

Responses to ORR [consultation](#) on a draft Rail Ombudsman operating model

ORR has redacted all personal data from these responses

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Date: 22 July 2022

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By email to: [railombudsmanconsultation@orr.gov.uk](mailto:railombudsmanconsultation@orr.gov.uk)

Dear Sir,

**Seilwaith Amey Cymru / Amey Infrastructure Wales Limited (“AIW”) Response to the “Consultation on a draft Rail Ombudsman operating model. Proposals to implement a new Rail Ombudsman operating model and amended licence condition”**

Seilwaith Amey Cymru / Amey Infrastructure Wales Limited (AIW) is the Infrastructure Manager of the Cardiff Core Valley Lines Network (the “CVL”). AIW manages 200km of mixed traffic railway in partnership with Network Rail to deliver the transport needs of passengers and freight operators in the Cardiff area. In addition, AIW is also delivering the £738m Transformation Programme, which sees the modernisation and increase of capability of the CVL Network.

AIW welcomes the opportunity to input into the above consultation on the operating model for the Rail Ombudsman. We have considered the consultation and provided our answers to the questions, in Annex A.

**Annex A – Response of Seilwaith Amey Cymru / Amey Infrastructure Wales Limited to the “Consultation on a draft Rail Ombudsman operating model. Proposals to implement a new Rail Ombudsman operating model and amended licence condition”**

**Chapter 3 (of the consultation document)**

Q1. Please provide any additional information not provided in the draft equality impact assessment (Annex C) which you consider we should take into account, whether in relation to impacts on those with the protected characteristic of disability or any other protected characteristic.

No additional elements have been identified.

Q2. Do you agree with our proposed governance structure? Please give reasons for your answer.

AIW believe that it is important that the governance structure put in place by the ORR delivers a fully independent body. We support the recommendations made in the technical report.

We agree that the board should take the place of the scheme council and that it is “appropriately sized” and has the “requisite skills”. We believe that as the board members should be truly independent, there may be difficulty in finding the right calibre of membership with a detailed knowledge of the rail industry. We do not think it necessary that each board member has a proven track record in the rail industry. We do, however, think that there should be some level of expert knowledge of the rail industry particularly from a passenger operator background. The other board members should have relevant areas of expertise in ombudsman roles or legal expertise. We agree that the board members should be remunerated for their work if that leads to the best candidates.

Regarding the proposal of the ORR to appoint an independent assessor. The current scheme has an independent assessor which works well. However there could be improvements made in that time it takes to handle complaints. We therefore support the proposals made by the ORR in respect of the independent assessor.

The ORR have proposed that the new scheme has a passenger advisory panel and an industry member panel which replace the current “Rail Liaison Panel”. We support this approach as we believe that this will strengthen the passengers voice in that passenger concerns can be raised and dealt with more effectively. We also believe that scheme members may well have different agendas to the passenger representatives. We do however think that in some circumstances it may be beneficial to bring the passenger and member panels together.

In relation to performance management we note that the ORR is proposing to introduce various performance management measures in the form of regular reporting and KPI's. This is fine providing that in the event of poor performance that the independent Ombudsman board has the ability to enforce improvements in the scheme. Likewise we also note that the ORR will require regular performance reports to be supplied. We believe that the ORR should also have the power to enforce poor performance.

Q3. Please set out your opinion on the three funding model options, explaining why you consider that one option may be better than another:

- a. Status quo
- b. Less cost reflective
- c. More cost reflective

If you are a current member of the Rail Ombudsman scheme, please explain what you think works well and less well with the current model (i.e. the status quo option).

AIW is not a member of the Rail Ombudsman scheme. We have no view on this issue.

Q4. Do you agree with our proposals for the Rail Ombudsman operating model? When considering this question, please set out any ways in which you consider the OOM could further improve the accessibility of Rail Ombudsman services provided to passengers. If you have specific feedback on one area of ORR's proposals, please clearly indicate which proposal you are commenting on.

The proposed Rail Ombudsman operating model is in our opinion fit for purpose. However, we note the question relating to the accessibility of Rail Ombudsman services to passengers. Having looked at this, information on the Rail Ombudsman's services - this is well hidden. Some train operators have detailed how their complaints process works and have included details of how to contact the Rail Ombudsman. With some train operators it is difficult to find any details not only about the Rail Ombudsman services, but also about the complaints procedure in general. We feel that improvements could be made by the rail industry to improve the communication of how the complaints procedure works in simple terms. We also believe that this should explain the complaints procedure from start to finish and the role of the Rail Ombudsman.

#### Chapter 4 (of the consultation document)

Q5. Do you have any comments on our proposal to amend the Complaints Handling licence condition?

None

Q6. Do you have any comments on the proposed drafting amendments to the Complaints Handling licence condition?

The proposed drafting works.

Q7. What do you consider are the advantages and disadvantage of having two rail ADR schemes running simultaneously for a short transitional period? What are the potential impacts on your organisation of running two rail ADR schemes simultaneously?

As an Independent IM we are not party to the Rail Ombudsman scheme we therefore feel it would not be appropriate to comment.

However, we do feel that running two ADR schemes simultaneously for a short transitional period will not be efficient. That said, the simultaneous operation of the two schemes will allow a potential smoother transfer from the existing to the new regime.

## Arriva Trains UK response

**Q1. Please provide any additional information which you consider we should take into account in our equality impact assessment (Annex C), whether in relation to impacts on those with the protected characteristic of disability or any other protected characteristic.**

NONE IDENTIFIED

**Q2. Do you agree with our proposed governance structure? Please give reasons for your answer.**

Yes, we fully endorse the proposed governance. The proposal brings it into alignment with other sectors where other statutory regulators constitute and govern their relevant ombudsman schemes with oversight from independent boards. We agree there is merit in moving towards a proven governance model similar to those cited [3.48].

**Q3. Please set out your opinion on the three funding model options, explaining why you consider that one option may be better than another:**

1. Status quo
2. Less cost reflective
3. More cost reflective

**If you are a current member of the Rail Ombudsman scheme, please explain what you think works well and less well with the current model (i.e. the status quo option).**

We support Option 3: More cost reflective – Higher case fees with a lower subscription fee, which would see those member organisations with higher case volumes pay a higher share of overall costs relative to what they would pay under the status quo option. This option will incentivise better resolution at the first contact with the customer.

We support the intention that The Rail Ombudsman will consult with stakeholders on its estimated required budget each year, accounting for any projected increase in costs and specifying savings and we suggest that the Rail Ombudsman budget should be subject to final ORR approval.

While the ORR might allow bidders as part of the procurement process to put forward their own preferred solution, taking into account the overall business plan they propose and the profile of their fixed and variable costs, we believe it would bring greater certainty to develop Option 3 and provide estimated costs in this respect for budgeting purposes.

We believe a number of things have worked well:

- Prompt and timely responses, arbitrated in a fair and reasonable way.
- Open and transparent dialogue and feedback over specific cases leading to continuous improvement in our processes.

While we only have one concern over what has worked less well:

- Limited visibility of charging mechanisms or cost accountability

**Q4. Do you agree with our proposals for the ombudsman operating model?**

**When considering this question, please set out any ways in which you consider the OOM could further improve the accessibility of Rail Ombudsman services provided to passengers. If you have specific feedback on one area of ORR's proposals, please clearly indicate which proposal you are commenting on.**

**Yes, we agree with the proposals as set out for the Ombudsman operating model**

**Q5. Do you have any comments on our proposal to amend the Complaints Handling condition?**

NONE

**Q6. Do you have any comments on the proposed drafting amendments to the Complaints Handling condition?**

NONE

**Q7. What do you consider are the advantages and disadvantages of having two rail ADR-schemes running simultaneously for a short transitional period? What are the potential impacts on your organisations of running two rail ADR-schemes simultaneously?**

We are comfortable with the approach of running simultaneously for a short period while existing cases are closed.

**Are there any other comments you would like to make?**

NONE

Thank you for the opportunity to review the proposal for the operating model for the Rail Ombudsman. There is a response to the questions provided in the consultation on a draft Rail Ombudsman operating model below as well as feedback relating to the revised Complaints Code of Practise Revised draft.

### **Consultation Questions**

**Q1. Please provide any additional information not provided in the draft equality impact assessment (Annex C) which you consider we should take into account, whether in relation to impacts on those with the protected characteristic of disability or any other protected characteristic.**

Some consumers may not have access to smart technology along with a visual impairment which severely limits access to documents that could be sent in easy read or braille, however, only seven per cent of people who are registered blind or partially sighted use braille so it would be beneficial to have an option for people who identify as this with the option of a spoken transcript of documents.

**Q2. Do you agree with our proposed governance structure? Please give reasons for your answer.**

c2c agree with the proposed governance structure as it will give consistent reporting and transparency with both stakeholders and train operating companies.

**Q3. Please set out your opinion on the three funding model options, explaining why you consider that one option may be better than another:**

- a. Status quo**
- b. Less cost reflective**
- c. More cost reflective**

**If you are a current member of the Rail Ombudsman scheme, please explain what you think works well and less well with the current model (i.e. the status quo option).**

Status quo would be the most beneficial funding model for c2c as complaint numbers are small. The status quo has worked well for c2c in the past as we are a small train operating company and do not have the same demands as larger operating companies.

**Q4. Do you agree with our proposals for the Rail Ombudsman operating model? When considering this question, please set out any ways in which you consider the OOM could further improve the accessibility of Rail Ombudsman services provided to passengers. If you have specific feedback on one area of ORR's proposals, please clearly indicate which proposal you are commenting on.**

c2c agree with the proposals for the Rail Ombudsman operating model. Please see below under Complaints Code of Practise for further feedback.

**Q5. Do you have any comments on our proposal to amend the Complaints Handling licence condition?**

Please see below under Complaints Code of Practice for further feedback.

**Q6. Do you have any comments on the proposed drafting amendments to the Complaints Handling licence condition?**

No comments at the moment.

**Q7. What do you consider are the advantages and disadvantage of having two rail ADR schemes running simultaneously for a short transitional period? What are the potential impacts on your organisation of running two rail ADR schemes simultaneously?**

The primary advantage of having two rail ADR schemes is that consumers will not be transferred to multiple agents whilst getting resolutions for existing complaints. By keeping the same agent as was originally assigned, it will prevent data leaks, confusion and will keep satisfaction levels consistent.

However, the risk of having two rail ADR schemes running simultaneously would be possibly not getting the same level of customer satisfaction if there are differences in how they are run. Also there is room to get caught between the 2 scheme as people member may get confused.

**Complaints Code of Practice Revised draft for consultation**

**1.28 Licence holders must ensure information about how and to whom to complain is prominently displayed: (a) at stations; (b) on websites; and (c) on social media, for those licence holders who have a social media presence**

Social media is for marketing purposes and general questions. Twitter is unable to have a substantial bio so it would need to be broadcasted at intervals.

**Where a complaint is made via social media and the licence holder cannot resolve it on the spot, the licence holder must, as a minimum, assist the complainant in making a complaint by signposting them to the appropriate channels. ~~Where high volumes of complaints are received on social media (such as during periods of disruption, for example) and it is not feasible for licence holders to respond to them on social media, we expect licence holders to use their social media channels to signpost users to further information about the complaints process.~~**

In the event that the social media team experiences short staffing, this can make it difficult to individually signpost customers to the appropriate channels for the ombudsman in the event

of severe disruption. Broadcasted messages are signposts to appropriate channels, however, this would be towards delay repay in the event of severe disruption.

**1.53 If the licence holder requests further information from the complainant, and the complainant does not respond within ten working days, the licence holder may close the complaint. They must inform the complainant that they have done so and how the complainant can get in touch with the licence holder if they wish for their complaint to be re-opened.**

Once a complainant has been answered or a request for further information has been requested, the escalation team will close the case as once the complainant has provided a response then this will automatically reopen the case as a priority in the agent's name. By keeping the case active whilst waiting for a response from the complainant would be an increase in case numbers for a small team.

**3.45 We consider the current 40 working day response target for in-scope cases as an area for potential improvement going forward. We note that the current Rail Ombudsman scheme has most recently reported an average time of 26.2 days to close cases (see page 2 of the Rail Ombudsman's most recent CTSI Annual Activity Report). However, there is some uncertainty around the stability of the time series data on this, owing mostly to the impact of COVID-19 on case volumes and temporary changes it drove in the types of cases the Rail Ombudsman received.**

The current timescale of 40 working days works more favourably for c2c. This is because we have a small complaint escalation team and in times of severe disruption and short staffing, the risk of not meeting deadlines will increase if reduced to 26 days.



Centre for Effective Dispute Resolution

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## Response to the ORR Consultation on a draft Rail Ombudsman operating model

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**Better conflicts, Better outcomes, Better world**

## About CEDR

1. CEDR has been a UK flagship organisation within the field of effective dispute resolution and conflict management since 1990.
2. We are registered as a charity in England & Wales (charity no. 1060369).
3. CEDR is a leading full-service Alternative Dispute Resolution (ADR) service provider, and we work in all areas of disputes and complaints with the singular exception of matrimonial matters.

We operate in five main areas:

- CEDR's consumer services arm has provided dispute resolution for over 100,000 consumer complaints in more than a dozen different industries. These services are delivered in the form of sector specific schemes that have been developed by CEDR in collaboration with multiple stakeholders and regulators.
- CEDR's B2B dispute resolution arm has been referred over 20,000 disputes to help resolve with its panel of highly skilled mediators, arbitrators and other practitioners. The aggregate claim value of our B2B dispute work is in the region of £1.5 billion per annum.
- CEDR has trained over 10,000 people to become professional mediators in more than 65 countries through what is recognised as one of the world's leading skills training courses.
- CEDR is a leading provider of specialist consultancy and training expertise on the role of alternative dispute resolution within civil justice systems and is regularly called upon by major organisations and governments to design and introduce improved conflict management and mediation programmes.

## Responses to the Consultation

4. CEDR has considered the Consultation paper and identified a number of questions where we believe our insight may be of assistance to the ORR.

***Q.1 Please provide any additional information which you consider we should take into account in our equality impact assessment (Annex C), whether in relation to impacts on those with the protected characteristic of disability or any other protected characteristic.***

5. The assessment is comprehensive.

**Q2. Do you agree with our proposed governance structure? Please give reasons for your answer.**

6. We agree that the proposed governance structure is appropriate.
7. The composition of the Board is suitably appropriate and independent in our view. Through 30 years of experience as a dispute resolution organisation CEDR has learnt the importance of being perceived as independent and of having strong governance. In this respect CEDR itself has Board structure with a mix of executive and non- executive Directors. These structures ensure effective oversight of the governance of the organisation, while ensuring operational separation from the day-to-day decisions made under the various dispute resolution scheme run by CEDR Services. In addition, some of our schemes also have separate Boards in order to strengthen independent governance and oversight of the particular scheme. Accordingly, the model suggested in the proposal is consistent with the approach already taken by CEDR to ensure independence and effective
8. The inclusion of an independent assessor is supported. We currently have an independent assessor that reviews complaints about our service and produces an annual report which is publicly available. We have found that this provides a valued feedback loop that helps us identify areas for improvement and it also provides an important source of information about the organisation's performance for external stakeholders.
9. Collaboration with passenger advocacy bodies is essential in our view as an excellent way to support consumers and promote best practice within the industry through learning.
10. Advisory panels are a good way of obtaining feedback and we find that they work well in practice provided all relevant stakeholders are represented and the panels have appropriate terms of reference.
11. The performance management reporting requirements are sensible for monitoring the success of the process.
12. We support stakeholder satisfaction surveys as they provide vital real time insight if conducted immediately after a case has been completed.
13. We support the transparency requirements, and support all ADR bodies following these principles.

**Q3. Please set out your opinion on the three funding model options, explaining why you consider that one option may be better than another.**

14. As a general principle, we accept that there are differing, and potentially conflicting, objectives in devising a suitable funding model. From an industry perspective, there is clearly merit in an activity-based, "polluter pays", model as this ensures that the costs of complaint handling fall fairly on the operators to whom those complaints relate. Equally, however, there is an argument that the industry as a whole benefit both reputationally and in terms of learning arising from complaints, and that, therefore, a cost allocation model that reflects relative operator size also has attractions in terms of perceived fairness. An additional consideration which, in our view, is not clearly identified in the consultancy report is the perspective of the service provider. Typically, a provider would be looking for assurance that its fixed costs, in particular, would be covered as otherwise it will be taking on a commercial risk as to case volumes.
15. We support the notion that the provider should be remunerated by ORR who then recharges costs to operating companies, a method currently used in the water industry for England and Wales by Resolving Water Disputes. This opens up the possibility of operating two parallel regimes; in other words, the basis upon which the provider is remunerated does not necessarily have to mirror the basis upon which operating companies are charged. As for the details of each regime, our view is that each bidder should be free to propose whatever pricing model they wish to adopt, although in practice we would favour a split model based on a combination of both the true fixed costs of running the service and the true variable cost. As for recharges to operators, we assume that the arrangements will vary in that there will presumably be some ORR costs to be recovered; plainly operators will need some degree of budget certainty, but it may be that ORR might even consider varying its recharging model as the scheme progresses, with a higher element of fixed cost allocation in the early development phase of the new scheme, but then moving towards a stronger polluter pays model in due course.
16. Having said that, we would caution that case fees have to be very carefully set so as to avoid any unforeseen consequences regarding operator behaviour. Put simply, if a case fee is set too low an unscrupulous operator may decide that it is cheaper to deadlock a complaint and pass the work over to the ombudsman rather than have their own staff work the case. Conversely, if case fees are set too high there is a risk that **operators perceive that they are being "blackmailed" to settle low value complaints** rather than incur the higher cost of letting them go to the ombudsman.

17. Although we understand the importance of ensuring the ombudsman provides value for money there must be a balance between that and providing sufficient funding that will enable the ombudsman to function to a high standard that benefits all stakeholders. We have observed in recent years that in some invitations to tender commissioning organisations do not always strike the right balance between quality and cost in our view.

**Q4. Do you agree with our proposals for the ombudsman operating model?**

18. CEDR agrees with the proposals and makes the following observations on specific elements of the Technical Report that may be of assistance.

**Single front door (2.2)**

19. Whilst the single front door approach seems to have attractions in terms of articulating a clear and simple customer complaint journey, it does potentially create a challenge for the ombudsman service provider if there are then a high number of potentially out-of-scope complaints that require sign-posting elsewhere. We would suggest that passenger dissatisfaction is likely to increase where they complain to an operator who sign-posts them to the ombudsman but then they are told that the ombudsman cannot handle their case and that they need to approach another body. There is also a cost consideration for the service provider if they encounter a high number of out-of-scope cases for triage and sign-posting.
20. For these reasons, whilst we accept that triaging by the ombudsman is inevitable, the immediate focus should be on improving the nature of sign-posting by operators. In particular, operators should be encouraged to triage complaints themselves and then to sign-post complainants to whoever they believe is the appropriate body, or to the ombudsman if there is any uncertainty. Linked to this, both the ombudsman and other bodies should be required to log and report on the numbers of cases which, after triage are deemed to have been wrongly sign-posted to them. As a minimum these mis-directions and any resultant learning should be fed back to the operators concerned, and it may also be appropriate that the charging mechanism is used as a means of incentivising improved performance in this area. The Communications Regulator, Ofcom, has undertaken a great deal of work on signposting in recent years which the ORR may find useful.

**Controlling costs (2.3)**

21. CEDR agrees with the recommendation that the ORR invoices on behalf of the industry. We have found this has worked well in the water and sewerage industry

where Resolving Water Disputes (RWD) contracts directly with CEDR to provide adjudication on behalf of the industry. This has made it easier to collaborate on driving forward innovation and providing value for money as we work with a small group of stakeholders.

#### **Accreditations (2.4)**

22. CEDR agrees with the recommendations in the Technical Report, however, we have some concerns about the accessibility of Ombudsman Association accreditation.
23. Whilst we have no difficulty with the recommendations of the Technical Report that the successful bidder should obtain Ombudsman Association accreditation as an Ombudsman Member, we have some concerns that this approach may create a barrier to effective competition unless the accreditation process is properly policed by ORR.
24. The Ombudsman Association is well known for favouring the concept of a single ombudsman within an industry, and in this instance the incumbent provider, DRO, is already approved for rail, furniture and home improvement disputes. There may therefore be a natural disinclination to approve an additional provider if that could be prejudicial to the interests of an existing Ombudsman Member.
25. We have had direct experience of this approach when we previously applied for ombudsman status for our telecommunications service, CISAS. Although we felt that we met all of the required criteria, we found the validation process rather opaque and ultimately it appeared that our application was unsuccessful because there was a competing service, operated by Ombudsman Services, which was already accredited. This means that the Ombudsman approved for the sector has a perpetual monopoly on providing ADR as an ombudsman for the sector and is protected from any competition by the Ombudsman Association to which the ombudsman and complaint handler members pay an annual membership fee.
26. In our view, therefore, it will be important for the ORR to oversee any accreditation of a prospective new Ombudsman Member rather than simply outsource this important decision-making process.
27. We note also that, in the previous tender for the Rail Ombudsman, points were awarded in the evaluation process for tenders who were already approved by the Ombudsman Association, and we received zero points notwithstanding that we are already a complaint handler member of the Association (and now represented on its Board). Any repetition of this approach in the tender process would, in our view, be uncompetitive and would certainly act as a disincentive to prospective bidders. We

hope; therefore, the tender process will include sufficient reassurance that all bidders will be scored on the quality of their proposals and not on what existing memberships they hold.

**Staff qualifications (3.83)**

28. We agree with the proposals related to the qualifications of decision-makers. It's important that the service uses decision-makers that understand and have had training on the intricacies of the rail industry, and that those decision-makers are deployed at the appropriate stage in the dispute resolution process.

***Q5. Do you have any comments on our proposal to amend the Complaints Handling condition?***

***Q6. Do you have any comments on the proposed drafting amendments to the Complaints Handling condition?***

29. The proposal to amend the licence condition in order to transfer companies from the RDG scheme to the ORR scheme is sensible in our view.

***Q7. What do you consider are the advantages and disadvantages of having two rail ADR-schemes running simultaneously for a short transitional period? What are the potential impacts on your organisations of running two rail ADR-schemes simultaneously?***

30. CEDR has direct experience of working in sectors with overlapping schemes, namely aviation and communications services. On a number of occasions, we have seen a subscribing company move from one provider to another, and in our experience the process works smoothly provided that:

- a) there is proper communication between the respective providers, and
- b) there is a clear cut-off date for new case referrals.

31. In other words, there should be a specified date upon which all new cases are signposted to the incoming provider and, from that date onwards, the outgoing provider continues work to complete their work in progress, but does not take on new cases. There is, therefore, never a period of parallel running in which consumers are presented with multiple providers. We would add that this approach is far simpler than the alternative model under which the outgoing provider simply hands over any work in progress for the new provider to complete – we have had some experience of this approach when we took over a service from an Ombudsman a number of years



ago, and the approach created considerable consumer confusion when they found themselves suddenly dealing with a new provider.

32. Finally, the ORR will need to consider with the provider how to manage the Ombudsman website during any transition.

**RESPONSE TO  
ORR Consultation on a draft Rail Ombudsman operating model**

**Professor Christopher Hodges OBE<sup>1</sup>**

3<sup>rd</sup> August 2022

I hope that the following general comments may be of assistance to ORR. These are individual high level comments, rather than comments on every proposal.

I am a lay member of the Rail Ombudsman's Rail Sector Liaison Panel. I am also the new Chair of HMG's Regulatory Horizons Council. However, comments that I make here are made in my personal capacity as an academic expert on dispute resolution, ADR and Ombudsmen systems, and not in any sense on behalf of any governmental or public or private organisation.

**1. Strengthening the Ombudsman system is a good idea.**

I warmly support the concept of having a single independent Ombudsman for a sector, whose decisions will be binding on all providers. So I firmly support the general direction of travel on policy in this Consultation. I urge ORR and DfT to make progress on simplifying the landscape further in relation to all forms of transport.

**2. Talk about the Ombudsman rather than ADR**

It is advisable to move away from the language of 'ADR'. ADR is rightly not referred to in the body of the Consultation, but it appears throughout the draft Licence Conditions. There are two points. First, ADR is a term that focuses solely on dispute resolution as the core function, whereas Ombudsmen (unlike many other redress schemes) deliver more functions than just dispute resolution. Ombudsmen are typically involved in providing independent information, independent and unbiased support for both consumers and rail companies, aggregation and feedback of data about complaints and issues identified in the system and marketplace, and supporting changes in practice alongside the regulator. These wide functions are well recognised in Ch3, Section A of the Consultation. Just talking about ADR does not assist general understating about these wider functions and benefits.

Second, ADR is no longer regarded as alternative to or separate from the 'main' process of dispute resolution provided by the courts. That point has been made for some time now by the Master of the Rolls and the previous Lord Chancellor: (almost) all forms of dispute resolution are valid and they need to be integrated into a single matrix framework of dispute resolution. The Ministry of Justice and others are currently working towards exactly that end. So talking about ADR is out of date. Should not the terminology in the Licence Conditions be updated?

**3. Jurisdiction and Decision making of an Ombudsman**

It may be helpful to clarify one point, especially in relation to the discussion at paras 3.35 et seq. It is standard for Ombudsmen who work in regulated consumer protection fields to make decisions on the basis of what is considered fair and reasonable, based on an independent view of fairness, taking the law, industry knowledge and all relevant factors into account.

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<sup>1</sup> Christopher Hodges OBE PhD FSALS FRSA. Emeritus Professor of Justice Systems, University of Oxford; Supernumerary Fellow of Wolfson College, Oxford; Co-Founder, International Network for the Delivery of Regulation (INDR); Chair of the Housing and Property Redress Group; lay member of the Rail Ombudsman Consumer Panel. Chair, Regulatory Horizons Council.

That general approach is, indeed, recognised in para 3.5 of the Consultation. But it may be helpful to point out also that the Ombudsman has the power to depart from the law and from general policy if he or she considers that it is fair and reasonable to do so in the circumstances of a case.

I do not see a particular risk that the Ombudsman would depart from law, policy or expectations otherwise than extremely rarely, as recognised in para 3.38. Nor am I convinced by some concerns at the ability of an Ombudsmen to do so. It is, obviously, critically important that the Ombudsman has appropriate legal and vocational qualifications, whether referring to or departing from the legal position.

The overriding public expectation is that ToCs should be delivering a fair service to customers, rather than complying with rules. Society's value and sense of fairness, and confidence in a fair system, is ultimately more important than strict adherence to legal rules. this point can be a source of confusion for train operating companies, as well as regulators and consumers, but it is of fundamental importance, and can benefit from underscoring.

#### **4. Keep the architecture simple**

In my view, based on extensive research into different Ombudsmen and similar systems, it is advantages out to keep the system as simple as possible, and to avoid over-specification of how an Ombudsman should operate. We are currently in a period of considerable evolution in dispute resolution procedures, not least trying to balance the opportunities of digital online systems with low cost and fair systems, and it is important that Ombudsmen have the flexibility to evolve their procedures and how they operate, if consumers are be supported through speedy, low cost and fair outcomes. The best Ombudsmen systems delegate to the Ombudsman the ability to specify their procedure, subject to consultation and governance (relevant examples are the energy and communications Ombudsmen schemes, whereas the Financial Ombudsman is too top-heavy). Those systems that specify too much in the governing legislation and rules tend to find it subsequently difficult to implement improvements, and even to innovate and experiment. There are various points in the current scheme and Consultation where I think it would be preferable for the controlling legislative urge to be scaled back, and to leave things to the Ombudsman. Governance arrangements still ensure the maintenance of fairness (see paras 3.42 et seq).

#### **5. Too many Panels: para 3.56-3.62**

One example of the above feature of over-complication strikes me in relation to the requirement that the Rail Ombudsman should have both a passenger panel and a member panel. First, is that not over-specification? Should it not be a matter for the Ombudsman. But, more importantly, this seems like over-complication. Surely it is important that passengers and members should engage, debate and reach consensus on problems and solutions? If there were to be two separate discussions, how would they engage? They would continue to occupy their own echo chambers and reinforce their own views and interests, without being subject to wider ideas and challenge. It seems to me that there are very good reasons to encourage different stakeholders to cooperate, and that various regulatory systems are evolving towards single integrated Stakeholder Committees.<sup>2</sup>

In this context, a core function of a single Stakeholder Council is to discuss the contents of the Code that forms the basis of the Ombudsman's decisions. Leading regulatory systems are moving away from a Code being written solely by a regulator. The regulator is necessary to make the Code mandatory, but observance is significantly improved if the stakeholders are involved in its creation.

I hope that these thoughts are helpful.

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<sup>2</sup> See C Hodges, *Outcome-Based Cooperation* (Hart, 2022).

## **Disability Rights UK response**

Q1. Please provide any additional information not provided in the draft equality impact assessment (Annex C) which you consider we should take into account, whether in relation to impacts on those with the protected characteristic of disability or any other protected characteristic.

Answer - We agree with the points brought forward in 3.49 and 3.50 of identifiable and unquestionable independence, which is not currently apparent to some inside the industry and to external interested parties. The whole existing process has not been as promoted as it should have been. Much has been a mystery shrouded in an enigma.

Q2. Do you agree with our proposed governance structure? Please give reasons for your answer.

Answer - Good governance depends on corporate based individuals with the requisite skills, experience, and knowledge to carry out functions effectively. We agree that it is not the ask of the Board to involve itself in individual case decisions but should clearly appoint a person with overall responsibility for decision making with unambiguous and clear lines of responsibility.

It is essential to attain the adequate calibre of individual, we agree that Board members should be remunerated. That dedicated Board must include diversity for experience.

Q3. Please set out your opinion on the three funding model options, explaining why you consider that one option may be better than another: a. Status quo b. Less cost reflective c. More cost reflective If you are a current member of the Rail Ombudsman scheme, please explain what you think works well and less well with the current model (i.e. the status quo option).

Answer - We have no views on this question.

Q4. Do you agree with our proposals for the Rail Ombudsman operating model? When considering this question, please set out any ways in which you consider the OOM could further improve the accessibility of Rail Ombudsman services provided to passengers. If you have specific feedback on one area of ORR's proposals, please clearly indicate which proposal you are commenting on.

Answer – Our knowledge through direct contact is that The Rail Ombudsman operating criteria is just not as known or 'respected' as it should be. Many disabled people have not used the procedures available, simply because these are not clear, or are seen as pointless bureaucracy and therefore the ombudsman group have not worked in conjunction with lived experience groups.

The Ombudsman should establish a passenger panel that is representative of the consumers as its members. However, we do not agree that it should automatically include London TravelWatch as London is not representative of the majority of travel issues and much will be covered by Transport Focus. It needs a meaningful country wide group with lived experience of the issues facing those consumers with protected characteristics.

The group will advise on ongoing changes to equality and diversity matters affecting rail usage.

## **Chapter 4**

Q5. Do you have any comments on our proposal to amend the Complaints Handling licence condition?

No

Q6. Do you have any comments on the proposed drafting amendments to the Complaints Handling licence condition?

No

Q7. What do you consider are the advantages and disadvantage of having two rail ADR schemes running simultaneously for a short transitional period? What are the potential impacts on your organisation of running two rail ADR schemes simultaneously?

Answer – The option of two is not a suitable way forward, as it may increase confusion as to who is doing what and how will results be applied.



## **DPTAC response to ORR Consultation on a draft Rail Ombudsman operating model.**

### **About DPTAC**

The Disabled Persons Transport Advisory Committee (DPTAC) was established by the Transport Act 1985 and is the Government's statutory advisor on issues relating to access for disabled people to transport and the built environment. Our vision is that disabled people should have the same access to transport as everybody else, to be able to go where everyone else goes and to do so easily, confidently and without extra cost.

### **Introduction**

Disability affects some 14 million people in the UK. It includes physical and sensory impairments as well as 'non-visible' disabilities such as autism, dementia, learning disabilities or mental health conditions. For many people a lack of mobility or confidence in using the transport system is a barrier to being able to access employment, education, health care, broader commercial opportunities (for example shopping), and a social life.

The ability for all passengers, including disabled people to have access to free, simple-to-use redress when something goes wrong is crucial to support consumer confidence in the rail sector. It is also a key part of what drive improved service, culture and behaviours in the sector which in turn delivers better outcomes for all.

### **DPTAC Response**

We welcome the opportunity to comment on the ORR's consultation on the draft Rail Ombudsman operating Model.

We outline below our feedback on issues raised in the consultation and provide our detailed views on selected questions. Where appropriate, we have also suggested ideas where additional issues should be considered by ORR.

Over many years we have promoted the need for robust, free and binding alternative redress mechanisms to be available to consumers across all parts of the transport sector. We particularly welcomed the introduction of the Rail Ombudsman in 2018 and have been a supporter since then, as well as undertaking a role as an independent member on the Rail Ombudsman Scheme Council.

We support most of the proposals within this consultation. In particular we welcome those that protect the inalienable principles that the Ombudsman Service should be free to consumers, fair and transparent, that decisions are binding on transport providers, and the Ombudsman Scheme remains independent, impartial, and financially sustainable.

## **Section A: Overall description and key features of the Rail Ombudsman**

We support the existing criteria covering the role of the Rail Ombudsman, although some of those criteria should be strengthened in practice and monitored to ensure that they are adding value to consumers. This is particularly important around how evidence and intelligence gained from the Ombudsman's role in resolving disputes is collected and used beyond simply resolving those individual disputes.

### **The role of the Rail Ombudsman**

As stated above, we support the need for passengers to have access to free, fair, easy-to-use redress with decisions that are binding on the transport provider.

It is crucial that the needs of disabled people are understood and factored into the operation and development of the Ombudsman Scheme. It is also crucial that complaints arising from poor accessibility, poor quality services provided to disabled people and /or disability discrimination continue to be included within the scope of the Ombudsman.

Disabled people's views should also be represented in the governance structures that provide oversight of the Scheme. This is particularly necessary to recognise the fact that the duties under the Equality Act 2010 are owed to disabled people generally, and, unlike with other protected characteristics those duties represents an anticipatory duty to make reasonable changes to services to ensure that they are accessible. This means that service providers and people exercising public functions must proactively anticipate the needs of disabled people and make appropriate reasonable adjustments.

We welcome the changes and improvements proposed in the consultation but call for the Ombudsman to do more to publicise their work, strengthen and clarify signposting to the Scheme, and improve transparency through publishing all its awards and recommendations. This will provide greater incentive for the industry to change its behaviour. A higher level of transparency would proactively drive a clear 'prevention agenda', encouraging and promoting behaviour change, and the '*culture of continual learning and improvement*', preventing harm occurring in the first place which is not only better for consumers but will also reduce the overall cost of the redress system to the industry.

The 'polluter pays' principle must underpin the funding model as this serves not only to ensure that those operators that cause the work, pay for it, but also as an incentive on industry to prevent complaints arising in the first place, and to settle complaints early before they get to the Ombudsman.

It is crucial that ADR schemes work hard and transparently to make sure that the risks of perceived or actual bias are removed or at least minimised.

### **Accessibility requirements**

***Q1. Please provide any additional information not provided in the draft equality impact assessment (Annex C) which you consider we should take into account, whether in relation to impacts on those with the protected characteristic of disability or any other protected characteristic.***

The Rail Ombudsman must be fully accessible. While the existing requirements to provide a fully accessible service remain, we welcome the fact that the ORR has, in advance of the consultation, identified potential opportunities to *'advance equality of opportunity or further eliminate discrimination'* to strengthen those current accessibility requirements on the Ombudsman provider by:

- Ensuring all documents are available in accessible formats on request
- Strengthening the disability awareness training provisions
- Providing a translation service rather than signposting to one
- Explicit commitments on the website to providing reasonable adjustments

It is crucial to ensure that the competitive tendering process for the Ombudsman Scheme has 'accessibility' as an imperative, and clear accessibility principles are built into the process requiring potential scheme providers to show the right level of understanding and commitment, and also built into the KPI's/outcomes required of the Ombudsman Scheme once operational. We also propose that accessible formats available ensure that the different barriers disabled people face are removed so should include for example, large print, audio, BSL, braille, and easy read.

We agree that the future Ombudsman has a key role as a source of evidence and intelligence. This should be drawn not only from its role resolving disputes, but also on the experiences and expectations of consumers who have suffered harm yet who may not be eligible to use the scheme. This will help provide a more complete picture of the issues that may be causing consumer detriment in the rail industry, including to disabled people and those who share other protected characteristics. We particularly support the view that intelligence should include the *'overall passenger experience of raising a complaint about a rail service'*.

A key outcome should be the identification of any opportunities to advance equality of opportunity or further eliminate discrimination. As also set out in our response to this consultation and expanded on in our response to the ORR consultation on the Complaints Code of Practice Revised Draft, our view is that a complaints system which focuses exclusively on redress for the individual passenger is not appropriate when it comes to advancing equality of opportunity and delivery of the specific rights of disabled people to have their needs anticipated. As explained below the duty under the Equality Act 2010 is owed to disabled people generally, and, unlike with other protected characteristics is an anticipatory duty which means service providers and people exercising public functions must anticipate the needs of disabled people and make appropriate reasonable adjustments. Complaints are a key piece of evidence which operators, the Ombudsman and ORR can use to support the evaluation of whether the rail industry is making the required 'reasonable adjustments' that would prevent other disabled people from experiencing the same levels of exclusion or poor service. At the moment the systems are not in place to ensure this prevention happens.

Ideally any relevant complaint by a disabled person relating to a barrier to access should *automatically* be considered as potential evidence of a need to make an adjustment, and an initial decision should be made on whether this would be reasonable - as part of the

complaint handling process. For this to work properly, operators and the Ombudsman would need to maintain a formal 'register of reasonable adjustments' and ensure that a senior individual within each operator is responsible for this. We suggest that this register could be overseen by ORR. The result of this would be good for the operators as a way of demonstrating that they have met their anticipatory duties should they be challenged by other disabled customers. Many decisions regarding reasonableness of adjustments are very straightforward, and most complaints fit established patterns which allow for a standardised approach. Where there is a real opportunity for improvement is in the reasonable adjustments which can make a significant improvement to accessibility for all other disabled customers.

The key point is that a complaints system which focusses entirely on redress for the individual passenger is not appropriate when it comes to the specific rights of disabled people to have their needs anticipated and prevention measures put in place. Complaints are a key piece of evidence which operators can use to support the evaluation of reasonable adjustments, and at the moment the systems are not in place to ensure this happens.

***Q2. Do you agree with our proposed governance structure? Please give reasons for your answer.***

Yes we agree with the aims to retain many of the characteristics of the current Rail Ombudsman and with the desired outcomes. We have proposed some other areas for improvement where additional focus is required, as outlined in this response.

**Rail Ombudsman as a single front door for escalated passenger complaints**

We support the proposals outlined here. It is crucial to maintain the Rail Ombudsman as the 'single front door' for all escalated complaints. This provides a simple, clear process for any complaints that cannot be resolved to the passenger's satisfaction by the rail company.

We have no doubt that a single entry point reduces the potential for confusion, and crucially makes signposting simpler and clearer. However, further work is needed to understand whether there could be any improvement of the single front door role of the Ombudsman for disabled people in terms of making the process understandable, accessible and in delivering a smooth customer experience.

We would like to see research undertaken by ORR specifically focused on people with lived experience of disability. The aim should be to identify any issues and challenges with accessing the Ombudsman Scheme as we don't believe that enough is known about the experience of disabled people. Filling this gap in insight is particularly important because of the specific duties the Equality Act 2010 imposes on providers of services.

We would also like to see a requirement included for regular qualitative research aimed specifically at understanding the experience of disabled people when making complaints. For example, many disabled passengers may need assistance with making a complaint in the first place, or in understanding whether their complaint has received the respect and attention from the transport operator it deserves, or may not be clear about how to present their complaint at the point of escalation. Without specific qualitative data it is not possible to understand whether disabled passengers have been able to fully access the complaints and redress process and how many have not felt able to pursue their complaint as a result.

### **Controlling the Rail Ombudsman's costs**

We do not have any comments on this.

### **Accreditations**

We support the need for the Rail Ombudsman to achieve accreditation by the Ombudsman Association as an Ombudsman Member and also approval from the Secretary of State under the ADR Regulations. These accreditations/approvals must be mandatory for the Ombudsman Service to be allowed to operate as the chosen redress provider.

This provides appropriate levels of external assurance, trust and confidence that the practices of the redress provider meet current and future requirements to operate as an Ombudsman.

We question what the response would be from ORR should the accreditation and approval not be achieved by the ADR provider within the stated timescales. It would be useful for this to be set out clearly.

### **Contract length and timeframe for scheme set up.**

We agree with the proposals set out here. A 5-year contract term as the Ombudsman provider seems a sensible amount of time for the Ombudsman to establish itself, prove its value to passengers, and be allowed to 'evolve and mature'. It will also provide a suitable period of continuity, with the potential for a further 5-year extension acting as an incentive to perform at the highest level during the whole term.

We agree with the need for a no-fault termination clause backed by safeguards that will ensure continuity of service while new arrangements are put in place should that early break clause be activated by ORR.

We would recommend some additional strengthening of the proposals here. It is crucial throughout the term of the contract and on renewal for ORR to have the tools that would incentivise constant innovation and improvement in the services the Ombudsman offers. There needs to be a robust and transparent process to provide the appetite/motivation to do well and for the performance of the Ombudsman provider against the agreed KPIs in the contract and wider performance management framework to be monitored, tracked and properly assessed throughout the contract term.

It is important that the learning and built-up expertise and experience within one Rail Ombudsman Scheme provider is not lost in the process of transition to the next provider. This is particularly important when it comes to the level of understanding of issues that impact on the expectations and experiences of, and harm caused to disabled passengers, as well as the requirements of the legal frameworks that apply to accessibility, including the Equality Act 2010.

### **Section B: Jurisdiction and scheme rules**

#### **Ombudsman scheme membership**

We agree with the proposals here and agree that that equity and fairness dictate that all passengers, irrespective of which company they use to access rail services, should have access to the Ombudsman Scheme.

### **Rail Ombudsman scheme service jurisdiction**

We agree with the proposal here. We have outlined elsewhere in this document the need to ensure that the proposed 5-year contract term for the Ombudsman does not stifle innovation and improvement, but rather promotes or incentivises the innovation and change that is needed to constantly improve the quality of the services provided as well as potentially widen the scope and jurisdiction of the service over time.

Any review of scope should not wait until the 5-years expires as this would allow the scheme to remain static over that extended period. This is particularly important during what is set to be a period of fundamental change in the rail sector as a result of the Williams-Shapps Plan for Rail.

We would also propose that the jurisdiction of the Ombudsman in terms of the maximum levels of compensation that can be awarded should be kept under regular review. While we accept that current levels of awards are generally within the current maximum threshold, this should not prevent claims for higher amounts being brought within the scheme. We have set out more detail on this under 'maximum award limits' below.

For many claims for compensation, in particular those that arise under the Equality Act 2010, the only option for passengers who do not have access to alternative redress is to pursue their claim through the courts – not something that brings any benefits for passengers or transport operators.

Higher claims limits should not be a concern for operators as long as the value of the scheme in terms of cost (case fees), speed, efficiency, learning and consumer confidence remain clear.

In the meantime we suggest that consideration be given to a form of 'voluntary jurisdiction' allowing all providers that are subject to either the mandatory licence conditions of membership of the Rail Ombudsman or have agreed to join the scheme as 'voluntary' members to submit to the possibility of awards at higher levels than the current maximum. It is important that passengers are not prevented from bringing higher level claims to the Ombudsman if the operator voluntarily agrees, and this is something that can be agreed between operators and the Ombudsman in advance.

### **Decision making**

We agree with the proposals set out here. We also agree with the findings of the technical report commissioned by ORR which explain that it is not unusual for the unique circumstances of any individual case to be taken into account by an ombudsman to decide that – *'...despite industry arrangements or contract terms - redress should be made to an individual consumer. This is not the same as saying that an ombudsman can disregard policies set by a regulator or the contract between a company and a customer, but that an ombudsman can consider that in an individual case the circumstances are such that a fair outcome requires redress to be made.'*

We agree strongly that the Ombudsman's evidence and intelligence gathering role should put it under an obligation *'to collect, and report on, evidence that suggests any failings in industry wide policies that are to the detriment of consumers.'*

As industry policies will change and develop over time it is important to ensure that any unintended consequences of existing or future policies are monitored and recorded, and the potential for harm to passengers understood and measured. This needs to be spelled out clearly as a fundamental part of the Ombudsman's wider 'prevention' role - collecting and using data to feed into broader analysis of the way the rail industry operates, how its policies impact on passengers in practice, and allow this important data to contribute to proposed changes in industry policies and operations to prevent harm occurring in future. Again, with the proposed fundamental changes to the rail sector as a result of the Williams-Shapps Plan this type of data forms an important part of the ongoing review process.

### **The Rail Ombudsman scheme rules**

We agree with the proposals set out here.

### **Maximum award limits**

We agree with the proposals here subject to some additional safeguards being considered.

The Ombudsman should have a specific duty to proactively collect evidence of the impact the current maximum award limit has on any claims for amounts that exceed that threshold whether those claims are still able to proceed through the scheme or are excluded. It should also collect evidence of the decisions made by passengers who have higher-value claims - for example, do they deliberately restrict the value of their claim in order to use the Ombudsman Scheme? Do they decide not to pursue their claim? Do they still pursue higher value claims through the courts or use other redress options such as mediation? And the evidence should also include transport operators' reactions to such claims when dealing with these at the pre-escalation stage, and also where the claim continues through the courts or uses other redress options.

It can be the case that the compensation levels for some in scope disputes may exceed the current maximum award limit of £2,500. As explained earlier, we propose that in the short term the industry members, whether mandatory or voluntary members should have the opportunity to agree to submit to higher award limits in advance.

It is vital to ensure that claims for compensation under the Equality Act 2010 remain within scope of the scheme as now. In the context of the limit on in-scope disputes that relate to discrimination under the Equalities Act 2010, we are concerned that this may act as a barrier to the Ombudsman taking on these types of dispute. As was set out in the Lucerna report, it is understood that there has been only one case relating to discrimination under the Equalities Act 2010 where the maximum award limit has been problematic but that the Rail Ombudsman was able to deal with it. We are concerned that in future such cases the whole claim may be declared out of scope if the compensation payable exceeds the limit, or the consumer could receive a lower amount restricted to the maximum award limit in order to allow an award to be made.

We suspect that awareness of the right to bring compensation claims for injury to feelings as a result of disability discrimination will continue to grow over time. As a result the current maximum limit could present an unnecessary barrier to allowing such claims to be dealt with through the Ombudsman scheme, forcing claimants to settle for lower sums that they would otherwise be entitled to, or to go to court.

### **Rail Ombudsman case handling timescales**

We agree that the ORR should seek to reduce the current 40 working day response target as part of the tender process and ideally should implement this as a priority. For all consumers the current 40 working days allowed for the rail operator to deal with a complaint and issue a 'deadlock' letter, followed by a further 40 working days for the Ombudsman to complete a case means that consumers potentially face a process that could be allowed to extend to 16 weeks. While we accept that the evidence does not show that this is happening in practice it is clear that the published timeframes create an expectation among consumers that the process will be slow.

There is real risk that an overall complaints and redress process that takes too long will impact on confidence disabled people have to use it. And, particularly in the current and worsening financial crisis any unnecessary delay in the process for resolving complaints that warrant a payment of compensation can be devastating for many individuals and households.

We would refer to our proposals on the timescales set out in our response to ORR Consultation on the Complaints Handling Code review.

### **Section C: Governance**

***Q2. Do you agree with our proposed governance structure? Please give reasons for your answer.***

#### **Independent Rail Ombudsman Board**

We agree with the proposals here. In particular we agree that to meet principles of good governance the independent Board should contain the skills, experience, and knowledge to carry out its functions effectively and this should be subject to ORR's ability to review appointments, size and composition.

#### **Independent Assessor**

We agree with this proposal.

#### **Data and intelligence sharing with statutory passenger advocacy bodies – Transport Focus and London TravelWatch**

We agree with this proposal. It is particularly important for the statutory passenger advocacy bodies to have access to real time data.

#### **Advisory Panels**

We agree with this proposal. While we accept that the 'passenger panel' should include representatives of those with 'lived experience' of the issues facing consumers with protected characteristics, we would propose that this should also specifically include the issues faced by disabled people. This is particularly important as the duty under the Equality

Act 2010 is owed to disabled people generally, and, unlike with other protected characteristics is an anticipatory duty which means service providers and people exercising public functions must anticipate the needs of disabled people and make appropriate reasonable adjustments. Knowledge and understanding of what this means in practice would be a key skillset to include on an advisory panel

### **Performance management**

We agree with this proposal.

### **Stakeholder satisfaction and feedback**

We agree with this proposal.

We also propose that regular stakeholder surveys should seek feedback from a wider cohort of passengers, including those who have not, for whatever reason, pursued their complaint fully through the process, and also from passengers who share protected characteristics. This was a key recommendation in a recent Which? policy report which said: *“The publication of operational statistics and the results of customer satisfaction surveys conducted by the ADR scheme can help to identify areas of weakness in the scheme’s performance. It is important that customer surveys seek responses from customers who have had their case considered and those that weren’t. Collecting data on the age, income, educational qualifications and other relevant characteristics can also help to identify if a service is meeting different needs.”*<sup>1</sup>

We propose that stakeholder surveys include segmented data, proactively sought, about the experiences and satisfaction levels of disabled people as well as passengers with other protected characteristics.

This data is also important as part of an ongoing equality impact assessment of the Ombudsman provider and will help inform the Ombudsman and ORR about the effectiveness of the disability awareness training it should have in place for all its staff and keep regularly refreshed (see our response to Q4 below.)

### **Transparency**

We agree with the proposals here.

## **Section D: Demand and Fees**

### **Funding the Rail Ombudsman**

#### **Q3. Please set out your opinion on the three funding model options, explaining why you consider that one option may be better than another**

The detail of the funding model is not an issue that we are able to comment on in terms of recommending one model in preference to another. However, we agree with the area for improvement identified by the ORR to make *‘more explicit the role of the Rail Ombudsman in delivering a wider benefit over and above its dispute resolution role’*.

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<sup>1</sup> <https://www.which.co.uk/policy/consumers/7428/adrschemes>

This aligns with the Government's aims for the Williams-Shapps Plan for Rail and will help drive the 'culture change'<sup>2</sup> needed in the rail industry. To achieve this, the Ombudsman Service needs both adequate funding for its proactive prevention work and to ensure the structure of case fees incentivises firms to handle complaints better in the first place (and indeed prevent them altogether) so that they do not reach the Ombudsman Service. We believe the proposals in this consultation will help ensure this is the case.

Whichever funding model is agreed it should be governed by a number of overriding principles designed to ensure that the Ombudsman Scheme is able to operate in the most effective way:

- That access to the Ombudsman service remains free to consumers
- Is independent
- Is binding on the industry
- That the 'polluter pays' principle remains
- That there is a clear feedback and prevention agenda – ensuring that the Ombudsman Scheme is fully able to take the issues that arise from its role in handling complaints and proactively and transparently feed those back to the industry as part of its learning and prevention work
- That the service should remain solvent and financially sustainable

We support the view put forward by Which? in its recent ADR Policy report that *“Every approved ADR provider, in regulated and unregulated sectors, should have prevention of complaints as part of a published strategy and as a clear business priority.”*<sup>3</sup>

It is important to remember that the Ombudsman should be able to do a great deal of important work other than case-handling. This other work is not generally funded by case fees, and includes:

- work to prevent harm occurring in the first place
- sharing of insight gained from complaints resolution
- consumer communications and outreach
- close engagement with other Ombudsman and ADR Schemes

This work forms an important part of the Ombudsman's wider societal benefit and must be recognised in the funding structure. This rightly requires the right balance between case-fee income and a more stable funding basis from subscription fees calculated on the member organisation's size.

**Q4. Do you agree with our proposals for the Rail Ombudsman operating model? When considering this question, please set out any ways in which you consider the OOM could further improve the accessibility of Rail Ombudsman services provided to**

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<sup>2</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/994603/qbr-williams-shapps-plan-for-rail.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/994603/qbr-williams-shapps-plan-for-rail.pdf)

<sup>3</sup> <https://www.which.co.uk/policy/consumers/7428/adrschemes>

**passengers. If you have specific feedback on one area of ORR's proposals, please clearly indicate which proposal you are commenting on.**

**Case management process flows.**

We agree with the proposals here.

**Requirements on staff qualifications and rail industry knowledge**

We agree with the proposals here. Effective case handling is best served by staff who have an in-depth and current understanding of the issues they are investigating allowing for the identification of relevant evidence and making sense of contextual and causal factors. This includes disability awareness, vulnerability and awareness of all other protected characteristics.

We propose a specific requirement that all staff receive in-person disability equality and awareness training, with regular refresher training. We would urge ORR to consider including a requirement for all transport operators and the Ombudsman provider to achieve accreditation as part of the DfT's Inclusive Transport Leaders Scheme, or at least satisfying training criteria that matches the level of training that already exists as part of the DfT's REAL disability equality training programme.

**Service standards**

We agree with the operational KPIs of the current Rail Ombudsman being appropriate for the ORR-procured Rail Ombudsman but with one crucial addition. That not just 'availability' but 'accessibility' should be proactively built into the operational issues, measured and feedback actively sought and acted upon.

**Case Management System (CMS)**

We agree with the proposals here. It is a requirement under the Equality Act 2010 that the proposed minimum functionality and capabilities of the CMS meet all accessibility standards and expectations, and this applies equally to any extra functionality that may be added. All bids from prospective Ombudsman providers must reflect how they propose to deliver accessibility to all, and this part of the bid must be given a key weighting in the evaluation process.

**Q5. Do you have any comments on our proposal to amend the Complaints Handling licence condition?**

**Q6. Do you have any comments on the proposed drafting amendments to the Complaints Handling licence condition?**

We agree with the proposal to amend the licence condition. We have submitted our separate response to the ORR consultation on the revised Complaints Code of Practice setting out our comments and thoughts in more detail.

We support the proposal to modify and simplify the current licence condition to require passenger and station licence holders to join the ORR-procured rail ADR scheme. It is essential there is complete industry-coverage with all service providers and industry bodies required to sign up to one single Ombudsman Scheme

A mandatory membership requirement is crucial to ensure that consumers have access to a Rail Ombudsman service and benefit from the consumer protection safeguards it offers, as well as giving the whole industry access to data and support to prevent similar complaints arising and causing consumers harm.

In its recent Policy report Which? highlighted that in sectors where there are *“a number of different ADR providers but membership is not mandatory”* this results in *“a confusing and potentially frustrating experience for consumers. consumers. Voluntary membership often means that ADR is not available to consumers.”*

It is important to avoid this scenario in the rail sector.

**Q7. What do you consider are the advantages and disadvantage of having two rail ADR schemes running simultaneously for a short transitional period? What are the potential impacts on your organisation of running two rail ADR schemes simultaneously?**

We see clear advantages for passengers of having two ADR schemes running simultaneously for a transitional period and would support that approach. What is important for all passengers is to have the most straightforward transition that delivers a simple, seamless process. As highlighted in the consultation, this avoids a number of potential problems that would otherwise create confusion and practical additional costs and risks arising from the need to transfer files, as well as the potential to cause passengers some additional delay in the case being successfully referred to the Ombudsman.

**Disabled Persons Transport Advisory Committee (DPTAC)  
August 2022**

## ORR Consultation on a draft Rail Ombudsman operating model First Rail Holdings response – 04/08/2022

This is a response by First Rail Holdings Limited on behalf of our train operators trading as South Western Railway (SWR), Great Western Railway (GWR), TransPennine Express (TPE), Avanti West Coast (AWC), Hull Trains (HT) and Lumo, as well as First Customer Contact Limited (FCC) which conducts complaints handling activity for a number of our operators.

### Chapter 3

**Q1. Please provide any additional information not provided in the draft equality impact assessment (Annex C) which you consider we should take into account, whether in relation to impacts on those with the protected characteristic of disability or any other protected characteristic.**

Nothing additional to add.

**Q2. Do you agree with our proposed governance structure? Please give reasons for your answer.**

We are supportive of the majority of your proposals, with the following specific comments.

#### **Rail Ombudsman as a single front door for escalated passenger complaints**

We are strongly in favour of the Rail Ombudsman retaining its current role a single front door for complaints.

#### **Controlling the Rail Ombudsman's costs**

The proposal (before paragraph 3.17) says that: "The Rail Ombudsman budget may be subject to final ORR approval." Paragraph 3.19 describes ORR's role as including a "role as contract manager." We do not understand how ORR can conduct this role effectively without exercising approval responsibilities for Rail Ombudsman's budget and therefore suggest the proposal wording should be strengthened to: "The Rail Ombudsman budget will be subject to final ORR approval."

#### **Ombudsman scheme membership**

The proposal (before paragraph 3.27) says that compulsory members should include: "all passenger-carrying train operators; Network Rail (or future equivalent); and other station operators."

## **ORR Consultation on a draft Rail Ombudsman operating model First Rail Holdings response – 04/08/2022**

Paragraph 3.30 lays out the ORR's reasoning for the continued inclusion of small operators as mandatory participants in ADR, including that, "In the interests of equity and fairness it is our view that all passengers, irrespective of which company they use to access rail services, should have access to rail ADR."

We then see that ORR's statements in paragraph 3.31 on rail ticket retailers adopt a different and inconsistent approach, concluding that ticket retailers may become voluntary members but are not required to be subject to ADR.

This position is not well explained and as a result makes little sense to us.

We note that smaller operators and retailers are in similar positions in the sense that they operate in competitive markets, on a commercial basis, and both conduct in-scope activities within the ADR remit (as per Annex 1 (Part B) of the technical report).

If ORR's concern really is that passengers, irrespective of which company they use to access rail services, should have access to rail ADR then it would appear that retailers should be required to be mandatory members of the ADR scheme. Customers are not always clear on the distinction between retailer / operator, and the "equity and fairness" principle should apply to retailers as well.

Alternatively, if ORR's reasoning is something different (such as the principal motivation for ADR being to protect customers of potential monopoly franchised suppliers, or it not having the authority to require retailers to be mandatory members, or some other reasoning) then it should be clearer about how it has reached its conclusions.

As it stands, our understanding is that ORR's stated intentions are not consistent with its conclusions and either: (a) smaller operators (including all open access and heritage operators, and station operators of stations not served by the services of mandatory ADR members) and retailers should all have the option of voluntary membership, or (b) both groups should be required to be mandatory members of ADR.

We suggest ticket retailers should be mandatory members for all the same reasons ORR cites in its justification for small operators, with the elements of their operations that fall within the Rail Ombudsman Scheme Rules subject to ADR.

We also note that no ticket retailers have chosen to become voluntary members of the current ADR scheme so do not follow ORR's argument concluding that voluntary membership for retailers will somehow still be of benefit in delivering the outcomes it is seeking for either customers or for the industry.

## ORR Consultation on a draft Rail Ombudsman operating model First Rail Holdings response – 04/08/2022

**Q3. Please set out your opinion on the three funding model options, explaining why you consider that one option may be better than another:**

**a. Status quo**

**b. Less cost reflective**

**c. More cost reflective**

**If you are a current member of the Rail Ombudsman scheme, please explain what you think works well and less well with the current model (i.e. the status quo option).**

We see that the consultation document and technical report could have gone into more detail on the economic principles that should apply to, and incentives that result from, the funding model / charging regime. This being particularly in the context that funding of the current scheme has not been issue-free.

We are not in favour of the broad suggestion in Paragraph 3.79 that bidders' preferred solutions be considered – our view is that the pricing incentives on Rail Ombudsman members are an important consideration and that the relevant factors feeding into the process of determining individual member charges go well beyond those that bidders might reasonably be expected to consider when developing the commercial terms of their bids. (Note that this is not to be confused with the more specific input bidders can sensibly have on proposing elements of a charging structure that might reflect the composition of their variable costs associated with ADR volumes, which is discussed in more detail below, in the section on future funding model options.) We favour a more principled approach to charge-setting.

Firstly, we will address the strengths and weaknesses of the current, status quo, funding model. Then we will lay out our views on the model which we believe will be most effective going forward.

### **Current model / status quo option**

We believe it's understandable how RDG and operators got to the position of implementing the current charging model. In the context of launching the Rail Ombudsman there was:

- A focus by RDG on bringing the Rail Ombudsman into being,
- A focus by operators on discharging their new obligation to fund the Rail Ombudsman, and
- A lack of any historical data to support clear views on the volume of activity that the Rail Ombudsman would be required to manage, the distribution of this activity across operators and the potential value of any broader industry-wide benefits that might result from ADR.

## ORR Consultation on a draft Rail Ombudsman operating model First Rail Holdings response – 04/08/2022

As a result, we view the consensus that was reached around a broad “polluter pays” methodology (as per technical report annex 2) to be unsurprising and largely appropriate at the time.

Similarly, the different and more predictable charging model for smaller operators and station operators was also appropriate and indeed necessary given both the size of their operations for ADR purposes and the different commercial models they have in place. This aspect is a clear strength of the current model.

To note: in relation to paragraph 3.76 on current “status quo” funding model, annex 2 of the technical report doesn’t specify how voluntary members of the scheme are charged and it would be helpful if this could be clarified.

The key weakness of this model, however, is that the effective marginal cost to large operators of an incremental Rail Ombudsman referral is large, in the order of £400 or more (see box below).

### **Current model incremental costs to large operators**

This indicative analysis is based on figures taken from the technical report and the results are approximate, for a notional operator generating 10% of total ADR cases, for 2021.

- a. 1,782 total Rail Ombudsman cases 2021 (technical report table 5.7)
- b. £1,105,110 total Rail Ombudsman income 2021 (technical report page 34) taken to be indicative of Rail Ombudsman costs 2021
- c. 80% of the costs of the Rail Ombudsman are recovered by the “polluter pays” charges (technical report page 36)
- d. 10.000%, size of a notional operator as a proportion of the national total (a stated assumption for the purposes of this analysis)
- e. Total “polluter pays” charge for a notional operator generating 10% of total cases, 2021 =  $b * c * d = £88,408$
- f. Proportion of “polluter pays” charges incurred by a notional operator generating 10% plus one additional case =  $(a * d + 1) / (a + 1) = 10.050\%$
- g. Total “polluter pays” charge for a notional operator generating 10% of total cases plus one additional case, 2021 =  $b * c * f = £88,855$
- h. Additional “polluter pays” charge for a notional operator sized at 10% of the national total from generating one additional ADR case =  $g - e = £446$  per incremental case

Note the analysis ignores any additional costs which the Rail Ombudsman might incur in managing the one incremental case, corresponding to the case fees for that case, and focuses on the “polluter pays” elements of the total costs. Including these additional costs in the analysis would potentially increase the charge per incremental case further.

## ORR Consultation on a draft Rail Ombudsman operating model First Rail Holdings response – 04/08/2022

Repeating the analysis for different notional operator sizes shows that the size of the incremental charge to operators increases as their size reduces.

This suggests a strong financial incentive on operators to have low numbers of Ombudsman cases. The technical report is relatively dismissive of this as being an issue in practice, stating (page 37); “We think it is unlikely that the polluter pays charges have this effect in rail, and reputational impacts are probably more significant ...”. We disagree. While we accept that this has not been a significant phenomenon to date, it remains a significant future risk, particularly as industry cost pressures continue to tighten. We do not understand what reputational impact operators would suffer from having low numbers of ADR referrals that would mitigate this risk – if anything, it would seem to enhance it.

The obvious operator strategy under this charging model is to move more actively to avoid Ombudsman referrals, making relatively handsome settlement offers to complainants towards the end of the complaint handling window as being both a cheaper and more customer-friendly resolution than an ADR referral at a (greater than) £400 additional cost.

A further weakness is that costs to each large operator depend strongly on the behaviour of other large operators in terms of their number of Rail Ombudsman referrals. This is problematic because:

- It is difficult for operators to forecast and plan for,
- It challenges the concept of fairness in terms of different industry funders (e.g., Devolved Authority vs. DfT), and
- It is not consistent with ORR’s emphasis on the value of ADR in terms of whole-industry benefits (for example, paragraphs 3.2, 3.8, 3.9 and 3.30).

### **Future funding model options**

We don’t find the “Less cost reflective” and “More cost reflective” terminology to be particularly helpful because it doesn’t clearly distinguish between fixed and variable costs/charges or give clarity on the drivers of cost versus the charging mechanisms for operators. It also doesn’t inform the decision about how fixed costs should be allocated between scheme members. In all cases we believe that charges should be reflective of costs overall and over time, so that Rail Ombudsman costs are recovered in full with no additional margin.

We discount “polluter pays” due to the limitations we have discussed earlier.

A variant to the “polluter pays” model might attempt to address the risk of operators settling to avoid referrals by charging members based not on the number of ADR referrals, but instead based on ADR referrals ultimately resolved in the customer’s favour. However, we would discount this as unworkable on the basis that the charge

## ORR Consultation on a draft Rail Ombudsman operating model First Rail Holdings response – 04/08/2022

in each case would be even higher, compounding the unpredictability and variability of the resulting charges for each operator (again, as discussed earlier).

More constructively, we believe the best overall outcomes would be achieved where costs are set so that:

- Small operators, station operators (and ticket retailers or voluntary members) retain fixed low (or no) charges overall. This encourages voluntary membership and is a quid pro quo for mandatory membership for commercial operators in these categories where the argument for mandatory membership is weaker than other larger operators;
- Variable charges (per ADR referral) are always set to be (at least approximately) cost-reflective of ADR scheme variable costs. Potentially this can include different volume-based charging bands (as for the current model) and might be specified by bidders during the Rail Ombudsman procurement process, subject to application of an overall variable cost-reflective principal. In making this point we are assuming that is the case for the current case fees, and that variable costs are in the order of £24.50 to £55.00 per case as shown in the charging schedule in annex 2 of the technical report. To charge higher than this amount would disincentivise Ombudsman referrals, which we don't think is appropriate given the broader industry benefits that ORR is targeting (e.g., from insights flowing from these referrals, broader industry perception benefits, etc.). While it would be possible to set case fees below their incremental cost, we don't see a clear principle pointing towards this as a desirable structure and it would potentially have other minor negative consequences such as: complicating the process of overall cost recovery, and/or reducing the ability of ORR to hold the Ombudsman's overall costs to account; and
- Remaining fixed costs, not covered by the two elements above, should be shared between the larger/franchised operators in proportion to their size. This could be allocated by passenger journey, passenger mile or by passenger revenue, or some combination. Each might have its pros and its cons. ORR statements on the value of ADR attributes broader benefits to all passengers in various ways. It seems some combination of one or more of the three metrics listed might be appropriate, depending on ORR's view of what benefits the ADR scheme is delivering independently of individual case activity, the scale of these benefits, and to whom they accrue. This does, however, appear to discount using ADR member operating costs as an allocation metric, which does not, to us, appear to be as good an indicator of the values which the ADR scheme is delivering.

Other questions we have which ORR might want to consider for further investigation, include:

## **ORR Consultation on a draft Rail Ombudsman operating model First Rail Holdings response – 04/08/2022**

- Are current case fees cost reflective? ORR terminology implies as much (e.g., in paragraph 3.75) but does the analysis of ADR costs support this?
- How significant and/or material are the broader benefits of the Rail Ombudsman scheme? Paragraph 3.29 references the technical report finding that smaller operators should be mandated “where the cost to them is proportionate to the value it brings in passenger benefit.” We see potential benefits through: (a) more positive industry perception by passengers, leading to increases in rail demand, and/or (b) better insight for the industry allowing it to focus on the most productive areas for improvement. In both cases, however, the evidence that ORR provides is relatively limited. For example, the benefits of (a) might be fully achieved even without mandatory membership for smaller operators, or the benefits of (b) might already be being delivered through other mechanisms (such as other market research, analysis on non-ADR referred complaints, sharing of insights between operators independently of ORR/ADR involvement, etc.). A better understanding of these benefits, to whom they accrue, and how recipients value them, might better inform the decisions about cost allocation, particularly for the fixed costs of the scheme.

### **Q4. Do you agree with our proposals for the Rail Ombudsman operating model?**

**When considering this question, please set out any ways in which you consider the OOM could further improve the accessibility of Rail Ombudsman services provided to passengers. If you have specific feedback on one area of ORR’s proposals, please clearly indicate which proposal you are commenting on.**

Yes, we agree with your proposals as laid out in Sections E and F of your consultation document.

### **Chapter 4**

### **Q5. Do you have any comments on our proposal to amend the Complaints Handling licence condition?**

We have no comments.

### **Q6. Do you have any comments on the proposed drafting amendments to the Complaints Handling licence condition?**

We have no comments.

**Q7. What do you consider are the advantages and disadvantage of having two rail ADR schemes running simultaneously for a short transitional period? What are the potential impacts on your organisation of running two rail ADR schemes simultaneously?**

In the absence of any specific data on the costs of the two options, we prefer the option of having two rail schemes running simultaneously for a short transitional period, over the option of having a single changeover date. This would allow complaints in the current scheme to run to completion under that scheme, with all new complaints raised within the new scheme once it starts. This would save any complexity and risk of transferring in-progress complaints between the schemes. This would be less confusing for complainants and also allow for a more gradual ramp-up in activity for the new scheme which would likely be more manageable, with a smoother transition to the operator of the new scheme. It would also help to de-risk the transition for those bidders to operate the new scheme, which might be reflected in more competitive pricing, potentially mitigating the additional cost of having two schemes running in parallel for a short period.

In terms of the impacts on our operators, a transitional period would be preferred for largely the same reasons: de-risking the transition to support a smoother transfer by removing any complexity associated with Ombudsman cases that were in progress at the time of the change.

## Glasgow Prestwick Airport Ltd response

### Chapter 3

*Q1. Please provide any additional information not provided in the draft equality impact assessment (Annex C) which you consider we should take into account, whether in relation to impacts on those with the protected characteristic of disability or any other protected characteristic.*

None – no further comment

*Q2. Do you agree with our proposed governance structure? Please give reasons for your answer.*

The proposals would appear to cover all the requirements necessary for governance, but as an operator managing just one very small station who has never had cause to use the scheme, we do not have the experience to make detailed observations.

*Q3. Please set out your opinion on the three funding model options, explaining why you consider that one option may be better than another:*

- a. Status quo*
- b. Less cost reflective*
- c. More cost reflective*

*If you are a current member please explain what you think works well and less well with the current model (i.e. the status quo option).*

As a small station only operator, whilst we do not have any objection in principle to membership of the scheme, we are very concerned about the costs to us of our membership. Currently, our latest fee was £500 per year plus a case fee and whilst this may seem to be a generous reduction against the fees paid by many TOC's, it is a significant amount for operators such as ourselves, with low annual footfalls (currently below 120k), no responsibility or outlets for ticket retailing, have no commercial "contract" with our rail customers and historically a very low level of complaints about our station operation.

Operators such as ourselves are, of course, "outliers," being on a different level to the major TOC and infrastructure companies. We would welcome more opportunity in the development of a fee structure that would reflect upon the size and scope of our operation and our low risk of exposure to the ombudsman's services.

*Q4. Do you agree with our proposals for the Rail Ombudsman operating model? When considering this question, please set out any ways in which you consider the OOM could further improve the accessibility of Rail Ombudsman services provided to passengers. If you have specific feedback on one area of ORR's proposals, please clearly indicate which proposal you are commenting on.*

We do not have any practical experience of dealing with the Rail Ombudsman, but given that constraint, it would appear to our limited knowledge that your proposals cover the principles of operating an Ombudsman scheme.

#### **Chapter 4**

*Q5. Do you have any comments on our proposal to amend the Complaints Handling licence condition?*

No

*Q6. Do you have any comments on the proposed drafting amendments to the Complaints Handling licence condition?*

No.

*Q7. What do you consider are the advantages and disadvantage of having two rail ADR schemes running simultaneously for a short transitional period? What are the potential impacts on your organisation of running two rail ADR schemes simultaneously?*

As we have no experience currently of using the Ombudsman service, we do not feel qualified to comment on this issue.

Glasgow Prestwick Airport Ltd  
05 August 2022

## LNER response Consultation on a draft Rail Ombudsman operating model August 2022

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### Question 1

Please provide any additional information not provided in the draft equality impact assessment (Annex C) which you consider we should take into account, whether in relation to impacts on those with the protected characteristic of disability or any other protected characteristic.

NA

### Question 2

Do you agree with our proposed governance structure? Please give reasons for your answer.

Yes, we agree with the proposed governance structure. It seems not to be dissimilar from the current structure, which we believe works well.

### Question 3

Please set out your opinion on the three funding model options, explaining why you consider that one option may be better than another:

- a. Status quo
- b. Less cost reflective
- c. More cost reflective

If you are a current member of the Rail Ombudsman scheme, please explain what you think works well and less well with the current model (i.e. the status quo option).

Our preferred option is A. status quo. It seems the fairest model, in that all operators equally pay for the Ombudsman on a case by case basis. If less cost reflective may encourage operators attempting to settle without going to the Ombudsman, as it is cheaper to do so – therefore lowering industry standards.

## Question 4

Do you agree with our proposals for the Rail Ombudsman operating model?

When considering this question, please set out any ways in which you consider the OOM could further improve the accessibility of Rail Ombudsman services provided to passengers. If you have specific feedback on one area of ORR's proposals, please clearly indicate which proposal you are commenting on.

Please refer to the RDG response to the Complaints code of practice: consultation and second consultation.

## Question 5

Do you have any comments on our proposal to amend the Complaints Handling licence condition?

We agree with the proposals, and believe the current model works well.

## Question 6

Do you have any comments on the proposed drafting amendments to the Complaints Handling licence condition?

Please refer to the RDG response to the Complaints code of practice: consultation and second consultation.

## Question 7

What do you consider are the advantages and disadvantage of having two rail ADR schemes running simultaneously for a short transitional period? What are the potential impacts on your organisation of running two rail ADR schemes simultaneously?

The advantage of having two rail ADR schemes is that it may allow a smoother transition from the new to the old scheme.

However, the disadvantages far outweigh this advantage. It risks customer confusion and duplication of complaints. Customers might believe they should make complaints to both either by error, or in hope of improving their chances of a positive result in their favour. We suggest that the old ADR should be closed before a new ADR opens to avoid potential disadvantages.

## **London TravelWatch response to Rail Ombudsman Operating model consultation**

London TravelWatch is London's official transport watchdog, representing the interests of people who travel in and around the capital. Officially known as London Transport Users Committee, we were established in July 2000.

We welcome the opportunity to comment on the draft Rail Ombudsman Operating model having supported the introduction of the original ombudsman scheme in 2018.

London TravelWatch and Transport Focus retain a role with complaints and appeals and this consultation does not change how the Ombudsman engages with us. We therefore agree that a MOU or similar would remove the duplication of work although clarity around the expectations of data provision from the Ombudsman may be better if covered in the consultation.

### **Q1 - Please provide any additional information not provided in the draft equality impact assessment which you consider we should take into account whether in relation to impacts on those with the protected characteristic of disability or any other protected characteristic.**

London TravelWatch agrees that the Rail Ombudsman scheme must be accessible to all users and should self-test to monitor this.

We support the suggestions in Annex C although specific consideration regarding the Welsh language (as per the Welsh Language Act 1993) has not been mentioned. London TravelWatch would like clarification if the Rail Ombudsman services are aligned with these provisions.

### **Q2 – Do you agree with our proposed governance structure?**

- **Rail Ombudsman as a single front door for escalated passenger complaints**

London TravelWatch agrees that the existing triage arrangements continue as it is the most simple solution for all concerned in the short term but a commitment must be made to test this process at a later time. In addition, in order to operate an Ombudsman scheme, the decision on whether the appeal is in scope must start with the Ombudsman itself.

- **Accreditations**

London TravelWatch agrees that the new Rail Ombudsman must obtain ADR approval within three months of award and become an Ombudsman member within six months of award.

It is unclear what the steps would be if one or both awards were not achieved and how that would affect the process.

- **Contract length scheme set up timeframe**

London TravelWatch understands that a longer contact could provide learning and efficiency opportunities. However, it would be difficult to demonstrate value for money if a contract has the potential length of 10 years without being market tested. London TravelWatch agrees with the introduction of the no-fault termination clause which will provide flexibility to all concerned.

- **Ombudsman scheme membership**

London TravelWatch agrees that all passengers, irrespective of which company they use to access rail services, should have access to rail ADR.

Currently National Rail Enquiries is the only voluntary member of the Rail Ombudsman scheme. We support all rail ticket retailers joining the Rail Ombudsman scheme as voluntary members. Having all providers part of the same scheme offers the most consistent and easily understood system for passengers.

- **Rail Ombudsman scheme service jurisdiction**

London TravelWatch agrees that making jurisdictional scheme changes at this time may cause significant challenges. To ensure that the issue is not lost, a firm future timeframe should be in place to review scheme changes.

Additional clarity regarding signposting for other aspects of the passenger's journey is important so it is clear who does what and at what stage to promote understanding and confidence from all interested parties.

- **Decision making**

London TravelWatch understands the need for the Rail Ombudsman to make decisions based on policies that govern the rail industry. However, we strongly support the ability of the Rail Ombudsman in occasionally departing from these policies to recognise and support an individual's circumstances. The Ombudsman cannot simply be seen as a body that rubber-stamps industry terms and conditions –

it will always need the ability to take into account an individual's personal experience and circumstances. This flexibility is important in order to ensure fairness.

We agree with the proposal that the Ombudsman collects and reports on evidence that suggests failings in industry-wide policies that are to the detriment of consumers. However, this is also an area where Transport Focus and London TravelWatch are active, which creates the risk of duplication. There will be a need for the Ombudsman and Transport Focus/London TravelWatch to work together, sharing data and identifying issues. This is an area that we feel should be an important part of the MOU discussed earlier.

- **The Rail Ombudsman scheme rules**

London TravelWatch agrees with the importance of transparency – scheme rules should be written in language that is accessible to both industry and rail users, and easy to find.

We agree that ORR's approval should be required for any changes to the scheme rules and that a change control process should be followed. It is not clear whether this change control process will be internal to ORR only. We think there are circumstances when other parties (including Transport Focus and London TravelWatch) should have the ability to comment. We think this provision could usefully be built into the process.

- **Maximum award limits**

London TravelWatch broadly supports this proposal although believes that further financial consideration must be given to accessibility complaints such as a missed booked assistance. Ticket refunds must of course be excluded from the £2,500 threshold.

- **Rail Ombudsman case handling timescales**

The consideration of the 40 working day timeframe to close in-scope cases appears to be taking into account the pressures of the train operators and is certainly more beneficial to the industry rather than the passenger. London TravelWatch would like to see a reduction in the referral time as part of this consultation.

There is room for improvement. London TravelWatch was disappointed to note that following the Complaints handling code of practice consultation there is no current appetite for reducing the 40 working day referral time to the Rail Ombudsman. A reduction in this referral time would speed up the process for passengers and partly resolve some of the issues outlined in this document. The 40 working day referral time is an invisible barrier and could be almost seen as deterrent to a passenger who wishes to take their complaint forward. A passenger must be very motivated to continue with the complaint and the 40 working day referral time can be viewed as disproportionate if the complaint itself is of low financial value.

- **Independent Rail Ombudsman Board**

London TravelWatch broadly supports the proposal for the Independent Rail Ombudsman Board although would look for reassurances that there will be experienced passenger representation in its make up.

- **Independent Assessor**

London TravelWatch understands that most Ombudsman schemes have an Independent Assessor in place. However, it is difficult for service users to understand the independence if the assessor is appointed by the Rail Ombudsman Board. Clarity must be provided to services users to give confidence that there is no bias in this area.

- **Data and intelligence sharing with statutory passenger advocacy bodies - Transport Focus and London TravelWatch**

London TravelWatch welcomes the proposal for the Rail Ombudsman to provide data and that it be a contractual requirement to formally engage with the statutory bodies. We would prefer the requirement to be more prescriptive to give clarity on the data the Rail Ombudsman is to provide. This should include

- Near real time provision of high-level data similar to the current provision and as listed above.
- Provision of actual and full complaint information on a monthly basis.
- Sharing with the statutory bodies any recommendations the Rail Ombudsman make to the industry. This information may provide London TravelWatch and Transport Focus with evidence to support our work for passenger championship.

- **Advisory Panels**

London TravelWatch welcomes the introduction of the advisory panels and the opportunity to be part of them and suggests that there is a clear process to provide and escalate insights to the Scheme Council.

- **Performance management**

The word 'regular' reporting appears throughout this section and is ambiguous and requires clarification. The reporting must also be timely and no more than three months in arrears.

The ORR could commission a report after the first year to capture any issues arising and then every subsequent two years.

- **Stakeholder satisfaction and feedback**

London TravelWatch welcomes the Stakeholder satisfaction and feedback proposal.

- **Transparency**

London TravelWatch welcomes the transparency proposal and has no further comment to make.

**Q3. Please set out your opinion on the three funding model options, explaining why you consider that one option may be better than another:**

London TravelWatch would not comment on this question.

**Q4. Do you agree with our proposals for the ombudsman operating model?**

**When considering this question, please set out any ways in which you consider the OOM could further improve the accessibility of Rail Ombudsman services provided to passengers. If you have specific feedback on one area of ORR's proposals, please clearly indicate which proposal you are commenting on.**

- **Case management process flows**

London TravelWatch agrees with the four broad categories set out in 3.81. We are keen that any processes clearly set out how cases will be referred to other bodies, including timescales, formats, access to case files etc.

We agree with ORR as to the desirability of the Ombudsman monitoring users' satisfaction with case management processes, including for out-of-scope cases, and that it tests these with passengers, and then acts on findings to continuously improve its service.

- **Requirements on staff qualifications and rail industry knowledge**

We agree with the need for Ombudsman staff to understand the rail industry and for there to be mechanisms to keep the Ombudsman up to date with developments.

In line with our answer earlier, however, we would not want this 'training' to dilute the ability for the Ombudsman to occasionally depart from industry policies. As mentioned, the Ombudsman cannot simply be seen as a body that rubber-stamps industry terms and conditions – it will always need the ability to take into account an individual's personal experience and circumstances.

In addition, we would see the need for annual refresher training on issues such as accessibility/equalities requirements, and for training to recognise vulnerable complainants.

- **Case Management System (CMS)**

We agree that the CMS system should allow the Ombudsman to deliver tailored information that meets the needs of individual stakeholders, including Transport Focus and London TravelWatch. We are pleased to see this including management information relating to casework but also other information such as case outcomes, complaint types, and time to resolve cases.

We welcome that the CMS must facilitate the handling of cases split between more than one company, or between the Ombudsman and other bodies.

We agree that this will require clear data sharing agreements with stakeholders.

**Q5. Do you have any comments on our proposal to amend the Complaints Handling condition?**

**Q6. Do you have any comments on the proposed drafting amendments to the Complaints Handling condition?**

London TravelWatch and Transport Focus have submitted a joint response to the consultation on the revised Complaints Code of Practice. This will provide a more detailed assessment for ORR but, in general terms, we agree with ORR's broad arguments surrounding the Code of Practice and the transfer of license obligations.

**Q7. What do you consider are the advantages and disadvantages of having two rail ADR-schemes running simultaneously for a short transitional period? What are the potential impacts on your organisations of running two rail ADR-schemes simultaneously?**

London TravelWatch appreciates the cost implication of running two rail ADR scheme simultaneously for a short transitional period but recommends this action in order to minimise impact on the passenger for whom this must be a seamless service regardless of the provider.

It will increase the work of the London TravelWatch and Transport Focus casework team during the transitional period as they will be considering out of scope appeals potentially sent by two separate ADR scheme providers. The London TravelWatch and Transport Focus team will also need to have both ADR scheme providers' CMS in order to make assessments of the appeals considered to be in our scope. We will also need this CMS access to download data from both providers for data interrogation and reporting purposes.

## Network Rail's response to ORR's Consultation on the Ombudsman Operating Model

Network Rail welcomes the opportunity to respond to the ORR consultation on the draft Rail Ombudsman operating model published 28<sup>th</sup> June 2022.

Our response to this consultation is based on the current industry structure and mechanisms.

We welcome the proposals for ombudsman insights being used to drive continuous improvement in the industry as well as providing customers an avenue for complaint resolution. We are supportive of customer advocacy as aligns with our ethos of Putting Passengers First.

The response follows the consultation questions set out in the ORR's consultation document.

### **General observations:**

The scope of ombudsman referrals is in relation to our managed stations activities only, as per the previous ombudsman arrangements, we would like this confirmed in the terms of the scheme and in the Complaints Code of Practice.

**Q1. Please provide any additional information not provided in the draft equality impact assessment (Annex C) which you consider we should take into account, whether in relation to impacts on those with the protected characteristic of disability or any other protected characteristic.**

There are no additions to this Annex we would suggest for inclusion.

**Q2. Do you agree with our proposed governance structure? Please give reasons for your answer.**

While Network Rail's referred case numbers to the ombudsman remains low, we welcome the additional focus of the ombudsman to provide continuous improvement insights in addition to complaint resolution.

Overall Network Rail is supportive of the proposed governance structure and the proposal for the way the ombudsman will be held to account, the reporting and insights that will be provided to members and the concepts of transparency and good governance which run through the document.

**The following are specific points of feedback in relation to numbered paragraphs in the consultation:**

Section 3.10 - 'Memorandum of understanding' - We would like some additional information when available around the data sharing memorandum of understanding, the obligations we would have as an organisation and implications on the requirement of any additional reporting requirements on ombudsman scheme members.

Section 3.15 - "Acting as a single front door" - A single front door option for 'all escalated complaints' is not appropriate for Network Rail. The scope of our membership relates only to complaints regarding our managed stations. The majority of complaints we receive, are not related to stations so the ombudsman would not always be the correct avenue for ADR. A clarification of the scope would be helpful in detailing which of Network Rail's complaints would be eligible for this approach.

Section 3.38 - 'Ombudsman decision-making' - We want to draw out here that we, like many other organisations, have in place policies, standards and contracts which are designed to consider many factors and provide guidance on ways of working. These are well considered documents subject to our own internal governance, contracts are there to protect both the organisation and the individual by laying out expectations on both parties. They provide certainty on how matters will be delivered/dealt with. Therefore, if there are industry restrictions/policies in place, the ombudsman should be mindful of these and seek to use these as the basis for their consideration. In a case where contract terms and policies have been overruled, it is important that the ombudsman evidences their considerations and justifies why alternative action has been used to provide the outcome. This is to enable the industry to continue to operate with certainty.

Section 3.44 – 'Award limit' - The current limit of £2,500 works for Network Rail and we support the continuation of this.

Section 3.50 – 'Ombudsman Governance' – We would like the ORR to provide further information and guidance on the required skills and experience of board members and/ or any conditions they would expect board members to meet.

Section 3.52 – 'Independent Assessor' - We support the use of an independent assessor and the proposals around their use.

Section 3.58 – 'Advisory panels' - It is good to see evidence of consideration of other ombudsman schemes and the learning of lessons from them when establishing the advisory panels approach.

Sections 3.69 -3.73 - "Stakeholder satisfaction and feedback" - The stakeholder satisfaction and transparency sections outlined are welcomed and supported.

**Q3. Please set out your opinion on the three funding model options, explaining why you consider that one option may be better than another: a. Status quo b. Less cost reflective c. More cost reflective. If you are a current member of the Rail Ombudsman scheme, please explain what you think works well and less well with the current model (i.e., the status quo option).**

We would need to see some additional information on the alternative options to the current funding model, such as indicative cost structures and numbers before we can make a fully informed decision. For example, if Network Rail were to choose option 2 – less cost reflective, how would the ORR compare Network Rail to Train Operating Companies using figures such as journey volumes? For clarity, Network Rail is not supportive of this option at this stage.

The current model sets out that we pay a contribution to the overall running of the service and then must pay separately for each case that is escalated to the ombudsman. The case costs are off charged to the region where the issue relates to. The scope of ombudsman referrals is in relation to our managed stations only. The number of cases referred to the ombudsman is low. Only 31 in-scope cases (0.6 % of total cases) have been escalated to the ombudsman. It would be useful to understand comparable industry data on case numbers and outcomes.

At this time, we consider that maintaining the **status quo** funding model would be the preferred option until we have additional information, and justification, on the costs involved in the alternative options.

**Q4. Do you agree with our proposals for the Rail Ombudsman operating model? When considering this question, please set out any ways in which you consider the OOM could further improve the accessibility of Rail Ombudsman services provided to passengers. If you have specific feedback on one area of ORR's proposals, please clearly indicate which proposal you are commenting on.**

In general Network Rail supports the operating model outlined in the document. We reiterate the point that this should only apply to eligible complaints in relation to our managed stations.

**Q5. Do you have any comments on our proposal to amend the Complaints Handling licence condition?**

The proposed licence condition would form part of the Network Rail Station Licence, which relates to our Network Rail Managed Stations.

The general principles of the wording remain aligned to what is currently stated in the Station Licence. Whilst the formal acceptance of proposed licence changes is a matter reserved for our Board, we support a simplified licence condition with the following observations considered.

Condition 6: Complaints handling – Section 5 - Additional wording to the licence requires licence holders to continue paying to the ADR scheme sponsored by the ORR. Section 5 - which states: *c) the [SNRP / Licence] holder shall make such payments as required for the Relevant ADR Scheme on the terms notified to the [SNRP / Licence] holder in writing by ORR.*

In our response to the Complaints Code of Practice consultation (see Annex A) we explained that the current wording presumes unconditional payment into the scheme and compels the licence holder to pay the ADR based on the terms outlined by the ORR but makes no reference to the acceptance of these terms being a requirement or provide a clause for agreement if these terms change.

We believe the additional wording outlined in our response to question 6 below are important to give certainty to way the ADR operates for each licence-holder.

**Q6. Do you have any comments on the proposed drafting amendments to the Complaints Handling licence condition?**

As stated in our response to question 5 we request consideration of the following wording: *c) the [SNRP / Licence] holder shall make such payments as required for the Relevant ADR Scheme on the terms notified to the [SNRP / Licence] holder in writing by ORR on agreement of the licence holder to the terms. The ORR will provide in writing notice of any proposed changes and will consult and agree with these with licence holder.*

**Q7. What do you consider are the advantages and disadvantage of having two rail ADR schemes running simultaneously for a short transitional period? What are the potential impacts on your organisation of running two rail ADR schemes simultaneously?**

General observations:

Clarity on the length of the ‘short transitional period’ and clarity around the costs of running the two schemes in parallel would help us make a more informed decision. Whilst we generally understand and support the need for simultaneous operation, the overlap period should be no longer than absolutely necessary.

Additionally, it should be made clear in any communications that during the transition period, a complaint can only be raised through one ombudsman. Once deemed dealt with, a customer cannot approach the alternative ombudsman to have the complaint heard again, while this is not a significant concern, we believe it should be a consideration.

There is a potential concern relating to GDPR, if or when data might be transferred to the new ombudsman when the transition period is completed. In addition, there are data retention considerations in relation to the existing ombudsman when their operations cease. At this point it

is neither an advantage nor disadvantage but an important consideration to be addressed to ensure that all customer data is protected in the transition.

**Advantages:**

Having two rail schemes running simultaneously would be easier from a data point of view because existing claimants can have their case dealt with by the existing ombudsman and that should not jeopardise any data protection issues. As stated above, the data protection issue arises when the transition period ends.

**Disadvantages:**

The scheme was launched November 2018 but we have only received 31 cases in nearly 4 years so this is a very small amount for Network Rail. Running of two simultaneous schemes with such low usage rates may not be the most cost-efficient method for Network Rail.

Additionally, there would be a degree of work required around our signposting communications to our customers to avoid confusion.

We would need more information on how the customer would get equivalent outcomes while the schemes are running simultaneously. From a passenger's perspective, there may be concern that one scheme is more favourable than the other and may want reassurance, via industry communications that this should not be a concern. We think that such a communication should stem from an independent source rather than a scheme holder, like Network Rail. ORR would be best placed to make such a communication on behalf of the licence-holders in this case.

**Nexus response to consultation on draft Rail Ombudsman operating model**  
**August 2022**

Nexus welcomes the opportunity to respond to the consultation on the draft Rail Ombudsman operating model.

Since becoming a member of the Rail Ombudsman, Nexus has only had one complaint referred to the Rail Ombudsman. As a result, Nexus has very limited experience on which to evaluate the effectiveness of the current model and offer comments on the proposed operating model.

Nexus' main comment is on the funding model options. Nexus supports either the status quo or a more cost reflective model and strongly opposes a less cost reflective model. As outlined above, only one complaint has been referred to the Rail Ombudsman since Nexus joined the scheme; this could be due to the nature of the Tyne & Wear Metro service being a high frequency, 'turn up and go' rapid transit system with relatively low fares compared with other Train Operating Companies. It is noted that Table 5.12 in the ORR's technical report outlines that London Overground and TfL Rail had no ombudsman complaints in 2020/21 and Merseyrail had two ombudsman complaints in 2020/21; all of these operations bear some similarities to the Tyne & Wear Metro service. On a separate, technical, note Nexus is missing from Table 5.12.

Nexus acknowledges that a subscription fee recognises the overall value of the scheme, but given the number of complaints referred Nexus cannot support an increase in fixed costs of participation over and above its existing contribution.

Should the ORR decide to move to an option using items such as turnover or journey volumes, notwithstanding the comment above Nexus would highlight that the nature of its operations need to be taken into account, for example:

- Turnover – As a Passenger Transport Executive, Nexus' remit extends beyond the Tyne & Wear Metro and hence turnover includes items unrelated to the Tyne & Wear Metro. Furthermore, costs relating to the Tyne & Wear Metro include costs that would not typically be found in other Train Operating Companies such as infrastructure maintenance and renewal for the Nexus-owned part of the network and elements of station maintenance that would typically fall to Network Rail on the national rail network.
- Journey volumes – Pre-COVID, there were approximately 36m journey per year on the Tyne & Wear Metro – comparable to levels on Avanti West Coast. However, the journey length and average ticket cost is completely different to Avanti West Coast.

The above factors mean that negotiation of an appropriate level of contribution may be more appropriate, as a purely formulaic method would be unlikely to result in a contribution that reflects the nature of the Tyne & Wear Metro's operation.

ORR consultation: Rail Ombudsman sponsorship  
Office of Rail and Road,  
25 Cabot Square,  
London, E14 4QZ

5 August 2022

By email to: [railombudsmanconsultation@orr.gov.uk](mailto:railombudsmanconsultation@orr.gov.uk)

Dear Sir / Madam,

**Consultation on a draft Rail Ombudsman operating model**

We are grateful for the opportunity to respond to the ORR's draft Rail Ombudsman operating model. We have restricted our comments to the elements related to our criteria for ombudsman schemes.

**Summary**

1. The Ombudsman Association welcomes the ORR's work to implement a new Rail Ombudsman operating model, including changing the existing governance structure.
2. It is essential that the ombudsman is independent from both the industry it covers and advocacy bodies representing passengers.
3. An effective ombudsman engages closely with key stakeholders both in the industry it covers and those organisations representing users' interests. This should be done as part of the ombudsman's engagement activities, separate from the governance of the ombudsman scheme.

**Background**

4. The Ombudsman Association (OA) 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 OA 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 organisations 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.

7. The OA's membership criteria are recognised as representing best practice. This is reflected in the Cabinet Office's *Guidance for government departments on setting up Ombudsman schemes*<sup>1</sup>, which addresses the point of when it is appropriate to use the title 'ombudsman', and in the criteria used by Companies House on when a company can use the protected term 'ombudsman'<sup>2</sup>.

## **Response to consultation questions**

### **Chapter 3: Q2. Do you agree with our proposed governance structure? Please give reasons for your answer.**

#### *Key features of the Rail Ombudsman*

8. We welcome the ORR's explicit recognition that an ombudsman scheme is not limited just to resolving individual disputes but also provides additional value by sharing learning, identifying trends and systemic issues, to help drive improvement in service delivery and complaint handling practices.

#### *Single front door*

9. One of the drivers in establishing a rail ombudsman was the need for a single organisation to have a holistic overview of the issues across the sector. We welcome the ORR's position that the Rail Ombudsman should remain the *single front door* for all escalated complaints, and that consideration should only be given to reviewing that if evidence shows that the approach is having a serious adverse impact on passengers.

#### *Accreditation*

10. We welcome the ORR's recognition that the OA's criteria represent best practice for ombudsman schemes.

#### *Contract length*

11. As noted in the technical report<sup>3</sup>, the OA's independence criteria stipulates that the term of office of an ombudsman should be a minimum of five years, so we welcome the ORR's proposal regarding contract length.
12. A key element of the independence criteria is that the appointment of an ombudsman is "*not to be subject to premature termination other than for incapacity, misconduct or other good cause*", and that the grounds for dismissal should be stated.<sup>4</sup> Therefore, the inclusion of a 'no fault termination' clause would mean that the Rail Ombudsman did not meet the OA's criteria for membership.

#### *Jurisdiction*

13. We understand the attraction of not expanding the existing jurisdiction of the rail ombudsman, considering the potential complexity and delay that might entail at this stage. However, we also note the confusion and dissatisfaction caused when one element of a passenger's journey can be considered by the Rail Ombudsman, but another aspect of the same journey cannot e.g. car parking or third-party ticket platforms. Whilst allowing for organisations to *voluntarily* join the ombudsman scheme provides an opportunity to close some of those gaps, it is clear that some will remain. Considering the wider commitment from the UK Government to strengthen consumer rights and expand access to dispute resolution, particularly the work being undertaken by the Ministry of Justice<sup>5</sup>, we would urge the ORR to set a timescale for when they will review (and potentially implement) the expansion of the ombudsman's compulsory jurisdiction to cover all elements of a passenger journey.

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<sup>1</sup> [www.gov.uk/government/publications/new-ombudsman-schemes-guidance](http://www.gov.uk/government/publications/new-ombudsman-schemes-guidance)

<sup>2</sup> [www.gov.uk/government/publications/incorporation-and-names/annex-a-sensitive-words-and-expressions-or-words-that-could-imply-a-connection-with-government](http://www.gov.uk/government/publications/incorporation-and-names/annex-a-sensitive-words-and-expressions-or-words-that-could-imply-a-connection-with-government)

<sup>3</sup> [Rail Ombudsman operating model technical report – Annex B \(orr.gov.uk\)](http://Rail Ombudsman operating model technical report – Annex B (orr.gov.uk))

<sup>4</sup> [OMBUDSMAN ASSOCIATION TERMS & RULES](http://OMBUDSMAN ASSOCIATION TERMS & RULES)

<sup>5</sup> [Dispute Resolution in England and Wales: Call for Evidence - GOV.UK \(www.gov.uk\)](http://Dispute Resolution in England and Wales: Call for Evidence - GOV.UK (www.gov.uk))

#### *Governance / Advisory Panels*

14. We welcome the ORR taking on the sponsorship role for the Rail Ombudsman and the move to a traditional ombudsman governance structure in place of the current Scheme Council.
15. It is recognised best practice for an ombudsman scheme to engage closely with stakeholders, both those within their jurisdiction and those representing the interests of service users, to share feedback and gather insight as relevant. Because an ombudsman scheme needs to be independent of both the industry and passenger advocacy bodies it is important for it to be clear, both in terms of perception and reality, that those interactions are part of stakeholder engagement activities, not part of the governance / oversight of the ombudsman scheme itself. This can of course be clarified further in the panels' formal terms of reference (which should be published).
16. As paragraph 3.56 makes clear, *"The purpose of an Advisory Panel is to provide an ombudsman with ongoing access to essential expertise to help it continually deepen and widen its knowledge and understanding of the sector it serves."*
17. However, the suggestion in paragraphs 3.61 and 3.62 that the Advisory Panels might engage 'independent expert advice' and also make 'advisory statements' to the Rail Ombudsman Board, alongside the references elsewhere that describes the Advisory Panels as *"part of the performance monitoring regime"* risks creating the impression, both amongst the public and amongst the members of the Advisory Panels themselves, that the panels have some formal role in the governance and oversight of the Rail Ombudsman rather than being a forum for stakeholder engagement. To ensure that the ombudsman meets the OA's criteria, and also that there is a positive relationship with both groups of stakeholders, that potential misconception needs to be avoided by amending the language describing the Advisory Panels' roles.

#### **Chapter 4: Q7. What do you consider are the advantages and disadvantage of having two rail ADR schemes running simultaneously for a short transitional period?**

18. It is important that there is an effective handover between the RDG-procured scheme and the ORR-procured scheme to ensure that cases do not 'fall between the gap', including having clear agreement on what happens to 'legacy' cases that might not be completed before the transition date and when the RDG-procured scheme will stop investigating newly received complaints and 'hand them over' to the ORR-procured scheme.
19. All of that activity should take place as part of back-office functions as the service is transitioned from one provider to the next. There should also be clarity that someone whose complaint has been dealt with by the current RDG-procured scheme cannot bring the same complaint to the 'new' ORR-procured scheme. Whilst there may be two schemes operating back-office functions simultaneously during part of the handover, there should only be one public facing rail ombudsman scheme operational at any one time.

We are very happy to provide any further information or meet to discuss if you would find that helpful.

Emailed to: [railombudsmanconsultation@orr.gov.uk](mailto:railombudsmanconsultation@orr.gov.uk)

5 August 2022

Dear Sir/Madam,

### **The Office of Rail and Road consultation on a draft Rail Ombudsman operating model.**

Thank you for the opportunity to respond to the Office of Rail and Road consultation on a draft Rail Ombudsman operating model. In our response we have provided:

1. Background information about Ombudsman Services and the Trust Alliance Group;
2. General comments on areas that we think would help to enhance a new approach for an ombudsman scheme operating effectively in the rail sector; and
3. Answers to specific questions where we think we can contribute a helpful perspective.

#### 1. Background to Ombudsman Services:

Ombudsman Services is a not-for-profit private limited company established in 2002 which runs a range of discrete national Alternative Dispute Resolution (ADR) schemes across different sectors, including the sole ADR scheme in the energy sector, the Ofgem-approved Energy Ombudsman. We are also one of two ADR schemes in the Communications sector and we run an appeals service for private parking.

We operate at a critical juncture between suppliers, consumers and the Government to resolve complaints and mediate disputes. Each scheme is funded by the members and our service is free to consumers. This enables clear communication and the sharing of data and insights that supports suppliers to deliver better innovation and positive outcomes for consumers. This practice enables us to drive up standards in the industry by encouraging collaborative approaches to making improvements, managing expectations and informing policy.

In 2021 we received 152,566 initial contacts for the energy sector and resolved 68,343 cases. For the communications sector, we received 36,863 initial contacts and resolved 16,854 cases. We also received over 59,000 appeals in our private parking appeals service.<sup>1</sup>

Tasked with serving some of the UK's most disruptive consumer sectors, we have a proven track-record of proactively responding to the continuously evolving requirements of sectors, including our people

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<sup>1</sup> Initial contacts includes cases which fall inside and outside of our terms of reference as well as contacts from consumers who have approached our service too soon. Cases resolved refers to cases that are inside our terms of reference and have been resolved and closed within that time frame.



expanding their technical expertise and our systems expanding their technological functionalities to reflect the changing way consumers are interacting with suppliers, their services and products.

As we have grown we have acknowledged the need to evolve and to that end we are moving to a new group structure under a parent company called "Trust Alliance Group". In Annex A is our Group structure and we would be happy to discuss this in more detail.

We are a purpose-driven organisation which exists to **build, maintain and restore trust** and confidence between consumers and businesses.

Supporting the purpose will be a focus on building a deep understanding of consumer behaviour and using this to help suppliers to improve service and build confidence.

Part of the Group strategy will be a focus on investing and enhancing our core capabilities, as follows:

- Human-centric dispute resolution
- Understanding consumer behaviour and building trust across multiple stakeholder groups
- Deep knowledge of consumer and business behaviour
- Leveraging unique data driven insights

We place people at the centre of everything we do.

This means empowering our own people to live and breathe our core values and behaviours in every aspect of their work, through for example, bespoke Colleague Development Programs rolled out by our in-house Training Academy.

In 2022, we received the maximum accreditations from Great Place to Work®, including ranking 15<sup>th</sup> in the Best Workplace for Women™ in Large Organisations, 28<sup>th</sup> for Wellbeing and 38<sup>th</sup> for Best Workplace overall.

For consumers and companies who use our services, it involves delivery of a human-centric redress service which is easy to access, understand and progress through.

This year, we are well underway with our operational transformation which has so far seen our operational colleagues retrained to be able to own and manage cases end-to-end, as a single point of contact.

This dedicated team of Dispute Resolution Executives (DREs) work with a consumer and supplier from registration to resolution. They work through each complaint by Connecting, Concluding and Communicating to ensure consistent and quality outcomes. By connecting with the consumer and suppliers they can understand and listen to both sides. Through the concluding stage, DREs make their decision based on all the information available to them and then communicate this in a way that is easy to understand for both the consumer and supplier.

We believe that technology, data and insight are key enablers in the delivery and efficacy of services designed to build, maintain and restore trust.

Therefore, within our group we have created a software development company called Lumin Tech Limited with a mission to empower businesses to be more consumer-centric via the development of technological solutions for dispute resolution, including Case Management System (CMS) platforms.

We have recently delivered a data modernisation programme designed to unlock the full potential of our data and insights for the betterment of sectors, suppliers and consumers.

Other recent milestones include acquisition of the Internet Commission, a non-profit organisation which promotes ethical business practice to counter online abuse and misinformation,

## 2. General comments:

#### a. Overview

We welcome this consultation looking at how best to provide a Rail Ombudsman that is modern, cost effective, influential and uses data and insights to work with operators and the wider sector to help raise standards and build consumer trust and confidence in the rail sector.

As you will know, Ombudsman Services has engaged with both RedQuadrant and the Lucerna Partners in their work to look at the rail sector and how an effective Rail Ombudsman can best work.

#### b. Maximising the use of data, technology and artificial intelligence (AI)

We believe that making more use of uses data, technology and AI will be an important part of supporting the Rail Ombudsman raising the standards of operators and build consumer trust and confidence in the rail sector.

As we have explained above, we continue to invest in technology and AI and will continue to do so working with our technology organisation – Lumin Tech Limited.

We would be happy to talk through some of our ideas for developing a single portal for all complaints, how an improved Case Management System can operate, and how AI could be used to improve an effective Rail Ombudsman service.

#### c. Helping businesses and organisations build the right culture of customer service

We also share the ambition set out in the consultation document of using data to focus on preventative work. For example, we have used data to deliver insights that support suppliers in changing their approach to customer service. In the dispute resolution area, we promote and operate what we call strategic redress. By working with all parties – including businesses and regulators – we can perform an important role to support the improvement of consumer outcomes at a macro level. Integrating redress with processes upstream (such as the way businesses deal with complaints) helps to create the right cultures and practices in businesses and ultimately helps to foster trust and confidence in the broader market.

The real benefit of strategic redress, therefore, is that the positive impact on consumers stretches far beyond those whose complaints remain unresolved and decide to bring them to dispute resolution. Clearly, although, dispute resolution at an individual level remains crucial; providing a straightforward path to achieve justice for consumers when they have a complaint is a key part in building consumer trust and confidence.

The Trust Alliance Group strives to positively impact consumers across several fronts:

- providing a best-in-class dispute resolution service for the benefit of individual consumers who have an unresolved complaint with a company;
- helping suppliers improve service, change culture and build confidence for the benefit of all consumers who interact with their services;
- helping industries resolve systemic industry-wide issues for the benefit of all consumers who interact with the sector.

3. Below we have made some further comments on specific consultation questions

### Chapter 3

**Q1. Please provide any additional information not provided in the draft equality impact assessment (Annex C) which you consider we should take into account, whether in relation to impacts on those with the protected characteristic of disability or any other protected characteristic.**

We think the draft equality impact assessment within the consultation sets out key thinking and we agree with the conclusions drawn. We also agree that the new Rail Ombudsman will have a key role in improving and future proofing the Rail Ombudsman service to best serve all consumers and in particular those with protected characteristic.

However, the Equality Act 2010 also identifies other protected characteristics not specifically mentioned in Annex C, we think these should also be looked at in terms of impact. Similarly, any vulnerability training considered should look at and cover as many areas of potential vulnerability as possible. Finally, the draft equality impact assessment could provide more clarity around what the expectations are of an ADR provider in advancing equality in terms of language formats. We would also support any Rail Ombudsman engaging and consulting with as wide a range of stakeholders as possible on equality and diversity.

With challenges such as the current cost of living crisis and the pandemic affecting people in different ways, many consumers may have found themselves in a vulnerable situation – whether financially or otherwise. We believe a Rail Ombudsman scheme needs to have solid foundations and a commitment to provide additional support to consumers that need it. At Ombudsman Services we have recruited a specialist Legitimacy team to focus on equality, diversity and provision of additional support services, with a number of initiatives already implemented and more planned.

We are actively involved in the challenge to become net zero and how this could impact our existing sectors. The Rail Ombudsman of the future will need to understand the potential impacts that net zero can have and have contingency plans in place.

## **Q2. Do you agree with our proposed governance structure? Please give reasons for your answer.**

Yes. The proposed governance structure outlined in Section C of Chapter 3 seems sensible and is a similar structure to how Ombudsman Services operates in the energy and communications sector.

Below we have listed our view on each of the proposals as they map across to our experience:

- **Independent Rail Ombudsman Board** - We operate a Board that includes executives from Ombudsman Services (including the Chief Ombudsman) coupled with a majority of independent non-executives including an independent Chair.

Our non-executive Board members are from different backgrounds in terms of experience and subject matter. We actively recruit board members with a view to ensuring there are different skill sets and expertise available with a view to continuously improving our services. So, we share the proposed thinking set out in the consultation document.

Similarly, we think following the UK Corporate Governance Code is a good thing and we have in place an Independent Assessor [Independent Assessor's report. | Ombudsman Services \(ombudsman-services.org\)](https://www.ombudsman-services.org)

- **Working with stakeholders and sharing data and insight** - We also support an ombudsman scheme working with key stakeholders in a sector. As the consultation highlights, it is key that any Rail Ombudsman works closely with the statutory passenger transport organisations – Transport Focus and London TravelWatch – as well as other consumer advocacy bodies such as Citizens Advice and Advice Direct Scotland.

As an organisation, Ombudsman Services has a strong track-record in building trust across multiple stakeholder groups, including acting as impartial advocates between consumers, suppliers and regulators.

We agree that the sharing of data and insights between organisations is an essential part of an ombudsman scheme and we do this in all our sectors. In energy this is via a formal Tripartite Working arrangement with Ofgem, Citizens Advice (including the Extra Help Unit) and ourselves

as the Energy Ombudsman. In Communications this involves sharing data and insight with Ofcom and the Communications Consumer Panel.

The proposal to have two advisory panels – a passenger and a member panel also makes sense to us. We believe that these should share data and insight and help inform policy development, raise standards and act in a proactive way to identify issues and mitigate those issues within the sector. We implement quarterly sector liaison panel meetings with our suppliers as a two way communication and we link in closely with consumer organisations and representatives.

We are acutely aware of the privileged position we occupy within our schemes as a sector-level aggregator of pinch points in market, policy and regulatory design. Collectively, our complaints become a barometer for how well (or not) markets are operating at any given time.

As noted above, as a Group we are continuously investing in our ability to leverage our unique data-driven insights for the betterment of market functionality, and thus all consumers who engage in the markets we service. We recognise that engagement with appropriate stakeholders to encourage utilisation of data-driven insight to positively impact how markets operate is fundamental to addressing systemic-issues. The role of an ombudsman should be as a facilitator not just an identifier of improvement.

We anticipate our current investments in areas such as data science and techniques such as sentiment analysis can help us determine the impact of unresolved complaints upon consumer interactions with service providers, services and products. In turn, this insight can be leveraged to help motivate companies to better mitigate and/or handle complaints at the sectoral level for the betterment of all consumers.

- **Performance management** – We agree with the proposals around how and what a Rail Ombudsman scheme should be reporting in terms of its performance. Again, we operate in similar ways in our sectors, publishing our performance in terms of key performance indicators regularly meeting with stakeholders such as regulators, companies and consumer organisations.
- **Stakeholder satisfaction and feedback** – We see this as an important part of ensuring a quality service and looking to constantly improve a service. We currently undertake stakeholder surveys in our sectors - mainly consumer and supplier satisfaction surveys. These are then shared with the relevant teams in order to develop and implement action plans that deliver improvements based on the survey work.
- **Transparency** – We agree that any ombudsman scheme needs to be transparent in how it operates, performs and works with the sector. This should also include publishing data and insights and being proactive in helping to identify issues for the sector and working with stakeholders to mitigate those issues in order to raise standards, protect consumers and build trust within sectors.

**Q3. Please set out your opinion on the three funding model options, explaining why you consider that one option may be better than another:**

- a. **Status quo**
- b. **Less cost reflective**
- c. **More cost reflective**

**If you are a current member of the Rail Ombudsman scheme, please explain what you think works well and less well with the current model (i.e., the status quo option).**

As highlighted in the consultation paper each option should be aimed at ensuring that the scheme's fixed costs or 'front end' operations are covered and then an appropriate case fee should be charged to cover any complaints resolved by the scheme.

To a certain extent we do have experience around each of the options. We think it is important that, whatever approach to recovering costs is taken, certain principles are met, for example:

- the scheme is self-funding and is not subsidised by another scheme.
- a fair, reasonable and transparent approach is taken in terms of fees and how that is broken down;
- the scheme is transparent about its funding model with its members; and
- the scheme should provide value for money. If efficiencies can be found and costs saved these will be reflected in funding model charges.

If a new provider is appointed to run the Rail Ombudsman in the future, then it may be sensible to have a higher subscription fee to help cover the start-up/transition costs for the new scheme and potentially a smaller case fee. However, once the new provider is fully operational a more flexible approach could be taken.

A general rule of thumb in terms of fairness is that larger companies/operators should probably pay a proportionately larger part of any fixed costs via subscription. And whilst it may seem right that a company or operator that has more complaints coming to the ombudsman scheme should pay a larger part of the fixed costs, it could well be that this company or operator is good at signposting complaints to the scheme at the right time – which may result in more complaints. So, it is important to look at unintended consequences of any approach taken.

Looking at the funding formula for the status quo model, on the face of it, this does look slightly complicated. However, it may well be that in practice it works well and companies/operators understand it fully. We think it is important that, whatever the funding model is, it should be easy to understand and shared with all companies/operators, and it should put the consumer at its heart.

The consultation exercise will also help in gauging views from companies/operators on which funding model option they would prefer and for what reasons. This will be important information to take forward with any tendering exercise.

#### **Q4. Do you agree with our proposals for the Rail Ombudsman operating model?**

**When considering this question, please set out any ways in which you consider the OOM could further improve the accessibility of Rail Ombudsman services provided to passengers. If you have specific feedback on one area of ORR's proposals, please clearly indicate which proposal you are commenting on.**

Yes, we think the proposals put forward are sensible and appropriate for how a Rail Ombudsman should operate. The proposals are based on the technical report produced for the Office of Rail and Road by the Lucerna Partners. Ofgem commissioned the Lucerna Partners to review how the Energy Ombudsman was operating. We welcomed that report in September 2015 and worked closely with Ofgem and other stakeholders in implementing all the recommendations. The report was the catalyst to help Ombudsman Services modernise how it operates and to approach the different roles that an ombudsman service should be providing in terms of:

- resolving individual consumer complaints;
- using data to deliver insights to help improve the services provided by suppliers; and
- using data to deliver insights to identify systemic issues in sectors and help inform policy development.

By performing these different roles, the impact an ombudsman scheme can have within a sector is magnified and can be a real driver to raise standards and help build consumer trust and confidence in sectors.

The proposals put forward by the Lucerna Partners in the Technical Report are very much in keeping with their review of the Energy Ombudsman and so we recognise and have considerable experience of

operating along the lines of the proposed operating model being put forward for a future Rail Ombudsman.

Below we have listed our view on each of the proposals as they map across to our experience:

- **Case Management Flow process** – We agree with the four stages proposed and welcome the fact that early resolution of cases that come to the Rail Ombudsman is one of the stages highlighted. We think it is important to provide that function and to encourage early resolution between the parties where possible. Our Case Management System fully supports this approach with our early resolution – Facilitated Case Resolution.

We also agree that staff training and experience should be an important consideration. We train all our staff and have quality assurance measures in place to ensure they provide quality adjudication services, engage with the parties in a complaint in a professional way, as well as providing quality decisions.

Our Dispute Resolution Executives (DRE) are trained in getting decisions right, first time. Whilst DRE's work on specific schemes to facilitate sector-level expertise and competency in specific regulatory codes, a consistent culture of quality control and rigour runs across all schemes.

In our schemes, we work closely with the operational teams and other stakeholders to understand technical issues, how the sector operates and what the different challenges are. We have run workshops and events to talk through technical issues and we encourage and welcome stakeholders providing insight and training to our staff on important sector issues and technical details. We also think that close links between the Rail Ombudsman and Transport Focus and London TravelWatch are key to fully understand roles and remits. These relationships will also ensure that the front-end portal delivers complaints to the right place to ensure consumers have the best possible complaint journey.

We also advocate the importance of the Rail Ombudsman scheme aligning with developments occurring at the sectoral level, particularly those which have a direct connect into complaints – an example would be the Delay Compensation Code of Practice which came into effect in April of this year. This code will have a direct impact upon the volumes and types of complaints arriving at the Rail Ombudsman.

Similarly, AI-driven solutions rolled out by service operators, such as automatic batch compensation for passengers, could see the Rail Ombudsman's case pipeline alter to one where it has lower volume, higher complexity cases to handle compared to today.

Keeping abreast and planning for such disruptions is an integral part of being a proactive ombudsman. Complaints arriving at an ombudsman are also one of the first gauges on the efficacy of newly rolled out schemes, processes and transformations at the sector level.

- **Service Standards** – The suggested KPIs look in keeping with other ombudsman schemes and we agree with them. We know from independent research that we have commissioned for the last seven years that consumers want easier access to make complaints and faster resolution times ( see [CAM Report 2020 by ombudsman-services](#) ), but we agree that the measures suggested in the consultation seem sensible. In terms of how we operate in the energy and communications sectors we have a KPI that requires us to issue 90% of our decisions in less than 6 weeks (calendar weeks, so 30 working days). From Quarter 3 2021 to Quarter 2 2022 our performance in energy was between 97 and 99% of decisions completed in less than 6 weeks and in communications between 95 and 97% completed in less than 6 weeks.

As well as standard KPIs, we also think it is important that any ombudsman scheme looks to continuously improve what it does and update and invest in technology and how it provides additional support to consumers who are vulnerable. We welcome the opportunity to share our current and planned initiatives around identifying and meeting the specific requirements of

vulnerable consumers, including hosting vulnerability roundtables with stakeholders in the energy and communications sectors.

We are strategically committed to reinvesting in our capabilities to continuously elevate quality of service. Within our Group structure, our legitimacy function is leading a major programme around the provision of additional support to consumers. Extending our reach to ensure inclusivity for all consumers (particularly those historically under-represented within ombudsman schemes) is a fundamental goal of our corporate strategy.

We are constantly looking at how we track, monitor and improve the reach of our service, taking into consideration how different consumer groups can and will access our service. We develop a bi-annual consumer action monitor (CAM) report which looks at consumer complaining habits more broadly across the UK. We also conduct equality, diversity and inclusion surveys to understand who is engaging with our service, and who is not.

We would expect any future rail ombudsman scheme to use data and insights and demonstrate a commitment to understanding consumer complainant demographics with the objective of ensuring that those who need to use the service are able to do so.

- **Case Management System (CMS)** – What is being proposed here is sensible and familiar to us in the services we provide in our sectors. We are encouraged that the consultation highlights that potential bidders to run the Rail Ombudsman will have the opportunity to put forward ideas and solutions on how best to operate a CMS system. We would welcome further discussions around what a CMS could look like and how it could operate to maximise impact and reduce costs.
- **Other required elements** – We think the list of other requirements is sensible and we cover all those areas in the schemes that we operate currently.

## Chapter 4

### **Q5. Do you have any comments on our proposal to amend the Complaints Handling licence condition?**

Please see our answer below for question 6.

### **Q6. Do you have any comments on the proposed drafting amendments to the Complaints Handling licence condition?**

We agree that it is necessary to amend the Complaint Handling Licence condition given the changing role of the Office of Rail and Road. The changes proposed seem appropriate. We agree that it is important that there is a mandatory requirement on operators (SNRP licence holders) to be members of the Rail Ombudsman and to also comply with decisions made by the Rail Ombudsman.

### **Q7. What do you consider are the advantages and disadvantage of having two rail ADR schemes running simultaneously for a short transitional period? What are the potential impacts on your organisation of running two rail ADR schemes simultaneously?**

There needs to be a smooth and professional transition from the current provider of the Rail Ombudsman to any new provider. This makes sense in terms of building up knowledge and systems of the new provider and the continuation to decision of cases the current Rail Ombudsman is working on.

Due to the fact that we operate in a number of different sectors, we do have experience of introducing new ADR schemes or taking over the running of schemes from the original scheme provider. From our experience we think it is key to ensure there is a clear transition date. What will be important is that, for consumers their complaint journey from the rail operator to the current or new Rail Ombudsman is seamless, so they do not need to worry about which ombudsman to use. It will also be important that all

operators and stakeholders know what the transition programme is and what the key dates for transfer are and what they should do with complaints they need to signpost to the Rail Ombudsman.

Clearly, the sector will not want to pay for two ADR services and so the transition needs to be timely. We do wonder about things like the Transfer of Undertaking (TUPE) legislation and how that might factor with a new provider being approved.

Any new provider will have to have the ability to scale up or down during the transition and the first couple of years of running the Rail Ombudsman. We are experienced in taking on new areas of work and schemes as Ombudsman Services and within our Group structure we have a nationwide operational support unit that provides us with great flexibility to gear up or down accordingly.

# Office of Rail and Road Consultation on a draft Rail Ombudsman Operating Model

## Rail Ombudsman response

## Introduction

The establishment of the Rail Ombudsman was a manifesto pledge of both the Conservatives and the Liberal Democrats in 2017 and the importance of an Ombudsman in this sector was, and remains, a priority for Government who restated this objective in the Williams-Shapps Plan for Rail in May 2021. The Rail Ombudsman opened its doors to rail passenger complaints against Rail Service Providers (RSPs) on 26 November 2018. In the past three and a half years, the Rail Ombudsman has provided (alternative) dispute resolution ((A)DR) to the sector which it has also supported with insight, learning and training. We read the consultation with interest and were very pleased to have the opportunity to provide insight both to the Office of Rail and Road's (ORR's) commissioned RedQuadrant Report in 2019, as a result of which certain improvements and enhancements were made to the way in which the Ombudsman is able to provide impact and influence, as well as that provided by Lucerna Partners into which the Rail Ombudsman was able to provide crucial input into the Ombudsman Operating Model and best practice based on the organisation's extensive experience of operating within the ombudsman sector.

Whilst there are several key sections which we will address specifically, more broadly (A)DR, and in particular an ombudsman, represents a strong means by which a consumer can access redress which is fair and proportionate to the issue at hand, but in order to deliver this to the fullest extent possible, its discretion and decision-making powers must be unfettered within its agreed remit.

Ombudsman schemes represent the gold-standard of (A)DR provision, are accessible to all consumers and businesses benefit from the wider remit with access to additional services enabling them to enhance their performance and comply with their obligations in the law, with the assistance of training and advice. That said we also recognise (and strongly advocate), that a complaint is best dealt with between business and customer, and only when they are unresolvable and have escalated into a dispute, should the Ombudsman become involved. It should also be noted that an Ombudsman can help businesses informally to resolve complaints through advice and training thus preventing a complaint from turning into a dispute and this should be central to any considerations of the operating model. Industry knowledge is crucial both, engendering trust in decision-making from consumers and the sector, however in the Rail Ombudsman has provided expertise and

excellence in dispute resolution over the initial period of its operation, which can also be attributed to a strong ethos of case-handling staff who are legally and vocationally trained to deliver consistent, reasoned and balanced outcomes. The Rail Ombudsman strongly suggests that this should not be overlooked in any proposed changes to the operating model and we will amplify this point further below.

**The Rail Ombudsman welcomes the opportunity to comment on the proposals and we are, as always through our engagement with the ORR and the industry more broadly, happy to amplify any of points made in this consultation response.**

**Q1. Please provide any additional information not provided in the draft equality impact assessment (Annex C) which you consider we should take into account, whether in relation to impacts on those with the protected characteristic of disability or any other protected characteristic.**

The Rail Ombudsman agrees that many of the current processes be retained and has no specific comment on the proposals to enhance these, broadly being in agreement with the suggestions. However, as this is an ongoing area of development, the Rail Ombudsman is committed to embedding the principles of **ISO 22458:2022 Consumer vulnerability — Requirements and guidelines for the design and delivery of inclusive service** and suggests that the guidelines and requirements contained within that standard should be a priority across the sector. It should also be noted that in addition to the requirements under the contract with RDG, the Rail Ombudsman has innovated in the area, listening to the needs of passengers and those who support them, providing accessible channels over and above those specified. We would also welcome engagement with other stakeholders including services users to ensure continuous improvement in this area.

The Rail Ombudsman also suggests that these requirements are considered to be the minimum, with flexibility for continuous and demonstrable improvement, appropriately funded and resourced.

**Q2. Do you agree with our proposed governance structure? Please give reasons for your answer.**

Agreed with no further comments.

**Q3. Please set out your opinion on the three funding model options, explaining why you consider that one option may be better than another:**

**a. Status quo**

**b. Less cost reflective**

**c. More cost reflective**

**If you are a current member of the Rail Ombudsman scheme, please explain what you think works well and less well with the current model (i.e. the status quo option).**

We have no specific response to question 3 save to note that the scheme is required to be adequately funded and resourced in accordance with Ombudsman Association criteria, with contingency to enable development and improvements to be made where stakeholders agree these would be beneficial to the operation of the scheme, the sector it supports and the consumer experience or both.

**Q4. Do you agree with our proposals for the Rail Ombudsman operating model?**

**When considering this question, please set out any ways in which you consider the OOM could further improve the accessibility of Rail Ombudsman services provided to passengers. If you have specific feedback on one area of ORR's proposals, please clearly indicate which proposal you are commenting on.**

The Rail Ombudsman welcomes the OOM proposals, which capture learnings derived through the operation of the scheme to date and the sound practices already adhered to. When responding to this question, the Rail Ombudsman wishes to make it clear that any points not responded to, we support, and our responses, therefore are tailored to provide the ORR with the insight of particular relevance as current provider.

Section A: Overall description and key features of the Rail Ombudsman

**Rail Ombudsman as a Single Front Door:** The rationale behind the original set-up was to create a seamless user experience from a consumer perspective and provide the industry, including the passenger watchdogs with joined up data. Specifically with regards to the triage function, a one stop shop inevitably means a consumer could be directed to an alternative body. This was recognised in the original setup and efficient means of transferring consumers to the principal alternatives (Transport Focus and London TravelWatch) established as a result. The alternative to a single front door or one stop shop may be handing appropriate signposting decisions to the industry, which removes from this process the independent and impartial directing of the complaint, and therefore may not be in the passengers' interest. This was not seen to be working effectively prior to the establishment of the Rail Ombudsman, there being inconsistent and unreliable data as to case volumes and inconsistent signposting. That said, the Rail Ombudsman agrees that ways of working should be constantly under review and this is no exception, being fundamental to

the consumer user-experience, and on the basis that sign-posting has been a common theme of scrutiny throughout the scheme's operation to date.

The Rail Ombudsman's experience is that it is inherently the case that staff at the front end of the process must be well-versed in the various roles and remits within the industry and consumer landscape, such that they may respond to consumer enquiries with clarity and confidence. This naturally equips the organisation to deliver this single front door role.

A significantly larger case volume than that which occurs could support an alternative position, on resourcing grounds should cost savings be sought. However, the Rail Ombudsman suggests that adequately resourcing the scheme should not be at the expense of a wholly independent process that is clear for consumers, and that in light of actual case volumes any such saving would be insignificant in practice.

**Controlling the Rail Ombudsman's Costs:** the proposals are very welcome from the perspective of transparency and wholly appropriate for a not for profit scheme. The Rail Ombudsman would highlight the requirement for a robust and timely change control process which the ORR proposes, and should consider this both in respect of this cost-control aspect and throughout the operating model where referenced and applicable.

**Accreditations (specifically Ombudsman Association (OA)):** In terms of (A)DR Schemes, an Ombudsman is specifically tasked with a broad remit in terms of raising standards, which is complementary to the impact and influence role expected of the Rail Ombudsman. A break in the continuity of these accreditations could undermine the trust and confidence in the Rail Ombudsman, to the detriment of the sector, stakeholders and ultimately consumer. As an OA-approved Ombudsman, the Rail Ombudsman recognises the value of working to the service standards required to achieve accreditation, and recommends that the ORR considers the implications for the service if these accreditations are not obtained. Similarly, the ORR may consider whether the proposal to extend the deadline for achieving accreditation is appropriate, given that this means a delay to the externally validated operation of the scheme to the standard currently recognised.

## Section B: Jurisdiction and scheme rules

**Ombudsman Scheme Membership:** The Rail Ombudsman agrees that it is preferable to enable further businesses to join voluntarily and a broader membership was envisaged during the initial set-up. Indeed, casework to date has made clear the role of third-party ticket retailers, for instance, and the Rail Ombudsman has previously recommended better integration between RSPs and retailers to facilitate the transfer of complaints (Annual Review 2021<sup>1</sup>). Such organisations could join the scheme to the benefit of their customers. However, the Rail Ombudsman suggests that consideration should be given to measures that avoid individual negotiations on scope or the basis of membership, which must be consistent across all and that these should be put in place at the earliest possible time to avoid confusion for current Rail Service Providers.

**Rail Ombudsman Scheme Service Jurisdiction:** The Rail Ombudsman, along with other stakeholders, have previously made suggestions as to where a broadened scope in some instances could operate for the benefit of users. We agree, however, that any changes to the scheme should be made in consultation and collaboration with a range of stakeholders and it makes sense to transition with an established and recognised jurisdiction, and embed any changes in the future.

**Decision making:** The Rail Ombudsman is bound to consider claims, not only in light of industry arrangements (as to which the Rail Ombudsman suggests that the ORR consider greater transparency in information provided from the industry to the consumer, there being instances where the Rail Ombudsman has been asked to consider information that is not widely available), consumer legislation (such as the Consumer Rights Act 2015) and in line with its OA validation. The latter involves taking an inquisitorial approach to evidence and being able to make reasoned decisions in accordance with what is fair in all the circumstances.

**Rail Ombudsman Case Handling timescales:** The Rail Ombudsman suggests that the ORR gives careful consideration to the needs of both Rail Service Providers and

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<sup>1</sup> <https://www.railombudsman.org/about-us/documents/>

consumers given the current composition of the scheme, geared to provide early resolution through Simple Resolutions and Mediation. If the parties are not given sufficient time to consider their positions, this could seriously impair the effectiveness of the informal means of resolution and act as a barrier to those potentially and actually digitally excluded. The Rail Ombudsman has examples of cases that have required additional time by way of a reasonable adjustment and also where this has benefitted both parties to reach an amicable resolution, one of the central pillars of (A)DR. In addition, the criteria for resolving disputes under the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 is 90 days from the receipt of the full case file which is fulfilled by the current SLA and meets broader dispute resolution expectations.

In addition to consumer considerations, the ORR should consider the following:

- Will the industry be able to manage the intensity of interaction needed to resolve a case to the same standard in less time?
- Reducing the timescale gives the industry no contingency at all for when they need to react to their own spikes – which has been a prevalent factor of the Rail Ombudsman initial term, including as it did, the impacts of the Covid-19 pandemic and its effects on industry.
- The potential that cases will either be closed in SLA with less interaction and thus quality, or the Rail Ombudsman risks being in breach the SLA for the sake of achieving the best outcome for both parties – which may not be viable under a performance regime.

### Section C: Governance

**Independent Assessor:** The Rail Ombudsman recommends that consideration is given to the mechanism to better promote this role without procuring escalations and it being seen as an appeals mechanism.

**Data and intelligence sharing with the passenger watchdogs:** The Rail Ombudsman agrees with the need for clarity as to respective remits to avoid undue duplication of effort with regard to generating insight.

**Advisory Panels:** The Rail Ombudsman notes the evolution of the current iteration of the Rail Sector Liaison Panel and would and propose retention of its members in order that the progressive work of the panel can continue. In terms of the passenger

panel, consideration should be given as to whether a consumer panel comprised of consumers representing a diverse range of perspectives and needs, feeding into the representative panel could add value. This could be incorporated into satisfaction feedback also.

#### Section D: Demand and Fees

A key principle is that the funding model should, as far as possible, avoid incentivising certain behaviours in the complaints handling process. High case fees could drive this as in effect a larger amount of money is “already spent” if it reaches the Rail Ombudsman. As such, a Rail Service Provider may consider that a higher offer could be made, to reduce the likelihood of the case progressing to ADR, with the effect of depriving the sector of insight derived by the Rail Ombudsman and inflated value of settlements.

#### Section E: Case management operations

**Requirements on staff qualifications and rail industry knowledge:** Industry knowledge is crucial both in, engendering trust in decision-making from consumers and the sector, however in the Rail Ombudsman has provided expertise and excellence in dispute resolution over the initial period of its operation, which can also be attributed to a strong ethos of case-handling staff who are legally and vocationally trained to deliver consistent, reasoned and balanced outcomes. The base-line qualifications of staff have enabled flex during periods of uncertainty around case numbers and the implications on this for resource.

The professional qualifications of management provide a natural path for internal escalation and reduce the need for external counsel due to the legal and (A)DR expertise flowing top-down. Whilst therefore subject-matter expertise cannot be underplayed, and flexible remedies also remain a cornerstone of (A)DR, it is important that staff are able to understand the legal interpretations and application to the sector if the Rail Ombudsman is to continue to represent a genuine alternative to court. This also guards against capricious and inconsistent outcomes.

The ORR should consider promoting a culture of excellence in terms of learning and development with a focus, not only on industry-specific knowledge, but how this interfaces with the consumer protection landscape as to which broader knowledge is not only desirable, but essential.

## Section F: Other required elements

**Signposting:** The ORR setting the standard and ensuring consistency in compliance is crucial to a consistent consumer experience and therefore consumer confidence. Consistency is especially important in providing certainty for consumers, who could conceivably be making a claim against multiple operators.

**Q5-6** No response submitted

**Q7. What do you consider are the advantages and disadvantage of having two rail ADR schemes running simultaneously for a short transitional period? What are the potential impacts on your organisation of running two rail ADR schemes simultaneously?**

A potential risk of two schemes running simultaneously is that it could cause confusion and creates the opportunity for comparisons to be drawn between outcomes on "similar" cases. Cases are always considered on their individual merits and it falls to an Ombudsman acting reasonably to determine the outcome. The risk is most acute in the context of different schemes adhering to different standards.

### **Conclusion**

The Rail Ombudsman recommends that at the heart of the operating model should be the preservation of its independence and many of the important safeguards envisaged do appear to acknowledge this.

The Rail Ombudsman looks forward to working with all stakeholders to ensure that the customer is at the heart of the implementation of the new Ombudsman Operating Model and that it operates to the empowerment of the sector to resolve disputes amicably where reasonably possible, at the earliest possible point and in line with (A)DR and Ombudsman best practice.

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



I am writing to express my views on the proposals contained in the above document and which are specific to the role of Independent Assessor, as current incumbent in that role. I welcome the proposals to ensure the continued incorporation of this role into the governance structure of the Rail Ombudsman and would be more than happy to share my experience more broadly. I will for the moment confine my response to the two suggestions for improvements:

- Timescale for review of cases: Of course, some of this can depend upon the engagement of the parties. In my experience some form of discussion will always be beneficial and I am always keen to do this at the earliest point, at the convenience of the consumer or Rail Service Provider as the case may be. May I suggest that the average days for the Independent Assessor to review and close a case from the initial contact received from the party complaining, be incorporated within the Independent Assessor's annual report in order to give some visibility of this?
- Improving awareness that the Independent Assessor can hear service complaints from Rail Service Providers as well as consumers: I am aware that work has been undertaken in this regard and indeed I did hear a complaint from a Rail Service Provider which is referenced in my [report for 2021](#). In terms of improving awareness, this could be included in the initial induction of the Rail Service Provider to the scheme and reminders provided at service reviews, in addition to the engagement from the Independent Assessor themselves with stakeholders? It is of vital importance that consumers and Rail Service Providers alike understand the decisions that are made by the Rail Ombudsman, that they are communicated in plain language, well-reasoned in accordance with best practice and that the staff are suitably qualified both in terms of legalities and ombudsmanry and able to communicate this effectively. Feedback from all service users can be crucial in ensuring that the service remains at such a high standard and, as I noted in my Annual Review for 2021 "as the world returns to a new normal, it will be important to maintain an independent, impartial, thorough and fair complaints handling service for the Rail Industry". It is my experience that feedback, where provided, is taken on board and I believe the robust mechanisms that have evolved should be replicated within the new operating model.

I am more than happy to take these discussions further and would suggest a meeting if this is of interest to colleagues at the ORR, in order to inform the process and ensure that the Rail Ombudsman remains robustly independent in its decision making and that service users can be confident that their feedback is listened to independently.

**Kathryn Stone OBE**

Independent Assessor

Dear colleagues

**ORR Consultation on the draft Rail Ombudsman Operating Model**

Thank you for inviting ScotRail to input into the review of the Rail Ombudsman Operating Model.

We have reviewed the proposal and are pleased to provide our response to the consultation questions:

**Q1: Please provide any additional information not provided in the draft equality impact assessment (Annex C) which you consider we should take into account, whether in relation to impacts on those with the protected characteristic of disability or any other protected characteristic.**

No additional information to add, however, we would like to note that historically accessibility related claims were not being processed, and this does not give confidence to disabled people that their grievances will be dealt with in the same manner as their counterparts. Therefore, we would like it to be considered that it needs to be explicitly detailed if this Ombudsman will be able to settle discrimination claims and to what level, in order for the practical operation of it to be inclusive.

**Q2. Do you agree with our proposed governance structure? Please give reasons for your answer.**

ScotRail agrees with most of the suggested governance structure. We are particularly supportive of a Rail Ombudsman that identifies trends in how complaints are handled and provides support to the TOC in terms of continuous improvement.

Handling of 'in or out of scope' cases is something which ScotRail would prefer sits with the TOC. Under the current scheme, evidence suggests that 'out of scope' cases are still being accepted and we believe this could be avoided by handling, at least obvious 'out of scope' cases ourselves. In saying that, we appreciate that this requires very clear guidelines and a step by step process to be drawn up so that all TOC's are consistent in signposting to the customer correctly. We also note that there is a caveat on page 12 section 3.15 and 3.16 which commits to consumer testing at a later stage to review alternative approaches. ScotRail are therefore supportive of remaining with the current position.

ScotRail would also like to point out that we feel the Ombudsman is not likely to resolve complaints and that their role is to support both customer and TOC through mediation and adjudication.

**Q3. Please set out your opinion on the three funding model options, explaining why you consider that one option may be better than another.**

- 1) Status quo – whilst this option means that the higher the case volumes the more we pay, ScotRail feels that with ongoing continuous improvement we can work to lower cases escalated to the Ombudsman resulting in this option potentially saving us money.
- 2) Less cost reflective – this option is likely to cost ScotRail more in fixed subscription costs due to size, journey volumes etc. and whilst case cost is lower, the overall cost may still exceed the current funding method

- 3) More cost reflective – this option looks to still be a costly option for ScotRail again due to our size and therefore by default higher overall costs

With all of the above in mind, Scotrail would opt to remain with the Status Quo in terms of funding.

**Q4. Do you agree with our proposals for the Rail Ombudsman operating model?**

ScotRail firmly believe that a knowledge of the Rail Industry is essential to ensure cases are handled effectively. We support ORR's position on ensuring that as part of the tender process, providers must include how their staff will acquire and maintain their knowledge.

ScotRail would also like to see reporting on 'in' and 'out of scope' case numbers.

**Q5. Do you have any comments on our proposal to amend the Complaints Handling licence condition?**

ScotRail supports the proposal to amend the CHP licence condition

**Q6. Do you have any comments on the proposed drafting amendments to the Complaints Handling licence condition?**

ScotRail supports this.

**Q7. What do you consider are the advantages and disadvantage of having two rail ADR schemes running simultaneously for a short transitional period? What are the potential impacts on your organisation of running two rail ADR schemes simultaneously?**

Scotrail fully supports the running of both ADR schemes simultaneously, for a short period, as it ensures a smoother, more efficient overall handover.

Advantages – Seamless transfer of business

Disadvantages – potential confusion for customer which can be easily overcome with effective communication and signposting

Impacts on our organisation – customer confusion potentially increasing contacts from customers; however with effective communication and signposting this can be overcome

22 July 2022

Dear Colleagues

## **Southeastern response to ORR's Consultation on the draft Rail Ombudsman Operating Model**

Thank you for the opportunity to review the above consultation.

Southeastern has been running the train service between London and Kent and parts of East Sussex since 2006. We operate one of the busiest networks in the country including the UK's first domestic high speed service with Javelin trains. We operate **1,600** trains a day; carry more than **400,000** passengers and serve **180** stations and covering **540** miles of track.

Regarding the wording used in the grey box on page nine in the section called Proposal, a Rail Ombudsman is unlikely to resolve passenger complaints. However, they will access the complaint and make an adjudication on a resolution, so this needs to be clearer in the scope.

Set out below are our responses to the consultation questions.

**Q1. Please provide any additional information not provided in the draft equality impact assessment (Annex C) which you consider we should take into account, whether in relation to impacts on those with the protected characteristic of disability or any other protected characteristic.**

Any website brought in would need to meet the ShawTrust standards and be AA compliant with any forms a consumer would have to complete.

**Q2. Do you agree with our proposed governance structure? Please give reasons for your answer.**

Southeastern is supportive of most of the suggested structure, especially having a single front door for consumers. However, Southeastern believes that the Rail Ombudsman appointed would need to already have accreditation. If the contract was to be awarded for five years, then a plan of what improvements would be made over those years would need to be agreed before a contract is signed.

In terms of the Rail Ombudsman board, Southeastern believes that a TOC, or RDG, should also be represented on the board.

**Q3. Please set out your opinion on the three funding model options, explaining why you consider that one option may be better than another.**

a. Status quo – Southeastern is not sure this option works, as we now understand more in terms of what volume of case work we can expect to see.

b. Less cost reflective – For Southeastern, this option would see us paying more for the service simply because of our size, yet as can be clearly seen from case volumes, we are one of the least polluting TOCs.

c. More cost reflective – As Southeastern would be able to forecast cases due to be received, this option may save us money, so for Southeastern it would be between options A and C

**Q4. Do you agree with our proposals for the Rail Ombudsman operating model?**

In terms of the proposal around the case management system, what should also be added is the ability to see cases related to the TOC that have been passed to Transport Focus or London Travel Watch - as well as the ability to see cases that have been set out of scope.

Regarding section F 3.92 – A section around advertising needs to be included.

**Q5. Do you have any comments on our proposal to amend the Complaints Handling licence condition?**

Southeastern support the amendments required to the CHP.

**Q6. Do you have any comments on the proposed drafting amendments to the Complaints Handling licence condition?**

Southeastern support the drafting required to the CHP.

**Q7. What do you consider are the advantages and disadvantage of having two rail ADR schemes running simultaneously for a short transitional period? What are the potential impacts on your organisation of running two rail ADR schemes simultaneously?**

**Advantage:** Allows comparison to be drawn on what works best. Learning and working practices can be shared with the new ADR. Transition will be more seamless with both ADRs overlapping, the former ADR completing the cases currently in the system while the new one takes on the new cases.

**Disadvantages:** New complainants' confusion on which ADR to go to and current complainants losing confidence in the old ADR that's handling their case at the time. Potential for the less effective and efficient practices to be picked up by the new ADR if there is any sharing of modus operandi.

**Impacts on your organisation:** We will potentially have cases being handled by two ADRs – possibly with different ways of working and differing nuances in approach which can be somewhat disconcerting and confusing on which ADR to refer complaints to.

Taking all the above into account, Southeastern would suggest the running of two ADR services during the transition period.

## ORR Consultation on a draft Rail Ombudsman operating model

### Response from Transport Focus

August 2022

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Transport Focus is an independent, statutory consumer watchdog promoting the interests of transport users. Working with transport providers and Governments across England, Scotland and Wales we ensure that the users voice is heard.

We welcome the opportunity to comment on the draft rail ombudsman operating model (OOM). Transport Focus supported the introduction of the original ombudsman scheme in 2018, believing it important that consumers had access to a dispute resolution scheme where decisions are binding on operators.

Transport Focus and London TravelWatch also have a role with complaints. We note that this consultation does not amend the role of the Ombudsman in respect of how it engages with us (para 2.8). It is clear, however, that the reform programme envisaged by the Williams Shapps Plan for Rail will have an impact on these wider roles and responsibilities. We agree with the ORR about the importance of working openly and collaboratively whilst avoiding unnecessary overlaps and duplication of functions. We also agree that the best way to achieve this will be through some form of Memorandum of Understanding (MOU) rather than via this consultation. So, while this response inevitably touches on some of these interfaces, we have avoided getting too deeply into issues best covered by the MOU.

**Q1. Please provide any additional information which you consider we should take into account in our equality impact assessment (Annex C), whether in relation to impacts on those with the protected characteristic of disability or any other protected characteristic.**

Transport Focus agrees that the Rail Ombudsman scheme must be accessible to all rail users and should conduct monitoring and testing to ensure that its practices and processes are non-exclusionary.

We note that the Rail Ombudsman is already required to offer a fully accessible service, in line with mandatory commitments made in industry Accessible Travel Policies and ORR's Accessible Travel Policy Guidance.

We support the suggestions set out in Annex C to strengthen these existing requirements:

- ensuring all documents are available in accessible formats on request
- strengthening the disability awareness training provisions
- providing a translation service rather than signposting to one
- explicit commitments on the website to providing reasonable adjustments

While providing a translation service is part of these proposals, it is recommended that specific consideration be given to Welsh language services. The Welsh Language Act 1993 places a specific duty on public bodies that provide services to the public in Wales to ensure that the English and Welsh languages are treated on a basis of equality. It is worth clarifying whether the Rail Ombudsman services would fall within these provisions, and if so, what provisions will be made.

**Q2. Do you agree with our proposed governance structure? Please give reasons for your answer.**

- **Rail Ombudsman as a single front door for escalated passenger complaints**

We agree with the proposal that the existing triage arrangements continue but with a commitment to conduct consumer testing at a later stage.

Retaining the Rail Ombudsman as the single front door presents the simplest solution in the short-term. It is easy to explain to passengers and there is a logic in not complicating the transition process (both in terms of the move of sponsorship to ORR and the tendering process).

In addition, the Ombudsman Association Terms and Rules state that, “The Ombudsman alone (or someone acting on his or her authority) must have the power to decide whether or not a complaint is within the Ombudsman’s jurisdiction<sup>1</sup>”. Allowing the operator to make the decision on what goes to the Ombudsman may not be compliant with this.

However, it is equally true that some cases are obviously outside the Ombudsman’s remit. At such times having to go via the Ombudsman before reaching Transport Focus/London TravelWatch creates an impression of being passed from pillar to post. This is especially so if a passenger has had to wait for a deadlock letter or the expiry of 40 working days before being passed to the Ombudsman in the first place. To do so, simply to be told that it’s now being sent to another body, can be very frustrating. [As an aside we would re-iterate comments made as part of our response to ORR’s Complaints Code of

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<sup>1</sup> [Ombudsman Association Terms and Rules](#). Page 2: B 1 (f)

Practice consultation in wanting the deadlock period to be reduced to 20 working days. Not only would this decrease the chance of the complainant dropping out of the system, but it would also minimize the impact of the triage process when passing on complaints].

We think there is value in any review of triage arrangements looking at whether a 'fast track' system could operate in some clearly defined instances – even if just for the most obvious cases. We would be happy to discuss this further.

- **Accreditations**

Transport Focus fully supports proposals that the new Rail Ombudsman should obtain ADR approval from the Secretary of State within three months of contract award; and obtain (and thereafter retain) Ombudsman Association accreditation as an Ombudsman Member within six months of contract award.

This will provide additional checks and assurances that the Ombudsman scheme is meeting best practice. We presume that ORR will monitor accreditation. It is not clear, though, what powers ORR will have if there are problems in getting accredited – will it result in termination of the contract or are there other mitigations that ORR can use?

- **Contract length and timeframe for scheme setup**

The initial contract would last for five years, with the potential for a further five-year extension. This would provide some certainty for the provider and create a sense of continuity for consumers, but it does remove the opportunity for reform/innovation that comes with a competitive tendering process. It will be important that ORR retains the ability to innovate within these contractual terms – being locked into arrangements for five or ten years could prove restrictive for consumers. To this end we agree with the introduction of a no-fault termination clause, which will ensure that ORR has some flexibility.

- **Ombudsman scheme membership**

Transport Focus agrees that all passengers, irrespective of which company they use to access rail services, should have access to rail ADR.

Purchasing tickets is a key element of rail travel. Reforms planned by Great British Railways (GBR) as part of the Williams Shapps Plan for Rail are likely to have an impact on ticketing for years to come, and it will be important that passengers have the protection of an Ombudsman in this area. We would expect the new retail portal to be introduced by GBR to be included in the Ombudsman scheme. We would also like to see other rail ticket retailers join the scheme as voluntary members - currently National Rail Enquiries is the only voluntary

member. Having all providers part of the same scheme offers the most consistent and easily understood system for passengers.

- **Rail Ombudsman scheme service jurisdiction**

We agree with the proposal to continue with the current service jurisdiction. This is a practical solution that avoids creating uncertainty during the bidding process.

There is, though, value in a subsequent review to make sure that all aspects of a passenger's journey are covered – whether by the Ombudsman scheme, some other appeal body (such as for penalty fares or car parking) or by Transport Focus. It will be crucially important that there is clarity over any different roles and responsibilities so that passengers know who does what. This will need to be clearly signposted.

It would be helpful if a timeframe for such a review was specified.

In time it would also be useful to consider multi-modal journeys. There are already efforts to create multi-modal contactless ticketing schemes in big cities other than London. And GBR will need to work with providers of other modes of transport in trying to make rail travel a more seamless experience. As these plans develop it will be important that the consumer protection regime develops in parallel, such that it is easier for passengers to make a complaint about any leg of their journey.

- **Decision making**

Transport Focus understands the need for the Rail Ombudsman to make decisions based on policies that govern the rail industry. However, we strongly support the ability of the Rail Ombudsman in occasionally departing from these policies to recognise and support an individual's circumstances. The Ombudsman cannot simply be seen as a body that rubber-stamps industry terms and conditions – it will always need the ability to take into account an individual's personal experience and circumstances. This flexibility is important in order to ensure fairness.

We agree with the proposal that the Ombudsman collects and reports on evidence that suggests failings in industry wide policies that are to the detriment of consumers. However, this is also an area where Transport Focus and London TravelWatch are active, which creates the risk of duplication. There will be a need for the Ombudsman and Transport Focus/London TravelWatch to work together, sharing data and identifying issues. This is an area that should be an important part of the MOU discussed earlier.

- **The Rail Ombudsman scheme rules**

Transport Focus agrees with the importance of transparency – scheme rules should be written in language that is accessible to both industry and rail users, and easy to find.

We agree that ORR’s approval should be required for any changes to the scheme rules and that a change control process should be followed. It is not clear whether this change control process will be internal to ORR only. There are circumstances when other parties (including Transport Focus and London TravelWatch) should have the ability to comment. This provision could usefully be built into the process.

- **Maximum award limits**

The current average award (£80) is substantially below the £2500 threshold. So there would not appear to be the need at present to change the threshold. This is, of course, subject to ticket refunds still being excluded from this amount.

- **Rail Ombudsman case handling timescales**

From a passenger perspective it is the total time to get a resolution that matters. As it stands it can take up to 40 working days to be referred to the Ombudsman, another 40 working days for the Ombudsman on top of this could mean waiting up to 16 weeks for a decision.

We would like to see the overall response times reduced. This could be through reducing the time the operator takes or likewise the Ombudsman – or ideally both.

As previously mentioned, Transport Focus’s response to ORR’s consultation on the Complaints Code of Practice argued for a reduction in the time before complainants can contact the Ombudsman (from 40 to 20 working days). This would mean that fewer people drop out of the system in frustration. We welcomed ORR’s commitment to come back to this issue but wanted to see some dates for this review rather than it being an open-ended commitment.

Similarly, it will be important that the tender process for the Ombudsman emphasizes the value in reducing the 40-day maximum response time and requires bidders to set out a timeframe for doing so.

- **Independent Rail Ombudsman Board**

It is important that the rail Ombudsman board has independent non-executive directors who hold a voting majority.

We agree that these non-execs should not have any conflicts of interests – this would seem to rule out representation coming from existing bodies within the sector. We note the requirement that non-execs have requisite skills, experience and knowledge. It will be important that at least one person on the board has relevant experience of consumer representation.

- **Independent Assessor**

Transport Focus supports the proposal to appoint an Independent Assessor. It is good that the Assessor will be able to review complaints from companies and consumers about the scheme’s service provision, and review the quality of case handling and internal processes of the Rail Ombudsman. It is also good that the Ombudsman will have a specific requirement to promote the presence of the Independent Assessor with consumers and companies with a clear explanation of its remit.

It will help cement trust in the process if stakeholders are consulted on the remit of the Assessor and the mechanism they will follow.

- **Data and intelligence sharing with statutory passenger advocacy bodies - Transport Focus and London TravelWatch**

Data sharing with Transport Focus and London TravelWatch will be essential if all parties are to avoid the “unnecessary overlaps and duplication of functions” set out in Section A of the consultation.

We welcome the proposal that the Rail Ombudsman be required to consult to identify our requirements, including near real time provision of data; and put in place an agreement to share data and insight. While the precise wording will be subject to discussions on the MOU, we would see this including:

- near real time provision of high-level data similar to the current provision and as listed above.
- provision of actual and full complaint information on a monthly basis. We draw a distinction here between data and management information – getting numbers is helpful but sometimes you need access to more information to help interpret it. For example, knowing there were 10 complaints on ‘ticketing’ does not really give you a feel for the issue. If Transport Focus is to fulfil the wider investigatory role set out in the Williams Shapps Plan for Rail, it will need access to this additional layer of information.
- any recommendations the Rail Ombudsman make to the industry (as previously mentioned in an earlier answer)

- **Advisory Panels**

We agree in principle with the proposal to set up Advisory Panels and with the suggestion that Transport Focus is part of the Passenger Panel. This is subject to seeing additional details such as terms of reference and how often the panel will meet.

We also welcome the proposal that these advisory panels can make advisory statements to the Rail Ombudsman Board to which the Board would be required to respond. This will help generate accountability.

- **Performance management**

Transport Focus supports the proposals as set out.

- **Stakeholder satisfaction and feedback**

Transport Focus welcomes the proposal that the Rail Ombudsman monitors satisfaction with its services. It is particularly important that passengers are surveyed, and their input used to improve the service where highlighted.

It also good to see the requirement to draw up action plans to improve satisfaction where a need is indicated and to report progress against this. We agree that these should be shared with the Advisory Panels.

- **Transparency**

Transparency will be key to building confidence in the Ombudsman. It will ensure that stakeholders are able to give their opinion on performance and it will give ORR the tools to ensure it can properly monitor compliance and delivery. The consultation sets out several strands to this:

- monitoring performance against KPIs
- passenger and member satisfaction surveys
- statements from the Advisory Panels
- the findings of any biennial independent reviews

We welcome the proposed minimum transparency requirements on performance and use of complaints data. We believe better use can be made of trend data to improve services more generally, especially if used with data collected by Transport Focus and London TravelWatch.

It will be important that the frequency of reporting is clearly established as part of the process. Definitions of 'regular reporting' will differ between stakeholders.

**Q3. Please set out your opinion on the three funding model options, explaining why you consider that one option may be better than another:**

From a passenger perspective the important thing is that the Ombudsman services is free to use. Issues about funding models are more proper to licence holders and ORR.

**Q4. Do you agree with our proposals for the ombudsman operating model? When considering this question, please set out any ways in which you consider the OOM could further improve the accessibility of Rail Ombudsman services provided to passengers. If you have specific feedback on one area of ORR's proposals, please clearly indicate which proposal you are commenting on.**

- **Case management process flows**

Transport Focus agrees with the four broad categories set out in para 3.81. Any processes need to clearly set out how cases will be referred to other bodies, including timescales, formats, access to case files etc. This should also include instances where parts of a complaint are referred and parts retained – i.e. part is out of scope and part is within.

We agree with ORR that the Ombudsman should monitor users' satisfaction with case management processes, including for out-of-scope cases, and that it tests these with passengers, and then acts on the findings to continuously improve its service.

- **Requirements on staff qualifications and rail industry knowledge**

It is important that Ombudsman staff understand the rail industry and that there are mechanisms to keep the Ombudsman up to date with developments.

In line with our answer earlier, however, we would not want this training to dilute the ability for the Ombudsman to occasionally depart from industry policies. As mentioned, the Ombudsman cannot simply be seen as a body that rubber-stamps industry terms and conditions – it will always need the ability to take into account an individual's personal experience and circumstances.

In addition, we think there is value in annual refresher training on issues such as accessibility/equalities requirements, and for training to recognise vulnerable complainants.

There might also be merit in Rail Ombudsman staff meeting with other transport ombudsman/appeal bodies. This could help to cross fertilise issues and ideas between sectors.

- **Case Management System (CMS)**

We agree that the CMS system should allow the Ombudsman to deliver tailored information that meets the needs of individual stakeholders, including Transport Focus. We are pleased to see this include management information relating to casework but also other information such as case outcomes, complaint types, and time to resolve cases.

We welcome that the CMS must facilitate the handling of cases split between more than one company, or between the ombudsman and other bodies.

We agree that this will require clear data sharing agreements with stakeholders.

**Q5. Do you have any comments on our proposal to amend the Complaints Handling condition?**

**Q6. Do you have any comments on the proposed drafting amendments to the Complaints Handling condition?**

Transport Focus and London TravelWatch submitted a joint response to the consultation on the revised Complaints Code of Practice. This will provide a more detailed assessment for ORR but, in general terms, we agree with ORR's broad arguments surrounding the Code of Practice and the transfer of license obligations.

**Q7. What do you consider are the advantages and disadvantages of having two rail ADR-schemes running simultaneously for a short transitional period? What are the potential impacts on your organisations of running two rail ADR-schemes simultaneously?**

There are cost implications from running two rail ADR schemes simultaneously but from a purely passenger perspective this will be the most effective option. A system whereby cases opened under the old scheme will be completed by the old scheme will be seamless for passengers and offer the most consistency and continuity. It will avoid having to potentially transfer files to a new scheme (with all the risks and costs involved in that) and for a new case handler to familiarise themselves with the case.

It should also ensure that KPIs for the new scheme only reflect the new scheme rather than the ‘tail’ of the old.

Careful signposting would be required to ensure passengers were directed to the right operator during the transition period, but it should be feasible to have a system whereby all Ombudsman referrals after a set date go to the new scheme. This would be a similar arrangement to when the Ombudsman scheme was first introduced – all appeals after a certain date went to the new body, with those received prior to that staying with Transport Focus and London TravelWatch

Any parallel running will require Transport Focus and London TravelWatch working with both bodies. This means having access to both CMS systems. This could generate additional work in the short term.

**Transport Focus**  
**August 2022**

## **Consultation on a draft Rail Ombudsman operating model**

### **Transport for All's response**

August 2022

#### **About Transport for All**

Transport for All is the only disabled-led group striving to increase access to transport and streetspace across the UK. We are a pan-impairment organisation, guided by the passionate belief that all disabled and older people have the right to travel with freedom and independence.

#### **How the views of our community are obtained**

Transport for All is the leading voice on accessible transport. We have 40 years of specialist knowledge of transport access, and a unique understanding of the needs and views of Disabled travellers. As a membership organisation, we facilitate a network of over 600 Disabled people, gathering the perceptions and insights of those with lived experience of access to transport. Through our information and advice line we provide advice, support, and education for over 250 disabled and older people a month.

#### **About this consultation submission**

Transport for All welcomes the opportunity to respond to this consultation on a draft Rail Ombudsman operating model. Our response focuses on the areas of the proposed Rail Ombudsman changes that relate to our remit as a Disabled People's Organisation: specifically, those proposals related to accessibility. It focuses on the lived experiences of disabled people, and has been compiled through our independent research and the experiences of our members and the wider disabled community. The themes outlined below relate most specifically to questions 1, 4, 5, 6 and 7.

#### **Why a robust complaints service is vital for disabled people**

The Rail Ombudsman provides a crucial service to all rail passengers; however it is particularly vital for disabled passengers who face a range of barriers to rail travel. These include:

##### *Staffing*

Lack of staffing contributes to many barriers across the network- from unanswered Help Point queries to being left on a train due to a failed Passenger Assist, a shortage of staff can leave disabled people unable to board their trains. A recent study found that of 79 auditors, only 41 were able to connect to a Help Point and receive assistance, a success rate of 52%<sup>i</sup>. This is an unacceptably small number.

Additionally, whilst interactions with staff are often pleasant and helpful, sadly many disabled passengers have experienced rude and discriminatory behaviour from staff. In recent years our members have told us they have been ignored, sighed at, and even told they are “not allowed” to board the train<sup>ii</sup>. Visually impaired members tell us their assistance dogs are routinely distracted by staff who try to pet them.

### *Information*

A recent study found a third of disabled people have been given incorrect information regarding the accessibility of a mode of transport or a station<sup>iii</sup>. This can occur for information about permanent features such as step-free access and station facilities (a recent report found all but one of the 32 stations audited provided incomplete or inaccurate information about accessibility<sup>iv</sup>), and for information about more fluctuating or temporary features such as the working status of lifts and escalators, or the availability of assistance staff.

In addition, the accessibility of information is often either poor or non-existent. Information is often extremely dense, and full of industry language or jargon that make it difficult to understand. Certain document formats such as PDFs are not accessible to blind or visually impaired people who use screen readers, meaning that the information contained is simply not available to them.

### *Infrastructure*

Just 25% of the UK’s mainline train stations are step free<sup>v</sup>. In stations that do have ‘step-free’ access, there is an additional battle to get onto the train itself, with huge step-gaps at the platform-train interfaces that must be bridged by manual boarding ramps to allow disabled passengers to board – removing agency, independence, and confidence. We have heard from disabled people that the information around step free/level boarding is often incorrect, and leads to dangerous situations at stations:

“You have to argue with staff your need for a ramp. I have turned up at stations which technically meet the requirements for level boarding, and it’s been too high for me to reverse back off without hurting myself. And I’ve been told that they don’t even have ramps for those trains and I’ve had no choice but to reverse off backwards. It’s led to incidents with staff shouting and screaming at me, victimizing me, harassing me, in front of the public.”- *Workshop participant*

There is a lack of station facilities that meet disabled passengers’ needs, effectively locking them out of the network. Toilets, Changing Places facilities, and rest spaces and benches can all be difficult to come by.

More than one-third of the total length of the UK’s rail platforms do not have tactile paving – a vital safety measure for blind and visually impaired people. What is most concerning about these stations is the inconsistency; there is tactile paving at some of the platform edges but not all of them (and in some instances, tactiles on only part of the length of the

whole platform), creating confusion for blind passengers that is extremely dangerous. We welcome Network Rail's commitment to remedying the lack of tactile paving at platform edges, but this work must be significantly sped up. The current aim for all operational platforms to have tactiles installed by the end of 2029 is unacceptable given the urgency of the issue and the threat to life it poses.

### *Sensory environments*

Train stations are often extremely crowded environments. The lighting levels can be bright and harsh, and there are often high levels of noise and smells. This can cause confusion, discomfort, and distress for many disabled people, particularly autistic and neurodivergent people or people with learning disabilities.

### *Wayfinding, signage, and announcements*

Wayfinding can present barriers within stations, with signs and instructions being difficult to follow. Display boards can be too small or low-contrast, audio announcements can lack clarity or be difficult to hear alongside the high levels of background noise. Station facilities such as lifts and toilets are often located in nonsensical locations and not clearly signposted.

### **Barriers that disabled people face to pursuing a complaint**

As noted above, disabled people may be more likely to experience journeys where things go wrong. However, disabled people also face barriers to making a complaint.

Submitting a complaint can be an incredibly arduous task; Scope's Travel Fair Report found that of a sample of disabled passengers who experienced a problem and did not complain, 17% said that the complaints process was too complicated, and 5% said that the complaints form was inaccessible to them<sup>vi</sup>. Many disabled people live with energy limiting conditions, which can make the already complicated complaints process even more difficult.

It can be stressful for people to follow up with their complaints: having the knowledge of the complaints process and knowing who to contact to receive updates on the progress of a complaint is often extremely time consuming and difficult. Information about and communications around where a complaint has been referred to and how to receive updates must be clear and provided in a range of formats, including telephone calls.

The cost of contacting the ombudsman to make a complaint may also be a barrier. The current contact number is an 0330 telephone number, which is not a freephone number.

### **The opportunity posed by a new Ombudsman provider**

We feel that the current review and proposed move of the Ombudsman to relate to GBR provides a significant opportunity to build trust in the Ombudsman and to increase accessibility of the scheme for disabled people. While we welcome the aspirations for the Rail Ombudsman to expand its monitoring role through tracking trends/systemic issues and highlighting areas for industry improvement, this will only work if disabled people trust that they are being listened to, that communication will be in a manner that fits their access

requirements, and that they will not have to repeat themselves, their stories, or their experiences over and over again. If disabled people do not trust that the Rail Ombudsman is operating in their best interests, they may not lodge complaints: it will therefore be impossible for the Ombudsman to claim that they are presenting an accurate picture of the passenger experience.

In order to build this trust, we therefore propose action across the following areas:

- Training
- Monitoring and evaluation
- Communications
- Representation.

### *Training*

While training is referenced in the consultation, in many respects the EQIA does not go far enough into exploring and detailing the barriers that disabled people may face during the transition from a GBR sponsored Rail Ombudsman to an ORR sponsor. This includes the proposal to “expand disability awareness training”: currently, the Rail Ombudsman has staff that “are trained in disability awareness and vulnerability awareness and equipped to be able to meet the needs of any Consumers with impairments that might affect their ability to interact with the Rail ADR Service”. The proposal to strengthen such training is vague in terms of how this will be done. We strongly recommend the introduction of high-quality Disability Equality Training that is both developed and delivered by disabled people, taking a pan-impairment perspective. Disabled People’s Organisations and disabled trainers/consultants have the lived experience to truly understand and embed accessibility principles within Disability Equality, with a holistic understanding of the rail policy context and how disabled people across the impairment groups face barriers to rail travel.

Disability Equality Training should be delivered not only to the front facing complaints handling staff, but also to back office and executive level staff, including those on the operating board. It is important for back office and executive level staff to have the same training as front facing staff members, in order to embed accessibility within the Ombudsman’s working culture. Training should be delivered and updated at regular intervals.

### *Monitoring and evaluation*

We welcome the idea of consumer testing, particularly specialised testing with disabled passengers to determine the effectiveness and quality of the Rail Ombudsman. We would like to see more specific information on how this testing will be taking place: in particular, how the Ombudsman plans to make the testing procedure accessible and inclusive to disabled people with a range of impairments. As a pan-impairment organisation, we are particularly concerned with ensuring that any type of consultation with disabled people is inclusive of any and all impairments. To this end, we would suggest co-producing the consumer testing methods with Disabled Person’s Organisations, and disabled people.

Disabled people should be involved in setting performance metrics, identifying what good looks like, and shaping methods for monitoring and evaluation. Methods could include a programme of employing disabled people as mystery shoppers, to regularly evaluate the complaints procedures. This will contribute to establishing trust in the Ombudsman by demonstrating a commitment to bettering experiences for disabled complainants.

Furthermore, any consumer testing should include a commitment to meaningful engagement with disabled people. When we say “meaningful engagement”, we mean that such testing should not be treated as a ‘tick box’ exercise. We often hear from our members and the wider disabled community that consultations can feel like they are simply an empty gesture, where the feedback and criticisms made are simply written down and not taken into account in further actions. Additionally, many disabled people experience consultation fatigue after being asked to do multiple consultations, which often do not act on the experiences, insights and suggestions made. It is therefore vital that any engagement with disabled people leads to significant follow up action and coproduction of any changes to guidance or procedure. We also advocate for disabled people to be paid for their time and contributions; as experts by experience, disabled people give up their time to contribute meaningful insights, which should be fairly compensated.

### *Representation*

We recommend that the service provider appoints a disabled person as an accessibility representative to sit at Board level. This will ensure that accessibility is at the heart of the Ombudsman’s culture, and that any changes to the ADR rules or the Ombudsman operating procedures will be done in a way that prioritises the accessibility of said changes.

The procedure for recruiting an accessibility representative should be an open call for disabled experts or Disabled People’s Organisations, and the position should hold a pan-impairment perspective. As disabled people’s access requirements vary widely, it is crucial that anyone who is advocating for accessibility at an executive level can reflect this and be a representative for all disabled people.

We are pleased to see within this consultation that the representation of consumers “with lived experience of the issues facing consumers with protected characteristics” is key to the proposed passenger panel. We urge the Rail Ombudsman to embrace this as an opportunity for meaningful engagement and to take a pan-impairment approach: no two disabled people face the same barriers, which vary widely across impairment types. This panel should therefore comprise of disabled people from a variety of backgrounds, locations and with a range of impairments and access requirements. Meaningful representation of disabled people must be at the forefront of this passenger panel, in order for the Ombudsman to gain a realistic picture of the barriers faced by disabled passengers.

It is important that the positions on this panel are paid. Disabled people are often asked to contribute their time and expertise for free, which undermines and devalues the importance of receiving these insights. By making positions on the passenger panel paid, the

Ombudsman will demonstrate a commitment to valuing the experience and expertise of disabled people, and using this information to inform policy and procedure going forward. Meetings of the panel should be inclusive and accessible, with access support provided and documents made available in a range of formats.

### *Communications*

We are pleased to see that it is specified in this consultation that the Ombudsman scheme rules “must be written in language that is accessible to passengers and subsequently published”. We would like to reiterate that these scheme rules must be available in a variety of accessible formats, and should be accessible by telephone as well as via the internet. Communication must be clear, without jargon or confusing industry language. Any external communications should also highlight that the Ombudsman is an independent body, along with clear information on how the Ombudsman works and what services it is able to offer.

We are also pleased that the draft EQIA makes recommendations for translations services, including British Sign Language, to be available directly rather than signposting passengers to service providers. We agree that all documents pertaining to the Ombudsman’s role as a complaints service should be available in a variety of formats, not just the ADR rules. These documents must also be available in versions that are compatible with screen readers for blind and visually impaired customers.

We’re also pleased to see that there is a commitment to maintaining a phone line with this same information. Given that disabled people are disproportionately likely to not have internet access, it is important to maintain non-digital channels of communication in order to ensure that communication surrounding ADR complaints is as accessible as possible. Where 10% of adults in the UK have no internet access, this number jumps to 23% of disabled people and 38% of blind and visually impaired people<sup>vii</sup>. It is vital that those who do not have access to the internet can make a complaint easily and simply. This phone number should also be free of charge.

## **Additional comments on the role of the Ombudsman**

### *Compensation thresholds*

We are concerned with the proposal to limit the maximum award amount to £2,500. Whilst we acknowledge that the average award is far less than this (detailed as £80 in this consultation), in the case of a damaged mobility aid, £2,500 will, in many cases, not be enough to cover this. Mobility aids are often extremely expensive pieces of equipment, with many people needing additional costly customisations in order to meet their access requirements. This is particularly true of electric wheelchairs, which cost several thousand pounds in the first instance, and often far more with any additional customisations. If one of these mobility aids is damaged, it is unlikely that £2,500 will be enough to cover the cost. Whilst we acknowledge that there is provision for referring a complaint to the CAHA Registrar if the maximum award limit is not high enough, we are concerned that this has the potential to cause added complexity and longer waits for complainants in this situation.

### *Complaints handling procedure*

The proposal to have two concurrent ADR schemes for a short transitional period is one that we cautiously support, provided that the information surrounding the concurrent schemes is made extremely clear. We agree with the advantages outlined in this consultation: namely, the streamlining of existing complaints that comes with them remaining in the existing scheme, and in particular, the advantage that existing complaints will remain within the same scheme and thus will not entail a transfer of personal data.

However, there are concerns that this method of closing existing complaints while opening new complaints within the new ADR has the potential to be confusing, and add extra stress to a procedure that's often already very difficult. Disabled people already face tremendous barriers throughout the complaints procedure: the recent Travel Fair report from Scope indicates that it is often difficult to establish who to complain to in the first place regarding failed assistance and access failures, a problem that has also been acknowledged by the ORR<sup>viii</sup>.

Further, the same report states that the establishment of the Rail Ombudsman has gone some way to resolving this confusion<sup>ix</sup>; it therefore stands that the single front door role of the Ombudsman is the simplest manner in which disabled people can achieve redress for their complaints. To introduce a second ADR, even for a transitional period (which is currently unspecified in length), risks adding an extra and unnecessary bureaucratic burden to an already stressful process.

We would therefore want to see a commitment to making the information around where to direct complaints crystal clear: this includes obvious signposting to the new ADR for any new complaints, as well as transparent information on the ways in which existing complaints are being processed and how to keep track of any existing complaint a person may be making. This must include the formats proposed for the new ADR rules on the Ombudsman website (i.e., British Sign Language translation services, Easy Read formats, a dedicated telephone line that directs people to where their complaint lies and answer their questions, etc.). It would also be useful to have a clearly signposted Frequently Asked Questions section on the Rail Ombudsman website with details on the structure of the two ADR schemes and how this affects new and existing complaints. This section must be accessible; written in clear language without jargon, accessible to screen readers, and have multiple editions of the material (Easy Read, British Sign Language, etc.).

We strongly advise that any transition period where two ADRs run concurrently is as short as possible, whilst allowing for a thorough investigation into any existing complaints. This is to mitigate any confusion over the direction of complaints as well as encourage a timely move to the new ADR.

### *Proposed changes to the Complaints Handling licence condition*

We welcome the sustained commitment to mandating train operating groups and providers to join the ADR under the new operating model. We would also like to see a commitment in

the licensing condition to not only send copies of the Complaints Procedure to the train stations at which the NSRP/Licence holder's trains call, and to make a copy of the Complaints Procedure available to anyone who requests it; these copies need to be available in the same formats as those materials on offer for the ADR through the ORR (including a videoed British Sign Language translation, an Easy Read copy, a way to obtain the Complaints Procedure that is not via the internet, etc). It is vital that both the ADR and the Complaints Procedures of various NSRP/Licence holders are made available in both accessible digital and non-digital formats, in order to ensure that no one is unable to make a complaint due to not having internet access.

#### *The accessibility of the consultation*

We would like to register our concerns at the way in which the accessibility of this consultation was communicated. Whilst the consultation itself was open for 5 weeks (28 working days), the information on the consultation webpage relating to obtaining accessible formats was as follows: "If you need this document in a different format such as large print, easy read, audio recording or braille, please contact our Public Correspondence Team... We will consider your request and will endeavour to get back to you with the accessible format within 20 working days." This means that if someone requested the documents on the day the consultation was released, they could end up with just a third of the time allowed for response. This is even more problematic for those who were not aware of the consultation within 8 working days, who run the risk of not being sent the accessible documents in time to submit a response prior to the consultation closing.

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- <sup>i</sup> Research Institute for Disabled Consumers (2022), Accessible Travel Policy Implementation: Review of unbooked assistance and Help Points. Available at: <https://www.orr.gov.uk/media/23499>
- <sup>ii</sup> ITV Meridian (2020), Wheelchair user speaks out after being told she couldn't board train. Available here: <https://www.itv.com/news/meridian/2020-02-28/transport-campaigner-speaks-out-after-she-couldn-t-board-train>
- <sup>iii</sup> Scope (2019) Travel Fair report. Available at [https://www.scope.org.uk/campaigns/travel-fair/travel-fair-report-summary/?gclid=Cj0KCQjwpcOTBhCZARIsAEAYLuV8-n0oaYx-WtkDVhJNA49BNU\\_O8PkvuZX8KaWRykyfkmsKVvXr9vlaAIH1EALw\\_wcB](https://www.scope.org.uk/campaigns/travel-fair/travel-fair-report-summary/?gclid=Cj0KCQjwpcOTBhCZARIsAEAYLuV8-n0oaYx-WtkDVhJNA49BNU_O8PkvuZX8KaWRykyfkmsKVvXr9vlaAIH1EALw_wcB)
- <sup>iv</sup> ORR (2022) Annual Rail Consumer Report. Available at <https://www.orr.gov.uk/sites/default/files/2022-07/annual-rail-consumer-report-2022.pdf>
- <sup>v</sup> UK Government (2021), National Disability Strategy. Available here: <https://www.gov.uk/government/publications/national-disability-strategy/forewords-about-this-strategy-action-across-the-uk-executive-summary-acknowledgements#fnref:7>
- <sup>vi</sup> Scope (2019) Travel Fair report. Available at [https://www.scope.org.uk/campaigns/travel-fair/travel-fair-report-summary/?gclid=Cj0KCQjwpcOTBhCZARIsAEAYLuV8-n0oaYx-WtkDVhJNA49BNU\\_O8PkvuZX8KaWRykyfkmsKVvXr9vlaAIH1EALw\\_wcB](https://www.scope.org.uk/campaigns/travel-fair/travel-fair-report-summary/?gclid=Cj0KCQjwpcOTBhCZARIsAEAYLuV8-n0oaYx-WtkDVhJNA49BNU_O8PkvuZX8KaWRykyfkmsKVvXr9vlaAIH1EALw_wcB)
- <sup>vii</sup> Office for National Statistics (2019) Exploring the UK's digital divide. Available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/householdcharacteristics/homeinternetandsocialmediausage/articles/exploringtheuksdigitaldivide/2019-03-04>
- <sup>viii</sup> Scope (2019) Travel Fair report. Available at [https://www.scope.org.uk/campaigns/travel-fair/travel-fair-report-summary/?gclid=Cj0KCQjwpcOTBhCZARIsAEAYLuV8-n0oaYx-WtkDVhJNA49BNU\\_O8PkvuZX8KaWRykyfkmsKVvXr9vlaAIH1EALw\\_wcB](https://www.scope.org.uk/campaigns/travel-fair/travel-fair-report-summary/?gclid=Cj0KCQjwpcOTBhCZARIsAEAYLuV8-n0oaYx-WtkDVhJNA49BNU_O8PkvuZX8KaWRykyfkmsKVvXr9vlaAIH1EALw_wcB)
- <sup>ix</sup> Scope (2019) Travel Fair report. Available at [https://www.scope.org.uk/campaigns/travel-fair/travel-fair-report-summary/?gclid=Cj0KCQjwpcOTBhCZARIsAEAYLuV8-n0oaYx-WtkDVhJNA49BNU\\_O8PkvuZX8KaWRykyfkmsKVvXr9vlaAIH1EALw\\_wcB](https://www.scope.org.uk/campaigns/travel-fair/travel-fair-report-summary/?gclid=Cj0KCQjwpcOTBhCZARIsAEAYLuV8-n0oaYx-WtkDVhJNA49BNU_O8PkvuZX8KaWRykyfkmsKVvXr9vlaAIH1EALw_wcB)

Transport for London (TfL) response to the Office of Rail and Road's (ORR) Consultation on a draft Rail Ombudsman operating model

Date: 3 August 2022

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**Q1. Please provide any additional information not provided in the draft equality impact assessment (Annex C) which you consider we should take into account, whether in relation to impacts on those with the protected characteristic of disability or any other protected characteristic.**

TfL does not have any comments on the proposal draft equality impact assessment.

**Q2. Do you agree with our proposed governance structure?**

TfL agrees with the ORR's new proposed governance structure for the Rail Ombudsman operating model.

**Q3. Please set out your opinion on the three funding model options, explaining why you consider that one option may be better than another:**

- a. Status quo
- b. Less cost reflective
- c. More cost reflective

TfL agrees with the continuation of the current funding model (a: status quo) which is a mix of a cost reflective polluter pays methodology.

**Q4. Do you agree with our proposals for the Rail Ombudsman operating model?**

TfL agrees with the new proposals for the Rail Ombudsman's operating model. and that the current accessibility of the Rail Ombudsman's services is adequate. TfL should not be responsible for any additional costs relating to the implementation of the new operating model.

Chapter 4

**Q5. Do you have any comments on our proposal to amend the Complaints Handling licence condition?**

TfL does not have any comments on the ORR's proposal to amend the Complaints Handling Scheme to remove the current obligation on SNRP/Licence holders to become and remain members of the RDG-procured rail ADR scheme and replace it with a requirement to join and remain a member of the ORR-procured rail ADR scheme.

**Q6. Do you have any comments on the proposed drafting amendments to the Complaints Handling licence condition?**

Please see answer to Q5

**Q7. What do you consider are the advantages and disadvantage of having two rail ADR schemes running simultaneously for a short transitional period? What are the potential impacts on your organisation of running two rail ADR schemes simultaneously?**

TfL appreciates that there may be a need to run two ADR schemes concurrently. There could be implications to cost and duplication of work. TfL would seek assurances from the ORR for a definitive time of any simultaneous running of ADR schemes and TfL should not be responsible for any additional costs. We would also request that data migration should also be part of this process.

Fraser Lawson  
Head of Rail Policy  
**Rail Directorate**

Buchanan House,  
58 Port Dundas Road  
Glasgow G4 0HF



13 September 22

Office of Rail and Road (ORR)  
By e-mail only, [railombudsmanconsultation@orr.gov.uk](mailto:railombudsmanconsultation@orr.gov.uk)

Dear Sirs,

## **CONSULTATION - DRAFT RAIL OMBUDSMAN OPERATING MODEL**

Thank you for providing Transport Scotland with the opportunity to review and comment on the ORR's consultation on the draft Rail Ombudsman Operating Model.

As the Rail Ombudsman deals largely with operational matters impacting licence holders/operators and their passengers, Transport Scotland has no formal comments to make at this stage, other than to note that the following text in the document if used in subsequent material will need to be updated to reflect the arrangements for ScotRail Trains Limited and Scottish Rail Holdings in Scotland:

*"This also applies to the current Rail Ombudsman which has some constraints around its decision-making by obliging it to consider things such as (see section 3.3 of Annex B for full list):*

- franchise requirements (e.g. contractual obligations set by a franchising authority, such as DfT or Transport Scotland);" (3.36)*

However, in responding to this consultation, we would reiterate the Scottish Ministers' general guidance to the ORR that Scotland's Railway<sup>1</sup> needs a strong, independent and most of all assured regulator in order to meet the needs of rail users in Scotland.

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<sup>1</sup> [Scotland's Railway - Better In The Making \(scotlandsrailway.com\)](https://www.scotlandsrailway.com)

Key to this is the ability of the ORR to adapt its approach in order to meet the policy requirements of the Scottish Government as primary specifier and funder, particularly where these may differ from other parts of the GB network.



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**Fraser Lawson**

## West Midlands Rail Executive response

Thank you for the opportunity to comment on the Rail Ombudsman consultation. Since its creation, the role of the Rail Ombudsman does not appear to have delivered any function or benefit to rail passengers that could not be provided more simply and more effectively by transferring the Ombudsman's responsibilities to Transport Focus (or London Travelwatch as appropriate). The proposed Rail Ombudsman operating model and licence modifications required as a result of transfer of sponsorship to ORR would be unnecessary, if this largely superfluous organisation were to be abolished.

To the Office of Rail and Road,

**Submission to the consultation on the draft Rail Ombudsman operating model.**

As Worldline's CEO for the UK and Ireland, I am writing to respond to the Office of Rail and Road's (ORR) consultation on a draft Rail Ombudsman operating model.

To introduce Worldline further, we are the world's fourth largest global payment company, operating in over 50 countries with annual revenue of over €3.7bn (2021) delivered with 20,000 people covering all aspects of payments and digital services. This includes hundreds of UK employees, based across London, Darlington, Chester, Beeston and Guildford. Worldline offers products and solutions to transport and mobility businesses throughout Europe, Latin America, North America and APAC, retailing and settling over €20bn of mass transit tickets annually.

In the UK, our businesses has been involved in rail and mobility since before the 1994 privatisation and our roots can be traced back to British Rail Business Systems. We provide a significant range of technology services to public transport, delivering and maintaining the revenue settlement and digital systems that underpin UK rail including LENNON and ORCATS. We also provide and invest in solutions that enable operators to plan their fleets and operational resources so services can run on time, and dynamically plan timetables against rail's constantly changing variables. Worldline also maintains extensive relationships with other public transport operators across the UK, including through our Mobility Marketplace offer, which empowers the potential for connected multimodal mobility and ticketing. Our client base includes the Rail Safety and Standards Board, all transport owning groups operating in the United Kingdom, Transport for London and Network Rail. I am passionate about the difference we make in UK transport, and the role that rail plays in changing lives, so I am proud to also serve as Chair of the Rail Supply Group, and the Chair of the Rail Data Council. I am proud that in that role we secured UK government funding of £5m to set up the Rail Data Marketplace and we are strong advocates for the use of open data for public good; a facet which should be a central component of UK rail's legislative and regulatory structure.. With this in mind, we have also submitted a response to the simultaneous consultation on the legislative proposals to implement the recommendations of the William-Shapps Review.

Innovation is part of Worldline's DNA and in 2019 alone we invested over €200m in Research and Development across our markets. Through our internal Worldline Innovation Network, we have spent time and money investigating new solutions to invest in, including the Open Payment technologies for public transport that have been deployed across Europe. We strongly believe in the development of innovative and simplified infrastructure systems, whether that be railway infrastructure or digital payment systems, to drive forward business and improve user experience for customers.

**Accountability and an effective regulatory environment**

Fundamentally, Worldline agrees with the proposal for Great British Railways (GBR) to be established as the 'guiding mind' for UK rail, and the reorganisation of the sector to respond to this. However, it is important to recognise that this change places more control in the hands of Government, including its role in being accountable to rail's customers – in the case of this consultation, this includes freight and private services, in addition to passengers.

We see the customer as key, because it is essential that our sector actively creates conditions in which people choose rail.

Worldline's own research indicates one of the greatest frustrations rail customers encounter is complexity in pricing, and do not have confidence that they are achieving the best possible price for

the journey that they want to make, nor can they properly assess the options available to them. The ORR must ensure that fragmentation is reduced, friction is minimised, and the private sector is required to achieve minimum standards for digital and data technologies that power this experience.

In order for this to happen, with ORR's new proposed role as sponsor of the Rail Ombudsman, there is a need to create clear and simple structure of accountability and redress, for customers to ensure GBR can act as a unified body. For us, the key question, is can a body like the ORR, if it has a role in awarding contracts or setting fares, also play an unconflicted role as an ombudsman?

Our view is that statutory oversight, monitoring and watchdog functions, including protecting access to rail, may therefore be better served as an independent function of GBR or as a sponsored function of the ORR. Simplicity is key in order for customers to hold GBR properly accountable, and to seek redress.

If it does become the statutory body monitoring GBR, the ORR will need ensure that the railways are demonstrating value for taxpayers and working to provide a consistent experience for customers across the UK.

### **Digitalisation and Data for Industry and its Regulators**

We believe that a central part of delivering better oversight, understanding and protection of access to rail is enabled by properly investing in and establishing high expectations for the entire sector – public and private - of more advanced digital infrastructure.

We support the Plan for Rail's commitment to an "open by default" approach to data sharing and would like to see more specific commitments as to how technology policy will be deployed to improve transparency – for example, ensuring that GBR can set technology standards and compel the private sector to comply.

It is vital that the ORR pushes for investment in the most innovative open data tools and technology to make the Great British Railways as efficient as possible. This is critical to ensuring it can deliver the improved experience promised to customers, and to make the system level reforms required to ensure it delivers value for taxpayers, and to target investment where it will make the most significant difference.

These digital investments are also incredibly valuable for ORR to better understand how the railways are run. The information that can be gathered about railway functioning from open data systems would allow the ORR to better understand the railway network and make more informed decisions about infrastructure regulation. Not only do these systems improve the overall customer experience, but they are an investment that will help the ORR optimise the GBR.

To offer tangible examples:

- To maximise the ability of freight and private services to access and use physical rail infrastructure, it is vital that the digital technologies are in place to maximise the amount of data we generate about how rail is being used. This can then be used to drive powerful data science techniques, like modern machine learning applications, to efficiently utilise the physical infrastructure we have, and optimise GBR's services.
- To understand how an individual customer is being impacted by GBR, the entire rail sector must have in place consistently high standards for the quality and depth of data, and GBR must enforce those standards.

The changes that are proposed have the potential to ensure that the UK's new railway system is more transparent, more innovative and more effective than ever before, and open to disruption, innovation and competition. This in turn will create an improved rail sector that delivers true value for the Government, GBR's customers, and the taxpayer.

We look forward to seeing the outcome of the consultation.