issues raised. A separate assessment of the types of responses provided by the train company to the consumer would be required, to ensure the reliability of this measure. Separate reporting of types of response, be they ‘stage 2’ decisions or ‘deadlock’ letters, would assist here.

Where this figure is high (above 10%) for a majority of train companies, on the basis of justifiably complex complaints, this may be an indication that the timescale is too short and should be extended. If it becomes clear that most complaints are actually being dealt with in a much shorter timescale, it would be useful to consider shortening the timescale to reflect this, ensuring that all train companies are held to the same standards.

Further to this, it would be technically possible to calculate a model timescale using existing data on complaint handling time and the above equation. However, as complaints are currently handled without this escalation process, and so the time-

pressure or ‘threat’ of escalation, the existing data gathered may not be reliable for this purpose.

- **Should individual train companies be able to set their own signposting time limits as long as they are below the minimum agreed signposting standard?**

There would be no reason why train companies could not set their own internal timescales to resolve complaints that were shorter than the allotted signposting timescale, as long as:

  - Internal complaint investigations are not being artificially cut short so they could be sent to the Ombudsman;
  - Complaints that should normally be resolved by the train company are not being passed to the Ombudsman, so using the Ombudsman as a replacement front-line complaint handling function; and
  - These timescales are not externally communicated, so as to avoid consumer confusion, and to maintain clear service standards for train companies.

Further to this, we would suggest that train companies should be encouraged set stricter internal guidelines than those allowed by the deadline for referral to the Ombudsman. This would be in the interest of the consumer, as it would raise Service Standards above the minimum requirement. It would also be useful operationally for train companies, as it would allow for some flexibility in case of incidental variances in staffing or complaint volumes.

- **Should arrangements be introduced to allow signposting before the time period is reached i.e. deadlock?**

This practice is advisable where it becomes clear that a complaint is not able to be resolved to the satisfaction of both parties; normally because of complexity and the need for a neutral determination of facts and decision, or when it becomes clear that the dispute between the parties to the complaint has become intractable.

However, as mentioned in previous sections, use of this function should be monitored to prevent abuse and the use of the Ombudsman as a replacement for normal frontline complaint handling duties. The ‘deadlock’ option might however be used where there are temporary capacity issues, in the interests of providing consumers with timely access to redress. Train companies should, however, be notifying appropriate stakeholders, such as ORR and the Ombudsman, of these issues, for follow-up and further investigation if not resolved.

Chapter 3

- **As substantial progress has been made voluntarily by industry on developing an ADR scheme, is it necessary to make membership of an approved ADR scheme a requirement in the licence (and reflected in CHP guidance and CHPs)?**

Yes. Our recent research for Citizens' Advice into consumer ADR[5], led to several conclusions being drawn as to why consumer ADR needs to be mandatory, which is reinforced by our experience of operation and research in the sector.

We found that where mandatory ADR does not exist in consumer sectors, consumers are left without access to redress. We also considered that where businesses have chosen not to sign up to an ADR scheme, it is likely that these are in areas where consumers are most likely to have issues resolving complaints with businesses, and so most likely to need access to an ADR scheme. For these reasons, we recommended that mandatory ADR should be extended across all consumer sectors.

The consultation paper states that consumer confidence is low in train companies, and that satisfaction with complaint handling in the sector is generally low. This indicates the existence of a high level of consumer detriment in the sector, and a need for consumer access to impartial redress facilities. As consumers are not often afforded choice in their train company, membership of the Ombudsman scheme will not drive consumer use of a particular operator. As a result, as in other consumer sectors where ADR is available but not widely taken up, we do not foresee that there will be any incentive for the train companies that are performing most poorly to voluntarily take up membership of the Ombudsman scheme. As the poorest performers will be creating the most consumer detriment, it is here that access to ADR will be most required, and so it is strongly urged that membership become mandatory.

In addition, non-mandatory membership has serious effects on the ability of an Ombudsman or ADR body to make decisions and enforce remedies. Where an organisation is able to relinquish membership of the scheme, there will be pressure on the decision-maker to consider the value of that organisation as a customer when making decisions. This will impact the impartiality of the decision maker, and the organisation itself. Where an organisation is in receipt of a decision that it does not agree with, and has the ability to simply cease membership of the Ombudsman scheme (even if it is contractually bound to honour the decision made in question), it is possible that non-mandatory membership will drive behaviours that are detrimental

[5] GILL, C., CREUTZFELDT, N., WILLIAMS, J., O'NEILL, S. and VIVIAN, N. 2017. *Confusion, gaps, and overlaps: A consumer perspective on alternative dispute resolution between consumers and businesses.* [online]. Available at: https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Confusiongapsandoverlaps-Original1.docx.pdf.

to the good-functioning of the scheme, to consumers, and the overall purpose of ADR.

- **Are there any other approaches which could provide certainty in the ADR arrangements for consumers?**

The consultation mentions that it is not foreseeable that legislation will be bought forward to require train companies to be members of an ADR scheme, which is unfortunate. However, it is stated within the body of the consultation document that it would be possible to include an equivalent requirement in the train operator licence to be a member of an ADR scheme, which we would wholeheartedly support. We do not consider that having a voluntary ADR scheme would be beneficial regarding consumer trust in the wider rail sector. We envisage that some poorly performing companies would opt to remain outside such a scheme, that consumer confusion across the sector would increase, and that the authority of the Ombudsman to make decisions and enforce remedies would be undermined.

- **What alternative safeguards are available to ensure that train companies do not withdraw their membership from a scheme?**

Our strong preference would be to include a requirement on train companies to join an ADR scheme from the earliest date possible. We note, however, that the consultation states that it would be costly to amend existing licences to include a new requirement that a train company be a member of the Ombudsman scheme. If this cost is prohibitive, it might instead be possible to advise train companies that any award of future licences, as they expire and are re-tendered, will take into consideration a train company's previous membership of, and conduct with, the Ombudsman scheme.

- **Are there any reasons why charter operators and station licence holders should not join an ADR scheme?**

We are in agreement, in that we see no reason why other rail-related bodies should not be included in the Ombudsman scheme. This can only be in the interests of consumers who use the services provided by these companies.

Rail Delivery Group

National Rail BRITAIN RUNS ON RAIL

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

22nd November 2017

Dear Consumer Policy Team

Thank you for the opportunity to respond to the consultation *Changes to Complaints Handling Guidance* 26th September 2017.

Role of Rail Delivery Group (RDG)
RDG brings together the companies that run Britain's railway into a single team to deliver a better railway for all users. Our membership is constituted of train operating companies and Network Rail. This response reflects the views on which there is consensus among our members. Train operating companies and Network Rail may also respond directly in relation to areas of specific relevance to their own circumstances.

General Background
Over the last decade rail industry complaint volumes have fallen significantly. For franchised TOCs, complaints as a proportion of passenger journeys, have reduced from 74.4 per 100,000 journeys in 2005-6, to 27.4 in 2015-16 (from a total volume of 473,000).

Last year, this decrease came to a pause in the context of significant issues around industrial relations and infrastructure upgrades. Other developments have also contributed to the rise of consumer contacts including the introduction of the CRA, the publicity around the Which? Super Complaint, and the extension of Delay Repay. It has been a challenging time for rail company customer service teams as ORR complaints data illustrates and the industry is working hard to get back on trend

The rail industry is committed to treating consumers fairly and, along with the improvements that rail companies implement individually, the industry is working to establish a voluntary Alternative Dispute Resolution (ADR) scheme that is intended to:

- Create an accessible, simple, effective and quick one-stop shop for consumers who dispute the way in which a rail sector organisation has handled their complaint
- Introduce binding resolution to deadlocked complaints and end the frustration caused when complaints are unresolved
- Create a credible alternative route to resolution for consumers who currently feel that they have no other option than to go to court
- Increase the incentives for rail sector organisations to tackle the drivers for consumer complaints

- Make the rail industry complaints process demonstrably fair
- Increase consumer trust and satisfaction in the rail industry
- Strengthen the voice of the consumer in the complaints process
- Drive improvements for the rail industry

The outcome of the consultation will, we hope, help us deliver the above goals.

We also believe that there are good reasons to conduct a more fundamental review of the CHP Guidance once the Rail ADR scheme is imminent and the detail of the service is being developed with an appointed supplier. We anticipate that this will be in the Spring next year.

Recognition of voluntary nature of Rail ADR scheme
Whilst it is our intention that all train operating companies will participate in the Rail ADR scheme it needs to be recognised that the scheme is constituted as a voluntary one. We have initiated the procurement of the service, and we are currently working with potential providers. We expect to be able to confirm the membership of the scheme in early 2018. It is important therefore that any changes made recognise the possibility of a rail company delivering its complaints handling requirements in compliance with its license agreement without being a member of the Rail ADR scheme.

Enforcement
The consultation does not explicitly propose an enforcement regime to underpin the proposals. We would like clarity on this. We ask that the ORR gives regard to the fact that it is undesirable to place an increased risk of regulatory penalties on companies that join a voluntary Rail ADR scheme as this would in effect penalise those companies that seek to benefit the consumer.

Chapter 1 – Signposting unresolved complaints
We agree that the current signposting requirements are not satisfactory. The ADR Directive requirement for rail companies to signpost to "an ADR Scheme that they do not use" clearly serves no purpose for either consumers or service providers.

In creating a Rail ADR scheme for the rail industry, we are working towards a point where there will no longer be the need to signpost to an ADR "dead-end" for rail companies that join the voluntary scheme.

As the government does not plan to change to the statutory duties to Transport Focus and London TravelWatch (which both have a duty to investigate any disputes presented to them), potential for confusion around signposting remains. This is because once a Rail ADR scheme is established, there will still be two potential routes available to resolve disputed rail complaints:

i. the proposed Rail ADR Scheme independent of all parties to a dispute with the powers to impose binding redress on rail companies, and

ii. the Statutory Bodies (Transport Focus and London TravelWatch) working as passenger advocates without powers to impose redress.

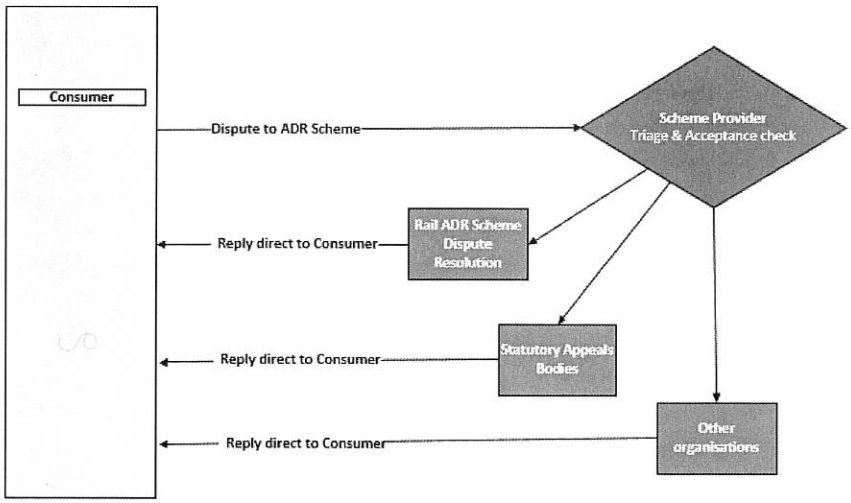
In developing the Rail ADR scheme, we have agreed, in principle, a way of working with the Statutory Appeals Bodies which will route all referred disputes through the Rail ADR scheme, with those relating to the quality of the provision of services remaining within the scope of the Rail ADR provider to resolve; whilst disputes that relate to the specification of services or general rail industry

policy would be referred to the Statutory Appeals Bodies to review and make recommendations to the Secretary of State and the industry as appropriate.

Q. Which of the three options provided for in the consultation is most appropriate for signposting to ADR?

Option 1 is the most appropriate option. It is our ambition to create a "single front door" for the consumer looking to bring a dispute. Whilst there are multiple bodies in the "appeals landscape" for rail consumers, signposting to the ADR scheme provider will be the only way of achieving this. It will ensure that there is independent oversight of all appeals at the point of escalation, and give consumers confidence that their dispute has been assessed independently and placed with the most appropriate body to progress their case. It will also guard against the risk of disputes being referred to the wrong body.

The diagram below illustrates how a triage process will work for disputes relating to scheme members:



Option 2 ("Signposting to the ADR scheme, and to Transport Focus and London TravelWatch") effectively makes the TOCs accountable for the triage process. Whilst rail companies are capable of this, it works against the principle of a dispute being independently reviewed for acceptance by the Rail ADR scheme, and does not deliver the benefit of having a single body with oversight of all disputes.

In our view, Option 3 is not compliant with the CTSI's interpretation of the ADR Directive. Schedule 3: 6 (bi) of *CTSI Requirements and Guidance on seeking approval as a Consumer ADR Body Operating in Non-Regulated Sectors* states:

> The parties must have access to the ADR procedure without being obliged to obtain independent advice or be represented or assisted by a third party, although they may choose to do so.

Placing Transport Focus and London TravelWatch (consumer advocacy bodies) between the rail company and the Rail ADR scheme appears to impose just such an obligation.

Consideration needs to be given to the evolving roles of Transport Focus and London TravelWatch. Whilst both organisations clearly have the expertise to triage disputes, such a role would require them to administer a workstream that is not congruent with their developing strategic remit,

especially as the majority of disputes would be about consumer issues that sit within the scope of the Rail ADR scheme.

As things stand, it is possible that the Statutory Appeals Bodies may have to retain the capacity to accept disputed complaints should some rail companies not join the Rail ADR scheme. It is also feasible that some consumers may, for reasons of their own, prefer to present their dispute to the Statutory Appeals Bodies despite the fact that binding redress is not available through this route. This contingency is likely to remain pending any restructuring of the statutory landscape within which the industry sits.

Q. Are there any other approaches that we have not considered which may be preferable to those set out above?

None that we have identified.

Q. Is it necessary for ORR to set out in detail expectations, and make these formal requirements, in the CHP of communications about the ADR scheme?

We do not believe that detailed formal requirements for the content of letters is necessary. It would be beneficial for the ORR to produce best practice examples, and rail companies are happy to work with the ORR, the Statutory Appeals Bodies and the Rail ADR scheme to produce this. The content of signposting letters must clearly inform consumers of their rights, and it will be part of the Rail ADR scheme provider's duties to hold rail companies to account in this regard.

Chapter 2 - Timescale for sending signposting letters

It is important that any timescales put in place facilitate a quick resolution to any dispute. Protracted correspondence increases frustration for consumers and cost for rail companies. Furthermore, encouraging consumers to escalate their complaint before a rail company has had the opportunity to resolve it leads to an unnecessary duplication of work for the consumer and the rail bodies party involved in the dispute.

Any changes to the CHP guidance should be made with regard to the ORR document *Reference guide for complaints and CHP/DPPP indicators data reporting* which has a bearing on the existing CHP requirements.

Q. What is the most appropriate point at which to signpost to ADR? Eight weeks; six weeks; another period?

Rail companies currently work to achieve a target of 95% of complaints being resolved within 20 working days, and we understand that this requirement will remain. The proposal to signpost after a fixed period will introduce an additional requirement on rail companies; this should give consumers confidence that they will be able to seek binding redress if a company does not resolve their complaint within a reasonable timeframe. This is a significant change for industry complaints handling.

Under RDG's proposal for a Rail ADR scheme, at the point that it becomes clear that a consumer is unhappy with the outcome of a complaint the customer will be sign-posted to ADR by means of a Deadlock Letter (when a rail company can do no more for the consumer) which will inform them of their options. This process will ensure that the vast majority of complaints will either be resolved or referred to ADR before the eight week timescale proposed.

The consultation does not indicate whether or not the ORR has assessed the financial impact of each of the timescales proposed. We believe that the eight week point is a reasonable place to start. It aligns with the established eight week rule employed in other sectors and it is feasible that rail companies could deliver this without significant changes to their existing cost base.

The consultation does not explore the impact of rail companies configuring their systems and processes to implement the new requirements. In particular, monitoring response times and the conditions for signposting need to be clearly set out.

Response times

At present, rail companies calculate response times by "stopping the clock" whilst they wait for a response from a consumer. This practice is in line with the ORR requirements set out in *Reference guide for complaints and CHP/DPPP indicators data reporting*. It ensures that delays attributable to lack of consumer engagement do not negatively impact on performance levels.

In discussions with the ORR we understand that the eight week timescale will be calculated by a method different to that used for the 20 working day turnaround. The eight weeks will be a straight forward eight calendar weeks from the date on which the complaint was received. TOC systems are currently configured to monitor timescales based on working days, so some TOCs will have to reconfigure their processes or systems.

A consequence of this arrangement it is likely that there will be times where a complaint that has not breached the 20 working day turnaround time will have exceeded the eight week timescale. Such cases will usually result from when a consumer has not responded to requests for information; should this occur, the proposed rules for the Rail ADR scheme allow for the scheme provider to refer the consumer back to a rail company so that there is adequate opportunity for resolution. The ORR should recognise this practice in any emerging guidance and captured in reporting.

Conditions for signposting

Rail companies expect trust in their complaints handling process to increase once a Rail ADR scheme is established. They will publicise the Rail ADR scheme and how it can be accessed by consumers. They will also have the duty to tell individual consumers when they are eligible to go to ADR.

In most cases, rail companies will send a response that is expected to resolve the complaint and assume that the matter has been closed unless they receive further contact. There is no reason to signpost to the Rail ADR scheme in such circumstances (that is when both parties understand that the matter is closed).

There are also times when rail companies might require additional information to investigate or close a complaint. Some consumers do not provide details of their journey or location; others might not submit the evidence (such as tickets or receipts) necessary for rail companies to be able to provide refunds so rail companies will contact a consumer and request the additional information, marking the complaint as "suspended" until they hear back or an appropriate time has elapsed for the complaint to be closed. When rail companies request additional information from consumers, the CHP guidance should allow for them to state the time within which the consumer should reply before the case is closed. The amount of time allowed for responses will be reasonable and agreed with the Rail ADR scheme provider and stakeholders. We would not therefore expect to signpost to the Rail ADR scheme when requesting further information from consumers.

We would expect that it is appropriate to signpost customers to the Rail ADR scheme when

a consumer is unhappy with the proposed resolution and the rail company, having reviewed the complaint, feels that it can do no more. It would also be appropriate to signpost if correspondence is ongoing at the time at which the timescale has expired (e.g. eight weeks).

Q. Should we conduct a review of whatever time period is agreed? If so, at what point; after one year, two years, another period?

Yes. Given that the Rail ADR scheme could have significant impact on complaints handling in the industry, a review would be useful. We would prefer a review after two years so that any potential enhancements could be could be validated and understood once it has been operating in a steady state.

Rail companies are open to reducing the timescale for responses in the future, but the cost of doing so needs to be recognised and addressed. At present, there is no indication as to whether any of the proposed changes will bring additional cost to rail companies who have based their resourcing commitments on the current known requirements. From this perspective, shortening the timescales to six weeks or even lower could impact on the cost base of the industry.

Q. If the time period should be subject to review, what metrics should we use to establish whether the time period remains appropriate or should be changed?

We would propose a measure of the percentage of disputes that have been submitted to the Rail ADR scheme because of the time limit being triggered rather than a Deadlock letter being sent.

Understanding the reasons why the time limit has been breached would also be useful - for example, understanding how train service performance impacts on response times, and understanding what impact the time consumers take to respond.

Q. Should individual rail companies be able to set their own signposting time limits as long as they are below the minimum agreed signposting standard?

As stated earlier, the majority of consumers who use the Rail ADR process will do so because of a Deadlock letter rather than having to wait for the prescribed time limit to expire. In principle, if individual rail companies feel that they can offer a reduced time limit to customers then this should be allowed for. However, the way this would work operationally will need to be understood as it has implications for the Eligibility Criteria for the Rail ADR scheme, and how access to the Scheme is promoted.

Rail companies are committed to continuously improving the services they offer, and once the Rail ADR scheme is established there will be an opportunity to identify how timescale limits can best contribute to this.

Q. Should arrangements be introduced to allow signposting before the time period is reached i.e. deadlock?

Yes. This is fundamental to the RDG proposal for a Rail ADR scheme and vital for enabling consumers a speedy resolution to disputes. It is in the interest of no party to insist that consumers wait for a maximum time period to access ADR once deadlock has reached.

Chapter 3 - Requirement to be a member of an ADR Scheme

Q. As substantial progress has been made voluntarily by industry on developing an ADR scheme, is it necessary to make membership of an approved ADR scheme a requirement in the licence (and reflected in CHP guidance and CHPs)?

No. Should the ORR modify the CHP guidance to make membership of an approved ADR scheme a licence condition, it would make the scheme mandatory. This would have impacts on both the DfT and the ORR and could well delay implementation.

Q. Are there any other approaches which could provide certainty in the ADR arrangements for consumers?

It is feasible that the government could introduce significant changes to the statutory role of Transport Focus to enable it to perform ADR for the industry and give binding redress. We recognise that the timescales for such a legislative change would delay the introduction of ADR for the industry.

Q. What alternative safeguards are available to ensure that rail companies do not withdraw their membership from a scheme?

Once rail companies are members of the scheme we consider that it would be exceptionally damaging for them to withdraw from such arrangements.

Q. Are there any reasons why charter operators and station licence holders should not join an ADR scheme?

We are designing the scheme so that it will be open to charter operators and station licence holders.

The main challenge with station licence holders is that they do not have a direct contractual relationship with rail users. Whilst in principle they act as suppliers to TOCs, in practice they operate with a degree of autonomy that means that the traditional supplier/customer relationship does not apply.

As the Rail ADR scheme is based on the contractual relationship between the service provider and consumer we are working with station licence holders to agree a suitable way of addressing this so that disputes relating to station licence holder services can be satisfactorily resolved for consumers.

Second substantive response

We understand that the requirement to respond in the second substantive response will be superseded by the eight week timescale for companies that join the ADR scheme. However, it is possible that some rail companies might not join the scheme. Also, it is likely that the eight week timescale will not come into force until the Rail ADR scheme is launched. With this in mind, it is regrettable that paragraph 1.2 of the consultation document states that rail companies are required to signpost to Transport Focus and London TravelWatch "in" their second substantive response to the customer - this is unnecessarily inflexible and does not allow for the rail company to tailor its approach to addressing the issue at hand. We agree that all complaints should be resolved as soon as possible, but it is not desirable for a rail company to signpost "whilst it continues to engage with a consumer with the objective of resolving a complaint".

Signposting prematurely can create the impression that a company has "washed its hands" of a complaint that it is continuing to endeavour to resolve. Furthermore, it is inefficient to embroil the Statutory Appeals Bodies or an ADR provider in an issue, only for them to find that it has been

resolved by the time they have initiated their investigations. We would ask that the ORR works with rail companies to improve this requirement as soon as possible.

Additional comments on the ORR consultation process

We would like to express concern about the process that the ORR has followed for this consultation. The established practice is for the ORR to formally approach senior contacts at rail companies and other interested parties to notify them that a consultation is open and responses are being sought. This did not happen with the current consultation which caused RDG to request an extension for the deadline for responses for members. We are grateful that this extension was given. RDG would be prepared to work with ORR to make sure that communication process is well-understood by all parties and clear for future consultations.

I trust that this response is useful. We will be happy to provide further support as required.

Yours sincerely,

John Horncastle
Project Manager, on behalf of Rail Delivery Group

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

22nd November 2017

Dear Consumer Policy Team

Thank you for the opportunity to respond to the consultation *Changes to Complaints Handling Guidance* 26th September 2017.

Role of Rail Delivery Group (RDG)
RDG brings together the companies that run Britain's railway into a single team to deliver a better railway for all users. Our membership is constituted of train operating companies and Network Rail. This response reflects the views on which there is consensus among our members. Train operating companies and Network Rail may also respond directly in relation to areas of specific relevance to their own circumstances.

General Background
Over the last decade rail industry complaint volumes have fallen significantly. For franchised TOCs, complaints as a proportion of passenger journeys, have reduced from 74.4 per 100,000 journeys in 2005-6, to 27.4 in 2015-16 (from a total volume of 473,000).

Last year, this decrease came to a pause in the context of significant issues around industrial relations and infrastructure upgrades. Other developments have also contributed to the rise of consumer contacts including the introduction of the CRA, the publicity around the Which? Super Complaint, and the extension of Delay Repay. It has been a challenging time for rail company customer service teams as ORR complaints data illustrates and the industry is working hard to get back on trend

The rail industry is committed to treating consumers fairly and, along with the improvements that rail companies implement individually, the industry is working to establish a voluntary Alternative Dispute Resolution (ADR) scheme that is intended to:

- Create an accessible, simple, effective and quick one-stop shop for consumers who dispute the way in which a rail sector organisation has handled their complaint
- Introduce binding resolution to deadlocked complaints and end the frustration caused when complaints are unresolved
- Create a credible alternative route to resolution for consumers who currently feel that they have no other option than to go to court
- Increase the incentives for rail sector organisations to tackle the drivers for consumer complaints
- Make the rail industry complaints process demonstrably fair
- Increase consumer trust and satisfaction in the rail industry
- Strengthen the voice of the consumer in the complaints process
- Drive improvements for the rail industry

The outcome of the consultation will, we hope, help us deliver the above goals.

We also believe that there are good reasons to conduct a more fundamental review of the CHP Guidance once the Rail ADR scheme is imminent and the detail of the service is being developed with an appointed supplier. We anticipate that this will be in the Spring next year.

Recognition of voluntary nature of Rail ADR scheme
Whilst it is our intention that all train operating companies will participate in the Rail ADR scheme it needs to be recognised that the scheme is constituted as a voluntary one. We have initiated the procurement of the service, and we are currently working with potential providers. We expect to be able to confirm the membership of the scheme in early 2018. It is important therefore that any changes made recognise the possibility of a rail company delivering its complaints handling requirements in compliance with its license agreement without being a member of the Rail ADR scheme.

Enforcement
The consultation does not explicitly propose an enforcement regime to underpin the proposals. We would like clarity on this. We ask that the ORR gives regard to the fact that it is undesirable to place an increased risk of regulatory penalties on companies that join a voluntary Rail ADR scheme as this would in effect penalise those companies that seek to benefit the consumer.

Chapter 1 – Signposting unresolved complaints
We agree that the current signposting requirements are not satisfactory. The ADR Directive requirement for rail companies to signpost to "an ADR Scheme that they do not use" clearly serves no purpose for either consumers or service providers.

In creating a Rail ADR scheme for the rail industry, we are working towards a point where there will no longer be the need to signpost to an ADR "dead-end" for rail companies that join the voluntary scheme.

As the government does not plan to change to the statutory duties to Transport Focus and London TravelWatch (which both have a duty to investigate any disputes presented to them), potential for confusion around signposting remains. This is because once a Rail ADR scheme is established, there will still be two potential routes available to resolve disputed rail complaints:

i. the proposed Rail ADR Scheme independent of all parties to a dispute with the powers to impose binding redress on rail companies, and

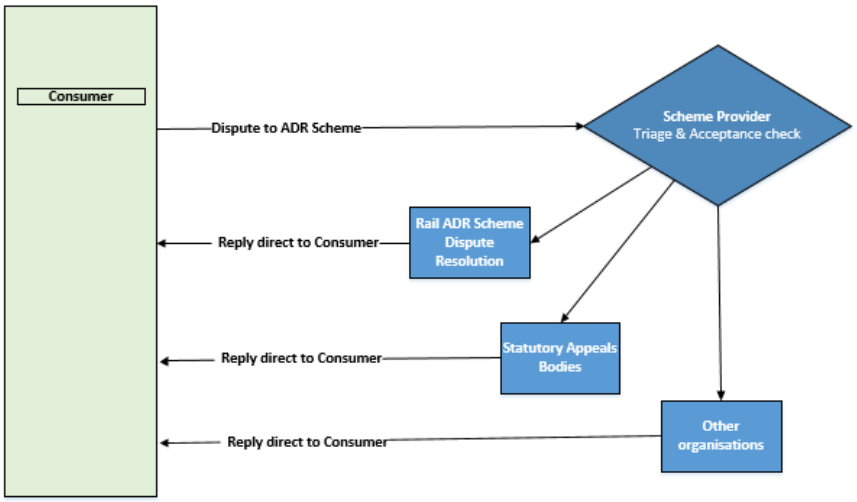
ii. the Statutory Bodies (Transport Focus and London TravelWatch) working as passenger advocates without powers to impose redress.

In developing the Rail ADR scheme, we have agreed, in principle, a way of working with the Statutory Appeals Bodies which will route all referred disputes through the Rail ADR scheme, with those relating to the quality of the provision of services remaining within the scope of the Rail ADR provider to resolve; whilst disputes that relate to the specification of services or general rail industry policy would be referred to the Statutory Appeals Bodies to review and make recommendations to the Secretary of State and the industry as appropriate.

Q. Which of the three options provided for in the consultation is most appropriate for signposting to ADR?

Option 1 is the most appropriate option. It is our ambition to create a "single front door" for the consumer looking to bring a dispute. Whilst there are multiple bodies in the "appeals landscape" for rail consumers, signposting to the ADR scheme provider will be the only way of achieving this. It will ensure that there is independent oversight of all appeals at the point of escalation, and give consumers confidence that their dispute has been assessed independently and placed with the most appropriate body to progress their case. It will also guard against the risk of disputes being referred to the wrong body.

The diagram below illustrates how a triage process will work for disputes relating to scheme members:



Option 2 ("Signposting to the ADR scheme, and to Transport Focus and London TravelWatch") effectively makes the TOCs accountable for the triage process. Whilst rail companies are capable of this, it works against the principle of a dispute being independently reviewed for acceptance by the Rail ADR scheme, and does not deliver the benefit of having a single body with oversight of all disputes.

In our view, Option 3 is not compliant with the CTSI's interpretation of the ADR Directive. Schedule 3: 6 (bi) of *CTSI Requirements and Guidance on seeking approval as a Consumer ADR Body Operating in Non-Regulated Sectors* states:

> The parties must have access to the ADR procedure without being obliged to obtain independent advice or be represented or assisted by a third party, although they may choose to do so.

Placing Transport Focus and London TravelWatch (consumer advocacy bodies) between the rail company and the Rail ADR scheme appears to impose just such an obligation.

Consideration needs to be given to the evolving roles of Transport Focus and London TravelWatch. Whilst both organisations clearly have the expertise to triage disputes, such a role would require them to administer a workstream that is not congruent with their developing strategic remit, especially as the majority of disputes would be about consumer issues that sit within the scope of the Rail ADR scheme.

As things stand, it is possible that the Statutory Appeals Bodies may have to retain the capacity to accept disputed complaints should some rail companies not join the Rail ADR scheme. It is also feasible that some consumers may, for reasons of their own, prefer to present their dispute to the

Statutory Appeals Bodies despite the fact that binding redress is not available through this route. This contingency is likely to remain pending any restructuring of the statutory landscape within which the industry sits.

Q. Are there any other approaches that we have not considered which may be preferable to those set out above?

None that we have identified.

Q. Is it necessary for ORR to set out in detail expectations, and make these formal requirements, in the CHP of communications about the ADR scheme?

We do not believe that detailed formal requirements for the content of letters is necessary. It would be beneficial for the ORR to produce best practice examples, and rail companies are happy to work with the ORR, the Statutory Appeals Bodies and the Rail ADR scheme to produce this. The content of signposting letters must clearly inform consumers of their rights, and it will be part of the Rail ADR scheme provider's duties to hold rail companies to account in this regard.

Chapter 2 - Timescale for sending signposting letters

It is important that any timescales put in place facilitate a quick resolution to any dispute. Protracted correspondence increases frustration for consumers and cost for rail companies. Furthermore, encouraging consumers to escalate their complaint before a rail company has had the opportunity to resolve it leads to an unnecessary duplication of work for the consumer and the rail bodies party involved in the dispute.

Any changes to the CHP guidance should be made with regard to the ORR document *Reference guide for complaints and CHP/DPPP indicators data reporting* which has a bearing on the existing CHP requirements.

Q. What is the most appropriate point at which to signpost to ADR? Eight weeks; six weeks; another period?

Rail companies currently work to achieve a target of 95% of complaints being resolved within 20 working days, and we understand that this requirement will remain. The proposal to signpost after a fixed period will introduce an additional requirement on rail companies; this should give consumers confidence that they will be able to seek binding redress if a company does not resolve their complaint within a reasonable timeframe. This is a significant change for industry complaints handling.

Under RDG's proposal for a Rail ADR scheme, at the point that it becomes clear that a consumer is unhappy with the outcome of a complaint the customer will be sign-posted to ADR by means of a Deadlock Letter (when a rail company can do no more for the consumer) which will inform them of their options. This process will ensure that the vast majority of complaints will either be resolved or referred to ADR before the eight week timescale proposed.

The consultation does not indicate whether or not the ORR has assessed the financial impact of each of the timescales proposed. We believe that the eight week point is a reasonable place to start. It aligns with the established eight week rule employed in other sectors and it is feasible that rail companies could deliver this without significant changes to their existing cost base.

The consultation does not explore the impact of rail companies configuring their systems and processes to implement the new requirements. In particular, monitoring response times and the conditions for signposting need to be clearly set out.

Response times
At present, rail companies calculate response times by "stopping the clock" whilst they wait for a response from a consumer. This practice is in line with the ORR requirements set out in *Reference guide for complaints and CHP/DPPP indicators data reporting*. It ensures that delays attributable to lack of consumer engagement do not negatively impact on performance levels.

In discussions with the ORR we understand that the eight week timescale will be calculated by a method different to that used for the 20 working day turnaround. The eight weeks will be a straight forward eight calendar weeks from the date on which the complaint was received. TOC systems are currently configured to monitor timescales based on working days, so some TOCs will have to reconfigure their processes or systems.

A consequence of this arrangement it is likely that there will be times where a complaint that has not breached the 20 working day turnaround time will have exceeded the eight week timescale. Such cases will usually result from when a consumer has not responded to requests for information; should this occur, the proposed rules for the Rail ADR scheme allow for the scheme provider to refer the consumer back to a rail company so that there is adequate opportunity for resolution. The ORR should recognise this practice in any emerging guidance and captured in reporting.

Conditions for signposting
Rail companies expect trust in their complaints handling process to increase once a Rail ADR scheme is established. They will publicise the Rail ADR scheme and how it can be accessed by consumers. They will also have the duty to tell individual consumers when they are eligible to go to ADR.

In most cases, rail companies will send a response that is expected to resolve the complaint and assume that the matter has been closed unless they receive further contact. There is no reason to signpost to the Rail ADR scheme in such circumstances (that is when both parties understand that the matter is closed).

There are also times when rail companies might require additional information to investigate or close a complaint. Some consumers do not provide details of their journey or location; others might not submit the evidence (such as tickets or receipts) necessary for rail companies to be able to provide refunds so rail companies will contact a consumer and request the additional information, marking the complaint as "suspended" until they hear back or an appropriate time has elapsed for the complaint to be closed. When rail companies request additional information from consumers, the CHP guidance should allow for them to state the time within which the consumer should reply before the case is closed. The amount of time allowed for responses will be reasonable and agreed with the Rail ADR scheme provider and stakeholders. We would not therefore expect to signpost to the Rail ADR scheme when requesting further information from consumers.

We would expect that it is appropriate to signpost customers to the Rail ADR scheme when a consumer is unhappy with the proposed resolution and the rail company, having reviewed the complaint, feels that it can do no more. It would also be appropriate to signpost if correspondence is ongoing at the time at which the timescale has expired (e.g. eight weeks).

Q. Should we conduct a review of whatever time period is agreed? If so, at what point; after one year, two years, another period?

Yes. Given that the Rail ADR scheme could have significant impact on complaints handling in the industry, a review would be useful. We would prefer a review after two years so that the impact of the new system could be validated and understood once it has been operating in a steady state.

Rail companies are open to reducing the timescale for responses in the future, but the cost of doing so needs to be recognised and addressed. At present, there is no indication as to whether any of the proposed changes will bring additional cost to rail companies who have based their resourcing commitments on the current known requirements. From this perspective, shortening the timescales to six weeks or even lower could impact on the cost base of the industry.

Q. If the time period should be subject to review, what metrics should we use to establish whether the time period remains appropriate or should be changed?

We would propose a measure of the percentage of disputes that have been submitted to the Rail ADR scheme because of the time limit being triggered rather than a Deadlock letter being sent.

Understanding the reasons why the time limit has been breached would also be useful - for example, understanding how train service performance impacts on response times, and understanding what impact the time consumers take to respond.

Q. Should individual rail companies be able to set their own signposting time limits as long as they are below the minimum agreed signposting standard?

As stated earlier, the majority of consumers who use the Rail ADR process will do so because of a Deadlock letter rather than having to wait for the prescribed time limit to expire. In principle, if individual rail companies feel that they can offer a reduced time limit to customers then this should be allowed for. However, the way this would work operationally will need to be understood as it has implications for the Eligibility Criteria for the Rail ADR scheme, and how access to the Scheme is promoted.

Rail companies are committed to continuously improving the services they offer, and once the Rail ADR scheme is established there will be an opportunity to identify how timescale limits can best contribute to this.

Q. Should arrangements be introduced to allow signposting before the time period is reached i.e. deadlock?

Yes. This is fundamental to the RDG proposal for a Rail ADR scheme and vital for enabling consumers a speedy resolution to disputes. It is in the interest of no party to insist that consumers wait for a maximum time period to access ADR once deadlock has reached.

Chapter 3 - Requirement to be a member of an ADR Scheme
Q. As substantial progress has been made voluntarily by industry on developing an ADR scheme, is it necessary to make membership of an approved ADR scheme a requirement in the licence (and reflected in CHP guidance and CHPs)?

No. Should the ORR modify the CHP guidance to make membership of an approved ADR scheme a licence condition, it would make the scheme mandatory. This would have impacts on both the DfT and the ORR and could well delay implementation.

Q. Are there any other approaches which could provide certainty in the ADR arrangements for consumers?

It is feasible that the government could introduce significant changes to the statutory role of Transport Focus to enable it to perform ADR for the industry and give binding redress. We recognise that the timescales for such a legislative change would delay the introduction of ADR for the industry.

Q. What alternative safeguards are available to ensure that rail companies do not withdraw their membership from a scheme?

Once rail companies are members of the scheme we consider that it would be exceptionally damaging for them to withdraw from such arrangements.

Q. Are there any reasons why charter operators and station licence holders should not join an ADR scheme?

We are designing the scheme so that it will be open to charter operators and station licence holders.

The main challenge with station licence holders is that they do not have a direct contractual relationship with rail users. Whilst in principle they act as suppliers to TOCs, in practice they operate with a degree of autonomy that means that the traditional supplier/customer relationship does not apply.

As the Rail ADR scheme is based on the contractual relationship between the service provider and consumer we are working with station licence holders to agree a suitable way of addressing this so that disputes relating to station licence holder services can be satisfactorily resolved for consumers.

Second substantive response

We understand that the requirement to respond in the second substantive response will be superseded by the eight week timescale for companies that join the ADR scheme. However, it is possible that some rail companies might not join the scheme. Also, it is likely that the eight week timescale will not come into force until the Rail ADR scheme is launched. With this in mind, it is regrettable that paragraph 1.2 of the consultation document states that rail companies are required to signpost to Transport Focus and London TravelWatch "in" their second substantive response to the customer - this is unnecessarily inflexible and does not allow for the rail company to tailor its approach to addressing the issue at hand. We agree that all complaints should be resolved as soon as possible, but it is not desirable for a rail company to signpost "whilst it continues to engage with a consumer with the objective of resolving a complaint".

Signposting prematurely can create the impression that a company has "washed its hands" of a complaint that it is continuing to endeavour to resolve. Furthermore, it is inefficient to embroil the Statutory Appeals Bodies or an ADR provider in an issue, only for them to find that it has been resolved by the time they have initiated their investigations. We would ask that the ORR works with rail companies to improve this requirement as soon as possible.

Additional comments on the ORR consultation process

We would like to express concern about the process that the ORR has followed for this consultation. The established practice is for the ORR to formally approach senior contacts at rail companies and other interested parties to notify them that a consultation is open and responses are being sought. This did not happen with the current consultation which caused RDG to request an extension for the deadline for responses for members. We are grateful that this extension was given. RDG would be prepared to work with ORR to make sure that communication process is well-understood by all parties and clear for future consultations.

I trust that this response is useful. We will be happy to provide further support as required.

Yours sincerely,

John Horncastle
Project Manager, on behalf of Rail Delivery Group

Changes to complaints handling guidance: a consultation

Resolver welcomes the opportunity to respond to this consultation.

Resolver is a free tool to help consumers raise and resolve issues. Making complaints can be a time-consuming and frustrating experience. It is Resolver's goal to take the frustration out of complaining for the countless number of people who give up on pursuing a problem because they think the odds are stacked against them, or it's too difficult.

Resolver provides one place where consumers can; learn about their rights, raise an issue with a company, escalate their case to the relevant regulator or ADR, and store all their case information in one place. This service is completely free to the public. Since Resolver's launch in late 2015 it has helped consumers raise over 1.25 million issues, almost 10,000 of which are about the rail sector.

Resolver fully supports the proposals for a free and independent ADR scheme in the rail sector. Delivering effective dispute resolution is essential to improve consumer confidence in the rail sector, which many passengers currently feel does not work for them. The positive response from rail companies is encouraging.

Chapter 1 – Signposting unresolved complaints

Which of the three options set out above is most appropriate for signposting to ADR?

Of the options presented, option 2 (signposting to the ADR scheme, and to Transport Focus and London TravelWatch) would be the most effective way to handle unresolved complaints. This option reduces the number of 'levels' the consumer must go through to get a resolution and, therefore, reduces the risk of the complainant dropping out of the complaints process. Resolver has researched the relationship between the number of touchpoints and a user's feeling upon escalating their case. The data shows that the more touchpoints required of someone the worse they feel about their complaint.

Option 1 (signposting to the ADR scheme) could be problematic. Complainants who are referred to ADR and then moved on to Transport Focus / London Travelwatch could feel misled, having believed they were going to receive binding adjudication from an ADR service. This runs the risk of complainants dropping out of the complaints process. In light of this, the ADR scheme should have as broader role as possible in resolving consumer complaints.

If it is decided, in line with the RDG proposal, that option 1 is the most appropriate process then it should be made clear to consumers which issues are in the scope of the ADR. Providing the consumer with the best possible information regarding complaints processes will help manage their expectations and lead to fewer people dropping out of the process. In situations where the complaint is out of the scope of the ADR, clarity is needed around the process of referral to Transport Focus / London Travelwatch. Will the ADR service pass the complaint on to Transport Focus / London Travelwatch on the consumer's behalf, or will the complainant need to do this themselves? If the consumer must do this themselves it increases the risk that they will drop out of the complaints process.

Are there other approaches that we have not considered which may be preferable to those set out above?

The best process would be one where it is determinable whether the complaint is in-scope, or not, from the outset. If consumers are passed from ADR to Transport Focus/London Travelwatch there is a higher chance they will drop out of the complaints process. Prediction of the relevant referral point will eliminate the need to send a consumer, whose issue is with Transport Focus/ London Travelwatch, to ADR first. Resolver has

developed the ability to predict how likely a complaint is to be escalated and would be happy to discuss with ORR how this could help the rail complaints process.

Is it necessary for ORR to set out in detail our expectations, and make these formal requirements in the CHP, of communications about the ADR scheme?

Difficult, technical, and ambiguous language puts consumers off from pursuing their complaints. It should be a requirement in the rail companies CHP's that companies will provide complaints guidance in plain and simple language, wherever possible.

It should be a requirement that rail companies have their complaints handling procedures published on their websites. This should include an email and postal address to contact the ADR with.

The Gambling Commission requires gambling businesses (as a condition of their licence) make a summary of their terms and conditions, in plain and simple language, available to customers. This approach to language should be adopted in the rail sector.

Chapter 2 – Timescale for sending signposting letters

What is the most appropriate point at which to signpost ADR? Eight weeks, six weeks, another period?

Many ADR services use an eight-week timescale. However, Resolver has found that the longer the time a complainant must wait for escalation the more likely they are to become frustrated by the service or drop out of the complaints process altogether. Resolver believes 4 weeks is enough time to consider a complaint. The Scottish Public Services Ombudsman uses this timescale effectively. Shorter timescales would improve consumer confidence in the complaints process and help build trust between customers and businesses.

Timescales should be clear to complainants, both at the time of signposting and before. As outlined above, rail companies should have to publish their complaint handling procedures, this should include information about timescales. It would also be useful if an explanation about what an ADR does is set out in simple language in the complaints handling procedures.

Should we conduct a review of whatever time period is agreed? If so, at what point; after one year, two years, another period?

Reviews of these kinds of processes are useful. The experiences and voices of consumers should be included in any review of signposting timescales.

Should arrangements be introduced to allow signposting before the time period is reached i.e. deadlock?

It will be necessary to signpost consumers to the ADR provider should the complaint process reach a deadlock. It will make little sense to the consumer if their complaint is rejected within one week, but then have to wait a further 5 or 7 weeks to escalate their case to the ADR service. If this happens the consumer will be less likely to continue with their complaint and leave them unsatisfied with the rail companies service.

If a deadlock is reached the rail company should make it explicitly clear to the consumer. This could take the form of a letter or email, depending on the complainants previous preferred choice of communication. It should clearly state that that communication is confirmation of a deadlock and that the consumer may now raise their case with the ADR provider. The details of the ADR should be provided in that communication.

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

As substantial progress has been made voluntarily by industry on developing an ADR scheme, is it necessary to make membership of an approved ADR scheme a requirement in the licence (and reflected in CHP guidance and CHPs)?

Membership of an approved ADR scheme should be a requirement in the licence. Consumers will be left dissatisfied, confused, and frustrated if they are only able to seek independent dispute resolution services on some rail lines. Furthermore, as franchise contracts end and new companies enter the market, it would be frustrating to the consumer to have ADR services available on a rail line, only to see that option disappear a few years later. When ADR is utilized effectively it improves markets, this should be reflected through the compulsory membership of an ADR service.

Further points

Rail companies and the ADR service should be willing to accept complaints raised via third party organisations, like Resolver. It should be the consumer's choice to raise a complaint in the way they feel makes the process simplest for them.

Consumers become very frustrated when their original complaint email/letter receives no response from the company. It should be a requirement that rail companies must respond as quickly as possible to the consumer's original complaint, even if this only an auto-reply confirming receipt of the email. This will reassure customers that their issue has been received and is being dealt with.

Resolver hopes this information is useful. If you have any questions or would like to discuss anything further, please don't hesitate to contact freddie@resolver.co.uk.

ScotRail Consultation questions and answers

Chapter 1 – Signposting unresolved Complaints

Option 1 - Signposting to the ADR scheme

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

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

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

Option 3 - Signposting to Transport Focus and London TravelWatch

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

Questions:

1) **Which of the three options set out above is most appropriate for signposting to ADR?**

Scotrail are of the same opinion as RDG in that option 1 is the preferred option. In addition to their reasons, we would like to add the need for consistency in approach which this option gives. It is important that any documentation, to the customer, clearly advises that the ADR may refer this to Transport Focus if it falls outside of ADR scope.

2) **Are there other approaches that we have not considered which may be preferable to those set out above?**

No.

3) **Is it necessary for ORR to set out in detail our expectations, and make these formal requirements, in the CHP of communications about the ADR scheme?**

In the interest of consistency Scotrail thinks that the process for signposting should be set out in the CHP in order to avoid TOC's potentially signposting differently depending on the case. It should be clear that, regardless of whether the TOC knows, in advance, that it is out of ADR scope, the customer should still be signposted to them for triage.
In terms of standard letters, it's not necessary to formalise the content of these within CHP. Some best practice examples would be beneficial however.

Chapter 2 – Timescale for sending signposting letters

Option 1 - Signposting at eight weeks

The scheme proposed by RDG envisages that the time period for informing consumers that they may refer their complaint to ADR should take place eight weeks after the complaint has been received by the rail company. This will be a backstop and it is likely that rail companies will resolve most complaints before this point is reached. There will also be complaints where deadlock is reached prior to eight weeks. This is explored further in paragraph 2.11 below.

A maximum period of eight weeks appears to be a standard commonly adopted across many of the regulated sectors including Ofgem, Ofcom, and CAA. In respect of Ofgem and Ofcom, this time period has remained unchanged for a number of years since the ADR schemes started. However, it may be that the nature of the disputes in these regulated sectors dictates that this is the

Option 2 - Signposting at six weeks or less

As noted above, a prolonged complaints experience can result in complainants disengaging from the complaints process and not exercising their right to take their complaint to an ombudsman service. One way of overcoming this may be to make the period before signposting happens as short as possible.

We are aware of one example in the energy sector where an energy supplier has voluntarily decided to signpost consumers to the ombudsman scheme at six rather than at eight weeks. A similar timescale of six weeks or less could be applied across all rail companies or by individual companies voluntarily i.e. the standard signposting timescale could be eight weeks but a rail company may choose to adhere to its own shorter timescale of six weeks. The latter could provide an opportunity to differentiate their service to, and build trust with, consumers.

Review in the light of evidence

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

Signposting when the rail company can do no more

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

Questions:

1) **What is the most appropriate point at which to signpost ADR? Eight weeks, six weeks, another period?**

Scotrail SLA is 95% of responses closed within 7 days and 99.5% closed within 20 days. Given that we expect 99.5% of cases, to be closed within 4 weeks, a 6 week point for signposting seems reasonable under this scheme. However, as this is a new scheme we would be aiming to start at 8 weeks (as is standard across most industries) with a view to reviewing this at an appropriate time i.e. when the scheme has been up and running and has gained stability.

2) **Should we conduct a review of whatever time period is agreed? If so, at what point; after one year, two years, another period?**

Yes we should and the time period should be sufficient enough to allow stability. We would suggest 2 years would be appropriate.

3) **If the time period should be subject to review, what metrics should we use to establish whether the time period remains appropriate or should be changed?**

We should be looking at the number of cases which are signposted at the 8 week point whether or not the case has been resolved i.e. the case needs to be signposted as the timescale has been reached. Reasons why timescale has been reached without resolution would need to be considered.

4) **Should individual rail companies be able to set their own signposting time limits as long as they are below the minimum agreed signposting standard?**

TOC's will be signposting at deadlock point and not always at the end of the time limit therefore by default there will be differences. On the standard time limit of 8 weeks (if that's what's agreed as a starting point) I'd like to think that individual TOC's could decide to change this after the first review.

5) **Should arrangements be introduced to allow signposting before the time period is reached i.e. deadlock?**

Yes. Signposting should be done before time limit is reached if deadlock situation.

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

Questions:

1) **As substantial progress has been made voluntarily by industry on developing an ADR scheme, is it necessary to make membership of an approved ADR scheme a requirement in the licence (and reflected in CHP guidance and CHPs)?**

Scotrail are of the same opinion as RDG on this one in that this should not be a mandatory scheme.

2) **Are there any other approaches which could provide certainty in the ADR arrangements for consumers?**

The view of Scotrail is that the implementation of an ADR scheme would need to be documented as a requirement in consumer facing documents i.e. CHP. This should provide the certainty that a consumer needs.

3) **What alternative safeguards are available to ensure that rail companies do not withdraw their membership from a scheme?**

Once signed up to the scheme there is a considerable reputational risk for the TOC to withdraw.

4) **Are there any reasons why charter operators and station licence holders should not join an ADR scheme?**

In Scotland we have Edinburgh Waverley, Glasgow Central and Aberdeen stations all owned by Network Rail. Any customer complaint to Network Rail is signposted to the 'Consumer Ombudsman' (after Transport Focus). It is possible, therefore, that they may be interested in joining a Rail Ombudsman scheme.
Prestwick Airport station is the only other station licence holder in Scotland and this station is owned by the airport. Prestwick airport have their own CHP and escalate to the CAA. In the case of Prestwick airport I would imagine they would have no desire to join any Rail scheme however we can't speak for them therefore separate consultation would need to take place.

Second Substantive Response

In line with most TOC's and the RDG, Scotrail find the 2nd substantive response requirement inflexible and unnecessary. We appreciate that all complaints should be addressed as quickly as possible however the TOC should be given the opportunity to work through the complaint, in a reasonable timescale, before the need to sign post. It is unprofessional and is seen by customers as an easy way out for the TOC not to take responsibility for a complaint.
Under an Ombudsman scheme the second substantive response would not be required however until this is in place it would seem reasonable that the ORR consider improvements to this requirement.

Stuart Freer
Franchise & Access Manager

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

Sent via e-mail to CHP@orr.gsi.gov.uk

23 November 2017

Dear colleagues,

Southeastern response to ORR's consultation on Changes to Complaints Handling Guidance

London & South Eastern Railway Limited (Southeastern), is a major rail franchise of Govia, one of the leading rail operators in the UK and is a joint venture between the Go-Ahead Group (65%) and Keolis (35%). Govia has extensive experience running complex and challenging rail operations. Govia currently runs three major rail franchises: Govia Thameslink Railway (GTR), Southeastern and London Midland. This response is provided solely on behalf of Southeastern.

We draw your attention to the submission made by the Rail Delivery Group dated 22 November 2017, on behalf of its membership. Southeastern has contributed to the formation of its submission and is supportive.

More specifically to Southeastern; we wish to raise the following key points for your consideration as part of the consultation:

Rail ADR scheme tender

As the RDG led tender of the Rail ADR scheme is currently underway, we ask ORR to note that as the project is still in development, there remains a possibility that the scope of the Rail ADR scheme may change and it could cause a requirement for further consultation of industry partners or in ORR's consultation response document; clarifying the interaction between the Rail ADR tender process and its final conclusions. We trust ORR will provide a sufficient period to implement any required changes.

Membership of Rail ADR and enforcement

In response to question 4 of section 3 on page 21 *(As substantial progress has been made voluntarily by industry on developing an ADR scheme, is it necessary to make membership of an approved ADR scheme a requirement in the licence (and reflected in CHP guidance and CHPs)?*:

Making membership of the approved Rail ADR scheme a requirement in the licence would have the effect of making it mandatory and as this is a voluntary scheme developed by the industry, we consider membership should evolve as a example of industry best practice and a high standard to achieve as opposed to forced participation. Should, after a period of time and reflection on the success of the scheme, revisions be required to the Rail ADR scheme, this will be easier to achieve if membership remains voluntarily instead of working within the confines of amending licences.

There are also impacts on franchised passenger operators in their obligations to the Department for Transport as part of their franchise agreements, most notably in amending Passenger Charters (which require DfT approval) and current version of the Complaints Handling Procedure.

Southeastern did not note any explicit proposals regarding an enforcement regime of the Complaints Handling Procedure and clarity on this is welcomed. As we note above, including membership in a passenger operators' licence has the effect of making participation mandatory but while it remains voluntarily; we do not consider it reasonable to place an increased risk of regulatory sanctions on TOCs that participate in a scheme that seeks to benefit the passenger.

If you have any questions regarding Southeastern's response, please feel free to contact my colleague Christine Heynes, Customer Relations Manager.

Yours sincerely

Stuart Freer
Franchise & Access Manager

The only recommendation I would make is that the Ombudsmen must have absolute powers in enforce 'Turn up and go' travel for the disabled by either platform staff or train staff, they need the power to compel train companies to either return train guards to trains if ' Turn up and go' isn't being maintained or provided by the train companies or have the power to appoint a person with the ability to troubleshoot and find a solution to their lack of 'turn up and go' provision at station(s) or via train crew(s).

At present the horrific effect of 'turn up and go' deterioration because of the mix of OBS not being on every train and not getting off at every station hasn't yet been addressed.

I fully expect the Ombudsmen to have the powers to do just that to keep the Department of Transport in the scope of the 2010 Equalities Act and other European Acts which this issue is breaching.

Changes to Complaints Handling Guidance: a consultation by the Office of Rail and Road (ORR).

Response from Transport Focus

Transport Focus welcomes the opportunity to comment on the above consultation.

It is perhaps worth setting out from the offset that Transport Focus supports (and welcomes) the concept of a binding dispute resolution process. Indeed, we have been in the vanguard of discussions with the industry, the Department for Transport (DfT) and ORR about establishing such a scheme – both as part of the current proposal and the implementation of the original 2015 Alternative Dispute Resolution (ADR) directive.

The current complaint system involves Transport Focus acting as an advocate on behalf of passengers and working with rail companies to try and reach a satisfactory outcome. Not all of this involves actual compensation – it is often an apology or explanation that is required or some gesture of goodwill. We have been successful at this, regularly achieving around 70% customer satisfaction levels with the way in which we dealt with the complaint. We have also been successful at using the information gathered to help drive improvements and preventing repeat complaints.

Nonetheless, and as mentioned above, we believe it is right that passengers have access to binding resolution. This binding element will be an important 'backstop' but it will be important that the ADR scheme does not lose sight of strengths of the existing mechanism, in particular the advocacy element and the 'feedback loop'.

The consultation raises four key issues:

1. Signposting

Any complaint system has to be simple and easy to use. So we agree with the statement in paragraph 1.3 about the need for "a clear, understandable, and seamless pathway to a body which can provide independent redress and with which it is easy to engage".

It is important that this also applies to the wider complaint 'envelope' as well as the ADR element. As the document makes clear, there will still be cases that fall outside the remit of the ADR body. It is unlikely that an ADR provider will be able to rule on cases where, for example, passengers want a stop inserted on a service, or fares to be cut or new types of ticket implemented. Sometimes correspondence will also include both ADR and non-ADR type complaints. So there will still be issues that will come through to Transport Focus and London TravelWatch.

Nor are complaints always just about train companies – we can get complaints about third party retailers (e.g. trainline), Network Rail, penalty fare appeals and also about local authority/ PTE products that allow travel on rail. If these aren't to be covered by ADR – and this consultation only looks at train companies – then these too will still come to Transport Focus and London TravelWatch.

So introducing ADR effectively puts a 'third link' in the escalation process. The options presented by ORR recognise this, and the potential additional complexity it brings. There is no single fool-proof process – there are pros and cons to each. Under option one for instance, a passenger with an unresolved complaint could find themselves passed from the ADR provider to Transport Focus; under option three this is reversed; and under option two both the ADR body and us could disagree with the decision made by the train company.

On balance we would favour option one. However, we think the key element is the initial signposting letter. The letter from the train company to the passenger must clearly explain the whole complaint process not just the ADR element. We know from our research that being passed unexpectedly from body to body can be infuriating and could result in passengers abandoning their case. So it is crucial that the letter from the train company is clear that the case goes to the ADR body but that they may involve Transport Focus or London TravelWatch. There would need to be an agreed form of words but the key issue is to raise awareness/ expectation that the case may go beyond the ADR body.

Consideration will need to be given to the way that the complaint process is explained on posters at stations and on board trains and in any online documentation (for example the complaint handling procedure documents published by train companies). It will be important to strike the right balance between outlining the complaints process and a more general 'how to get in touch' with the train company and, for that matter, Transport Focus.

It will also be important to explain when and where ADR applies. If, for instance, Transport for London services are not part of the ADR scheme then it will be important to say so, likewise for third party retailers. This will help prevent false expectations being formed and save time and effort when escalating cases.

In addition, and as ORR acknowledges, speed is of the essence – referrals from the ADR body to Transport Focus would need to be done swiftly. The longer it takes the greater the level of frustration and the likelihood that the case will be abandoned. Analysis of our own complaints handling statistics shows that speed of response is one of, if not the, key driver of satisfaction with passengers in the way the complaint was handled.

2. Timescale for sending signposting letters
We agree that it is essential that rail companies have adequate opportunity to resolve the issue before it goes to the ADR body. But clearly this cannot go on for an indefinite period – it cannot simply be a case of stalling until the passenger gives up.

Not all complaints are the same – complex cases will take longer to deal with than simpler ones. Some will require members of staff to be interviewed and some will require going back to the passenger to seek additional details. Though the latter could be significantly reduced by having a good front-end system that helps passengers provide everything that is required in a readily accessible format.

Any timeframes will need to accommodate these more complicated cases. All of which suggests that option one – eight weeks – may be the most realistic backstop. We would, though, be concerned if eight weeks became the norm for all cases rather than these exceptions. Transparency will be important here – details should be provided on how many (and what type of) cases close within four weeks, five weeks etc. With the clear expectation that most cases should be resolved (or referred to the ADR body) well within the eight week window.

We also support the concept of the deadlock letters – if the train company knows it will not do more it is pointless to wait for the eight week period to expire.

We would ask whether there are lessons that can be learnt from existing ADR schemes in other sectors – especially in regard to the suitability of the eight week timeframe and the deadlock process?

3. Requirement to be a member of an ADR scheme.
We agree with the document that membership of the ADR scheme demonstrates a strong commitment to customer service and builds trust.

The end-game for us is that all passengers have access to the binding resolution element of an ADR process. Having a train company buy into this process because it wants to is arguably a better incentive than one where it is forced to do so and where the focus is on minimum compliance rather than excellence. However, this does mean that a train company can walk away if it disagrees with the ADR body or gets into financial difficulty.

Even having one train company outside the tent makes a bad impression and creates additional complexity – especially where a complaint involves more than that one train company

We tend to agree with ORRs conclusion in paragraph 3.11. If full participation can be achieved on a voluntary basis then good – but there needs to be a very clear '…or

else…' message attached. The option/means to shift to a compulsory scheme needs to be clearly known and understood. Indeed, it could be a positive incentive in its own rights.

4. Inclusion of other rail companies

As we have mentioned previously, there is great merit in having a simple, consistent and easily explained complaint process. If someone asks 'how do I make a complaint' it is far better to say '….you do this' rather than '…it depends, you do x for this company, y for that…and so on'

Therefore, the more the wider rail industry is part of the same process the better. Clearly the main focus will be on train companies but, as mentioned, we currently get complaints from other bodies/companies. We would support efforts to extend ADR to these organisations as well.

We would be happy to discuss this response in more detail should you find it helpful.

Transport Focus
3rd Floor,
Fleetbank House,
2-6 Salisbury Square,
London EC4Y 8JX
www.transportfocus.org.uk

November 2017

Office of Rail and Road

Consultation on changes to complaints handling guidance

Consultation response by Transport for London

Content for response to Proposals to introduce an Alternative Dispute Resolution (ADR) scheme in the rail sector will require changes to rail companies' Complaint Handling Procedures (CHPs).

Consultation questions

Chapter 1 – Signposting unresolved complaints

Which of the three options set out above is most appropriate for signposting to ADR?

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

It would be helpful for the ORR to provide formal guidance as to their expectations for communications relating to the ADR scheme.

As you may be aware, we already have an established complaints handling procedure, which includes a robust appeals and ADR process.

Further information on this can be found on the link below and separate attachment.

http://content.tfl.gov.uk/tfl-complaints-handling-procedure.pdf

Are there other approaches that we have not considered which may be preferable to those set out above?

No. TfL feels that the consultation has fully considered all approaches.

Is it necessary for ORR to set out in detail our expectations, and make these formal requirements, in the CHP of communications about the ADR scheme?

Yes. As stated above, it would be helpful for the ORR to provide formal guidance as to their expectations for communications relating to the ADR scheme.

Chapter 2 – Timescale for sending signposting letters

What is the most appropriate point at which to signpost ADR? Eight weeks, six weeks, another period?

TfL feels eight weeks is a reasonable time period after which the complainant should be signposted to the ADR. This will allow sufficient time for any operators to resolve such complaints, although we would always encourage operators to resolve complaints within our established service level agreements (SLAs), as set out in our complaints handling procedure. If however deadlock is reached over a complaint before the eight week period has elapsed, signposting to ADR should occur automatically by the operator.

Should we conduct a review of whatever time period is agreed? If so, at what point; after one year, two years, another period?

With reference to a review of the time period, TfL understands this to mean a review of the eight week ADR scheme. If so, TfL believes two years to be an acceptable time period for a review.

If the time period should be subject to review, what metrics should we use to establish whether the time period remains appropriate or should be changed?

TfL feels that our established complaints handling procedure should be used as a measurement in the first instance to ensure that our Service Level Agreement (SLA) have been adhered to. Another metric that could be used is reviewing the number of unresolved escalated complaints that are referred to the ADR scheme. It is important to measure complaints against total journeys made. For example, TfL currently measure complaint numbers against every 100,000 journeys made.

Should individual rail companies be able to set their own signposting time limits as long as they are below the minimum agreed signposting standard?

Yes. TfL agrees that companies should be able to set their own signposting time limits as long as they are below the minimum agreed signposting standard.

Should arrangements be introduced to allow signposting before the time period is reached i.e. deadlock?

As stated previously, if deadlock is reached over a complaint before the eight week period has elapsed, signposting to ADR should occur automatically.

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

As substantial progress has been made voluntarily by industry on developing an ADR scheme, is it necessary to make membership of an approved ADR scheme a requirement in the licence (and reflected in CHP guidance and CHPs)?

TfL does not feel it is necessary to make membership of an approved ADR scheme a requirement in the licence. We feel that substantial progress has been made

throughout the industry without the need for a requirement in the licence. We already have an established procedure in place, which clearly signposts customers to our official watchdog organisation, London TravelWatch.

If the ORR was to make membership of an approved ADR scheme a requirement in the licence, TfL would require greater certainty as to the cost of any scheme, before we can reasonably take any formal decision as to whether or not we would participate.

Are there any other approaches which could provide certainty in the ADR arrangements for consumers?

TfL believes that increased signposting to the current established independent watchdogs would benefit consumers.

What alternative safeguards are available to ensure that rail companies do not withdraw their membership from a scheme?

As stated previously, TfL feels that substantial progress has been made throughout the industry, without the need for any formal membership to an ADR scheme. This is evident through our established complaint handling procedure and our current appeals process.

Are there any reasons why charter operators and station licence holders should not join an ADR scheme?

Yes – please refer to previous response which sets out our reasons.

Tyne & Wear Metro response to ORR consultation on Complaints Handling Procedures

Tyne & Wear Metro welcomes the opportunity to respond to this consultation. In doing so, Tyne & Wear Metro is aware that a decision on whether it remains 'in scope' for a CHP and DPPP is pending, following the ORR's October 2016 consultation titled "Consultation on the scope of regulation for some categories of licence holder for Complaints Handling Procedures and Disabled People's Protection Policies".

The Tyne & Wear Metro falls under regulatory scrutiny for 11 stations on the Pelaw to South Hylton extension. The other 48 stations on the Nexus network, and the passenger trains themselves, fall outside the scope of the regulatory scrutiny.

Given the nature of the system, Tyne & Wear Metro considers that its position is akin to London Underground. It is understood that Transport for London is not intending to become a member of an ADR scheme.

As highlighted in its response to the ORR consultation on "Consultation on the scope of regulation for some categories of licence holder for Complaints Handling Procedures and Disabled People's Protection Policies", Tyne & Wear Metro would welcome a proportionate approach by the ORR.

Which of the three options set out above is most appropriate for signposting to ADR?

Recognising that each has its advantages and disadvantages, overall option three (signposting to Transport Focus) is the preferred option. This would provide an opportunity to resolve complaints prior to referral to an ADR scheme.

Are there other approaches that we have not considered which may be preferable to those set out above?

None identified.

Is it necessary for ORR to set out in detail our expectations, and make these formal requirements, in the CHP of communications about the ADR scheme?

Whilst Tyne & Wear Metro does not suggest that these requirements are made formal, it is proposed that the ORR could develop a model form of words. This would ensure that best practice is adopted, and also aid consistency between train operating companies, whilst allowing flexibility where required.

What is the most appropriate point at which to signpost ADR? Eight weeks, six weeks, another period?

It would be expected that the timescale should allow for the customer to escalate the issue if the complaints remains unresolved within a reasonable period of time, but also that the train operating company has had sufficient time to investigate and respond to the complaint. From Tyne & Wear Metro's perspective a time period of eight weeks is most appropriate, as secondary investigation can take some time in some circumstances.

Should we conduct a review of whatever time period is agreed? If so, at what point: after one year, two years, another period?

A review of the time period seems appropriate in order to learn from experience. A year would probably be sufficient for the scheme to settle in and for the review to have enough information to draw on.

If the time period should be subject to review, what metrics should we use to establish whether the time period remains appropriate or should be changed?

As per the response to question 4.

Should individual rail companies be able to set their own signposting time limits as long as they are below the minimum agreed signposting standard?

Yes, to best reflect local circumstances, for example if they are able to generally progress complaints to this stage in a shorter time period. However, this does generate the risk of confusion if passengers correspond with several train operating companies and this should be considered.

Should arrangements be introduced to allow signposting before the time period is reached i.e. deadlock?

Yes. Such an approach is appropriate when it is clear that no further progress can be made and signposting is the next step. In these circumstances it makes no sense to delay referral.

As substantial progress has been made voluntarily by industry on developing an ADR scheme, is it necessary to make membership of an approved ADR scheme a requirement in the licence (and reflected CHP guidance and CHPs)?

Tyne & Wear Metro does not believe that membership of an approved ADR scheme should be a requirement of a licence and/or CHP guidance. It considers that

membership of such a scheme should be discretionary, based on the circumstances in each train operating company. In the case of Tyne & Wear Metro, it has in most cases implemented decisions of Transport Focus in the past and it is felt that the costs associated with membership of an ADR scheme would be disproportionate to any customer benefit from the scheme.

Are there any other approaches which could provide certainty in the ADR arrangements for consumers?

None suggested.

What alternative safeguards are available to ensure that rail companies do not withdraw their membership from a scheme?

None suggested.

Are there any reasons why charter operators and station licence holders should not join an ADR scheme?

This question relates to the previous ORR consultation titled "Consultation on the scope of regulation for some categories of licence holder for Complaints Handling Procedures and Disabled People's Protection Policies" where a decision is awaited. It would be logical for such a decision to follow the general ORR decision from this previous consultation.

By email to: CHP@orr.gsi.gov.uk

Victoria Square House,
Victoria Square,
Birmingham B2 4DN

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

24 November 2017

Dear Sirs

Changes to Complaints Handling Guidance: a Consultation.
Response from Virgin Trains (West Coast)

This letter is in response to the ORR Consultation regarding Changes to Complaints Handling Guidance published on 26 September 2017.

We have liaised closely with the Rail Delivery Group over the preparation of their response and support the submission they have made.

We look forward to hearing the outcome of the consultation and will submit a revised Complaints Handling Procedure in the light of republished guidance at the appropriate time.

We have invested heavily in recent months in additional resources and systems within our Customer Resolutions Centre and will continue to keep ORR appraised of the positive impact these measures are having. Not only have these changes led to improvement in our response performance, they also improve our resilience on occasions when significant disruptive incidents lead to sudden high volumes of contacts for the team to handle. We will continue to alert ORR to occasions when such incidents occur and the impact they have.

Yours faithfully,

Chris Hagyard
Franchise and Public Affairs Manager
Virgin Trains

Virgin Trains East Coast
East Coast House, 25 Skeldergate
York YO1 6DH
virgintrainseastcoast.com

By email to: CHP@orr.gsi.gov.uk

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

24 November 2017

Dear Sirs

Changes to Complaints Handling Guidance: a consultation.
Response from Virgin Trains (East Coast)

This letter is in response to the ORR Consultation regarding Changes to Complaints Handling Guidance published on 26 September 2017.

We have worked closely with the Rail Delivery Group over the preparation of their response and support the submission they have made.

We look forward to hearing the outcome of the consultation and will submit a revised Complaints Handling Procedure in the light of republished guidance at the appropriate time.

We have invested heavily in recent months in additional resources and systems within our Customer Solutions Centre and will continue to keep ORR appraised of the positive impact these are having, and look forward to building relationships between our team and the team at ORR to make things better for customers, including self-regulation to any compliance requirements.

Yours sincerely,

Emma Vincent
Head of Customer Contact
Virgin Trains East Coast

Which?, 2 Marylebone Road, London, NW1 4DF
Date: 17th November 2017
Response by: Which?

Consultation response

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

Which? response to the ORR's consultation on Changes to Complaints Handling Guidance

About Which?

Which? is the largest independent consumer organisation in the UK with more than 1.5 million members and supporters. We operate as an a-political, social enterprise working for all consumers and funded solely by our commercial ventures. We receive no government money, public donations, or other fundraising income. Which?'s mission is to tackle consumer detriment by making individuals as powerful as the organisations they have to deal with in their daily lives. Which? empowers consumers to make informed decisions and campaigns to make people's lives fairer, simpler and safer.

Summary

- The Government should establish a Transport Ombudsman on a statutory basis with it being mandatory for all train operating companies to be a member.
- Which? welcomes the proposal to create a new rail ombudsman. It should be mandatory for all train operating companies to be a member, whether through regulation or licence conditions.
- The new ADR scheme should fulfil three roles - the resolution of individual complaints, improving complaint handling by firms, and reducing the causes of complaints.
- It should be easy and straightforward for consumers to access redress. This includes only going to one place to resolve complaints.
- The presence and role of ADR should be flagged to consumers more than once during their complaint journey.

Introduction

Which? has received thousands of passenger stories that bring to life the problems people face every day when travelling on the trains. People's frustrations have ranged from delayed and unreliable services, overcrowded and dirty carriages, and poor customer service from staff in stations and on trains.

Even after experiencing these problems, very few people told us that they attempted to complain or claim compensation. Yet where people did complain, they often felt that the process was difficult, that the companies involved were unhelpful, and that the amounts received derisory. Some people did not even get a response from a train company after submitting a complaint.

Which? analysis of official Transport Focus data has revealed that passenger satisfaction on how complaints are managed has failed to significantly improve in over a decade. Today only 46% of passengers are satisfied, whereas ten years ago it stood at 42%.

It is clear that the current redress landscape in rail is not fit for purpose. The absence of a formal ADR scheme means that passengers' complaints can too often go unheard, with no opportunity to escalate their complaint if a train-operating company fails to deal with their complaint effectively. Transport Focus, the passenger watchdog, provides a voluntary forum for complaint handling but has no powers to impose binding decisions. This means that rail providers have little incentive to handle complaints effectively at the first tier or to be held to account for service failings.

The ORR's review of the Complaints Handling Procedures (CHPs) in rail is welcome, particularly in preparation for the forthcoming voluntary Ombudsman. Given the barriers passengers currently face when trying to resolve issues, the success of the new scheme will be reliant on how well the scheme is communicated, the simplicity of the complaints journey, and the coverage of the scheme across all train operators. However the new Ombudsman scheme should only be viewed as a last resort to improvements to individual train operating companies' first-tier complaints handling practices, so that passengers can receive effective redress as quickly as possible.

Effective, mandatory Alternative Dispute Resolution (ADR) must be a priority for the rail sector to ensure that people are not ignored when they face problems on the network, companies improve their own complaints handling systems, and that wider service failings are addressed. Effective ADR is also fundamental to increasing trust in markets by providing protections when things go wrong, which is critical for a sector that scores low on consumer trust.

1. Signposting unresolved complaints

It must be easy and straightforward for consumers to access redress. This requires a simple complaints journey which entails going to a single place to resolve complaints. Of the three options proposed in the consultation document, Option 1 is the most appropriate as it involves clear signposting to the ADR scheme during the complaints process is the most appropriate. This is the only option that ensures direct access for consumers to the ADR scheme and it places the onus on the scheme to decide whether it can deal with a complaint and refer it elsewhere if it cannot. Which? agrees with the proposal that there should be a protocol for handling complex complaints that include relevant issues for both the ADR scheme and the transport consumer champions.

It would be concerning if Option 2 or Option 3 were implemented as a means to communicate about the scheme. It is inappropriate for rail companies to decide whether to refer a complaint to the ADR scheme or to the existing rail consumer bodies, as proposed by the second option.

As the consultation notes, there would be a perverse incentive for rail companies to direct complaints to Transport Focus or London TravelWatch since these involve no cost to the companies and these bodies are unable to issue binding decisions on the companies, or deliver remedies for passengers. Where complaints are complex and cover several issues, there would be a particularly strong incentive for companies to direct complaints away from the ADR scheme if at all possible. This option would not provide consumers with reassurance that their complaint will be dealt with fairly and properly and it would undermine consumer trust in the new system.

The third option would only prevent consumers from directly accessing the ADR scheme. This option proposes retaining the existing system of rail companies referring complaints to Transport Focus or London TravelWatch before complaints are passed onto the ADR scheme where the bodies have been unable to resolve it themselves. As the consultation itself notes, this would risk high complainant drop-out as the process drags on, and risk further passenger dissatisfaction and poor trust in the rail sector.

Setting expectations on communications

The quality, length and timeliness of communications about the ADR options open to consumers is extremely important in determining whether consumers decide to take a complaint forward to ADR. It is an essential component in the success of the new ADR scheme. As such, the ORR should set out clear expectations and standards for the communication of the ADR scheme, which go beyond the consultation proposal.

As the consultation notes, Ofgem has found that the quality of energy supplier communications has a significant impact on consumers' engagement with the ADR scheme. Which?'s own research found that external factors prompted consumers to take their complaint to an ombudsman including receiving and noticing a leaflet and or deadlock letter from the company. In contrast, few consumers who decided not to escalate the complaint to the ADR scheme could remember having received a deadlock letter or ADR information leaflet from the company.[1]

Communications need to be clear and accessible for consumers, and need to increase consumers' awareness of the ADR scheme itself and their right to take unresolved complaints to it. Prescriptive rules are not necessary to achieve this, and in fact could reduce the opportunity for innovation and experimentation in communications. However, clear standards will support the delivery of a successful ADR scheme and should include:

- Communications are accessible to all consumers including plain simple language.
- Communications clearly set out the complaints that ADR can deal with and the consumer's options for resolving complaints which are out of scope.
- Communications clearly explain how ADR works – including how to submit a complaint, the time limits for doing so, how the process works, how long it takes and what to expect.
- Communications clearly explain the possible outcomes to a complaint.

[1] Which? research, The Behavioural Architects Alternative Dispute Resolution for Consumers, October 2015, unpublished.

2. Timescale for sending signposting letters

Effective signposting to ADR should aim to achieve two core outcomes – to raise consumer awareness of ADR, and to encourage consumers to refer their unresolved complaints for ADR. Which? research has found that consumers are more likely to use ADR when they have received information about it two or three times during their complaints process.[2] As such, consumers should be signposted to ADR at more than one point in their journey - for example, when their complaint is submitted and at six and eight weeks. This will increase the likelihood that a passenger will continue with their complaint until a satisfactory outcome has been reached.

The ORR should review the effectiveness of the ADR process, including the timings of signposting and the communications. It would be appropriate to conduct this one year from the establishment of the scheme and then regularly thereafter. Any review and recommendations should be published and should inform any resultant changes to improve the scheme.

The ORR's review should include the following outcome indicators:

- Awareness of ADR scheme among: (i) all rail passengers; (ii) rail passengers who have complained, by train operating company.
- Proportion of unresolved complaints referred to ADR.

Other indicators should include:

- How people have heard of the ADR scheme.
- Proportion of consumers who complained who remember a communication from the train company signposting to the ADR scheme.
- Length of time taken to resolve complaints by individual train operating companies.
- Proportion of unresolved complaints that receive deadlock letters and signposting to ADR.

Time limits to signposting

Consumers are more likely to pursue their complaint through ADR the earlier they are made aware of the scheme, therefore Which? agrees that individual train companies should be allowed to reduce their signposting time limits to below the minimum standard. However, as stated above, the frequency of signposting to the scheme is equally important and therefore individual train companies must ensure that they make their complainants aware of the scheme at multiple points during the complaint journey.

Signposting before the time period is reached should be allowed as this will help improve the effectiveness of the complaint handling process. It also enables consumers to access ADR quicker, if they choose, improving the consumer experience.

3. Requirement to be a member of an ADR scheme

Which? continues to call for the Government to establish a Transport Ombudsman on a statutory basis, and for such a scheme to be mandatory for all train operating companies. There are currently insufficient market incentives ensuring that rail companies will deliver good outcomes for consumers and sign up to ADR voluntarily.

[2] Which? research, The Behavioural Architects Alternative Dispute Resolution for Consumers, October 2015, unpublished.

Consumer trust in the rail industry has remained persistently low for the last five years and currently standing at 27%.[3] This is not helped by individual train companies' poor handling of complaints when customers raise concerns. As the ORR has found, 12 out of 24 train companies failed to meet their regulatory requirements in responding to complaints in a timely fashion. Which? research has shown that only 46% of passengers were satisfied how a train company handled their complaint in 2017, with little improvement on satisfaction levels made in over decade. This is unacceptable in the context of rising dissatisfaction with the service that train companies are providing, as demonstrated by the 7% rise in passenger complaints this year.[4] It is imperative that train operating companies improve their own complaints handling processes and meet their license obligations, and the ORR should take firm action where it finds evidence of such breaches.

Given the culture of poor complaints handling across the rail market, passengers must have guaranteed access to an effective, independent ADR scheme, which will deliver binding outcomes and have the power to award compensation. Which? has strong expectations that the rail industry can deliver, 100% sign-up and coverage of firms.

As an interim measure, Which? is open about how mandatory provision can be achieved whether through regulation or licence conditions. However, there must be full coverage of the scheme. The best safeguard for consumers is ensuring that the ADR scheme membership is mandatory for all train operating companies.

Other approaches to provide certainty in the ADR arrangements for consumers

To facilitate effective oversight of the rail ombudsman scheme, the ORR should have competent authority status in the ADR regulations. In the interim, the ORR must work closely with CTSI to provide effective oversight.

ADR should fulfil three roles - resolution of individual complaints, improvement of complaint handling by firms, and reduction of the causes of complaints. Which? has developed a principles based framework on what a good ADR scheme looks like and identifying the following features:

- Independent
- Effective
- Transparent
- Fair to the consumer; and
- Promoting improvements.

ADR schemes should also be easy to access and use. This should include:

- Consumers being aware of the ADR scheme.
- An easy, one-step process for starting the ADR process.
- Schemes providing support to consumers throughout the process, including regular communication.

[3] Which? Consumer tracker, Train Travel trust, September 2017

[4] Office of Rail and Road, Annual Rail Consumer Report, July 2017

- Complaints being resolved as quickly as possible.

To help firms and the sector improve their complaint handling and reduce the cause of complaints ADR schemes should:

- Publish their decision criteria, complaints data, and anonymised outcomes of cases.
- Use complaints data to help members of ADR schemes, and the sector in general, to improve services to consumers.
- Ensure that their decisions are binding and enforceable.

It is critical that the ADR scheme makes granular complaints data publicly accessible on a regular basis. This will allow for better scrutiny of the scheme, identification of persistent systemic problems, and where there are poor performance issues in individual TOCs. This should in turn drive improvements across the sector and help to resolve the consumer trust deficit in the rail sector.

Charter operators and station licence holders

All rail passengers should be able to access redress wherever their problem arose on the journey, at the station, or traveling. The type of issues consumers complain about in relation to Network Rail managed stations would be in scope for a rail ombudsman. For example, Network Rail received 2,473 complaints related to its managed stations, with 21% of complaints relating to customer care and 17% about information provision.[5]

Neena Bhati, Which?, 2 Marylebone Road, London NW1 4DF

[5] Office of Rail and Road, Annual Rail Consumer Report, July 2017

Responses to “Changes to complaints handling guidance - A consultation” from Marcus Williamson, editor CEOemail.com and Helen Dewdney, The Complaining Cow

Thank you for the opportunity to prove input to this consultation.

Our responses are included in the document below.

Contents

Page

Chapter 1

Q. Which of the three options set out above is most appropriate for signposting to ADR?

A. Option 2 (ADR/TF/LTW) is most appropriate, provided that the ADR scheme is already operating effectively, including:

- a clear procedure for the appointment of "fit and proper" leadership and staff of the ADR body, including enhanced DBS and financial background checks.
- clear escalation procedure in the event of a complaint about the ADR body.
- continuous performance monitoring and reporting by the ADR body.

Q. Are there other approaches that we have not considered which may be preferable to those set out above?

A. Option 3 (TF/LTW) should continue to be used until Option 2 is proven to be operating effectively.

Q. Is it necessary for ORR to set out in detail our expectations, and make these formal requirements, in the CHP of communications about the ADR scheme?

A. Yes, there must be absolute clarity on ORR's expectations and role in relation to the ADR scheme. There is currently a lack of clear guidance in the "unregulated" ADR landscape. Organisations involved in appointing and overseeing ADR bodies already include: Companies House, Ombudsman Association, CTSI and BEIS.

Any new expectations from ORR about the ADR scheme must be clearly stated prior to implementation of the new scheme. The new responsibilities of ORR vis à vis the existing ADR stakeholders (CH, OA, CTSI, BEIS) must be made very clear. In particular, ORR needs to clarify:

- Who is responsible for appointing the rail ADR body?
- Who is responsible for monitoring the performance of the ADR body?
- Who is the accountable organisation for consumers to approach if something goes wrong during engagement with the ADR body?

Chapter 2

Q. What is the most appropriate point at which to signpost ADR? Eight weeks, six weeks, another period?
A. Eight weeks would appear to be appropriate. Whatever period is used it should be standardised across all rail companies for the sake of clarity for consumers.

Q. Should we conduct a review of whatever time period is agreed? If so, at what point; after one year, two years, another period?
A. No, once a time period has been set it should remain, for the sake of clarity for consumers.

Q. If the time period should be subject to review, what metrics should we use to establish whether the time period remains appropriate or should be changed?
A. The time period should not be subject to review, as this could cause confusion for consumers.

Q. Should individual rail companies be able to set their own signposting time limits as long as they are below the minimum agreed signposting standard?
A. No, there should be a standard time limit across all rail companies, in order to ensure clarity for all consumers.

Q. Should arrangements be introduced to allow signposting before the time period is reached i.e. deadlock.
A. Yes, where a deadlock has already been reached then signposting should be provided, as it already is, for example, in the financial services sector.

Chapter 3

Q. As substantial progress has been made voluntarily by industry on developing an ADR scheme, is it necessary to make membership of an approved ADR scheme a requirement in the licence (and reflected in CHP guidance and CHPs)?

A. Yes, if ADR is to be successful in rail, then every rail company must be a member of a single recognised ADR scheme which applies across the whole rail industry.
There should not be multiple competing ADR schemes, as this would cause confusion for consumers.

Q. Are there any other approaches which could provide certainty in the ADR arrangements for consumers?
A. Consumers will expect an ADR body that is:

- Free - Accessible without cost to the consumer.
- Binding - The outcome of the ADR engagement should be binding upon the rail company and the consumer, without exception.
- Open - responsive to questions from consumers, the press and other stakeholders about its structure and membership.
- Transparent - publishes information about itself including: structure, rules of engagement, membership, performance statistics, funding and financial accounts.
- Safe - Manned by directors and staff who have all passed “fit and proper person” tests, including enhanced DBS and financial background checks.
- Accountable - There must be a means by which consumers can lodge a complaint about the ADR body to a higher entity, if necessary.

If the ADR body is an “ombudsman” then it must be a member of the Ombudsman Association, which provides additional independent oversight and safeguards.

Q. What alternative safeguards are available to ensure that rail companies do not withdraw their membership from a scheme?
A. Ensuring that ADR membership is a requirement in the operating licence would be sufficient safeguard.

Q. Are there any reasons why charter operators and station licence holders should not join an ADR scheme?
A. No. All rail companies, charter operators and station licence holders should be members of the ADR scheme.

Chapter 4

No questions are posed by ORR in this chapter of the consultation.

But a point that arises in the discussion of performance monitoring is that ORR will need to monitor the performance of its chosen ADR body. ORR must therefore put in place the necessary procedures, systems and personnel to be able to do this.

As a matter of openness and transparency, ORR should explain to all interested parties how this monitoring will work and where the information gathered by ORR will be published. ORR must also explain the escalation procedure by which consumers can complain about the ADR body, if necessary.

ORR must also publish all responses to this consultation in a timely manner, consistent with established principles of openness and transparency.

Further Reading

"Ombudsman Omnishambles - Serious unresolved issues affecting the operation of the ombudsman ADR system in the UK"

https://ceoemail.com/ombudsman-omnishambles.pdf

"Rail Ombudsman is finally coming down the tracks – consultation closing soon"

http://www.thecomplainingcow.co.uk/rail-ombudsman-is-finally-coming-down-the-tracks-consultation-closing-soon/

Contact

Marcus Williamson
Editor, CEOemail.com
[redacted]

Helen Dewdney
Author of "How To Complain: The Essential Consumer Guide to Getting Refunds, Redress and Results!"

[redacted]