

Responses to Modification of Passenger Licence Condition 6 (Complaints Handling)

A Consultation by the Office of Rail and Road - July 2018

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Consumer Policy Team
Office of Rail and Road
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London
WC2B 4AN

Email: CHP@orr.gsi.gov.uk

24th September 2018

Dear Consumer Policy Team

Re: Modification of Passenger Licence Condition 6 (Complaints Handling) – A Consultation

We do not intend to respond to this consultation currently, we understand the Rail Delivery Group is doing so on behalf of the industry. Arriva Trains Wales will not be operating the service when the Ombudsman is launched and so this will be picked up after the 14th October, when Transport for Wales and Keolis Amey become responsible for rail services in Wales & Borders, with the new management team who can review and agree the most appropriate approach.

Yours sincerely,



Barry Lloyd
Head of Customer Experience
Arriva Trains Wales

[redacted]

12 September 2018

Consumer Policy Team
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Dear ORR

Consultation on modifying licence condition 6 (complaints handling)

I am writing in response to your current consultation regarding compulsory TOC participation in the rail ombudsman scheme. Although I am engaged to represent London TravelWatch and Transport Focus from time to time on a consultancy basis, primarily in relation to rail safety questions, I should stress that for the purposes of this exercise I have no formal connection with either body and the replies below are entirely mine.

- *Do you agree that mandating membership to an approved binding ADR scheme would protect dissatisfied consumers?*

As that is the declared purpose of ADR schemes, it should give consumers at least a degree of protection. Much will depend on its exact terms of reference, its ease of use, the consumer-friendliness of the decisions reached by the ombudsman, and the readiness of rail operators to comply with the spirit as well as the letter of these.

Since part of the purpose of such a scheme is to mitigate the likelihood of a recurrence of the problems giving rise to dissatisfaction, it will also be essential for all operators to take due note of the decisions irrespective of the specific operator involved. In other words, decisions should become precedents with industry-wide application.

But it is likely that many complaints will continue to relate to issues of policy rather than performance, thus falling outside the ombudsman's remit, and it is essential that there is an agreed protocol whereby these are systematically re-routed to the appropriate consumer body for attention.

- *Do you agree that rail companies should be required to join the ADR scheme procured by RDG?*

Yes. It would be illogical, and incomprehensible to passengers, if there was a half-in half-out situation in which rail operators could pick and choose whether or not to submit themselves to the discipline of an ombudsman scheme – with the likelihood that it would be the operators most likely to be the subject of complaints which would be the most reluctant to join.

It is unfortunate that Transport for London has apparently decided that London Underground and the Docklands Light Railway will not participate in the scheme. This will mean that, for example, the entitlement of a passenger travelling between (say) Harrow on the Hill and Amersham to seek the ombudsman's help in the event of a dispute will depend on the

random fact of whether the first train to arrive is a Metropolitan line or a Chiltern railways service, a technical distinction which to most passengers is of no practical consequence.

Compulsory membership must also be required of bodies to which rail operators have outsourced functions at the interface with passengers. These include ticket sales (e.g. Raileasy, Trainline, Red Spotted Hanky), railcard issuing (ATOC Ltd) and penalty fare recovery (RPSS etc). The omission of such bodies from the complaint handling procedures contained in current ORR licence conditions has caused considerable difficulties for the consumer bodies when seeking to deal with complaints arising from their activities.

It has been suggested that there might be a “de minimis” threshold below which cases would not qualify for the ombudsman’s scrutiny, to discourage trivial complaints and possible disproportionality between the costs of handling a case and the monetary value of any compensation to which it might lead. This suggestion has merit, but would be likely to have the effect of discriminating arbitrarily against passengers who make short journeys or qualify for low fares but who have been equally ill-served by a TOC. If part of the object of the scheme is to encourage more sympathetic TOC responses at the initial stage, this might be undermined if some complainants were automatically excluded from having recourse to the ombudsman in circumstances in which they believe that a TOC has failed to treat them fairly.

- *Do you agree with the principles we propose to include in CHPs? Are there any others we should consider for inclusion?*

[The principles are listed as :

- *Accessible – the consumer should have to make minimal effort in order to get to the scheme;*
- *Free to the consumer;*
- *Explains decisions to consumers in a clear and understandable form;*
- *Makes decisions which are binding on the rail company and with which the rail company abides within the scheme’s specified timescales;*
- *Publishes information about its own performance and the performance of its member companies on a quarterly basis;*
- *Be a driver for improved complaints handling and performance, identifying and sharing best practice; and*
- *Provides data to rail companies, ORR, and statutory consumer bodies, to improve complaints handling performance.]*

These principles are all appropriate and desirable. But it should also be made clear that having recourse to the scheme does not fetter a consumer’s existing rights either to seek the assistance of the appropriate consumer body or that of the courts (e.g. under the Consumer Rights Act).

The consumer bodies should be free to refer cases to the ombudsman (with the complainant’s consent) in cases where they have been unable to achieve an outcome which is acceptable (either to them or to the complainant) through their usual mediation functions.

And the ombudsman must be required to rule in conformity with the principles of natural justice in circumstances where these are violated by the fine print of (e.g.) the National Rail Conditions of Carriage, and take due account of accumulating “case law” in order to achieve consistency of treatment.

- *Do you agree that there should be a fixed date by when rail companies are required to be members of the scheme? Do you agree with the proposed timing or would you favour a different date?*

If it is agreed that all operators must be members of the scheme, there would be no logic in allowing them to evade this requirement by deferring the date from which it applies. If it cannot in practice be introduced sooner than the date proposed (1.4.19), so be it, though voluntary adherence in advance of this would be seen by passengers as a welcome token of operators' sincerity.

- *Do you agree that the licence requirement should apply to concession operators, station-only and charter operators (as well as franchise operators and station licence holders including Network Rail)?*

Yes – it should apply to all licenced operators. To the passenger, the identity and legal status of the operator of the train or station, and the niceties of franchises/ concessions/open access, are rightly immaterial. A train is a train and a station is a station.

Exclusion of international services, as currently proposed, is regrettable. It is ironic if Eurostar is to be exempted from a mandatory ombudsman scheme in Britain on the grounds that it is already subject to such schemes in Belgium and France, and it is not yet clear whether such access will continue to be available to British passengers post-Brexit.

Charter operators are closer to tour operators than to conventional train operators in the nature of their activities. But this is no reason why their clients should not have equal access to the protection offered by an ADR scheme, particularly as other tour operators are likely already to be subject to such provisions via ABTA, ATOL, etc.

- *Do you agree that there should be regulatory oversight of the RDG scheme? What form should ORR's role take?*

Yes. ORR should monitor the operation of the scheme, publish (or secure the publication of) data relating to its use, and keep its guidance under active review. It may be that in due course it would be appropriate for ORR to acquire "competent authority" status. In any event, it should involve the rail passenger bodies fully in this activity, and draw upon their case-handling expertise in developing its own new-found interest in consumer affairs.

- *Do you have any comments on the draft Impact Assessment in annex one?*

It appears broadly correct but two points should be noted.

In estimating the scale of complaint referrals that the rail ombudsman may receive, comparisons with the number of cases closed by Transport Focus and London TravelWatch should be made with caution, because the latter total will include some (possibly many) cases relating to matters outside the scope of an ADR scheme.

It is noted that "RDG informed us [*i.e.* ORR] that "they were designing the scheme so that it will be open to charter operators and station licence holders." It is unfortunate that no mention is made here of the other categories of organisation cited above to which rail operators have sub-contracted some of their commercial functions and whose membership should therefore be required – *i.e.* ticket sales agencies, railcard issuers, and penalty fare recovery agents.

I hope these comments are helpful.

Yours sincerely

John Cartledge

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19 September 2018

Dear Consumer Policy Team

Consultation – Modification to Passenger License Condition 6 (Complaints Handling)

Thank you for your email dated 06 May in respect of the above.

We appreciate the opportunity given to review and feedback on the proposed content and are keen to work alongside you to ensure that the agreement reached adds value to all parties concerned.

In terms of the consultation documents provided, please see below our response to each question raised;

Question 1

Do you agree that mandating membership to an approved binding ADR scheme would protect dissatisfied consumers?

We believe that consumers should have access to an approved binding ADR scheme, however do not believe it necessary to mandate membership. CrossCountry, alongside the other Train Operators have supported the introduction of a rail specific ADR scheme from the outset, playing an instrumental part in selecting and supporting the most appropriate supplier to manage this activity. We are all therefore fully committed to making this work and ensuring consumers are treated fairly, without the need to make membership of this scheme compulsory. By doing so, it will potentially impact the way in which this initiative would be viewed externally, and not represent the true nature of our pro-active involvement in this scheme and the support demonstrated by the industry thus far. For clarity, we would have no concern with membership to this scheme being mandated per se, we just see no benefit of doing so, especially given the 'administrative burden' of doing so that you have outlined in your proposal.

Question 2

Do you agree that rail companies should be required to join the ADR scheme procured by RDG?

As outlined above, CrossCountry are fully supportive of the ADR scheme and along with the other operators, have been instrumental in procuring an appropriate supplier and continued to actively support the project and ongoing implementation. We agree that all rail companies (including station licence holders such as Network Rail) should be required to join the same ADR scheme, procured by RDG with the support of the industry.

Question 3

Do you agree with the principles we propose to include in CHP's? Are there any others we should consider for inclusion?

CrossCountry have no concerns with the principles outlined in the consultation document.

Question 4

Do you agree that there should be a fixed date by when rail companies are required to be members of the scheme? Do you agree with the proposed timing or would you favour a different date?

We agree there should be a fixed date on when rail companies are expected to become members of the scheme, and in principle have no issue with the six-month timeframe outlined (or earlier if a new franchise date applies). This will help consumers have a consistent approach to appeals quickly and efficiently and remove the currently fragmented approach in place. However, appropriate resource to allow a review of key policies such as CHP's must be considered for the industry if this timescale were to be adopted.

Question 5

Do you agree that the licence requirement should apply to concession operators, station-only and charter operators (as well as franchise operators and station licence holders including Network Rail)?

We believe that all operators and licence holders (including Network Rail) should be a member of this scheme, and that it should be a licence condition. In addition to this, we also believe that any third party retailers or organisations who are accredited to act on behalf of the Rail Industry should also be encouraged (or incentivised) to join the ADR scheme proposed. As outlined above, this would then ensure a non-fragmented and consistent approach for consumer's right across the Rail Industry.

Question 6

Do you agree that there should be regulatory oversight of the RDG scheme? What form should ORR's role take?

We would support there being regulatory oversight to ensure all parties were performing as expected. We would recommend a collaborative approach, given that we are all working for the benefit of the customer and want to achieve the same objectives.

Question 7

Do you have any comments on the draft Impact Assessment in annex one?

No further comments, other than those already outlined.

In summary, as a conscientious service provider to our customers, we have proactively engaged and supported the implementation of a Rail specific ADR scheme, alongside our TOC colleagues and RDG, and will continue to do so for the benefit of the consumer.

Yours sincerely



Andy Cooper
Managing Director
(Signed on behalf of to avoid delay)

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19/09/2018

Modification to Passenger Licence Condition 6 (Complaints Handling): a consultation

Dear Sirs

I am writing on behalf of Dispute Resolution Ombudsman Limited (the Ombudsman) with our responses to the above consultation. We read the consultation with interest and welcome the opportunity for open debate regarding the strategies and scrutiny put forward to ensure a simple and effective scheme, with fully committed engagement from the industry and with the consumer voice at its heart.

The Ombudsman is pleased to have been asked to provide the rail industry and its consumers with a free and independent means of complaints resolution, which will assist, with appropriate engagement from the rail sector, in raising standards and building trust in the rail industry. We welcome the support of the ORR (Office of Road and Rail) in facilitating the introduction of ADR (Alternative Dispute Resolution) to the industry and of the role of the RDG (Rail Delivery Group) in confirming that all franchised train operating companies have already joined the Rail Ombudsman on a voluntary basis and all have agreed to be bound by the Ombudsman's decisions. We look forward to working with all parties to engage with the industry further as an effective and credible supplier of ADR.

We look forward to working with London Travel Watch and Transport Focus and other industry bodies to provide a seamless experience for consumers with clear, robust and binding resolutions.

We believe that an ombudsman, if embraced in the right way by the sector within which it operates, delivers the best experience for consumers for several important reasons:

- Protected name and checks and balances which are in place to ensure service standards are adhered to across the ombudsman sector;
- Industry specific knowledge;
- Systemic reviews and help to raising standards. An ombudsman has a wider remit than the dispute before it and can use data to track trends and issues within the industry thus assisting the industry in raising standards and working with businesses to understand their obligations and closing the feedback loop in terms of accessible industry data;
- Accessibility is a key element of an ombudsman scheme and these, therefore, offer a platform for vulnerable consumers to more readily access their rights of redress.

We note, with interest, the calls for a mandatory scheme across the rail sector. In our experience, this raises pros and cons. On the one hand, voluntary membership of a scheme demonstrates a commitment to customer service and raising standards. The danger of wholesale mandatory ADR, on the other hand, is that consumers who have disputes with mandatorily onboarded members could become disenchanted with the process if scheme members regularly contested decisions. In either event, our approach to ADR is to build relationships and establish trust in the fairness and/or legal bases which underpin our decisions, thus providing a strong incentive for the industry to reduce complaints. We welcome the debate and await the outcome of this.

We welcome the statement of the ORR that they do not consider that it is in the public interest to have more than one ADR scheme in the rail sector and are keen to ensure that consumers have a clear and understandable route to the ADR scheme. We agree that there would be a risk in having more than one scheme leading to confusion and limit the scope for awareness raising by the scheme provider and the risk that it may also lead to different standards of service between additional schemes.

The Ombudsman notes the criteria set out in the consultation and welcomes the scope of the modifications to the content of the scheme members' CHPs to ensure that consumers have a clear and understandable route to the rail ADR scheme.

The Ombudsman confirms that it will readily engage by whatever means necessary with the ORR and other stakeholders, such as London Travel Watch and Transport Focus to provide industry insight and access to underlying data. However, the Ombudsman also welcomes the appreciation that an effective scheme is one which preserves its commitment to independent assessment of disputes.

Thank you for providing us with the opportunity to comment upon the consultation and we await the outcomes with interest.

Yours faithfully,



Judith Turner LL.B (Hons), ACI Arb
Head of ADR & Senior Ombudsman
Dispute Resolution Ombudsman Limited

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26 September 2018

Dear Sirs

Re – Modification to Passenger Licence Condition 6 (Complaints Handling): a consultation. Response from East Midlands Trains.

Thank you for providing East Midlands Trains with the opportunity to respond to the above consultation.

We are pleased that, working in partnership with the Rail Delivery Group and other Train Companies, we have developed a solution which provides our customers with a free and appropriate course of redress. We support the elements of the Ombudsman scheme and believe that it will improve the way East Midlands Trains handle complaints and also assist us to drive further service improvements. We will continue to engage with the chosen supplier and RDG in the next coming months to ensure a successful launch in November 2018.

We do not believe mandating membership is necessary, as all franchise operators have joined the scheme on a voluntary basis and this will ensure national consistency. East Midlands Trains are committed to joining the scheme (and updating our CHP) within 6 months of its confirmed launch date.

Yours sincerely,



Vishaal Bagga
Head of Customer Experience

EAST MIDLANDS TRAINS



I have been asked by **Glasgow Prestwick** Airport Ltd, for whom I work as a rail consultant, to respond to your consultation paper regarding Condition 6 of the Passenger Licence. As you are aware, Glasgow Prestwick Airport Ltd is the owner and operator of Prestwick International railway station, is licensed accordingly as a station operator and maintains a CHP.

We note your proposals regarding a binding ADR scheme, and we note that station-only operators such as ourselves should be included in this scheme. Whilst we have no issue in principle with this approach, we would be concerned if we were forced to join the ADR scheme proposed by RDG for the following reasons:

1. As Glasgow Prestwick Airport Ltd's core business is as an airport operator, we are already members of an ADR scheme approved by the CAA, which regulates our airport operation, and which you make reference to in your paper.
2. Glasgow Prestwick Airport Ltd is not a member of the RDG, and therefore have no knowledge of the scheme procured by them or costs or implications involved.
3. The majority of passengers using Prestwick International railway station do so because they are using Glasgow Prestwick Airport, either as air passengers or staff and contractors working on the airport, and we have no involvement in any ticketing issues for our rail industry colleagues.
4. Accordingly, we would hope that in the event of the proposals being implemented, we would be able to retain our existing ADR arrangements.

We look forward to receiving further information and details from you when you have considered the consultation responses, and of course are happy to discuss issues further with you at any time.

Thank you for the opportunity to comment.

Richard Shaw
Rail Consultant
Glasgow Prestwick Airport

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13 September 2018

Dear Sir or Madam,

MODIFICATION TO PASSENGER LICENCE CONDITION 6 (COMPLAINTS HANDLING) – CONSULTATION

Thank you for your invitation to respond to the above consultation.

Greater Anglia has engaged with RDG and the process by which all TOCs have voluntarily committed to the success of an Ombudsman scheme within our industry. We are happy to provide our comment to the questions posed:

Do you agree that mandating membership to an approved binding ADR scheme would protect dissatisfied consumers? If you do not, please provide evidence to support your answer.

Greater Anglia has been very pleased to voluntarily adopt membership of this scheme as we see real benefits for both the rail customer, and for the industry. Greater Anglia has actively engaged with RDG throughout this process.

Do you agree that rail companies should be required to join the ADR scheme procured by RDG? If you do not, please provide evidence to support your answer.

Greater Anglia agree that having one ADR provider for the industry is not only desirable for TOCs but more importantly will enable rail customers to understand very clearly how their complaint will be handled should they remain dissatisfied, or unable to reach resolution, with a respective train company.

Do you agree with the principles we propose to include in CHPs? Are there any others we should consider for inclusion?

Our CHP has always been an internal document. We have published our CHP to our Greater Anglia website at the ORR request and have been happy to do so in the interests of transparency. Going forwards we will, as we believe will all TOCs, need to work with the Ombudsman as to how we can deliver. We will signpost our customers to the Rail Ombudsman in the agreed format, and ensure that we put the information that needs to be in the customer domain in our customer facing literature where appropriate. The scheme should be independent therefore in our view the Ombudsman should facilitate any redress.

Do you agree that there should be a fixed date by when rail companies are required to be members of the scheme? Do you agree with the proposed timing or would you favour a different date? Please provide evidence to support your answer.

Greater Anglia can only respond from our own position that there is more benefit to a voluntary approach rather than imposed regulations. We understand that some operators may wish to have sight of how the scheme works initially as this is new to the industry.

Do you agree that the licence requirement should apply to concession operators, station-only, and charter operators (as well as franchise operators and station licence holders including Network Rail)? If you do not, please provide evidence to support your answer.

Greater Anglia do agree that third party operators, charter operators, Network Rail and freight services should be included within the scheme because all make use of the national rail network and therefore may have a part to play in a rail customer journey or experience.

Greater Anglia would welcome sight of how the above will be built into the scheme. Greater Anglia would welcome ORR support to find a way to ensure that Transport for London and its concessions be equally included within the scheme.

Do you agree that there should be regulatory oversight of the RDG scheme? What form should ORR's role take? If you do not agree, please provide evidence to support your answer.

Yes, with a view that the ORR has oversight along with existing mechanisms to ensure that standards are continuing to be met by members. Greater Anglia agrees with the RDG position that ultimately ORR should be recognised as Competent Authority.

Do you have any comments on the draft impact assessment in annex one? Please provide evidence to support your answer.

Greater Anglia would like clarity on the level of sight that the ORR will have of the Ombudsman portal.

Greater Anglia believe that the quality of the customer experience is paramount, and this scheme sends the right message within the industry, and importantly outside the rail industry.

Not all Train Operating Companies are operating in the same way, and we all have nuances to our Passenger Charter's as well as compensatory regimes. We do not feel at this early stage that there can be a fundamental statement about customer satisfaction as a consequence, as the same standards and practices cannot be uniformly applied. Satisfaction levels may differ as a result. We recognize that there is still likely to be a level of dissatisfaction which the Ombudsman cannot resolve.

Annex one reference 'a high rate of business participation in sectors where there are significant levels of consumer complaints'. Greater Anglia participate in a variety of surveying and 'pulse checks' as part of our usual business to understand customer satisfaction. This scheme and any trends that come from the reporting side of the portal will form part of the measures by which we assess the customer view of our business and work to improve but will not be the sole measure.

Yours sincerely,



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Sent via email to CHP@orr.gsi.gov.uk

26th September 2018

Dear Colleague

GTR response to the ORR consultation on 'Modification to Passenger Licence Condition 6 (Complaints Handling)'.

Thank you for the opportunity to feed into the above consultation.

We note that it is proposed that there is a modification to Condition 6 of the Passenger Licence in order to make membership of the Alternative Dispute Resolution (ADR) scheme in the rail sector a mandatory requirement.

We draw your attention to the submission made by the Rail Delivery Group dated 20th September 2018 on behalf of its membership. GTR have worked closely with the Rail Delivery Group to implement the introduction of the voluntary Ombudsman (ADR) within the rail industry. GTR are in agreement with this response and have no further comment.

If you need to discuss further do feel free to contact me direct at [\[redacted\]](#) or call me on [\[redacted\]](#).

Kind regards

Julie Allan
Senior Customer Relations Manager

Govia Thameslink Railway

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**Heathrow
Express**
The smarter way

Heathrow Express Operating Company
The Compass Centre
Nelson Road
Hounslow
Middlesex
TW6 2GW

20th September 2018

Consumer Policy Team
Office of Rail and Road
One Kemble Street
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WC2B 4AN

Dear George,

Re: Modification to Passenger Licence Condition 6 (Complaints Handling): a consultation

Many thanks for your invitation to respond to the above consultation. Having been involved in early discussions around the introduction of an ADR for the railway industry at the previous TOC I worked at it is good to see progress has been made in this area.

I have set out the position of Heathrow Express in regards to each of the questions posed in your consultation document. I must stress, that although we are broadly in support of the introduction of this scheme, we have not been involved with the selection and scoping process with RDG. We therefore will require much more information before we join such a scheme, so that we can fully understand the requirements and the impact on Heathrow Express and its customers.

1. Do you agree that mandating membership to an approved binding ADR scheme would protect dissatisfied consumers?

As demonstrated by the success of ADR schemes in other industries, Heathrow Express agrees that a binding ADR scheme would protect dissatisfied customers as well as the business. The ADR would need to be fully up to speed with the variances of Passenger Charters across the industry and would need to consider (especially in the case of Heathrow Express) that we not bound by the National Rail Conditions of Travel and therefore operate under our own Conditions of Carriage.

2. Do you agree that rail companies should be required to join the ADR scheme procured by RDG?

Heathrow Express, in principle, agrees that rail companies should be required to join an ADR scheme. As we have not been involved with the RDG discussions around this scheme we would invite the RDG to present the mechanics of the scheme to us before we commit fully to adopting this approach.

3. Do you agree with the principles we propose to include in CHPs? Are there any others we should consider for inclusion?

Heathrow Express agrees in principle with the proposed principles to be included in the CHP. We have nothing further to add now.

4. Do you agree that there should be a fixed date by when rail companies are required to be members of the scheme? Do you agree with the proposed timing or would you favour a different date?

As Heathrow Express has not had any involvement in the supplier selection process it would be beneficial to have more understanding from the RDG relating to their proposals. RDG will need to provide information, including how the cost structure will work in practice, with enough time for Heathrow Express to agree to the principles and update all customer facing documentation. Therefore, I cannot commit Heathrow Express to the proposed timescales.

5. Do you agree that the licence requirement should apply to concession operators, station-only, and charter operators (as well as franchise operators and station licence holders including Network Rail)?

We agree that for an ADR to be successful it needs to apply to the entire industry. As a non-franchised, non-subsidised rail operator it is imperative we understand more around the commercial impact of the scheme on our organisation. We would expect the RDG to provide us with such information.

6. Do you agree that there should be regulatory oversight of the RDG scheme? What form should ORR's role take?

Heathrow Express agree that there should be regulatory oversight on the operation of the scheme but there should be no involvement from the ORR in individual cases (which are bound by the decisions of the ADR process).

7. Do you have any comments on the draft Impact Assessment in annex one?

Heathrow Express are broadly satisfied with the details in the draft impact assessment. We would however need to complete our own impact assessment on receipt of details from RDG of the chosen scheme.

I hope these answers to your questions assist in your consultation and please feel free to contact me should you require any further information.

Yours Sincerely,



Daniel Edwards
Commercial Customer Service Manager
Heathrow Express Operating Company

Mr Marcus Clements
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1 October 2018

Modification to Passenger Licence Condition 6 (Complaints Handling); a consultation

Dear Marcus

Thank you for the opportunity to comment on this. It concerns us that the consultation as you have set it out gives very little room for disagreement or for constructive criticism of the proposals as they stand, in order to get a better outcome for passengers.

London TravelWatch is the statutory consumer watchdog representing the interests of passengers using Transport for London (TfL) services, Eurostar and those using the National Rail network in the London Railway Area. Passengers who are not satisfied with the outcome of their complaint to TfL or to National Rail operators have the right to appeal to us to act on their behalf. The volume of work that we handle is set out in appendix A below.

London TravelWatch welcomes the enhanced consumer protections for passengers that Alternative Dispute Resolution (ADR) provides in principle. However we are concerned that the proposal to force all train operators to join the RDG ADR scheme is not necessarily in the best interests of passengers using services in our area, particularly, but not limited to, operators of TfL rail concessions,

The RDG scheme was set up by the industry as a voluntary scheme to try and improve complaints handling amongst its members. The original proposal was to introduce an ADR process that would be binding on the operators as a third stage option for rail passengers who remained dissatisfied with the outcome of their complaints once the statutory appeals bodies (London TravelWatch and Transport Focus depending on where the problem occurred) had attempted to resolve the issue through mediation. Building on an existing and successful model (approximately 70% of complaints successfully resolved) and well regarded (over 70% of users satisfied or very satisfied with the way that their complaint was handled) this would, we believed have been very much in the passenger interest. This would ensure free and effective passenger advocacy with the option of taking the complaint onto a third stage of impartial ADR, binding on the operator and would be an improvement as well as being easy to explain to passengers.

In April 2017, the RDG decided to amend its voluntary scheme to a second rather than third stage appeals scheme. Although concerned that this would not be so beneficial for passengers, particularly those travelling in and around London where so much travel is multimodal, we continued to attend the RDG's task force meetings to provide the London passenger perspective, and encouraging the industry to make the scheme as passenger friendly as possible. However, it should be noted that this arrangement is for a balanced outcome between

the passenger and the railway company, which may not necessarily find in the passengers' interest.

With respect to TfL concessions as the table in Appendix B to this report shows, there are far fewer complaints compared to other TOCs in our area (just 56 in 2017/18 and not all of these would be eligible for ADR). These operators also have achieved consistently high overall satisfaction levels in the National Rail Passenger Survey. Open access operators such as Grand Central and Hull Trains, that are not part of the franchising process and are therefore much more subject to the commercial necessity of providing good customer service, have achieved consistently high overall satisfaction levels in the same survey and also have very low volumes of appeal complaints. Mandating operators who consistently get high satisfaction scores and low complaints rates to compulsorily join a scheme designed to improve complaints handling therefore seems perverse.

In respect of TfL rail modes we think this would lead to confusion and delays for passengers as well as disproportionately increasing transaction costs for TfL in complying with the requirements. Complaints handling for TfL rail modes is centralised with other TfL modes and all passengers are directed to the same customer service centre. When TfL staff close a complaint they signpost complainants to London TravelWatch as an appeals body. If TfL had to introduce separate arrangements for a relatively small number of complainants it would add to their handling costs – as well as the need to pay whatever subscription costs the RDG would levy. This would be disproportionate to the cost of processing cases given that the average ticket price for journeys on the London Overground and TfL Rail is approximately £3 per single journey, and with many journeys only costing £1.50 per single journey.

At present TfL itself deals with all appeal complaints, rather than referring these to the individual rail concessions. The largest proportion of appeals (33%) relate to fares and ticketing arrangements. It is appropriate that TfL does this itself as most journeys are multi-modal and it would be confusing to passengers if rail journeys were subject to a different appeal handling process to the other parts of their journey or modes of transport.

It should also be noted that the current TfL process specifies and largely achieves a 10 working day response time to an appeal, as against the current 20 working day response time for rail operators, and to signpost to London TravelWatch after the second substantive response. Under this proposal the operator is required to issue a 'deadlock' letter at eight weeks or earlier. Coupled with the time the Ombudsman would then take to close the case, the passenger could find themselves waiting for a considerable time to get an outcome, which they still may not agree with.

As a statutory second stage appeals body advocating for passengers London TravelWatch has a good success rate in dealing with such cases, and so we would not wish to support a proposal that added extra administrative burdens or resulted in passenger detriment.

There is also the issue of accountability relating to journeys that are done all or in part on the Transport for London (TfL) network, and this will increase over time with the expansion of the Elizabeth Line and transfer of other lines to TfL concessions. Most passenger journeys in and around London use several modes of transport, with multi-modal tickets such as Travelcards or pay-as-you-go arrangements through contactless bank cards, Oyster and other smartcards as the principle means of ticketing. Disaggregating these transactions for the purpose of an ADR scheme will be complex and require a series of arrangements for the transfer of personal data.

London TravelWatch is therefore of the view that membership of the scheme should only be made mandatory if an operator persistently fails to demonstrate that they are complying with the requirements of any license condition for a Complaints Handling Policy, so that mandating membership of an ADR scheme is a means of compliance and remedy.

However we could see a case for encouraging TfL and open access operators to voluntarily join the scheme for third stage appeals where a second stage appeal through London TravelWatch has not been able to be resolved.

Thank you for the opportunity to comment on this, we are of course willing to discuss this further with you as necessary.

Yours sincerely,

Tim Bellenger
Director, Policy and Investigation

Appendix A

London TravelWatch Casework appeals taken forward in 2017/18

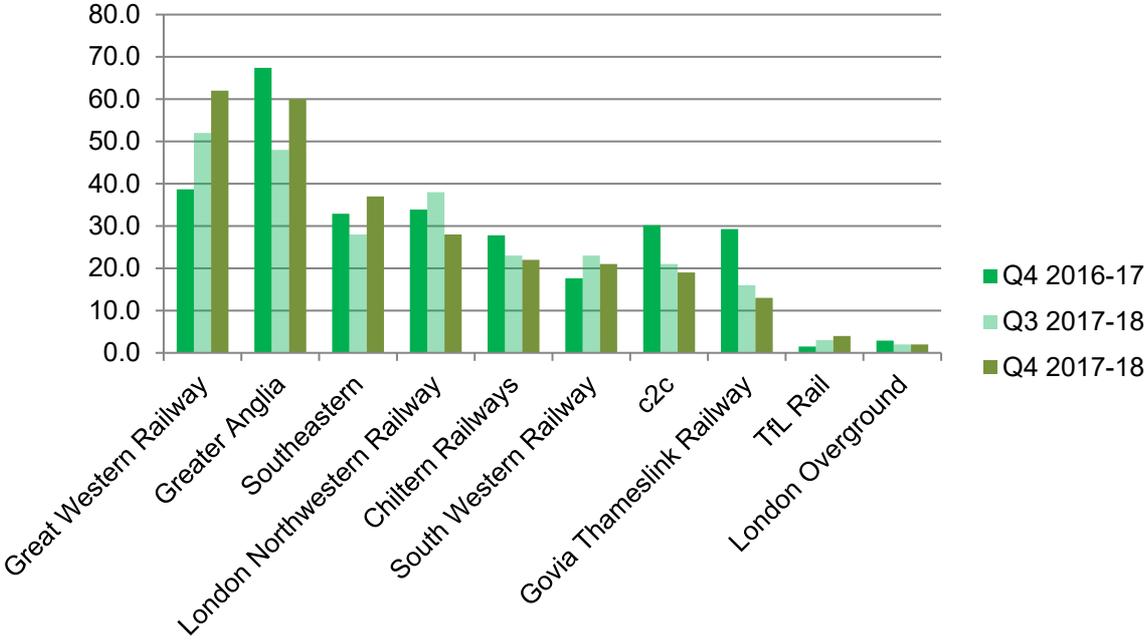
	Jan to Mar 2018	Oct to Dec 2017	July to Sept 2017	Apr to June 2017	Total appeals
Greater Anglia	23	14	26	17	80
c2c	7	6	5	7	25
Chiltern	22	2	9	2	35
CrossCountry	0	0	0	0	0
Virgin East Coast/LNER	10	9	11	2	32
East Midlands Trains	3	1	2	4	10
Eurostar	28	21	32	14	95
GTR	56	52	39	40	187
GWR/FGW	22	19	40	32	113
Grand Central	1	0	0	1	2
Heathrow Express	20	1	10	11	42
First Hull Trains	0	0	0	0	0
London NW (LM)	5	13	8	4	30
ScotRail	0	0	0	0	0
Southeastern	34	27	37	22	120
Southern	56	51	49	47	203
SWT/SWR	90	53	38	51	232
Virgin West Coast	22	8	16	13	59
Caladonian sleeper	0	0	0	0	0
West Midlands	0	0	0	0	0
Total Non-TfL	347	297	282	267	1193

TfL Overground	12	6	13	12	43
TfL Rail	3	2	4	4	13
Total TfL rail	15	8	17	16	56

Total TfL other modes	162	87	121	125	495
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NB: These figures do not include other casework statistics

Appendix B - Complaints per 100,000 passenger journeys by train operating company, Q4 2016-17, Q3 2017-18 and Q4 2017-18 (ORR statistics).



Response to Consultation

- 1. Do you agree that mandating membership to an approved binding ADR scheme would protect dissatisfied consumers?**

If you do not, please provide evidence to support your answer.

We believe there is no barrier to Merseyrail being a member of the scheme. We also believe the Industry has already, as is acknowledged in the consultation, demonstrated its commitment to the proposed Ombudsman Service. We therefore think that there is no additional protection offered to dissatisfied customers by such a mandate.

As a small metropolitan TOC with historically high levels of performance we receive very small numbers of complaints proportionate to the level of customer journeys undertaken each year. As such we believe only a small number of our customers will seek to make use of this route of redress but remain committed to membership due to the benefits outlined in the consultation.

- 2. Do you agree that rail companies should be required to join the ADR scheme procured by RDG?**

If you do not, please provide evidence to support your answer.

We believe the proposals set out by RDG and the subsequent scheme design are proportionate and sensible. We therefore intend to join the scheme. We offer no view on whether other rail companies should be obliged to join the specific ADR scheme however we do believe any mandated membership must result in a consistent experience for both TOC's and customers.

- 3. Do you agree with the principles we propose to include in CHPs?**

We have no objections to the principles

- 4. Are there any others we should consider for inclusion?**

None that we have identified.

- 5. Do you agree that there should be a fixed date by when rail companies are required to be members of the scheme?**

If membership is to be mandated we believe it would need to be enforced from a fixed date to avoid customers having different experiences across operators.

- 6. Do you agree with the proposed timing or would you favour a different date? Please provide evidence to support your answer.**



The current RDG timescales mean the scheme will launch in November 2018. We believe the April date specified would not pose a problem as long as the scheme is delivered to the current planned schedule.

- 7. Do you agree that the licence requirement should apply to concession operators, station-only, and charter operators (as well as franchise operators and station licence holders including Network Rail)? If you do not, please provide evidence to support your answer.**

We don't offer a view on this, other than whatever is decided it must be consistent from a customer perspective.

- 8. Do you agree that there should be regulatory oversight of the RDG scheme? What form should ORR's role take?**

If you do not agree, please provide evidence to support your answer.

We believe that the scheme as it has been designed by RDG provides a clear and comprehensive ADR service that meets all relevant standards. We have no strong view on the issue of regulatory oversight.

- 9. Do you have any comments on the draft Impact Assessment in annex one? Please provide evidence to support your answer.**

We do not have any comments.

Network Rail's response to ORR's consultation on modifications to passenger licence condition

26 September 2018

Our key points in response to ORR's consultation are:

- We agree that membership of the ombudsman scheme and compliance with its decisions demonstrates a commitment to customer care. The reputational benefits are enhanced by the voluntarily nature of the scheme. An impression that ORR has had to 'step in' to mandate membership undermines these reputational benefits.
- We support ORR having an overview role which would provide further confidence, on an ongoing basis, that the scheme is independent of any undue influence from the industry.
- Given that Network Rail and all franchised operators have committed to join the ombudsman scheme voluntarily when details are agreed, we are concerned that by mandating membership through the licence, ORR is attempting to solve a problem that does not currently exist. This could set an inappropriate precedent.
- From a policy perspective, we believe that it is inappropriate to mandate membership of a single ADR scheme which would restrict competition in the provision of ADR services. Competition could drive up standards and innovation in providing ADR services.

Question 1: Do you agree that mandating membership to an approved binding ADR scheme would protect dissatisfied consumers? If you do not, please provide evidence to support your answer.

Network Rail agrees that membership of a binding ADR scheme will help to protect dissatisfied consumers by providing access to independent redress. We also agree that industry parties should be members of an approved scheme, to provide assurance to consumers that it meets the required standards.

We do not agree that it is necessary to mandate membership of such a scheme. Network Rail and all franchised operators have committed to join the Rail Ombudsman scheme when details are agreed. The value in a voluntary scheme is that it clearly demonstrates to consumers that rail industry parties are committed to customer care, enhancing the reputation of the overall industry's approach to addressing passenger complaints. Mandating membership would undermine this, indicating to the public that regulatory intervention was required to secure industry commitment, which is not the case.

We agree that widespread membership of an approved scheme will help to drive improvement of overall complaints handling and addressing the initial causes of complaints in the industry. However, we do not agree with, and have not identified any evidence to support, ORR's view that a mandatory scheme will be more effective than a voluntary one. It would be useful to understand why ORR believes this to be the case.

ORR pre-emptively mandating membership to address the risk that rail companies may leave the scheme is misleading to consumers. It fails to recognise the evidence of positive engagement with the development of the scheme by the whole rail industry, and based on the evidence to date, would be a disproportionate response to a low risk of companies' withdrawal from the scheme. The industry has voluntarily developed the Rail Ombudsman scheme led by RDG in addition to two existing tax-payer funded consumer watchdogs in order to provide additional protection for consumers.

Network Rail does not see the value in ORR seeking to use regulation to solve a problem that does not currently exist by mandating membership.

Question 2: Do you agree that rail companies should be required to join the ADR scheme procured by RDG? If you do not, please provide evidence to support your answer.

We support the work of the industry, led by RDG, to develop the industry ADR scheme and Network Rail will be joining this scheme when details are agreed. However, from a policy perspective, it is inappropriate to mandate membership of a single scheme which would restrict competition in the provision of ADR services. We believe that the door should be left open to rail companies joining any approved scheme that is able to meet the necessary criteria to achieve CTSI certification. Competition could drive up standards and innovation in providing ADR services.

In the communications sector, communications providers have the option to join either the Communication and Internet Services Adjudication Scheme (CISAS) or Otelo, both of which have been certified by Ofcom, to resolve disputes related to communication and internet services. Both services are free of charge to customers as required by the Communications Act 2003. We see no reason why ORR would seek to restrict competition in the provision of ADR services to rail users, provided that any such service is able to meet the necessary criteria to achieve CTSI certification. Indeed, competition, could drive up standards and innovation in providing ADR services whilst providing the best value for money for Network Rail and ultimately the tax payer. We are surprised by ORR's assertion (in paragraph 2.5) that 'it is not in the public interest to have more than one ADR scheme in the rail sector' particularly as this model has been proven to work successfully in the communications sector. ORR's consultation focusses solely on the negative aspects of having more than one ADR provider and fails to recognise the benefits that 'competition' could bring.

Question 3: Do you agree with the principles we propose to include in CHPs? Are there any others we should consider for inclusion?

We agree with the proposals set out in paragraph 2.6 of ORR's consultation. We also agree that it is more appropriate to include these principles in the CHP guidance than the licence, providing more flexibility to update them as required. We support RDG's proposal to add a principle that the scheme must be independent from all stakeholders that might seek to influence it.

Question 4: Do you agree that there should be a fixed date by when rail companies are required to be members of the scheme? Do you agree with the proposed timing or would you favour a different date? Please provide evidence to support your answer.

Network Rail has committed to join the scheme procured by RDG and will do so when detailed terms have been agreed. We are concerned that a requirement to join the scheme within six months of commencement disregards the evidence from industry that, as was announced by RDG in July, Network Rail (and every franchised operator) has already voluntarily agreed to join the ombudsman scheme. The value of a voluntary scheme is that membership is considered best practice. Mandating membership within a time period suggests that industry parties are not actively engaging in the scheme.

Modifying the complaints handling licence condition to require membership of an ADR scheme within six months of scheme commencement would effectively tie us into membership of a single scheme before the value of the scheme is fully understood. As a primarily publicly funded organisation, we are concerned that if the scheme is ineffective, this may result in Network Rail spending valuable funding for limited return (for passengers or Network Rail).

Question 5: Do you agree that the licence requirement should apply to concession operators, station-only, and charter operators (as well as franchise operators and station licence holders including Network Rail)? If you do not, please provide evidence to support your answer.

As stated above, we do not support ORR's view that a licence obligation requiring membership of a single approved ADR scheme is necessary. In respect of its station licence activities, Network Rail has committed to join the ADR scheme procured by RDG voluntarily when details are agreed, as have all franchised operators in respect of their licenced activities. We agree that it would be beneficial for consumers to be able to access the same level of redress for complaints about any part of the industry. We do, however, believe that regulation should be proportionate to the scale of the risk and not impose undue regulatory burden on industry parties. ORR should consider the size and type of risk relating to concession operators, station-only operators and charter operators in determining if and how regulatory intervention would be beneficial.

Question 6: Do you agree that there should be regulatory oversight of the RDG scheme? What form should ORR's role take? If you do not agree, please provide evidence to support your answer.

We agree with ORR's view that it is important that there is no perception that the industry could exert undue influence on a scheme's decision making. RDG's development of the scheme has considered this and has taken steps to ensure that the scheme is independent.

We support ORR's role in setting out expectations (in CHP guidance) of the scheme of which an industry party is a member, which we expect to remain consistent with the standards required by the competent authority. We recognise that the responsibility to be a member of a scheme that meets these expectations is on the licence holder rather than the ADR scheme itself.

We support the introduction of a memorandum of understanding between the scheme and ORR so that ORR, as well as rail companies, can benefit from information and insight from the scheme in its monitoring. We believe that it would be appropriate for rail companies to be consulted on the memorandum of understanding, so that there is a clear line of sight between the actions of rail companies and the information upon which ORR is basing its monitoring. If there were a misalignment between the information ORR seeks from the ADR scheme and the information that rail companies use to assess and monitor their own performance, it may limit the value that ORR, rail companies and the public get from analysis and recommendations. Consulting the industry in the development of the memorandum of understanding will also help to capture the benefits that the whole industry is seeking from the scheme (on a longer-term basis, recognising that RDG has incorporated this into the development of the scheme but these may develop with time), so that ORR can consider these in assessing whether benefits are being realised.

Question 7: Do you have any comments on the draft Impact Assessment in annex one? Please provide evidence to support your answer.

We agree with the proposal in the draft impact assessment that membership and compliance with scheme decisions demonstrates a commitment to customer care and that the reputational benefits are particularly relevant in the context of low levels of consumer trust in the rail sector. We believe that these reputational benefits are enhanced the voluntary nature of the scheme, which demonstrates that rail companies have chosen to make this commitment themselves. Mandating membership creates a perception that ORR has had to 'step in', therefore this impact would not be as relevant for a mandatory scheme.

We believe that the impact assessment cannot be universally applied to all rail companies as the impact will be relative to the type and scale of complaints that are received.

The impact assessment focuses heavily on access to consistent data, which is one benefit of uniform membership. However, this does not justify why it is necessary to mandate membership in circumstances where Network Rail and all franchised operators have committed voluntarily to join the scheme when details are agreed.

While we agree that this is beneficial for ORR to make comparisons in performance, we consider that ORR should be proportionate in its approach to collecting this data and is considerate of the fact that companies' operations differ and a 'one size fits all' approach is not needed, or always appropriate.

As a low volume heritage operator The type of complaints the North Yorkshire Moors Railway receives are not typical to the industry and are rarely if ever transport focused. Whilst we operate as a non-mainline operator, and we do indeed offer a transport function, our activities are mainly tourism based and therefore any complaints are dealt with on that basis. It is felt that the NYMR, and it's customers, would in no way benefit from membership of an ADR scheme.

The NYMRs operation rarely operates over a distance greater than 6.5 miles on a low density area of the network and we do not feel this scheme would be appropriate.

Best Regards

Chris Price

General Manager | North Yorkshire Moors Railway

Consumer Policy Team
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WC2B 4AN

Email: CHP@orr.gsi.gov.uk

20 September 2018

Dear Consumer Policy Team

Consultation – Modification to Passenger Licence Condition 6 (Complaints Handling)

Thank you for your email dated 06 May in respect of the above. We appreciate the opportunity given to review and feedback on the proposed content and are keen to work alongside you to ensure that the agreement reached adds value to all parties concerned.

With regard to the consultation documents provided, please see below the ARN response to each question raised;

Question 1

Do you agree that mandating membership to an approved binding ADR scheme would protect dissatisfied consumers?

ARN would have no concern with membership to this scheme being mandated, but we do not believe it necessary as operators have supported the introduction of a rail specific ADR scheme from the outset, playing an instrumental part in selecting and supporting the most appropriate supplier to manage this activity. We are all therefore fully committed to making this work and ensuring consumers are treated fairly, without the need to make membership of this scheme compulsory.

Question 2

Do you agree that rail companies should be required to join the ADR scheme procured by RDG?

As outlined above, ARN are fully supportive of the ADR scheme and along with the other operators, have been instrumental in procuring an appropriate supplier and continued to actively support the project and ongoing implementation. We agree that all rail companies (including station licence holders such as Network Rail), should be required to join the same ADR scheme, procured by RDG with the support of the industry.

Question 3

Do you agree with the principles we propose to include in CHP's? Are there any others we should consider for inclusion?

ARN have no concerns with the principles outlined in the consultation document.

Question 4

Do you agree that there should be a fixed date by when rail companies are required to be members of the scheme? Do you agree with the proposed timing or would you favour a different date?

Yes. In principle ARN has have no issue with the six-month timeframe outlined (or earlier if a new franchise date applies). This will help consumers have a consistent approach to appeals quickly and efficiently and remove the currently fragmented approach in place.

Question 5

Do you agree that the licence requirement should apply to concession operators, station-only and charter operators (as well as franchise operators and station licence holders including Network Rail)?

To ensure a non-fragmented and consistent approach for consumer's right across the Rail Industry we believe that all operators and licence holders (including Network Rail) should be a member of this scheme, and that it should be a licence condition. In addition to this, we also believe that any third party retailers or organisations who are accredited to act on behalf of the Rail Industry should also be encouraged (or incentivised) to join the ADR scheme proposed.

Question 6

Do you agree that there should be regulatory oversight of the RDG scheme? What form should ORR's role take?

Yes. We would support there being regulatory oversight to ensure all parties were performing as expected. We would recommend a collaborative approach, given that we are all working for the benefit of the customer and want to achieve the same objectives.

Question 7

Do you have any comments on the draft Impact Assessment in annex one?

No further comments, other than those already outlined.

Yours Sincerely,

David Brown
Managing Director



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Chair: Nick Bennett
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21 September 2018

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

Dear Sir / Madam,

Modification to Passenger Licence Condition 6 (Complaints Handling)

I am writing in response to the consultation on the proposed modification to the passenger licence conditions, in relation to complaint handling.

Summary

1. The Ombudsman Association welcomes the ORR's proposal to mandate access to independent redress.
2. It is in the interests of rail users that redress is in the form of a single, mandatory, ombudsman that meets the Association's best practice criteria.
3. To be effective an ombudsman needs to work in a well-regulated environment, with clear common standards to measure against, and should work closely with the regulator.

Background

4. The Ombudsman Association was established in 1993 and includes as members all public and private sector Ombudsman schemes and major complaint handling bodies in the United Kingdom, Ireland, the British Crown Dependencies and the British Overseas Territories.
5. The Vision of the Association is that throughout the public and private sectors:
 - It is straightforward and simple for people to complain.
 - People making a complaint are listened to and treated fairly.
 - A complaint is dealt with quickly, fairly and effectively at the earliest stage by suitably trained staff.
 - People have access to an ombudsman in all areas of consumer and public services.
 - The learning from a complaint is used to improve services.
6. An Ombudsman helps to underpin public confidence in the institutions that they cover; by providing accessible and effective redress, and by feeding back the lessons from their work in order to help improve service delivery and complaints-management for the future.

Q: Do you agree that mandating membership to an approved binding ADR scheme would protect dissatisfied consumers?

7. Whilst we welcome the announcement by RDG that all franchise operators and Network Rail have agreed to sign up to a single, binding, ADR provider, the Ombudsman Association agrees with the ORR's analysis that making membership of a single, mandatory, redress provider is in the interests of rail users, and is supported by the evidence from other sectors.
8. The position that there should only be one redress provider within a sector, and preferably an ombudsman, has been reinforced by a number of recent reports including the 2017 Citizens Advice report *Confusion, gaps and overlaps*¹ and the report by MoneySavingExpert². Both reports are clear that it is in the interests of consumers for access to redress to be simple and straightforward and that confusion is caused by having multiple providers, without any clear evidence of the benefits.
9. This has been echoed by the Gambling Commission, who have reiterated their intention to move towards a single ombudsman for the sector following their report in 2017.³ The responses to Ofgem's call for evidence in 2018, on whether to allow an additional redress provider to operate in the energy sector alongside the Energy Ombudsman, further underlined this; with both consumer representatives and the energy companies themselves highlighting that having multiple redress providers did not benefit either consumers or businesses.⁴
10. Furthermore, research published alongside the UK Government's recent Consumer Green Paper has shown that relying on businesses and service providers to sign up to ADR voluntarily has not been successful. The research undertaken by ICF and published alongside the Consumer Green Paper highlighted that 70% of consumers who went to Court did so because the trader refused to participate in ADR.⁵
11. The figures from redress providers are worse: the Consumer Ombudsman, which was set-up in line with the then Government's policy to create a voluntary 'residual body', reported that whilst they received 5,600 complaints in 2017, in only 6% of cases did the business agree to participate in ADR.⁶ The ORR has already referenced the experience in the aviation sector where three large carriers have failed to sign up to an ADR provider.
12. The ICF research also showed that, despite it being mandatory for traders in all sectors to signpost consumers to ADR⁷, only 37% of consumers who did use ADR had in fact received information on ADR providers from the trader.

Q: Do you agree that rail companies should be required to join the ADR scheme procured by RDG?

13. Many of the criticisms of having multiple redress providers within a sector is that the company chooses which one to work with. This means that no single Ombudsman scheme / redress provider has a holistic overview of the issues in the sector and the regulator / competent authority does not have a single partner to work with to drive improvements. The lack of clarity often puts consumers off complaining. There is also a perception amongst the public that as the business chooses which one of several redress scheme to work with, the redress provider is not truly independent and may side with the organisation complained

¹www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Gaps%20overlaps%20consumer%20confusion%20201704.pdf

²https://images6.moneysavingexpert.com/images/documents/MSE-Sharper_teeth_interactive.pdf

³www.gamblingcommission.gov.uk/PDF/Complaints-processes-in-the-gambling-industry.pdf

⁴www.ofgem.gov.uk/publications-and-updates/application-utilities-adr-be-certified-adr-provider-energy-sector-ofgem-decision-following-responses-our-open-letter

⁵www.gov.uk/government/publications/resolving-consumer-disputes-alternative-dispute-resolution-and-the-court-system

⁶www.gov.uk/government/consultations/consumer-green-paper-modernising-consumer-markets

⁷www.gov.uk/government/publications/resolving-consumer-disputes-alternative-dispute-resolution-and-the-court-system

about to retain their business. Regardless of whether there is any evidence to support that view, the perception puts consumers off taking their complaint further.

14. The Association's membership criteria are recognised both internationally and by the UK Government as representing best practice. This is reflected in the Cabinet Office's *Guidance for government departments on setting up Ombudsman schemes*⁸, which addresses the point of when it is appropriate for a public body to use the title 'ombudsman', and in the criteria used by Companies House as to when a company can use the protected term 'ombudsman'⁹.
15. Our membership includes all ombudsman schemes operating in both the public and private sectors, and in various countries and territories. Our common membership criteria of Independence; Fairness; Effectiveness; Openness & Transparency; and Accountability¹⁰ apply to them all.
16. The ORR highlighted the low levels of trust and customer satisfaction amongst rail users. Rail users should be entitled to access to a redress scheme that meets best practice criteria, just as they are if they complain about a financial provider, an energy company, or the NHS.
17. The Association's Validation Committee scrutinises both applications for membership and the 5-yearly re-validation of existing members against our membership criteria. The Validation Committee has a majority of independent members who are appointed via an open recruitment process for their knowledge and expertise of the ombudsman sector.
18. The ORR should not only require that rail companies join a single redress scheme, but also that the scheme in question is an ombudsman-level scheme that meets the best practice standards set out in the Ombudsman Association's criteria.

Q: Do you agree with the principles we propose to include in CHPs? Are there any others we should consider for inclusion?

19. The Ombudsman Association was established in 1993. During our 25-year history we have built up an expertise on what makes an effective, independent redress scheme, as evidenced in our guides to principles of good complaint handling¹¹ and good governance¹², our membership criteria, and more recently our Service Standards Framework¹³ - which sets out the public commitments and service standards that can be expected when using the services of an ombudsman.
20. The principles proposed by the ORR can all be found within the Association's criteria and Service Standards Framework. Our membership criteria of Independence; Fairness; Effectiveness; Openness & Transparency; and Accountability set a higher bar for an ombudsman than the ADR Directive does for other redress bodies, or the ORR's proposed principles do, especially around independence and access.
21. Ombudsman schemes represent a form of inquisitorial adjudication. Whilst there are other redress providers who also offer adjudication, accredited by the various Competent Authorities under the ADR Directive, there are some significant differences between an ombudsman and those organisations providing what you could term 'straight-forward' adjudication:
 - Ombudsman schemes are always free for the public to access;
 - Ombudsman schemes provide advice and sign posting to the public;
 - Ombudsman schemes take an inquisitorial approach when investigating;

⁸ www.gov.uk/government/publications/new-ombudsman-schemes-guidance

⁹ www.gov.uk/government/publications/incorporation-and-names/annex-a-sensitive-words-and-expressions-or-words-that-could-imply-a-connection-with-government

¹⁰ www.ombudsmanassociation.org/docs/OA-Rules-Schedule-1.pdf

¹¹ <http://www.ombudsmanassociation.org/docs/BIOAGoodComplaintHandling.pdf>

¹² <http://www.ombudsmanassociation.org/docs/BIOAGovernanceGuideOct09.pdf>

¹³ www.ombudsmanassociation.org/docs/OA17%20Service%20Standards%202017_Final.pdf

- Ombudsman schemes make recommendations for improvement in service provision, beyond simply settling the individual dispute;
- Ombudsman schemes have the ability to address systemic issues; and
- Ombudsman schemes share data and information for use by regulatory and enforcement bodies.

22. One of the benefits that an ombudsman brings as opposed to straight-forward adjudication is its role in proactively influencing the service provision and complaints handling of the bodies in its jurisdiction. This can be undertaken through training, producing guidance materials, and providing feedback on patterns in type and numbers of complaints. The further benefit of having a single ombudsman covering an entire sector is that service is available to all businesses / organisations. This has been done most effectively by the Scottish Public Services Ombudsman through their Complaints Standards Authority role, which is also being adopted by the public services ombudsman schemes in Northern Ireland and in Wales.
23. It is accepted practice internationally that, in the private / consumer sector, an ombudsman's decision is binding on the organisation complained about (if the complainant accepts the decision) and this is reflected in our membership criteria. Consumers should always retain the right to take their dispute to court if they are unhappy with the ombudsman's decision. It is also important that the routes for enforcement of decisions against the rail companies, through the regulator or the courts if necessary, are clear.
24. It is a key element of an ombudsman scheme that as well as providing individual redress they should also share information wherever possible to help the wider sector learn from complaints handling and to improve the provision of services. Transparency is one of our key membership criteria and the publication of information about decisions and the performance of individual companies and sub-sectors is an important tool to drive improvement in conjunction with regulators and policy makers.
25. Accessibility is another key element of an ombudsman scheme. Free, direct and immediate access to an ombudsman if the rail company does not resolve the complaint promptly is an accepted and essential feature of an ombudsman scheme. Ombudsman schemes proactively raise awareness of their services and ideally there should be a requirement on those in their jurisdiction to signpost to and inform consumers of their right to take their complaint to the ombudsman, as in, for example, the financial sector.
26. By mandating that the redress provider meet the Ombudsman Association's criteria the ORR will be ensuring not only that their proposed principles are met but also that internationally recognised best practice is as well.

Q: Do you agree that there should be a fixed date by when rail companies are required to be members of the scheme? Do you agree with the proposed timing or would you favour a different date?

27. It is a sensible approach to set a fixed date by which rail companies are required to be members of a single ombudsman-level scheme. 1 April 2019 would appear to allow enough time for an ombudsman-level scheme to be established.

Q: Do you agree that the licence requirement should apply to concession operators, station-only, and charter operators (as well as franchise operators and station licence holders including Network Rail)?

28. The Ombudsman Association's long-standing position is that people should have access to an ombudsman in all areas of consumer and public services. On that principle, the Association agrees that the licence requirement should apply to all operators that are providing a service to rail users, including concession operators, station-only, and charter operators, as well as franchise operators and station licence holders including Network Rail.

Q: Do you agree that there should be regulatory oversight of the RDG scheme? What form should ORR's role take?

29. An ombudsman is just one piece of the puzzle to drive improvement in services and provide effective redress to consumers. Ombudsman schemes are most effective in sectors where they work closely with a regulator and any other accountability bodies. This can be seen for example in the energy sector where the ombudsman works closely with Ofgem. In order to both improve services and hold organisations to account there needs to be clear common standards and commitments that an ombudsman can then measure organisations against, and effective relationships with regulators and any other bodies in place to ensure enforcement of decisions.
30. As membership of an ombudsman scheme should be mandatory, any serious issues such as non-compliance with decisions should be passed to ORR to take appropriate action.
31. As set out in both our membership criteria and our Service Standards Framework, all ombudsman schemes should publish how they perform against their stated service standards to enable policy makers, politicians, academics and the general public to hold them to account.
32. However, an ombudsman is not a consumer champion. It is crucial that an ombudsman is truly independent from both complainants and those bodies in jurisdiction, in this case rail companies, and our membership criteria ensures that is the case.
33. The Association's criteria regarding independence is clear that an ombudsman should not be appointed by those subject to investigation, and that those subject to investigation should not have the power to assess their performance, suspend or reduce their remuneration, or terminate the contract of an ombudsman. In order to meet the Association's independence criteria, ombudsman schemes in other sectors are appointed and accountable to either Parliament or the relevant regulator.
34. In order to meet best practice, the ORR should have the same oversight relationship with an ombudsman covering the rail sector.

The Association would be happy to provide any further information or meet to discuss if you would find that helpful.

Yours sincerely



Donal Galligan
Director, Ombudsman Association

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Dear Consumer Policy Team,

MODIFICATION TO PASSENGER LICENCE CONDITION 6 (COMPLAINTS HANDLING) – A CONSULTATION

Thank you for the opportunity to respond to the above consultation. RDG represents the companies that run Britain's railways, helping them to deliver a successful rail way for customers, tax-payers and the economy.

Since early 2017, we have been striving to establish an Alternative Dispute Resolution (ADR) service for the rail industry. We have worked with train operating companies (TOCs) and consulted with Transport Focus, London TravelWatch, the ORR, the Ombudsman Association and the DfT.

We are confident that we have developed a solution that will fulfil aspirations to give customers access to a free and fair ADR service that will resolve deadlocked complaints and make decisions that are binding on rail companies. The service is expected to launch in November 2018 and we believe it will increase trust in the way the industry handles complaints and provide insight to drive service improvements.

We welcome the ORR's recognition that the rail industry has made substantial progress in the establishment of an Ombudsman for the rail industry. We feel that it is crucial to make it clear that this scheme has been established voluntarily by the industry and franchised train operating companies are committed to its success.

At the outset, we want to be clear that although we are not averse to setting timescales for rail companies to join the scheme, all franchised TOCs have already joined the Rail Ombudsman on a voluntary basis and have all agreed to be bound by the Ombudsman's decisions. Because of their size, complexity and their potential impact on consumers, it was critical that the franchised companies became members without undue delay; they are now working with the newly appointed scheme to ensure their customers have access to the service at the earliest opportunity. Noting therefore that the most significant potential risk (that some or all TOCs do not join) has been

mitigated, RDG believes that sufficient time should be given for the rest of the industry and the Rail Ombudsman to complete the on-boarding process voluntarily.

Our answers to the consultation questions are set out below.

Yours sincerely

John Horncastle

Project Manager on behalf of the Rail Delivery Group

Do you agree that mandating membership to an approved binding ADR scheme would protect dissatisfied consumers? If you do not, please provide evidence to support your answer.

We agree that membership of an approved binding ADR scheme will give dissatisfied customers protection additional to that which already exists. The important factor however is *access* to an ADR Scheme not that a scheme has been mandated. Given that franchised TOCs have already contracted to join the Rail Ombudsman scheme, and non-franchised rail companies are engaging with the possibility of joining, mandating membership so soon after the scheme has been launched is unnecessary - indeed it changes the way in which both companies and the public perceive the initiative.

The consultation paper states that a mandated scheme per se will drive up standards but does not provide any evidence to substantiate this. It would be useful if the ORR could provide a clear explanation as to why it believes this. We are not aware of any significant independent research that shows that mandatory schemes are of a better quality than voluntary ones.

The suggestion that a mandatory licence requirement is essential to stop rail companies leaving the scheme is misleading. The rail industry has driven the delivery of this initiative because it believes this is the right thing to do for customers. In the context of a sector in which a Competent Authority has still not been established, and one that has two existing tax-payer funded consumer watchdogs with a statutory duty to review disputed complaints, rail companies have voluntarily developed the Rail Ombudsman proposition and incurred the additional cost of its establishment.

Do you agree that rail companies should be required to join the rail ADR scheme procured by RDG? If you do not, please provide evidence to support your answer.

We agree with the view (and indeed the Ombudsman Association and other consumer bodies) that it is desirable to have only one ADR Provider per industry sector.

We also agree with the ORR that it is important for customers to have a clear and understandable route to access the scheme. We have worked hard to ensure that the Rail Ombudsman will serve as a “single front door” for customers and thereby address the potential confusion in introducing an Ombudsman into a landscape where there are consumer watchdogs who continue to have a statutory duty to review appeals.

Do you agree with the principles we propose to include in CHPs? Are there any others we should consider for inclusion?

Yes. The principles in 2.6 of the consultation document are drawn from those on which we have already established the scheme.

A key principle that should be added to the list in 2.6 is that the scheme must be demonstrably independent from all stakeholders that might seek to influence it, including industry, consumer advocacy groups and government.

Do you agree that there should be a fixed date by when rail companies are required to be members of the scheme? Do you agree with the proposed timing or would you favour a different date? Please provide evidence to support your answer.

We do not agree with the timing and would not favour a single fixed date for all companies to join or indeed sectors. Paragraph 2.7 of the consultation states that the ORR considers that the most appropriate timing would be from six months after the scheme has started - this is too soon.

If the ORR chooses to mandate membership of the scheme, then a single fixed date does not need to be set as all current franchised operators have joined, and new franchised train operators could be mandated to become members at franchise change.

Not all rail companies have the same budget and the on-boarding could be proportionate to risk to passengers and size. Potential non-franchised rail companies that might wish to join should be afforded time to consider joining voluntarily. It would be good for the scheme to bed in so that they can see the value of the scheme and enter on terms that are fair and appropriate to their own circumstances. RDG is initiating talks with third party retailers, concessions and other non-TOC rail companies with a view to them joining the Rail Ombudsman scheme. We feel that RDG-led discussions with

potential members rather than ORR-imposed regulation would be the best way for companies to come onboard.

Do you agree that the licence condition should apply to concession operators, station-only, and charter operators (as well as franchise operators and station licence holders such as Network Rail)? If you do not, please provide evidence to support your answer.

The licence condition needs to be proportionate to the type of business on which it has a bearing. We are working to ensure that there are no barriers for any rail business that wants to join the scheme.

Regarding concession operators, RDG feels that it is important that there is a consistent “ADR-offering” to users of the National Rail network, or failing that, that any inconsistencies are well-understood and do not negatively impact on customers. As all franchised operators are signed up to the scheme the only potential “gaps” in the offering are where a concession operator might not join.

The ORR is aware that TfL has indicated it feels customers using its National Rail concessions have adequate recourse to dispute resolution through its existing arrangements (whereby TfL provides a single customer service support for all its transport modes) and that, at this point, does not intend for these concessions to join the scheme. We would welcome the ORR’s support in finding a way forward on this issue.

Do you agree that there should be regulatory oversight of the RDG scheme?

Yes. Having some form of regulatory oversight would give additional confidence in the independence of the scheme. The consultation document states:

...the scheme has been procured by the industry and it is important that there is no perception that it could exert undue influence on the scheme’s decision making, for example by threatening to terminate the contract if the industry is unhappy with the number of adverse decisions.

For clarity, there is no provision for the industry to terminate the contract on the grounds that it is unhappy with adverse decisions. The industry has done its utmost to hard wire in oversight of the scheme that is either equivalent to or superior to that in other sectors that have competent authorities. Measures include:

- The service will be provided by a supplier that is independent of the rail industry;
- The supplier has an independent Board specifically tasked with safeguarding the independence of the Chief Ombudsman;

- The supplier will provide its services to a standard that enables it to both attain and maintain accreditation from both the Chartered Trading Standards Institute (CTSI) and the Ombudsman Association;
- The supplier it will employ an Independent Assessor who will make sure that the Ombudsman is working free from interference by the rail industry and other stakeholders (such as government and consumer advocacy groups);
- The supplier will report on its performance and the outcome of decisions direct to the ORR, Transport Focus and London TravelWatch, it's information will also be available publicly facilitating scrutiny from other interested parties;
- Both Transport Focus and London TravelWatch have retained their statutory duties to review appeals, and so will be available to serve as "critical friends";
- The Ombudsman is subject to parliamentary scrutiny through the Transport Select Committee;
- The contract makes provision for the ORR to be made fully aware of the circumstances in the unlikely event that operational service standards (issues such as complaint response times) become poor.

What form should the ORR's role take? If you do not agree, please provide the evidence to support your answer.

We agree that the role of the ORR should be as set out in the consultation. In the longer term it would seem sensible for the ORR to be given the powers of a Competent Authority in the rail sector.

Do you have any comments on the draft Impact Assessment in annex one? Please provide evidence to support your answer.

We are not aware of any evidence to support the assumption that there will be a decrease in the number of cases going to the Rail Ombudsman once it is established; of course, we hope this will be the outcome. Nevertheless, one of the reasons for introducing an Ombudsman is to increase trust in the complaints process which could have the opposite effect and encourage more customers to complain, aware that there is a greater chance of a fair outcome. Over time however it is conceivable that as the industry learns from the Ombudsman's decisions the likelihood of deadlock situations occurring will decrease.

The impact on the amount of compensation paid by the industry is also unknown, but likely to rise given that the Ombudsman will have the power to impose awards. This increase could manifest in the value of the awards themselves or "upstream" of the

Ombudsman with rail companies choosing to settle rather than defend cases to avoid the cost of a case going to the Ombudsman.

We also believe that having a successful voluntary scheme raises confidence in the industry more generally which is a clear benefit; in mandating membership this will be lost.

Regarding costs for the Ombudsman, there is the potential logistical challenge for the Rail Ombudsman of an unknown number of diverse rail companies seeking to join it simultaneously. The Ombudsman service will be reaching maturity in the first year of its operation and it would be prudent for it to have the opportunity to operate in a steady state before having to another influx of members. It would be best for all parties if the service provider and businesses were able to agree the most suitable timescales for onboarding.

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Sent via email to CHP@orr.gsi.gov.uk

25th September 2018

Dear Colleagues

Southeastern response to ORR's consultation on Modification to Passenger Licence Condition 6 (Complaints Handling)

Thank you for the opportunity to review the above consultation.

We note that it is proposed to modify Condition 6 of the Passenger Licence in order to make membership of the Alternative Dispute Resolution (ADR) scheme in the rail sector a mandatory requirement.

We draw your attention to the submission made by the Rail Delivery Group sent on Friday 21st September 2018 on behalf of its membership. Southeastern have worked alongside them to implement the voluntary Ombudsman (ADR) within the industry and are in agreement with their response and have no further comment.

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

Yours sincerely



Susan Ellis

Access Contracts Business Partner



Let's talk

Consultation on Modification to Complaints Handling

Stagecoach Supertram would like to raise for consideration the applicability of the proposed Complaints Handling procedure to the passenger carrying rail operations which are due to commence shortly as part of the Tram-Train project in South Yorkshire.

This project will see a new Tram-Train service, operating broadly every 20 minutes, calling at a new tramstop on Network Rail infrastructure at Rotherham Parkgate, a low-level platform at Rotherham Central station, before connecting to the existing light rail system for onward travel into Sheffield city centre.

The two new calling points offered by this 5km extension will therefore be added to the 29km network offered by 48 existing tramstops on our tram system, and the operation has been referred to as an "extension of an urban light rail system" from a customer perspective - there will be no rail through ticketing, and tram tickets will be required to travel (including multi-modal ticket options).

As a pilot project, one of the requirements for the Tram-Train project was to challenge where appropriate and provide learning for future tram-train systems in the UK. This is the reason for raising our query, which is around the applicability of this Complaints Handling process, which would effectively apply to journeys on the heavy rail network (2 stops) only, since this is the "rail" or train element. There is a precedent setting principle here, as any other Tram-Train operations planned would by definition also involve combinations of light rail and heavy rail running, and if it were an extension of an existing system, then potentially only a small proportion of the total network provided.

So any mandatory membership would not necessarily cover an entire transport network, and certainly would not be consistent across UK light rail operations. Whilst we are not opposing the principle of a standardised procedure across the rail industry, we would like to flag at this early stage of the Tram-Train concept in the UK that it could give rise to inconsistencies due to the services straddling both heavy and light rail protocol.

We would be happy to discuss further if desired.

Kind regards
Tim Bilby
Managing Director
Stagecoach Supertram

Office of Rail and Road

Consultation on changes to complaints handling guidance

Consultation response by Transport for London

Date: 28 September 2018

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).

Questions

Do you agree that mandating membership to an approved binding ADR scheme would protect dissatisfied consumers?

TfL feels there is already appropriate processes and protection in place for dissatisfied consumers therefore we do not agree to mandating membership to an ADR scheme.

TfL's established procedures, clearly signpost customers to our official watchdog organisation, London TravelWatch.

Do you agree that rail companies should be required to join the ADR scheme procured by RDG?

TfL does not feel it is necessary to make membership of an approved ADR scheme a requirement in the licence. Whilst TfL fully supports the proposed principles of the scheme, we feel that substantial progress has been made throughout the industry without the need for a requirement in the licence. This is evidenced through our established complaints handling procedure and our current appeals process. TfL has clear and well established procedures 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 mandatory requirement in the licence, TfL would require further clarity as to the cost of the scheme.

Do you agree with the principles we propose to include in CHPs? Are there any others we should consider for inclusion?

TfL fully agrees with the proposed principles to be included in the CHP. TfL currently adheres to all of the planned principles through our current complaints handling processes and our commitment to transparency.

Do you agree that there should be a fixed date by when rail companies are required to be members of the scheme? Do you agree with the proposed timing or would you favour a different date?

TfL agrees with the proposal of a fixed date when rail companies join the scheme, along with a six month transitional period, if the mandatory proposal is enforced.

Do you agree that the licence requirement should apply to concession operators, station-only, and charter operators (as well as franchise operators and station licence holders including Network Rail)?

As TfL does not feel it is necessary to make membership of an approved ADR scheme a mandatory requirement, we do not feel this question is relevant,

Do you agree that there should be regulatory oversight of the RDG scheme? What form should ORR's role take?

As TfL does not feel it is necessary to make membership of an approved ADR scheme a mandatory requirement, therefore we do not feel this question is relevant.

Do you have any comments on the draft Impact Assessment in annex one?

TfL has no further comments on the draft Impact Assessment in annex one.

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Email: CHP@orr.gsi.gov.uk

Dear Consumer Policy Team,

Modification to Passenger Licence Condition 6 (Complaints Handling) – a Consultation

Thank you for providing TransPennine Express with the opportunity to respond to the above consultation.

The Rail Delivery Group (RDG), which represents the companies that run Britain's railways, is submitting a comprehensive response to each of the questions the ORR has posed as part of its consultation regarding this important matter.

TransPennine Express has worked closely with RDG to consider carefully the matters which the ORR has raised, and I can confirm that we endorse fully the answers set out within RDG's response and these are to be taken as representative of our views.

Yours Sincerely,

Kathryn O'Brien

Customer Experience Director

TransPennine Express

Modification to Passenger Licence Condition 6 (Complaints Handling): a consultation by the Office of Rail and Road.

Response from Transport Focus

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

It is perhaps worth reiterating our support for the concept of a binding dispute resolution process. As we set out in our earlier submission (November 2017) we have been in the vanguard of discussions with the industry, the Department for Transport (DfT) and ORR about establishing such a scheme.

Our response to the questions raised in the consultation are as follows:

1. Do you agree that mandating membership to an approved binding ADR scheme would protect dissatisfied consumers?

2. Do you agree that rail companies should be required to join the ADR scheme procured by RDG?

Membership of the ADR scheme demonstrates a strong commitment to customer service and builds trust. We agree that some of this commitment could be lost if an operator decides to walk away from a voluntary scheme. 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.

Hence, we would agree that mandating membership would provide better protection for dissatisfied consumers. It will be important, however, that the operators are encouraged to buy in to the process – passengers will ultimately be better off with an operator who wants to be a member rather than one who is focussed on achieving minimum compliance.

3. Do you agree with the principles we propose to include in CHPs? Are there any others we should consider for inclusion?

We agree with the suggestion that the licence agreement should contain the ‘compulsion’ element but that the bulk of the actual detail is better included within the Complaint Handling Procedure (CHP). This offers a more flexible process as well as offering operators more in the way of guidance.

We agree with the principles set out in paragraph 2.6:

- Accessible – the consumer should have to make minimal effort to get to the scheme;
- Free to the consumer;
- Explains decisions to consumers in a clear and understandable form;
- Makes decisions which are binding on the rail company and with which the rail company abides within the scheme’s specified timescales;
- Publishes information about its own performance and the performance of its member companies on a quarterly basis;
- Be a driver for improved complaints handling and performance, identifying and sharing best practice; and
- Provides data to rail companies, ORR, and statutory consumer bodies, to improve complaints handling performance.

We would, perhaps, emphasise that while the decision of the scheme is binding on the industry it should not be binding on the passenger – they should have the right to explore other legal avenues if they should wish.

There will inevitably 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 instance, passengers want a stop inserted on a service, or fares to be cut or new types of ticket implemented. Such issues will still come through to Transport Focus and London TravelWatch. Therefore, we think that another important principle will be that the scheme recognises and facilitates this wider process.

4. Do you agree that there should be a fixed date by when rail companies are required to be members of the scheme? Do you agree with the proposed timing or would you favour a different date?

We agree that a fixed date has advantages, not least in facilitating a simple, consistent message to passengers. It would allow a proper communication plan to be put in place on a national and local level.

We have no objections to the proposal to make this date six months after the scheme has started.

5. Do you agree that the licence requirement should apply to concession operators, station-only, and charter operators (as well as franchise operators and station licence holders including Network Rail)?

The more passengers who have access to binding arbitration the better. Widening eligibility has the benefit of generating consistency and understanding – having a

single system and process is easier to explain and to understand. It also allows for better data analysis and benchmarking.

So we support proposals to widen eligibility to concession operators. We agree with desirability of adding concession operators. Access to an ADR scheme could become a material issue when deciding which operator to travel with – for instance, in whether to take the Elizabeth Line (Crossrail) into London or to take Great Western Railway (GWR). From a passenger perspective it is better to have a single scheme for rail than it is to try and describe/declare differences in passenger rights within the ‘small print’. Having the likes of TfL rail within the scheme will aid consistency and understanding among passengers.

Likewise, we think that there is a case for Network Rail's wider complaints postbag coming within the process. Not only could this encompass station only issues but it could also extend to things like complaints from residents – e.g. about noise, litter clearance or vegetation clearance.

We would also urge that third-party retailers are brought within the scheme. These are increasingly playing a key part in marketing / attracting passengers to rail as well as selling tickets.

To re-iterate, the wider the eligibility the easier it is to spread a clear, consistent, understandable message to passengers.

6. Do you agree that there should be regulatory oversight of the RDG scheme? What form should ORR's role take?

Having determined that the scheme is to be mandatory it follows that there must be regulatory oversight. There is limited value in compelling someone if you do not check that they are complying.

There is a clear role for oversight in such things as accessibility (how easy is it for passengers to complain), in gathering and distributing data and in spreading best practice.

However, we are mindful that the Chartered Trading Standards Institute (CTSI) will be the Competent Authority for the ADR scheme and will presumably be doing its own ‘regulating’. It will be important that ORR's regulatory oversight is aligned with (and consistent with) CTSI's function.

It will be important that there are no contradictions or mixed messages between the two bodies. Ideally there would also be minimal duplication of work.

We note ORR's intention to meet on a regular basis with CTSI – this is good. We would suggest that there is scope for a Memorandum of Understanding between the two bodies to help ensure that this dual relationship is working.

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September 2018

Nexus response to ORR consultation on “Modification to Passenger Licence Condition 6”

1. Nexus welcomes the opportunity to the consultation on whether membership of an Alternative Dispute Resolution scheme should be made a licence requirement.
2. The Tyne & Wear Metro system is a light rail system with approximately 36 million passengers per year. The system is owned and operated by Nexus, the Tyne & Wear Passenger Transport Executive. The majority of the system runs on infrastructure owned and maintained by Nexus, with an extension opened in 2002 running on Network Rail infrastructure between Pelaw and South Hylton.
3. As a result of the extension, Nexus holds a Station Licence and therefore 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.
4. In the response to the ORR’s consultation on the scope of regulation for some categories of licence holder for Complaints Handling Procedures and Disabled People’s Protection Policies, it was highlighted that Tyne & Wear Metro voluntarily applies its Complaints Handling Procedure and Disabled People’s Protection Policy to the whole Metro network.
5. In responding to the ORR’s consultation there are three key themes:
 - The nature of the Tyne & Wear Metro system
 - The level, nature and outcome of complaints relating to Tyne & Wear Metro that would be heard by the ombudsman
 - The costs of participation in the scheme and the value for money of these costs.

Nature of the Tyne & Wear Metro system

6. In the context of comparisons, the nature of the system is more akin to London Underground than a heavy rail Train Operating Company. Tyne & Wear Metro transports high volumes of people short distances, with low cost fares.
7. It is noted that London Underground falls outside the scope of the rail ombudsman proposals.

Level, nature and outcome of complaints in scope for ombudsman

8. In 2017-18, 44 Tyne & Wear Metro customers escalated their complaint to Transport Focus. Of these, 18 related to Penalty Fare issues which it is understood is outside the scope of the ombudsman. This leaves 26 complaints which would be heard by the ombudsman.
9. These 26 complaints all related to the level of compensation for delays and consequential losses. Nexus had applied the Conditions of Carriage and Passenger Charter in processing these complaints. The ombudsman has indicated that in hearing such cases, it would not apply terms over and above those in the Conditions of Carriage and Passenger Charter. Therefore, the outcome of these cases would not change.
10. As a result Nexus can see no benefit to participation in the scheme as it would not change outcomes for consumers compared with current arrangements. Therefore, some of the benefits outlined in the ORR's impact assessment would not apply to Nexus participation in the scheme.

Cost of participation in the scheme and value for money

11. Whilst the final costs of participating in the ombudsman scheme are not finalised, Nexus estimates its participation would approximately £6,000 per year i.e. £230 per complaint heard. As a publicly funded body operating with reducing budgets, such an increase would have to be met with service reductions to the same value elsewhere. Considering the lack of benefits, Nexus does not consider participation offers value for money for the customer and taxpayer who fund the operation of the Tyne & Wear Metro.
12. The ORR's impact assessment does not highlight the impact of participation in the scheme, which is more significant than the indirect costs included.

Conclusion

13. When considering the various factors, Nexus does not agree that it should be mandated to be part of the scheme and that it should not form part of its Station Licence condition.
14. Should the ORR mandate membership as part of the Station Licence condition, Nexus will consider whether to solely apply this to the stations between Fellgate and South Hylton. Whilst this would result in an inconsistent

approach for Tyne & Wear Metro customers, it would mitigate the financial impact of the scheme which as outlined, Nexus considers does not offer value for money.



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

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26th September 2018

Dear Sirs

**Modification to Passenger Licence Condition 6 (Complaints Handling): a consultation
Response from Virgin Trains (West Coast)**

This letter is in response to the ORR Consultation regarding Changes to modifications to Passenger Licence Condition 6 published on 26 July 2018.

We have liaised closely with Rail Delivery Group (RDG) over the introduction of an industry ADR scheme and support the submission they have made.

Virgin Trains believes that the introduction of an ADR scheme will provide an appropriate course to redress for customers. We have worked in partnership with RDG and other train operating companies to ensure that the solution offered will fittingly address those cases that are in deadlock. The scheme has been well consulted on and the key principles will ensure that the decisions made are independent and binding.

We do not believe that mandating the membership type is essential. Currently all franchised operators have joined on a voluntary basis which we do believe will provide consistency among train operating companies. However, in order to provide consistency on a national basis we do believe that Network Rail should also join fully. Virgin Trains will continue to engage with the newly appointed scheme over the coming months to ensure that it can successfully launch in November.

We look forward to hearing the outcome of the consultation and will update our CHPs accordingly.

Yours faithfully,

A handwritten signature in blue ink, appearing to read "Prea Duhra".

Prea Duhra
Regulatory Affairs Manager
Virgin Trains

West Coast Railway would be a willing member provided the process applies equally to all charter operators and that the costs are proportionate to the likely use.

We note the following in clause 2.10

2.10 We propose that charter operators also join the scheme, preferably at the same time as the licence condition comes into force although we recognise that they have had limited engagement up to now in the scheme's development. RDG noted in response to our previous consultation that the scheme would be designed to be open to this group of licence holder. Nonetheless, we will consider charter licence holders' participation further in the light of responses to the consultation. We will also engage with RDG to discuss how it will ensure that the fee structure of the scheme will not have a disproportionate effect on any particular group of members.

George Denham
Consumer Policy Team
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WC2B 4AN

20 September 2018

Dear George

Modification to Passenger Licence Condition 6 (Complaints Handling): a consultation

Thank you for inviting us to respond to the consultation focussing on the introduction of Alternative Dispute Resolution (ADR). West Midlands Trains has engaged with RDG and the process by which all TOCs have voluntarily committed to the success of an Ombudsman scheme within our industry.

Taking each of the questions in turn.

- **Do you agree that mandating membership to an approved binding ADR scheme would protect dissatisfied consumers? If you do not, please provide evidence to support your answer.**

We believe that the independent, legal approach to dispute resolution through the ADR scheme will provide dissatisfied customers with final closure to their issue and increase customer trust with the rail industry. However, as the rail industry has driven the delivery of this initiative (including the associated costs), we do not believe there is evidence to suggest mandatory membership is required.

- **Do you agree that rail companies should be required to join the ADR scheme procured by RDG? If you do not, please provide evidence to support your answer.**

We support the approach for consistency to both the industry and customers.

- **Do you agree with the principles we propose to include in CHPs? Are there any others we should consider for inclusion?**

We are supportive of the items listed, although we also believe that it should be clearer that the Ombudsman is independent of all stakeholders (e.g. government and consumer groups). It would also be useful for the member to receive feedback and advice from the ombudsman to ensure that issues are rectified for future benefit.

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Do you agree that there should be a fixed date by when rail companies are required to be members of the scheme? Do you agree with the proposed timing or would you favour a different date? Please provide evidence to support your answer.

In order to communicate the ADR scheme to passengers in the right way, this would require changes to a number of publications (Passengers Charters, CHP, feedback forms etc.) and we therefore do not agree with imposing a deadline, especially the proposed 6 month timescale. Some operators will have recently had these reviewed and published or be in that process. We would ask that given this is a costly exercise it is taken into consideration. For example, members must take reasonable endeavours to publicise the scheme until the next review of the relevant documentation.

- **Do you agree that the licence requirement should apply to concession operators, station-only, and charter operators (as well as franchise operators and station licence holders including Network Rail)? If you do not, please provide evidence to support your answer.**

Yes. All customers of the industry should have access to the same process, although it should be proportionate to the type of business.

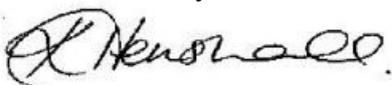
- **Do you agree that there should be regulatory oversight of the RDG scheme? What form should ORR's role take? If you do not agree, please provide evidence to support your answer.**

ORR's role should be to ensure that the scheme is specified correctly and adhered to once implemented to provide confidence in the independence of the scheme.

- **Do you have any comments on the draft Impact Assessment in annex one? Please provide evidence to support your answer.**

There needs to be clear communication to both customers and operators in terms of the role and remits of the ombudsman, Transport Focus and London TravelWatch to try and avoid confusion. We also believe that making an assumption on increased satisfaction / reduced numbers of cases being reviewed by the Ombudsman is not relevant. This is partly due to this not being evidenced in other industries, partly due to our membership being driven by a desire to increase trust with customers, and partly due to the differences between individual train company Passengers Charters and compensation schemes.

Yours sincerely



Kelly Henshall

Head of Franchise & Access Contracts