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Friday 14 May 2021

Dear Stakeholder,

Improving access to delay compensation – conclusions from initial consultation.

Providing compensation when a passenger has experienced a delay to their journey, regardless of who was at fault for the delay, is one way in which the train company is able to demonstrate to the passenger that it recognises that it has failed to provide the service that the passenger required. This is reflected in law and contract, with train companies required to provide appropriate compensation to passengers that submit a valid claim. However, it is clear that there is more to do to ensure that passengers are aware that they can claim delay compensation, and that when they choose to do so the processes involved are swift and easy to use.

On 30 June 2020, we published a consultation on proposals to introduce a new licence condition for train companies on delay compensation¹. These proposals included an obligation on licence holders to abide by the provisions of a Delay Compensation Code of Practice (CoP), setting out good practice standards in areas such as awareness and claim processing. The proposals also included a requirement for licence holders to accept claims submitted via Third Party Intermediaries (TPIs), where those TPIs could demonstrate compliance with a separate TPI Code.

In this letter, we provide a high-level summary of the views submitted by respondents to the questions in the consultation, and our comments on these responses and the changes we propose to make. Regarding the CoP, these changes are mostly clarifications and refinements – made in the light of stakeholder comments.

There has been one substantive change to our proposals. The ongoing coronavirus pandemic has caused significantly lower overall industry revenues and hence a more constrained budget position for train companies and government. Given the uncertain recovery trajectory of the industry, and the government's upcoming rail review, we consider it is not appropriate to proceed at this point with our proposals regarding TPIs.

¹ <https://www.orr.gov.uk/search-consultations/consultation-improving-access-delay-compensation>

These sections of the draft proposals have been deferred. We will wait for more detail on the future industry model before deciding how to proceed with these elements.

For future reference and transparency we have provided summaries of stakeholder responses on these elements of our initial proposals. We have not yet provided a response to the various points raised, but we will consider these points as we decide how to proceed.

We are minded to introduce a licence condition on delay compensation which will;

- **take effect from 1 January 2022;**
- **apply to all mainline passenger train companies including Open Access train companies; and**
- **require train companies to comply with a Delay Compensation Code of Practice (CoP), setting out good practice standards.**

We are now seeking the views of stakeholders on the wording of the revised draft licence condition and CoP which are appended to this letter. The policy objectives, and the principles through which we are aiming to secure them, have been decided for these aspects of the proposals. We welcome stakeholder comments on the specific wording of these documents.

Annex A (Licence Condition) and Annex B (Delay Compensation CoP) contain drafts of the proposed wording for each document. Please provide your comments on these documents by **Friday 11th June**. A regulatory impact assessment and equality impact assessment has been published at Annex C. **Responses to Annex A and Annex B** should be sent by:

Email to: compensation.consultation@orr.gov.uk

Post to: ORR compensation consultation
Office of Rail and Road
25 Cabot Square
London
E14 4QZ

Due to Covid 19 home working restrictions we ask that, wherever possible, you submit your response to us via email.

Following consideration of responses, we will publish the final licence condition, and CoP. We shall then proceed with the statutory consultation process with licence holders, as required for a new licence condition².

Background and objectives

Delay compensation arrangements are subject to relevant legislation³ and specified via contractual agreements with government, via franchises⁴, and passengers, via the National Rail Conditions of Travel. Such arrangements are not currently set out in or subject to ORR's licensing regime. The most common means through which passengers claim compensation is Delay Repay (DR). DR15 compensates passengers for a delay of 15-29 minutes, while passengers are eligible for DR30 when they are delayed by 30 minutes or longer. One train company still uses a bespoke 'passenger charter' scheme, with different eligibility thresholds and entitlements.

In December 2015, we received a super-complaint⁵ from Which? regarding compensation arrangements for passenger rail services. In our response, we made a number of recommendations to improve train companies' compensation claims processes. In making these recommendations, we stated that if they did not deliver the required improvement we would need to revisit this area.

In February 2019, the Williams Review asked ORR to advise on how to make it easier for customers to access the compensation they are entitled to, and whether ORR needed more regulatory powers to ensure that it happens. Research from the Department for Transport (DfT) and Transport Focus shows that only a minority of passengers receive the delay compensation to which they are entitled⁶; 37% in 2020, a figure that has risen by only 2% since 2016. We identified that a majority of passengers are unaware of their entitlement to claim, and even when passengers are made aware that they can do so, there can be a perception that the claims process is too onerous.

In our published advice⁷ to the Williams Review we set out a number of short, medium and long-term reforms designed to better protect the interests of passengers as well as

² Section 12(2) of the Railways Act 1993, and Regulation 13(2) of the Railway (Licensing of Railway Undertakings) Regulations 2005

³ Specifically, the Consumer Rights Act 2015, and the EU Rail Passenger Rights Regulation 1371/2007

⁴ <https://www.gov.uk/government/speeches/rail-update-emergency-recovery-measures-agreements>

⁵ The Enterprise Act 2002 (Super-complaints to Regulators) Order 2003 is at <http://www.legislation.gov.uk/en/uksi/2003/1368/contents/made>

⁶ Recent Transport Focus research published in 2020 shows a further small increase to 37%:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/927876/rail-delays-and-compensation-report-2020.pdf

⁷ https://orr.gov.uk/_data/assets/pdf_file/0005/41396/orr-advice-to-the-williams-rail-review-july-2019.pdf

promoting positive behaviours amongst train companies. Our short-term recommendation for reform was the introduction of a licence condition on delay compensation, bringing this area more squarely within our regulatory remit. This would require train companies to adhere to a delay compensation CoP, within which would be an obligation to accept claims for compensation from TPIs.

On 30 June 2020, we published a consultation on proposals to introduce a new licence condition on delay compensation⁸ requiring (i) adherence to a new CoP, and (ii) the acceptance of claims submitted via TPIs that meet a new TPI Code of Conduct. We also published a regulatory impact assessment and equality impact assessment.

We sought views on the following:

- the principle of a licence condition for delay compensation;
- the text of a draft licence condition;
- measures to increase awareness of delay compensation via a CoP;
- measures to improve the delay compensation process via a CoP;
- reporting of performance including measures to improve awareness and processes; and
- a new code of conduct for TPIs.

The consultation closed on 14th September 2020. We received written submissions from: Rail Delivery Group (RDG); five holding groups or train companies; two statutory consumer bodies; two TPIs; one third party retailer; and two independent organisations. We thank all who responded. A list of respondents is attached at Annex D. All non-confidential responses have been published on the ORR website. Since the consultation we have held a round-table stakeholder workshop, and engaged in bilateral discussions with several respondents to discuss their views and share our thinking as it developed.

⁸ <https://www.orr.gov.uk/search-consultations/consultation-improving-access-delay-compensation>

Consultation questions, responses, and our conclusions

Chapter 1 – Delay compensation licence condition

1. In Chapter 1 of the consultation, we drew upon the evidence of consumer detriment and concern, and the benefits available to passengers and train companies which could be derived from the proposed licence condition. We set out our proposals for a delay compensation licence condition, noting that there is considerable evidence available which demonstrates that the current arrangements for ensuring passengers can exercise their rights to delay compensation are not working properly. These problems are longstanding and efforts to date have not secured the necessary improvements.
2. We asked three questions of stakeholders in this section.

Consultation Question 1. Is there any evidence that we have not considered which may be relevant to this chapter?

Summary of responses

3. There was general acknowledgement amongst stakeholders that the available evidence continues to show limited uptake for delay compensation amongst eligible passengers. Statutory consumer bodies and one independent organisation indicated that the proposals were consistent with, and supportive of, their own recent findings and concerns.
4. Some licence holders acknowledged that the evidence showed persistent low take-up of delay compensation, but stated that it was important to define more clearly what success would look like and, furthermore, what indicative threshold would inform any future decisions on whether the provisions of the CoP remained appropriate.
5. RDG expressed the view that the industry-led initiatives are working well and have succeeded in driving up the amount of compensation. They cited evidence that the amount of compensation paid had increased by 75% over the last three years.

ORR Response

6. It is not our intention to attach rigid success criteria to the proposals. ORR is an evidence-based regulator and we will draw on a range of available information to determine whether the requirements of the licence condition and associated CoP are making a positive difference. This includes, but is not limited to, research and the collection of core data. Where material changes to the CoP are necessary we will consult stakeholders.
7. We note RDG's reference to an increase of 75% of the amount of compensation paid over the last three years. It is unclear from where this figure derives; DfT's own data shows an increase of circa 10%⁹ over this period. It is clear from Government-commissioned research by Transport Focus published in 2020¹⁰ that many passengers are not claiming the delay compensation to which they are entitled. This research shows that the percentage of eligible passengers who claimed for a delay was only 37%; a figure that has increased by only two percentage points since 2018.

Consultation Question 2. Should open access and concession train companies (as well as franchise holders) be subject to the proposed licence condition? Should it apply to other holders of a passenger SNRP?

Summary of responses

8. RDG and some owning groups stated that the draft licence condition should be restricted to train companies with franchise contracts, with open access companies having the right to opt in or out on a discretionary basis. Some owning-group submissions stated that the appropriate standards should be established within franchise contracts themselves, rather than as a licence condition.
9. The statutory consumer bodies were of the view that the licence condition should apply to all train companies regardless of operating arrangements (concession, franchise, or open access). They noted that passengers were often unaware of

⁹ <https://www.gov.uk/government/publications/train-operating-companies-passengers-charter-compensation/train-operating-companies-passengers-charter-compensation>

¹⁰

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/927876/rail-delays-and-compensation-report-2020.pdf

the differences and that standardisation would help to clarify requirements, particularly as journeys often involve more than one different train company.

ORR response

10. As noted in our consultation, we can see no reason why there should be a differentiation in licence requirements between train companies under government contract, and concession and open access train companies. Passengers should receive the same level of protection regardless of the compensation arrangements which apply to the train company whose services they are using. Therefore, the licence condition will apply to franchise / government contract train companies, and concession and open access train companies¹¹.

Consultation Question 3. Do you have any comments on the initial draft of the delay compensation licence condition?

Summary of responses

11. RDG and some train companies voiced support for an industry-developed code of practice, rather than licence condition. They noted that some of the proposals in the ORR CoP were similar to recent work taken forward by train companies and led by RDG. They expressed the view that RDG was better placed than ORR to develop this work on consistent standards, with ORR focusing instead on monitoring performance.

12. One train company noted the important distinction between the scope of a licence condition in this area, and what was covered in contracts. Notably; delay eligibility thresholds and compensation entitlements were commercial details that should be specified according to the train company, and not covered within a cross-industry licence condition.

13. One train company raised the issue of the appropriate timing for introduction of the proposals. While some of the proposals reflected existing good practice, others would require time and effort to implement effectively.

¹¹ For clarity, we consider that the licence condition would apply to the following existing train companies: Avanti West Coast, c2c, Caledonian Sleeper, Chiltern Railways, Cross Country, East Midlands Railway, Govia Thameslink Railway, Grand Central, Great Western Railway, Greater Anglia, Heathrow Express, Hull Trains, London North Eastern Railway, London Overground, Merseyrail, Northern Trains, ScotRail, South Western Railway, Southeastern, TfL Rail, TfW Rail, Transpennine Express, West Midlands Trains.

ORR response

14. We recognise the steps taken by industry but, as noted in our consultation document, RDG published its compensation best practice guide in 2017 and take-up of delay compensation has not improved significantly since then. We consider that, to be meaningful, the standards described in the CoP need to be underpinned by a clear regulatory framework.

15. With regards to scope, we recognise the distinction between consistent cross-industry standards, and commercial variables such as eligibility thresholds and compensation entitlements that should be specified according to the train company. The licence condition is focused on the former.

16. ORR recognises that some aspects of the requirements may require an appropriate implementation period. The licence condition will reflect this; we are proposing that it will come into effect on the 1st January 2022, well after the statutory licence modification decision.

General observations - summary of responses

17. Some respondents made a number of other general, high-level points with relevance to delay compensation.

- One industry respondent noted that increased payment levels of delay compensation would increase industry costs. It estimated that if the level of delay compensation increased to 100% of all eligible journeys, then industry costs would increase by £26m per annum.
- RDG and one train company noted that a large proportion of the delay suffered by passengers was not caused by train companies, but instead by infrastructure disruption. This perceived lack of accountability for the infrastructure manager was an existing gap that the proposals failed to address.
- Several respondents, including a TPI, statutory bodies, and an independent organisation, advocated for greater harmonisation and centralisation including a single central portal for delay compensation claims, and harmonisation of eligibility thresholds, compensation entitlements and evidence requirements. They cited benefits for passengers such as greater simplicity and consistency, as well as reduced processing-costs for train companies.

- One ticket retailer suggested that, in the interests of simplicity, the responsibility for receiving claims and administering delay compensation should sit solely with the party from which the passenger bought the ticket.

ORR response

18. Our proposals are designed to increase passengers' awareness of their entitlement to delay compensation and to make it easier for them to access that compensation. They do not involve any increase in liability for train companies, or eligibility for passengers. The current percentage of eligible journeys that result in a claim is 37%, and we maintain that this can be improved.
19. We note comments regarding the scope of the consultation. The scope deliberately does not seek to address delays caused by the infrastructure manager; performance regimes between train company and infrastructure manager already exist covering such matters. Suggestions of greater harmonisation of arrangements were noted as a consideration for medium-term reform in our response to the Williams Review, and are not within scope of this consultation.

Chapter 2: Passenger Awareness

20. In Chapter 2 of the consultation, we set out the case for making improvements to ensure that passengers are aware of their rights to delay compensation. We also set out the draft proposals in the CoP designed to achieve those improvements.
21. We asked four questions of stakeholders in this section.

Consultation Question 4. Do the requirements and drafting for the general provision of information online, on board, in stations and in person provide sufficient clarity and assurance for train companies and passengers?

Summary of responses

22. Respondents were generally positive in their view of these provisions. There were no responses that objected to the proposals on the general provision of information, although minor amendments in the interests of clarity were suggested in some submissions.

23. One owning group suggested further research might be appropriate on the specific information requirements of groups for whom claim patterns were particularly low to better understand how to improve awareness for these customers. Another asked when these requirements would come into effect, noting that staff would need to be provided with training on specific requirements.
24. RDG noted that the requirement to provide information about delay compensation during the booking process might provide a negative first impression, and give the passenger an expectation that their train will be delayed. Such information should be provided instead via after-sales communication.

ORR response

25. We agree that it is important to understand what further steps may be necessary to increase awareness of delay compensation. We set out our intentions in this regard in Chapter 4 (continual improvement and reporting) below. As part of their efforts for continual improvement, train companies should also consider how they might make improvements in this area.
26. As noted above we anticipate, the licence condition will come into effect on 1st January 2022.
27. The booking process is one of the key touch points for passengers, and compensation forms part of the agreement they make with train companies when purchasing a ticket. We remain of the view that it is appropriate for this to provide an early opportunity to ensure that passengers are aware of their possible entitlements to compensation should they experience a delay.

Consultation Question 5. Is the list of the information requirements comprehensive? What, if anything, should be added (or removed)?

Summary of responses

28. The statutory consumer bodies welcomed the information requirements, and noted that passengers might also benefit from clear guidance for different scenarios that might arise, with regards to their eligibility.

ORR response

29. We agree that it is important that passengers have the information they need to make a successful claim. The provisions we have included in the CoP designed to increase awareness and improve the claims process including the requirement to provide a FAQs should deliver the necessary improvements.

Consultation Question 6. Are the requirements for proactive provision of information by train companies during disruption clear and proportionate? Are there any further requirements which should be specified?

Summary of responses

30. Responses were generally supportive, with some suggestions in the interests of clarity. The statutory consumer bodies noted that the definition of stations where announcements should be made might not be appropriate and could be interpreted broadly, to include almost all stations, and suggested clarifying the language used. On the same provision, other respondents noted that it would be more accurate to specify platform announcements (rather than station announcements).

ORR response

31. We acknowledge the points made by respondents and have amended this provision accordingly. The proposals now refer to platform (rather than station) announcements, and we no longer refer to the specific exceptions for large or small stations.

Consultation Question 7. Are there any other requirements you consider would be necessary and proportionate to improve passenger awareness of delay compensation?

Summary of responses

32. One independent organisation welcomed the provisions on information and awareness, and recommended that train companies and ORR should regularly monitor outcomes and identify which activities are most effective, and in what circumstances. RDG noted a number of additional initiatives adopted by companies to improve awareness and processes, but did not call for these to be made mandatory. No other respondents had further suggestions for additional requirements.

ORR response

33. We agree that it is important to monitor the effectiveness of different forms of communication. We set out in Chapter 4 below how we will survey passengers. We will also monitor how train companies make progress in this area, under their continuous improvement obligations specified in Chapter 5.

General observations: summary of responses

34. Respondents made a number of general, high level points with relevance to passenger awareness and information.

- Train companies highlighted the positive steps that had been taken in this area, noting that RDG had helped to coordinate work to establish clear and consistent good practice guidelines. Whilst acknowledging some of the recent improvements, the statutory consumer bodies and an independent respondent stressed that there was still scope for further improvement.
- Some train companies described circumstances when the specific requirements for information provision might be difficult, and they may be held to account for matters outside of their control. They cited the technological capabilities of rolling stock could inhibit display screen messaging and that train companies might be unable to guarantee provision of poster information in stations that they did not manage.

ORR response

35. We recognise the steps taken by industry but, as noted in our consultation document, RDG published its compensation best practice guide in 2017 and take-up of delay compensation has not improved significantly since then. We consider that, to be meaningful, the standards described in the CoP need to be underpinned by a clear regulatory framework.

36. We note comments regarding requirements which may be challenging to meet. We have set out our expectations of licence holders in the CoP including those areas where we expect them to make reasonable efforts to meet the obligations. The wording of provisions ('where appropriate') reflects that there may be valid exceptions. We will expect each train company to demonstrate what it has done should ORR need to seek evidence of how it complied with such requirements,

and to justify any decision not to apply the requirements due to operational exceptions.

Chapter 3: Claims Process

37. In Chapter 3 of the consultation, we set out the case for making changes to improve the processes for claiming delay compensation with the objective of making it simpler and quicker for passengers to claim. We focused on two key aspects: the appropriate timescales for processing a claim; and the information requirements that are necessary and proportionate for a claim to be processed.

38. We asked six questions of stakeholders in this section.

Consultation Question 8: Do you have a view on the timescales, and associated requirements for contacting passengers, that we have proposed?

Summary of responses

39. The statutory consumer bodies and TPIs suggested that 20 working days was not a stretching timescale for the claims process, and that a more demanding target would reflect practice in other sectors, increased technical processing capabilities, and the actual current performance of train companies. It was suggested that a reduced timescale might also incentivise passengers to claim, by tackling any perception that the claims process is slow.

40. RDG noted that the existing target of 20 working days was a proxy for the one month timescale stipulated within the National Rail Conditions of Travel, and that there was a risk of confusion from different standards. It suggested some claims took more time for example where the company needed to contact the passenger, but acknowledged that in the interest of providing the best customer experience possible, train companies could look to see whether the proposal could be implemented. One owning group provided information on the processing costs, current and projected, for different timescale requirements and process configurations. It noted that existing systems were designed with the current timescales in mind, and that tighter timescales, or additional stages to communicate with the claimant, might involve additional systems development and transaction costs.

ORR response

41. Whilst companies' performance against the existing 20 working day target is generally strong, we consider it prudent to assess the impact of the new arrangements introduced in the CoP before determining whether to reduce the timescale. We also note that no alternative timescale was put forward by respondents. It is our intention to collect data and review in 18 months' time (after introduction of the licence condition) whether to tighten this requirement.

42. With regards to the additional processing costs cited by one train company, we do not consider that the proposed requirement to request further information from the passenger (in the case of an incomplete claim) represents a significant change to the current requirements, whereby a passenger already has the opportunity to provide additional evidence if they wish to challenge a rejected claim.

Consultation Question 9: Are the proposals on information requirements clear and proportionate? Do they provide sufficient flexibility to reflect the variety of claim and ticket types whilst addressing the risk of unduly onerous information requirements?

Summary of responses

43. Respondents were broadly supportive of this proposed approach, including RDG, companies, an independent body and the statutory consumer bodies.

Consultation Question 10: Is the provision on alternative forms of evidence clear – does it allow adequate flexibility for innovative solutions?

Summary of responses

44. The statutory consumer bodies welcomed the principle that train companies should be flexible on alternative evidence requirements. For them the more important reason (rather than innovation) was for passengers to be able to present reasonable proof of travel if the original ticket was unavailable, while still allowing train companies to monitor for duplicate or fraudulent claims. For example, email confirmation of a ticket purchase, or the other portion of a return ticket.

45. RDG agreed that companies should be open to innovative solutions and additional forms of evidence. This should, however, be balanced against the need to provide adequate protections against fraudulent or duplicate claims. One

owner group expressed concern about an open-ended provision on alternative forms of evidence, emphasising that back-office handling systems were configured to process evidence and submissions in specific formats, and that a requirement to receive high volumes of incompatible evidence could entail cost and delay.

ORR response

46. We expect train companies to ensure that the information they seek is the minimum they require to successfully process and, conclude a delay compensation claim, and to be able to explain why a specific piece of information or evidence is required. This does not mean that licence holders will be required to accept any type of evidence put forward. As set out in the consultation, our expectation is that train companies will give due consideration to alternative forms of evidence, provided that the proof offered is of an equivalent standard and sufficient to demonstrate the passenger's delayed journey, and will allow the company to monitor for duplicate or fraudulent claims.

Consultation Question 11: Is the provision on physical format claims clear and proportionate?

Summary of responses

47. Respondents were supportive of this provision, and did not raise any issues. RDG noted in passing that physical forms constitute a very small percentage of claims, and are neither cost-effective or quick to process. The statutory consumer bodies noted that current good practice was for train companies to offer a freepost address for delay compensation, and expressed their hope that this should continue.

ORR response

48. With regards to the statutory bodies' comments, our proposals set a baseline of minimum standards which we expect train companies to go above and beyond. It should not prevent train companies from continuing with existing good practices.

Consultation Question 12: Are the requirements with regards to online claim processes clear, proportionate and comprehensive?

Summary of responses

49. One owning group considered that the requirements were clear, proportionate and comprehensive.
50. The statutory consumer bodies noted that an account facility had the potential to make the claims process more user-friendly, and called for ticket purchase and delay compensation accounts to be the same, or directly linked. This might allow for relevant details for payment, and of the relevant journey, to be pre-populated within the form.
51. RDG also noted that an account facility might drive benefits for industry with regards to customer retention, particularly if customers were able to save their delay compensation claim details in their online account. However, for train companies where the ticket booking systems were not integrated with delay compensation systems, data transfer could potentially incur significant development costs. This point was echoed by one owning group who also called for consideration to be given to GDPR legislation, and to situations where licence holders do not own the ticket-booking system in question.

ORR response

52. We recognise that there are potential benefits of ticket-booking and delay compensation account systems that work together. As noted in our consultation document, our expectation is that where train companies allow for passengers to establish online or app-based accounts to save their details for the purpose of booking tickets, passengers should also be able to use these same (or equivalent) accounts to claim compensation.

Consultation Question 13: Are there any other requirements you consider would be necessary and proportionate to improve the claims process?

Summary of responses

53. The statutory consumer bodies noted the benefits of automatic compensation, where technology allows, but recognised that requiring automatic compensation was not feasible, or within scope of the licence condition. Nonetheless, they emphasised the importance, in terms of simplifying the claims process, of automation to the greatest extent possible.

54. The one owning group who responded specifically to this question noted that if the industry ticketing arrangements saw increased migration to smartcard systems, then a consolidated database of transactions and tickets would be necessary to improve process automation, and help to control for fraud. RDG, on the other hand, emphasised the potential cost of establishing such a system, and value of train companies running their own systems.

ORR response

55. ORR acknowledges the respondents' ideas on how the claims process might be improved. In our response to the Williams Rail review, we noted the potential benefits that could result from increased automation at a national level as part of the proposed reforms in the medium-term.

Chapter 4: Continual improvement and reporting

56. In Chapter 4 of the consultation, we set out the importance of continual improvement, and the information that we expect licence holders to provide to allow passengers and ORR to assess their performance in the provision of delay compensation.

57. We asked three questions of stakeholders in this section.

Consultation Question 14: Do you have a view on the requirement that train companies report annually on the steps taken to improve awareness and processes for delay compensation?

Summary of responses

58. The statutory consumer bodies agreed that train companies should report annually on the steps taken to improve awareness and claim processes, noting that this may incentivise more train companies to implement and promote new processes and awareness-raising initiatives that would make claiming delay compensation easier or more attractive to passengers. However, where performance was poor, for example on process timescales, there may be an unintended consequence of this dissuading applicants.

59. One owning group noted that two of their train companies already produced, respectively, annual and biannual customer reports that summarised improvements in customer-facing areas, and that these could include relevant

information on delay compensation. Two owning groups, as well as RDG, questioned whether there was sufficient evidence that customers care enough about delay compensation for this information to impact claim behaviours.

ORR response

60. Providing relevant performance information is one clear way of increasing public awareness and knowledge of delay compensation arrangements. We note the supportive comments of the statutory consumer bodies in this regard. We remain of the view that clear, consistent and regular publication of performance data will help to raise public awareness of delay compensation, and facilitate benchmarking and accountability.

Consultation Question 15: What is your view of our proposals for passenger surveys:

- Is it proportionate to survey every claimant for their views on awareness and process?
- If not, what might the alternative be (eg: specified number or percentage)?
- Should these be standardised?
- How frequently should they be undertaken?

Summary of responses

61. The statutory consumer bodies suggested that a requirement to survey passengers with each claim risked adding length and hassle into the process. They questioned whether it might be better to survey passengers at other stages in the process, and noted that other methods would be required to capture the responses of passengers who had not claimed.

62. Industry respondents cited resource concerns, that would likely outweigh the benefit of an exhaustive process, and which risked duplicating train companies' own surveys. They noted that different methodologies may be used by each train company, thus limiting the usefulness of the data, and suggested that it might be better to conduct representative surveys in other, simpler ways.

63. RDG noted that ORR's own experience with similar exercises in other areas could be utilised, and put forward alternative suggestions:

- opt-in mechanisms for leisure purchasers, and season ticket holders surveyed as part of the renewal process;
- automatic survey of 10% of claimants, with a minimum of 200 responses; and

- surveys could be sent to passengers who had claimed above a certain number of times, to gather feedback on the full claims process.

ORR response

64. We welcome the suggestions put forward by respondents. We are keen to ensure consistency across all train companies and wish to avoid imposing an unnecessary administrative burden. Therefore, our intention is that ORR will conduct a survey on a regular basis, using representative sampling. ORR has experience of conducting similar research exercises elsewhere, such as complaints handling satisfaction, that we intend to draw on in designing this regular survey. We may also undertake or commission additional targeted surveys or research, which may include mystery shopper exercises; we intend to discuss with DfT and Transport Focus how their two-yearly surveys on rail delays and compensation can complement this research package.

Consultation Question 16: Are there any other matters upon which it would be helpful to seek information?

Summary of responses

65. The statutory consumer bodies suggested that information on rejected claims including those subsequently contested by passengers, to identify any systemic issues would be helpful.

66. Two owner groups said that they would want to add their own questions concerned with customer effort, trust and perception of delay compensation's value for money within any survey.

ORR's response

67. We are grateful to respondents for their further suggestions. As noted above, it remains open to us to undertake targeted research as required. A regular passenger survey will ensure consistency in performance monitoring, and we will seek input as appropriate from train companies on the content of such a survey. Nonetheless, there is nothing to prevent companies from conducting their own research in addition to rather than as part of ORR's survey, to understand how their delay compensation arrangements can be improved.

Chapter 5: Third Party Intermediary Code of Conduct (TPI Code)

68. Chapter 5 of the consultation drew on the conclusions of ORR's market study of delay compensation Third Party Intermediaries (TPIs)¹². It set out proposals designed to capture the potential benefits that such organisations might bring, whilst minimising potential risks.

69. Our initial draft proposals set out a requirement, in the licence condition and CoP, for train companies to accept claims for processing from TPIs, provided that those TPIs meet clear standards of transparency and probity. A separate TPI Code established these standards for TPIs, including how they provide their services to customers and how they interact with licence holders. Our proposal was that assessment of whether TPIs were compliant was to be carried out, on an individual basis, by train companies receiving claims.

70. The ongoing coronavirus pandemic has caused significantly lower overall industry revenues and hence a more constrained budget position for train companies and government. Given the uncertain recovery trajectory of the industry, and the government's upcoming rail review, we consider it is not appropriate to proceed at this point with our proposals regarding TPIs. These sections of the draft proposals have been deferred. We will wait for more detail on the future industry model before deciding how to proceed with these elements.

71. For future reference and transparency we have provided summaries of stakeholder responses on these elements of our initial proposals. A list of respondents is provided at Annex D and, where they have consented for their full submission to be published, these can be found on the ORR website. We have not provided a response to the points raised here, but we will take these points into consideration as we decide how to proceed.

72. We asked four questions of stakeholders in this section, and the responses are summarised below.

Consultation Question 17: What are your general comments on the proposals, bearing in mind ORR's twin objectives to harness the potential benefits of greater TPI involvement whilst retaining important protections for passengers, train companies and taxpayers?

¹² <https://www.orr.gov.uk/sites/default/files/om/orr-advice-to-the-williams-rail-review-july-2019.pdf> Annex A

Summary of responses

73. Statutory consumer bodies were broadly supportive of the proposed approach, noting that TPIs could potentially help to raise awareness and spur innovation.
74. Two TPIs also welcomed the proposals. They agreed that there was potential for TPIs to help raise awareness and simplify processes, and pointed to their experience in the provision of digital services to passengers and train companies. One noted that retailers were well-placed to assist: being in a position to contact passengers, and with access to journey data.
75. RDG noted that there was a history of mistrust between train companies and TPIs, and that although this was changing slowly, the view was that without proper controls, bringing TPIs into the process risked causing more confusion and friction.
76. One of RDG's principal concerns, echoed by three owner groups, was that in acting as intermediaries, TPIs could inhibit the relationship of trust between train companies and passengers, a relationship that had already been harmed by the delay itself.
77. RDG and three owner groups expressed concerns that TPIs could generate additional cost (both for passengers and claim-processing train companies). Established claims processing systems had required time and money to develop and operate, and there was a concern that TPIs might impose cost burdens through the use of incompatible processes, or additional checks being required.
78. One TPI noted that there were different categories of TPI, with substantially different operating models, and that the TPI Code would need to take this into account.

Consultation Question 18: What are your comments on specific substantive policy proposals with regard to the appropriate standards for TPI firms, as detailed in the TPI Code?

Summary of responses

79. Two TPIs recognised that there was a need for clear standards for TPIs, both to ensure appropriate conduct by TPIs, and to ensure that TPIs that met these required standards were able to operate. One emphasised that such standards, (for example with regards to evidence requirements and fraud protections),

should be described in detail within the codes, to eliminate ambiguity and subjectivity on claim validity.

80. RDG and three owner groups expressed concern about data and financial security. In particular, it sought appropriate guarantees to ensure that delay compensation paid by the train company was transferred to the passenger, and provision for the train company to verify that this had happened. One train company noted that they should not be liable for further payments in the event that TPI conduct resulted in compensation not being transferred to passengers.
81. All train company responses emphasised that TPIs must be transparent, and provide key information at the first point of contact with anyone who might wish to use their services. This must include a breakdown of charges for the customer, either commission or subscription based, as well as a clear notification that claims can be made directly through the train company without any additional charges.

Consultation Question 19: What are your views on the proposed implementation regime, including the expectation that TPIs and train companies should work cooperatively to ensure compliance with the TPI Code, and the proposed mechanism for resolving disputes?

Summary of responses

82. The initial proposal of the TPI Code and CoP placed the onus for assessment of TPI compliance on train company and TPI self-regulation. Feedback from all parties emphasised the importance of consistency, transparency, and simplicity in assessment and, where necessary, enforcement. RDG and two owner groups called for a more structured process to assess TPI compliance, with RDG suggesting accreditation via ORR or RDG.
83. TPIs expressed an appetite for the licence condition and codes to be implemented as quickly as possible. One TPI, in particular, stressed that it wanted to start submitting passengers' claims as soon as possible, and that it was keen to work together with train companies to ensure an effective implementation of the proposals.
84. Respondents welcomed the proposal for there to be a working party to provide input on the implementation of the licence condition and codes.

Consultation Question 20: What, if any, further measures do you consider necessary and proportionate to achieve the objectives?

Summary of responses

85. Our initial proposals specified that TPIs should become members of the Rail Ombudsman Scheme. The Rail Ombudsman supported this proposal, welcoming that there would be a clear point of recourse for dissatisfied TPI customers, and a single front door for such issues in the rail industry. Other respondents noted the proposal, but sought further information about how this would work in practice.

ANNEX A: Revised draft licence condition.

Delay Compensation Licence Condition.

[Proposal for inclusion as condition 13 in the licence holder's SNRP]:

The SNRP holder shall comply with the Delay Compensation Code of Practice.

For the purposes of this Condition

- "Delay Compensation Code of Practice" means the delay compensation code of practice published by ORR, and as may be amended by ORR from time to time.
- "delay compensation" means the compensation which passengers are entitled to if they are travelling and experience a delay (above a given threshold) arriving at their destination due to a cancelled or delayed service.

Delay Compensation Code of Practice

1. Overview
2. Scope and definitions
3. Informing passengers
4. Processing of claims
5. Continual improvement
6. Monitoring and reporting

1) Overview

- 1.1. This Delay Compensation Code of Practice (CoP) sets out requirements with regards to delay compensation for passengers. It is designed to improve passengers' access to the delay compensation to which they are entitled, through measures that will raise awareness, improve processes, and enable passengers to submit claims via authorised parties.
- 1.2. The provisions of this CoP are designed to establish a common level of good practice. Licence holders may go beyond the requirements set out in the CoP, and we do not expect licence holders to discontinue or reduce existing practice where these exceed the requirements set out in this CoP
- 1.3. ORR shall maintain and review the efficacy of the CoP, and monitor licence holders' performance to ensure that passengers benefit from the standards established by this CoP. ORR will consult on any proposals for substantive changes to the CoP and will publish a revised CoP, as it considers appropriate, following such consultation.

2) Scope and definitions

Scope

- 2.1. This CoP applies to all passenger train companies in Great Britain whose Statement of National Regulatory Provisions (SNRP) includes licence condition 13.
- 2.2. The requirements of this CoP do not affect or alter licence holders' other legal obligations or passengers' legal entitlements, including – but not limited to - those established in consumer law, contracts, or other licence conditions. In particular, this CoP should be considered alongside the requirements of: the Consumer Rights Act 2015; the Rail Passengers' Rights and Obligations Regulations 2010; operator SNRPs; the National Rail Conditions of Travel; and the provisions of the Rail Ombudsman.

Definitions

- **Claim:** a request, initiated by a passenger, for the delay compensation to which they may be entitled under the conditions of the licence holder's Delay Compensation Scheme. A claim for delay compensation is distinct from a complaint, other compensation claim (for example, due to poor service), or refund application, that passengers may make about other aspects of their journey.
- **Delay Compensation Scheme:** a scheme designed to compensate passengers for late arrival at their destination (above a given threshold) due to a cancelled or delayed service.
- **licence holder:** a passenger train operator with a Statement of National Regulatory Provisions that includes Condition 13.
- **National Rail Conditions of Travel (NRCoT):** the ticketing contract between train company and passenger, published by RDG, as updated from time to time.
- **passenger:** the ticket holding traveller, who is the passenger for the purposes of the NRCoT

3) Information for passengers

Purpose: to raise passenger awareness of delay compensation.

General provision of information

- 3.1. Licence holders must ensure that information about delay compensation is clearly available to passengers; before their journey, in the course of their booking or purchase, and during and after their journey
- 3.2. Such information must include details about delay compensation entitlements and claim processes, displayed clearly and prominently.
- 3.3. Such information must be made available to passengers in the following ways, as appropriate:
 - a) Online, to include:
 - i. A direct link to the delay compensation claim process, to be displayed on the licence holder's homepage.
 - ii. A direct link included with notification of tickets purchased online (for example, in an email sent to passengers following the purchase of a ticket online).
 - b) At stations operated by the licence holder, to include posters, leaflets, display screens.
 - c) On board, including posters, vinyls or display screens, where they are installed.
 - d) In person, including on board, in-station, online and telephone customer-facing staff.
- 3.4. For paragraphs (a-c) above, and subject to sub-paragraph (3.5) below, such information must include appropriate details of:

- a) The delay compensation scheme operated by the licence holder, including eligibility criteria and the level of delay compensation to which the passenger may be entitled.
 - b) The methods by which passengers can claim delay compensation.
 - c) The information that passengers will need to provide as part of their Claim.
 - d) What the passenger can expect as part of the delay compensation process including timescales and payment options.
 - e) How the passenger can contest a Claim rejected by the licence holder.
 - f) Appropriate details of delay compensation arrangements for season ticket holders.
- 3.5. Where the nature of the manner in which the information is being provided or displayed prevent the provision of all these details, the licence holder must provide details of where such further information can be found.

Proactive provision of information during delay

3.6. When there is delay or disruption, licence holders must make reasonable efforts to proactively inform passengers that they may be eligible for delay compensation. Such steps include, as appropriate:

- a) In-train announcements when a train's arrival at a station may be above the relevant time threshold for delay compensation on that service. This may include voice announcements and information screen displays.
- b) In-train distribution of delay compensation details.
- c) Platform announcements at stations where a train's arrival may be above the relevant time threshold for delay compensation on that service.
- d) Online – to include:
 - i. General messaging about compensation, on website and via social media.
 - ii. Where appropriate, email or text to passengers who may have been affected.

3.7. For paragraph (3.6) above, such information shall include appropriate details of:

- a) The delay compensation scheme operated by the licence holder, the length of the delay and the passenger's entitlements.
- b) How to make a Claim for delay compensation.
- c) What evidence passengers will need to retain as proof of travel.
- d) Where passengers can find further information.

4) Processing claims

Purpose: to make the process for claiming delay compensation simpler, quicker, and more consistent.

Timescales and communications

- 4.1. Licence holders must process correctly completed claims within 20 working days, from receipt of claim to communication of decision and payment, where relevant. ORR will monitor performance on timescales, and will from time to time review whether this requirement remains appropriate.
- 4.2. Where the licence holder considers that the passenger has not provided appropriate or sufficient relevant information to enable the licence holder to process the Claim, for example due to a lack of appropriate evidence of travel, the licence holder must inform the passenger as soon as possible, and no later than 5 working days after receipt of the initial Claim.
- 4.3. Where the passenger does not respond to the notification in (4.2) above within 20 working days, the licence holder may reject the Claim. The licence holder must communicate this to the passenger promptly, in accordance with (4.6) below.
- 4.4. Licence holders must make reasonable provision for a passenger to enquire about the status of their Claim.
- 4.5. Where the processing of a Claim takes longer than 20 working days, licence holders must notify the passenger of the status of the Claim, the reasons for the delay, and anticipated timescales for resolution.
- 4.6. Where a licence holder rejects a Claim, it must provide written explanation to the passenger setting out the reasons for the rejection, and details about how the decision can be contested.

Claims process – information requirements

- 4.7. Licence holders must ensure that the information requirements for Claims are clear, proportionate and not unnecessarily burdensome. The claim form, or accompanying text, must make clear why specific evidence and information is required.
- 4.8. Licence holders must provide information for passengers about their statutory rights, and how passengers can submit complaints and seek redress for any issues not related to delay compensation.
- 4.9. Where a passenger offers alternative information that provides appropriate and equivalent evidence of travel and delay (for example with the use of location technology) then licence holders must give reasonable consideration to whether that information is sufficient.

Physical format claims process

- 4.10. Licence holders must ensure that it is possible for passengers to submit Claims in physical format, through completion of a form.
- 4.11. Physical format forms must include appropriate information about:
 - a. Information and FAQs for passengers about the delay compensation scheme operated by the licence holder, including eligibility thresholds, compensation entitlements, and the appropriate provisions for season ticket holders.
 - b. Details about process timelines, and claim information and evidence requirements.
 - c. Details of how a decision can be contested.
- 4.12. Physical format forms must be made available to passengers:
 - a. In stations that are staffed.
 - b. For download.
- 4.13. Licence holders must ensure that it is possible for passengers to submit physical format Claims:
 - a. In person at staffed stations.
 - b. By post, to an address displayed clearly in stations alongside relevant delay compensation material or on the claim form and online.

Online process

- 4.14. Licence holders must provide an online process for the submission of Claims, to include the following characteristics:
- a. A clear link to the claims process from the homepage of the licence holder's website.
 - b. Information and FAQs for passengers about the delay compensation scheme operated by the licence holder, including eligibility thresholds, compensation entitlements, and the appropriate provisions for season ticket holders.
 - c. Details about process timelines, and claim information and evidence requirements.
 - d. Details of how a decision can be contested.
 - e. Where the licence holder's website allows passengers to create a log-in account for the purpose of purchasing tickets, there must also be the capability to save delay compensation claim details in a similar manner. This must include a facility for season-ticket holders to store the details of their season ticket.
- 4.15. Where licence holders operate a smartphone app for passenger ticket purchases and timetable information, this app should include either a link to the online process, or an equivalent in-app capability to submit claims.

Accessible claim format

- 4.16. Licence holders must make appropriate and proportionate provision for passengers who are unable to access or use physical or online claim formats, or require claim forms to be provided in another format. This must include appropriate assistance in staffed stations or by phone.

Payment methods

- 4.17. Licence holders have obligations under the NRCoT, as well as other consumer law, in relation to repayment, Licence holders are expected to act in accordance with those obligations, notwithstanding any requirements of this CoP.

5) Continual Improvement

Purpose: to encourage licence holders to continue seeking to improve and innovate in how they provide delay compensation.

- 5.1. ORR expects licence holders, individually and collectively, to continue seeking to improve the service that they provide to respond with innovation to the opportunities and challenges presented by technology and passenger expectations.
- 5.2. As part of their regular reporting to ORR (see paragraph 6.5 below), licence holders must provide an annual update of steps that they have taken to improve passenger awareness of delay compensation, and improvements that they have made to the claims process.
- 5.3. A summary of progress in this area may be published by ORR as appropriate.

6) Reporting

Purpose: to improve passenger awareness of delay compensation, and to monitor performance.

Reporting for passengers

- 6.1. Licence holders must keep passengers informed of their performance on delay compensation. To this end, licence holders must publish information on key metrics including:
 - a. Volume of delay compensation Claims received, and approved.
 - b. Value of total delay compensation paid.
 - c. Average time for Claims to be processed.
- 6.2. Licence holders may wish to publish additional information to provide context, such as punctuality data.
- 6.3. Such information must be updated every 3 months, with data shown for performance over the previous year, and displayed prominently online alongside other delay compensation information required by the CoP.

Reporting to ORR

- 6.4. ORR will, from time to time, survey Passengers about aspects of their experience with delay compensation, including awareness and ease of process.
- 6.5. Licence holders must provide to ORR an annual summary of steps taken to improve passenger awareness of delay compensation, and the claim process.
- 6.6. Licence holders must collect and provide ORR with further relevant performance data set out in ORR core data monitoring guidance. Further detail on the format and frequency of data for submission is provided in the core data guidance¹³.

¹³ <https://orr.gov.uk/rail/consumers/core-data>

Annex C: Regulatory Impact Assessment and Equality Impact Assessment

Regulatory impact assessment

This regulatory impact assessment (RIA) summarises the key considerations that we have taken into account in developing our proposals for the delay compensation Licence Condition and Code of Practice.

The table below sets out our individual proposals, and the potential impact of these policies for the key stakeholder groups pertinent to our proposals, namely consumers and train companies, alongside any other factors that have been taken into account.

Our overall objective, informed by our submission to the Williams Review and our work on the Which? super-complaint, is to reduce the size of the current ‘compensation gap’¹⁴ by making it easier for passengers to access the delay compensation for which they are eligible. If this objective is achieved, and industry punctuality returns to pre-Covid 19 levels, then train companies will pay out more of the money to which passengers are entitled.

We want to ensure that these new proposals are proportionate to the objective, and achievable for licence holders. To this end we have engaged extensively with train companies, government, passenger representative groups and Third Party Intermediary firms.

A full description of the barriers that we are seeking to tackle, the objectives we are seeking to achieve and anticipated outcomes can be found in the consultation document.

¹⁴ e.g. see <https://www.orr.gov.uk/sites/default/files/om/orr-advice-to-the-williams-rail-review-july-2019-annex-c.pdf>

Annex C: Regulatory Impact Assessment and Equality Impact Assessment

Policy Area	Evidence and proposals (full details in consultation document)	Impact on		
		Consumers	Licence holders and industry	Other
Licence condition: general proposal	<p>Persistent ‘compensation gap’, caused in part by barriers of awareness and ease of process.¹⁵</p> <p>---</p> <p>Licence condition and CoP to promote consistent good practice across industry</p>	<p>[+] Passengers to receive more of the delay compensation for which they are eligible</p> <p>[+] Improved standards and greater consistency in the provision of delay compensation information, claims process.</p> <p>[+] Clarity about what passengers can expect of train companies, and how to raise an issue if required.</p>	<p>[+] Improved clarity about expectations, cross-industry standards, monitoring and enforcement.</p> <p>[+] Improved customer satisfaction with delay compensation.</p> <p>[+] Improved passenger trust in the delay compensation process, and broader rail industry.</p> <p>[-] Higher industry cost associated with the increased number of payments of delay compensation for which passengers are eligible.</p>	<p>[+] Increased train company exposure to incentive effects of compensation payouts, therefore increased incentive to provide punctual services.</p> <p>[-] Potential impact on the value of government rail contracts.</p> <p>[+] Clear standards will facilitate monitoring, benchmarking and holding to account.</p>

¹⁵ <https://www.gov.uk/government/publications/rail-delays-and-compensation-2020>

Annex C: Regulatory Impact Assessment and Equality Impact Assessment

Policy Area	Evidence and proposals (full details in consultation document)	Impact on		
		Consumers	Licence holders	Other
Awareness	<p>Limited passenger awareness remains a key contributing factor for the propensity of passengers to not claim the delay compensation for which they are eligible.</p> <p>----</p> <p>Clear standards about what information should be provided to passengers, both during the normal course of booking and journey, and during disruption.</p>	<p>[+] Better access to delay compensation, as a result of improved awareness about all aspects, including: eligibility thresholds, how to claim, what evidence will be required, and how to challenge a decision.</p>	<p>[=] Clear expectations for train companies about what information must be provided, and when, and how to report on this.</p> <p>[+] Facilitated processing of claims: better informed passengers are more likely to provide correct and complete information required for swift processing of claims.</p> <p>[-] Some administrative overhead costs associated with producing additional information materials, gathering feedback.</p>	

Annex C: Regulatory Impact Assessment and Equality Impact Assessment

Policy Area	Evidence and proposals (full details in consultation document)	Impact on		
		Consumers	Licence holders and industry(+)	Other
Claims process	<p>Perceived complexity of process is a deterrent to the passenger submitting a claim.</p> <p>Existing timescale of 20 working days may not be sufficiently demanding for train companies.</p> <p>Concern over disproportionate information requirements on passengers.</p> <p>----</p> <p>Clear standards for proportionality in information requirements.</p> <p>Clarity for appropriate timescales when further information is required.</p>	<p>[+] Improved process time for claim.</p> <p>[+] Diminished risk of disproportionate information / evidence requirements.</p> <p>[+] Ability to create an account for delay compensation, where this provision exists for ticket purchases.</p>	<p>[+] Improved clarity about expectations, cross-industry standards, monitoring and enforcement.</p> <p>[+] Use of single account for ticket purchases / delay compensation should facilitate claim processing</p> <p>[-] Potential one-off cost associated with improved processes.</p>	<p>[-] Current one month timescale is established in NRCoT. Potential possibility of confusion between differing standards.</p>

Annex C: Regulatory Impact Assessment and Equality Impact Assessment

Policy Area	Evidence and proposals (full details in consultation document)	Impact on		
		Consumers	Licence holders	Other
Continual improvement and reporting	<p>Developments in technology and customer expectations will present opportunities and challenges.</p> <p>Necessity for clear and consistent reporting metrics and timings</p> <p>---</p> <p>Continual improvement requirement for train companies, with annual reporting</p> <p>Survey by ORR of passenger experience of delay compensation.</p>	<p>[+] Passenger benefits from ongoing improvements to delay compensation that will make it easier for them to access</p> <p>[+] Passenger awareness improved by clear and regular reporting of performance.</p> <p>[+] Use of regular survey information helps to improve processes for passenger</p>	<p>[+] Return of experience and knowledge from innovation feeds into industry best practice.</p> <p>[+] Continual improvement demonstrates the industry's maturity and capability to passengers and government.</p> <p>[+] Train companies improve processes by acting on feedback.</p> <p>[=] Potential administrative burden on companies mitigated by passenger surveys being conducted by ORR.</p>	<p>[+] Improved assurance for government and regulator from consistent and timely reporting.</p> <p>[-]A potential risk that baseline standards elsewhere within CoP drive compliance with common denominator, rather than spurring further improvement.</p>

Equality Impact Assessment

This Equality Impact Assessment summarises how we have sought to meet our responsibilities under the Public Sector Equality Duty (PSED) within our draft proposals for a delay compensation licence condition, and code of practice.

As set out in section 149 of the Equalities Act 2010, the three arms of the PSED require ORR as a public authority to pay due regard to the need to:

- Eliminate unlawful discrimination, harassment, victimisation, and other prohibited conduct
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

The Equalities Act 2010 defines the following protected characteristics: age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership and pregnancy and maternity.

With regards to this work on delay compensation, ORR considers the principal relevant protected characteristic to be disability – particularly any sensory or cognitive disabilities that inhibit passengers' access to delay compensation information or claim processes. The Equality Act 2010 specifies the requirement for businesses and service providers to make reasonable adjustments for people with a disability.

We also consider that the most relevant arms of the PSED are eliminating unlawful discrimination, and advancing equality of opportunity.

We set out below the areas where we have sought to reflect the requirements of the Equality Act 2010 in our proposals.

Annex C: Regulatory Impact Assessment and Equality Impact Assessment

Policy area	Potential issue	Relevant considerations and proposal
<p>Improving access to delay compensation.</p> <p>Overall licence condition and structure of proposals</p>	<p>Passengers with sensory or cognitive disabilities may face particular barriers in accessing delay compensation to which they are entitled.</p>	<p>As service providers train companies are already subject to the requirements of general equality legislation (as described in the Equality Act 2010 and subsequent case law), which define a high-level obligation to make reasonable adjustments.</p> <p>Train companies are also subject to specific sectoral regulation through ORR’s Accessible Travel Policy licence condition. This sets out detailed requirements for how train companies must provide services and assistance for passengers with disabilities, including the provision of information, training and for booked assistance failures.</p> <p>We have not duplicated these existing requirements within our proposals.</p> <p>ORR recognizes the complexity of the challenges faced by passengers with different protected characteristics, and the risk of setting detailed requirements that may not take the nature of every protected characteristic into account. Rather than specify specific requirements for each eventuality, we have sought instead to articulate a high-level requirement on train companies to make appropriate provision for passengers</p>

Annex C: Regulatory Impact Assessment and Equality Impact Assessment

Policy area	Potential issue	Relevant considerations and proposal
<p>Information and awareness</p>	<p>Passengers with certain protected characteristics may face particular barriers in accessing information about delay compensation.</p>	<p>Train companies already have access to a wide variety of channels of communication with passengers, which they use on a regular basis to share information on different aspects of their service provision. These include; websites, audio announcements, help points, visual display screens, posters, social media and in-person staff communications.</p> <p>Our provisions on information and awareness establish a duty on train companies to make full use of these different channels of communication to provide information about all relevant aspects of delay compensation.</p> <p>This broad requirement on train companies to make full use of the various means at their disposal, many of which they already use as appropriate to communicate with passengers with protected characteristics, will help to ensure that such passengers receive the appropriate information on delay compensation..</p> <p>Relevant text</p> <p>Annex B, provision 1, Paragraphs a-g.</p>

Annex C: Regulatory Impact Assessment and Equality Impact Assessment

Policy area	Potential issue	Relevant considerations and proposal
<p>Claims Process</p>	<p>Passengers with a sensory or cognitive disability may encounter particular issues with accessing the claims process.</p>	<p>ORR recognizes the complexity of the challenges faced by passengers with different protected characteristics, and the risk of setting detailed requirements that may not take the nature of every protected characteristic into account.</p> <p>Rather than specify specific requirements for each eventuality, we have sought instead to articulate a high-level requirement on train companies to make appropriate provision, in terms of claims process, for passengers with protected characteristics, specifying only that this must include appropriate assistance in staffed stations or by phone.</p> <p>Relevant text:</p> <p>Annex B, Provision 2; paragraph P</p> <p><i>Accessible Claims Format.</i></p> <p><i>Licence holders must make appropriate and proportionate provision for customers who are unable to access or use physical or online claim formats, or require claim forms to be provided in another format. This must include appropriate assistance in staffed stations or by phone.</i></p>

Annex D: List of respondents

The following stakeholders provided a response to the 2020 consultation.

Where stakeholders have given permission for their submissions to be published, these can be found on the ORR website. <https://www.orr.gov.uk/search-consultations/consultation-improving-access-delay-compensation>

- Abellio
- Assertis
- First Group
- Govia Thameslink Railway
- London Travelwatch (joint response with Transport Focus)
- Rail Delivery Group
- The Rail Ombudsman
- Southeastern
- Tracsis
- Transport Focus (joint response with London Travelwatch)
- Transport for London
- Trainline
- Which?