

Sent by email only

6 May 2015

Dear Stakeholder

## Complaints Handling Procedures - Consultation on guidance

1. Train and station licence holders are required, by their operating licence, to have approved Complaints Handling Procedures (CHPs) and to comply with them. In October 2013 the Office of Rail and Road<sup>1</sup> (ORR) took over the approval and monitoring role from the Department for Transport (DfT). ORR committed in a letter of 15 April 2014<sup>2</sup> to review the guidance on complaints handling procedure published by the Strategic Rail Authority in February 2005 (the existing guidance). We set out our intended policy approach in a CHPs Regulatory Statement dated July, 2014<sup>3</sup>.
2. Our proposed new guidance is attached. It sets out what ORR will look for when exercising its approval role and when monitoring for continuing compliance.
3. Our policy approach and the proposed guidance have been developed following a prolonged process of engagement with the industry and other interested stakeholders,

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<sup>1</sup> From the 1<sup>st</sup> April 2015 Office of Rail Regulation became Office of Rail and Road as we took on the responsibility for monitoring the performance of the strategic road network in England. Our statutory designated name will be officially changed by secondary legalisation in late 2015.

<sup>2</sup> See further information : <http://orr.gov.uk/what-and-how-we-regulate/licensing/licensing-railway-operators/licence-obligations/complaints-handling-procedures/review-of-existing-chps>

<sup>3</sup> <http://orr.gov.uk/publications/policies-and-statements>



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initially by way of 1:1 meetings and latterly by way of workshops at which we also discussed the establishment of core data for monitoring purposes. We also held a well-attended conference in March 2014 where we took views from a number of stakeholders and special interest groups on how we should develop our regulatory approach in the area of both complaints handling and disabled persons protections policies.

4. During that engagement stakeholders provided us with the following feedback:

- Licence holders wanted greater flexibility to respond outside of the formal investigatory process where this would deliver a swifter and more proportionate resolution for the passenger.
- There should be a greater focus on outcomes, for example, establishing a greater link or measure of how operators' had responded to complaints overall, or had improved services following complaints.
- The guidance is dated, and should reflect modern methods of communication such as social media.
- The guidance should avoid conflict with other obligations owned by the licence holder arising out of franchise or other legislation.
- Licence holders should be encouraged to adapt approaches that reflected the types of service they offer.
- The purpose of the CHPs, in particular whether they are 'passenger-facing' was considered to be unclear.

5. The industry recognises the importance of having a good complaints handling procedure. It is a means by which licence holders gain insight into how their business is working from the perspective of those who use their services. Furthermore an easily accessible complaints system empowers consumers to seek answers or redress when things go wrong. The information provided by complaints, as well as passenger

feedback more generally, enables licence holders to identify root causes of dissatisfaction and take action to improve the customer experience.

6. Dealing well with complaints demonstrates a desire on the part of the licence holder to provide a good level of customer service, which in turn should promote confidence in the use of rail. With passengers paying a greater share towards the cost of the railway, through higher fares, it is all the more important that passengers – as customers – are able to have trust<sup>4</sup> in their operators and feel that they will be taken seriously if they make a complaint.
7. The development of this guidance provides us with an opportunity to ensure that it:
  - learns from the experience to date of licence holders;
  - is sufficiently flexible to enable licence holders to respond to the needs of their customers;
  - fits with our outcomes based approach to monitoring and enforcement, for example, placing a greater focus on organisational culture than specified inputs;
  - recognises technological change i.e. the growth in use of social media platforms such as Twitter;
  - is consistent with changes and/or developments in the application of the law and relevant statutes such as The Equality Act 2010 (the Equality Act); the Directive on consumer Alternative Dispute Resolution<sup>5</sup> (the ADR Directive); the information provisions in the Data Protection Act 1998 (the DPA); and

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<sup>4</sup> Research has demonstrated the importance of consumer engagement in building that trust and complaints handling is a means by which a licence holder can build a positive customer relationship. Passenger Focus, Rail Passenger Trust Survey, 2014  
<http://www.passengerfocus.org.uk/research/publications/rail-passenger-trust-survey-quantitative-research-august-2014>

<sup>5</sup> Available at:  
<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF> – The UK has to transpose the requirements of the ADR Directive into national law by 9 July 2015.

- reflects current best practice in complaint handling.

8. In particular, we want operators to:

- resolve individual complaints promptly and fairly, taking account of the reasonable interests of the complainant; and
- continuously improve, so that complaints and feedback are acted on by the licence holder so that in the medium term the root causes of complaints are addressed.

9. We want to see organisational cultures that support and encourage these objectives and embedded arrangements that effectively regulate themselves, minimising the need for our direct involvement.

10. In Annex A to this letter we provide a summary of what is contained in our proposed guidance, chapter by chapter. We identify where it varies from the existing guidance and give reasons including where the change responds to stakeholder input.

### **Transitional arrangements**

11. Our objective is to finalise and publish the guidance in the Autumn of this year. There will be a period, therefore, in which the 2005 guidance will remain current and we will approve and monitor compliance with CHPs on that basis. Following publication of the new guidance we will establish timescales for licence holders to undertake a review of their CHPs for the purpose of submitting CHPs to us for approval under the new guidance. We will engage with individual operators to determine what would be a reasonable timescale in each case taking into account such factors as the franchising timetable. **We seek views on how this transition period could be managed and other factors we should take into account.**



12. In parallel to this consultation, we are establishing a set of core data for monitoring purposes. A letter was issued to the managing directors of all licensed operators on 13 January 2015 setting out ORR's emerging view on what should be contained in the core data set. Our intention is to have the core data in place in advance of the publication of the finalised CHP guidance.

### **How to respond to this consultation**

13. The consultation period begins on 6 May 2015 and will run until 29 July 2015. Please ensure that your response reaches us before the closing date. If you would like further copies of this consultation document, it can be found at <http://orr.gov.uk/consultations/policy-consultations/open-consultations> or you can contact us on the details below if you need alternative formats (Braille, audio CD, etc.).

14. Please send your consultation responses to:

Rosie Clayton

Competition and Consumer Policy

Office of Rail Regulation

One Kemble Street

London

WC2B 4AN

Email: [rosie.clayton@orr.gsi.gov.uk](mailto:rosie.clayton@orr.gsi.gov.uk) Telephone: 020 7282 0116

15. When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

16. A list of those consulted is attached at Annex B. If you have any suggestions of others who may wish to be involved in this process please contact us.

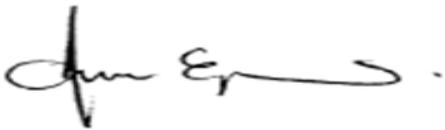
17. All responses will be published on ORR website unless marked as confidential.

### **Freedom of Information**

18. Information provided in response to this consultation, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

19. ORR will process your personal data in accordance with the Data Protection Act 1998 and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Annette Egginton', with a long horizontal flourish extending to the right.

Annette Egginton

Head of competition & consumer policy

## **Proposed guidance - Content and areas that we wish to explore with stakeholders**

### **Chapter 2 - Purpose and scope**

1. This chapter provides guidance on what we mean by a complaint and who is responsible for handling a complaint. This includes a complaint that involves more than one licence holder and/or involves third parties who have a contractual relationship with the licence holder.

#### **What has changed and why**

2. In response to feedback from stakeholders of the need to recognise the growth in social media and the various ways that consumers can now engage with their suppliers, we have made a distinction between complaints (that should be handled in accordance with this guidance) and feedback.

3. We also propose a new requirement for the licence holder to coordinate responses to complaints relating to third party suppliers of services, in circumstances where the licence holder receives the complaint.

4. We have proposed this obligation in recognition that third party supply has become an integral aspect of service delivery for licence holders. We want to ensure that the passenger is not disadvantaged by, for example, having to address their complaint to several different bodies. From a business perspective it also remains important to, as far as possible, retain a relationship with the customer. By retaining oversight of the sort of complaints being made against third party suppliers, the licence holder:

- increases opportunities for customer engagement which is important in building trust; and
- gains insight into the causes of passenger dissatisfaction.

5. For this reason we also expect the licence holder to ensure that it retains access to complaints information even where the complaint is received by and dealt with the third party directly.

**Question 1:**

**Do you agree with our overall purpose and scope? In particular, do you think that the way that we have distinguished feedback from complaints is helpful?**

**Question 2:**

**Do you agree that the licence holder should coordinate responses relating to third party suppliers? Please indicate in your response what the current practice is and identify any challenges arising from this proposed requirement? Do you agree with our reasoning contained above? Are there any other categories of third party supply that you consider should be explicitly covered within this obligation?**

## **Chapter 3 - Approval of CHPs**

6. This chapter describes our approach to the approval of CHPs. We ask that licence holders construct their CHPs around the three core standards that we describe within this chapter. Each core standard is drafted at sufficiently high level to enable licence holders to develop approaches that suit their own particular business models. They, however, contain some best practice principles including those that derive from legal obligation, for example licence holders' responsibilities toward data protection. When approving CHPs we will look

for ways in which the licence holder intends to adopt these best practice principles into its complaints handling procedures.

7. The three core standards cover:

- feedback mechanisms and response;
- people, process and structure; and
- organisational culture.

### **What has changed and why**

8. The change from the existing guidance is primarily around focus i.e. we provide more detail on what we expect to see demonstrated in a CHP in terms of staff, management and culture. We believe that this focus, together with our approach to monitoring compliance by way of customer outcomes is consistent with stakeholders' feedback that there should be a greater link or measure of how operators' had responded to complaints overall, or had improved services following complaints.

9. For example, the existing guidance states that all customer-facing rail staff, including sub-contracted staff, should be trained to receive and pass on complaints and that there should be clear internal complaints handling processes. The proposed guidance provides more by way of best practice principles, including the need for the appropriate chains of accountability; the involvement of the senior management team and an organisational culture that values the insights gained from complaints and the importance of responding effectively to dissatisfaction with its service. The suggestions we make are not binding but provide examples of ways in which the licence holder can provide us with assurance that its organisational approach to complaints will deliver a good complaints handling framework.

10. We have, however, retained the following obligations from the existing guidance and ask below for feedback on this:

- Including information about how to make a complaint in all major publications and at stations;
- Making comment/complaint forms available on request, for example, on trains which carry guards or conductors;
- Having minimum opening hours at call centres and a recording system for out of hours;
- Providing telephone routes at: local telephone rates or free/low call;
- Responding to 95% of all complaints within 20 working days. Where licence holders have set themselves and published more challenging targets, to provide full responses to at least 90% of complaints within that published target;
- Keeping customers informed of the process of the complaint. We have dropped the specific requirement on how often the complainant should be advised on progress (currently every ten working days).

11. We have provided more clarity on what we mean by **Conducting a full and fair investigation** and **effective response and resolution**.

12. We set out the steps that would normally comprise a full and fair investigation but in response to stakeholder feedback, we stress that this is not an exhaustive list and licence holders remain free to make their own judgements on what is appropriate to the

circumstances of the complaint and the complainant, for example, in the scale of the investigation and in the tone and the level of formality adopted.

13. We define resolution as being where **there are no outstanding actions required on the part of the licence holder**. We draw this from our best practice research and from discussions with industry parties as to what steps are taken currently.

14. We ask that licence holders record complaints that have been defined as frivolous or vexatious and subsequently terminated. This should be done in a way which allows licence holders to monitor and examine the number of complaints terminated and the reasons why.

15. In recognition of the central position played by appeals bodies in the complaints handling framework we set out a new obligation on licence holders to establish an appeals **handling protocol with PF and LTW**. We provide some detail on what such a protocol should contain.

16. In response to stakeholders' feedback as to whether the CHP should be a passenger facing document, we continue with the current obligation on all licence holders to **establish and publish separate service level commitments** in relation to complaint handling. These provide a statement of what the complainant can expect from the complaints process and provide licence holders with a metric by which success can be measured. We set out in this part of the guidance, what we would expect to see in a published service level commitment. We expect this to be the passenger facing part of a licence holder's procedures.

**Question 3:**

**Do you agree that the three core standards form a reasonable basis from which licence holders can develop complaint handling procedures? Please identify any areas, for example:**

- a. where you would prefer more detail or additional clarity; and/or**
- b. where you consider the standards do not meet our intention to draft at sufficiently high level for licence holders to develop procedures to suit their own business models and the needs of their passengers. In particular whether the balance between specified obligations and a focus on internal culture and arrangements appears consistent with our stated regulatory approach.**

**Question 4:**

**Is the guidance around *Conducting a full and fair investigation* and *Effective response and resolution* helpful and/or sufficiently clear?**

**Question 5**

**Do you consider that a CHP should contain a requirement to have an appeal handling protocol with PF and LTW? Do you agree that we should specify some of the detail including recommended response times? Alternatively, is there other detail that you think should be included?**

17. In the following areas we introduce more detailed guidance than exists currently to reflect best practice observed in other sectors; to ensure consistency with relevant legislation and to ensure that the guidance remains current.

- **Websites** - The guidance we provide on good practice takes into account how complaints handling has developed in other sectors, for example having a complaints page accessible within 2 clicks of the landing/home page. We also ask licence holders to be aware of their responsibilities under equalities legislation in terms of making the complaints pages of websites accessible to all.
- **Social media platforms** - Although feedback through social media is not included within our definition of complaint, we expect licence holders to have a social media policy and to explain to passengers what this is. We also set out how we would expect expressions of dissatisfaction made using social media to be dealt with.
- **Respecting equality and diversity and respecting confidentiality** - We expect licence holders to comply with their various statutory obligations and provide some examples of best practice in these areas. We identify the importance of having a privacy policy and making that publicly available. ORR may wish to contact complainants as part of our research and monitoring role. Data protection concerns must be properly addressed to allow this. Licence holders should consider ways in which the complainant could be advised of this eventuality.
- **Compensation – passenger awareness** - We remind licence holders of the need to raise awareness of compensation rights amongst passengers

18. Due attention must be paid to the Alternative Dispute Resolution (ADR) Directive which requires Member States to ensure that ADR is available “for any dispute regarding contractual obligations that a consumer has with a business”. While it doesn’t require businesses to sign-up to use ADR, it does require them to provide consumers with information about the relevant ADR bodies for the sector, and whether they will use ADR in an attempt to settle the dispute. There is no transport ADR body at present. For the time being, the train operating companies will be able to make use of the ‘residual’ ADR

provider if they so wish. The ORR will have powers to ensure that train companies are providing the information required by the Directive.

19. **We are minded to remove the following two key requirements** that exist in the current guidance:

- For licence holders to **formally review their CHPs each year**. Alternatively, we expect licence holders to demonstrate that they have robust quality assurance processes in place to identify where standards are not being met. We will intervene if we have evidence to suggest that the complaints handling procedures are not working effectively.
- For licence holders **to seek ORR's consent** to any lengthening of response timescales due to an unforeseen and specific event. ORR proposes to substitute this consent with an obligation on the licence holder to inform ORR when such a circumstance has occurred; the reasons; the expected duration; the plans in place to remedy the situation; and any steps taken to advise affected complainants.

**Question 6:**

**Are you content with the ORR's minded proposal to drop these two previous requirements? If not give reasons.**

## **Chapter 4 – Monitoring for compliance**

20. In this chapter we set out how we expect to monitor on-going compliance with licence holders' CHPs and the steps that we might take when concerned that individual CHPs may not be supporting our objective of continuous improvements in passengers' experience of rail.

## What has changed and why

21. The current guidance is silent on monitoring which was previously carried out by the DfT. We considered it would assist licence holders to have our monitoring approach set out in the guidance to provide context for what we are asking of licence holders in the establishment of a CHP and to demonstrate what we are expecting by way of outcomes.

22. In summary, we will monitor for compliance by way of the core data sets which we are currently discussing with the industry<sup>6</sup>, feedback received either by complaints or via PF and LTW; and/or independent research.

23. In the light of concerns arising from our monitoring activity, we may undertake a number of steps. This could include requesting further information from the licence holder; requiring a licence holder to conduct a review of its CHP and report findings; and/or undertaking an independent audit.

### Question 7:

**Do you believe our proposed monitoring activities will be effective in ensuring compliance with the obligations? Is there any additional evidence that you would like to see included as part of this process?**

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<sup>6</sup> ORR is working with licence holders to establish a core data set for CHPs and Disabled Peoples Protection Policies (DPPPs). A letter was issued to the managing directors of all licensed operators on 13 January 2015 setting out ORR's emerging view on what should be contained in the core data set.

## Regulatory impact

24. We believe that ORR's approach to complaints handling will not involve licence holders in making material changes to how they manage complaints. Where adjustments are necessary this is as a result of:

- statutory development, for example in the need to comply with equalities and data protection legislation;
- inevitable technological change, including the increased use of social media and the greater use of the internet; and
- improvements in accepted best practice that the railways should adopt in response to a normal commercial imperative to increase customer patronage and decrease transaction costs of managing unsatisfied complainants.

25. We also consider there to be significant benefits to an approach that has a greater focus on outcomes for the passenger and less focus on detailed commitments. This should enable licence holders to respond to the needs of their own particular markets whilst enabling change in line with technological developments and the changing expectations of passengers.

26. We do not expect that our focus on staff, management and culture should involve the licence holder making any material change. This is because each licence holder should already be mindful of its responsibilities for delivering a good complaints handling service and to respond appropriately in terms of delivering a better passenger experience in the light of feedback through complaints.

27. We also propose to reduce regulatory oversight in a number of key areas namely:

- No longer requiring licence holders to submit their CHPs for annual review.
- Not requiring licence holders to gain ORR consent to lengthen response times in reaction to an unforeseen incident or event.

28. We do, however, retain a number of the existing obligations and ask consultees whether we have got the balance right on this and whether we should revisit any of those specified requirements and why. We remain open to reasoned feedback on this.

#### **Question 8:**

**We ask for comments on our initial approach and its impact, including both any costs and benefits that we do not identify.**

## **Annex B**

*List of those consulted:*

- Abellio Greater Anglia
- Association of Train Operating Companies (ATOC)
- Arriva Trains Wales
- c2c
- Caledonian Sleeper
- Chiltern Railways
- CrossCountry
- Department for Transport (DfT)
- East Midlands Trains
- Eurostar
- First Great Western
- First Hull Trains
- First TransPennine Express

- Grand Central
- Great Northern
- Heathrow Express
- London Midland
- London Overground (LOROL)
- London TravelWatch (LTW)
- Merseyrail
- Network Rail
- Northern
- ScotRail
- Southeastern
- Southern
- South West Trains
- Thameslink
- Transport Focus (TF)
- Transport Scotland
- Virgin Trains
- Virgin Trains East Coast
- Welsh Government
- Which?