



## **Consultation on improving access to delay compensation**

**Proposals for a Licence  
Condition, Delay Compensation  
Code of Practice, and Third  
Party Intermediaries Code of  
Conduct**

**30 June 2020**

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# Executive summary

## Introduction

1. Delay compensation forms a crucial part of the offer made by train companies to their passengers. Providing compensation when a passenger has experienced a delay to their journey is one way in which the train company is able to demonstrate to the passenger that it recognises that it has failed to provide the service that the passenger required. It builds trust, and can provide a tangible acknowledgement of where the industry has fallen short.
2. Over the last year, train companies handled 6.3m claims for delay compensation. However, we know that only one third of passengers claim the delay compensation to which they are entitled, and that this ‘compensation gap’ between those who could claim compensation and those who actually do so, has failed to narrow in recent years.
3. Our response in 2016 to the Which? super-complaint helped to define and articulate the rail industry’s ‘compensation gap’ for the first time<sup>1</sup>. We made recommendations to improve compensation claims processes, and said that if they did not deliver the required improvement we would need to revisit this area.
4. We have continued to monitor progress and, whilst some has been made, there has not been a significant increase in the percentage of passengers who claim; Department for Transport and Transport Focus research<sup>2</sup> shows the claim rate in 2018 was 35%, unchanged from 2016.
5. Last year, we submitted advice<sup>3</sup> to the Williams Rail Review<sup>4</sup> setting out a number of potential reforms targeted at improving passenger awareness of their entitlement to delay compensation, improving the process for claiming compensation and increasing incentives on companies to promote delay compensation. Foremost amongst our reforms was the intention to consult upon the introduction of a licence condition on delay compensation. We have now developed our thinking further and seek comment on the draft proposals.

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<sup>1</sup> [https://orr.gov.uk/\\_data/assets/pdf\\_file/0009/21141/which-super-complaint-response-report.pdf](https://orr.gov.uk/_data/assets/pdf_file/0009/21141/which-super-complaint-response-report.pdf)

<sup>2</sup> <http://d3cez36w5wymxj.cloudfront.net/wp-content/uploads/2018/10/09181728/Rail-delays-and-compensation.pdf>

<sup>3</sup> [https://orr.gov.uk/\\_data/assets/pdf\\_file/0005/41396/orr-advice-to-the-williams-rail-review-july-2019.pdf](https://orr.gov.uk/_data/assets/pdf_file/0005/41396/orr-advice-to-the-williams-rail-review-july-2019.pdf)

<sup>4</sup> <https://www.gov.uk/government/collections/the-williams-rail-review>

## Our proposals

6. We are proposing a licence condition on delay compensation which will require passenger train companies to comply with a Delay Compensation Code of Practice (CoP). The CoP will set a common baseline, and set clear requirements in several areas.
7. Firstly, awareness. We know from passenger research how important the provision of information is, and the key role that train companies play in providing information about passengers' rights, and how to exercise them. The CoP establishes clear baseline expectations for how and when train companies should provide information on delay compensation to passengers, as well as the nature of that information. We focus here on two principal areas: general provision of information (including online and throughout the course of a passenger's booking and journey); and information during disruption – when research shows the importance of awareness is most acute.
8. Next, ease of process. We want to ensure that train companies are making it as easy as possible for passengers to submit claims for delay compensation. Information and evidence requirements should be clear and proportionate. The CoP establishes clear baseline expectations for the way in which the process for delay compensation works, with the objective of making it simpler and quicker for passengers to claim. We focus on two key aspects: the appropriate timescales for processing a claim, and the information requirements that are necessary and proportionate.
9. Thirdly, we want to see train companies continuing to improve and innovate. Continual improvement will require train companies to monitor their own performance. The analysis of this performance data will help them to identify areas for improvement, and potential options for how these areas might be addressed. Where new initiatives are trialled, we want to see the experience being shared for the benefit of the broader industry and travelling public. Clear, consistent and regular publication of performance data will also help to raise public awareness of delay compensation, and facilitate benchmarking and accountability.
10. Lastly, the CoP will require train companies to accept claims from Third Party Intermediaries (TPIs). We found evidence, from rail and other sectors, that such firms can help to raise awareness, spur innovation and improve passenger access to compensation. We have developed a separate Code of Conduct which sets out clear requirements for TPIs. If a passenger wants to use a TPI, and the TPI meets the Code of Conduct, then train companies must accept claims from them.
11. We recognise that it is ultimately the passenger who will determine whether and how they want to claim compensation for a delay. However, it is important that they are aware of their right to claim and are able to make an informed choice. We consider that our proposals are a proportionate response to this issue. They will better protect

the interests of passengers as well as promoting positive behaviours amongst train companies.

12. We are now seeking comments on these proposals.

## Background

### Current compensation arrangements

13. Delay compensation arrangements for franchised train operators<sup>5 6</sup> are designed and mandated by government through the contracts agreed with train operators. Different delay compensation arrangements apply across the train operators according to when the contract was agreed, although in recent years we have seen increasing commonality as these contracts have been strengthened.
14. A number of compensation schemes operate across Great Britain. Depending on which train operator passengers travel on, the most common means through which they claim compensation is Delay Repay. DR15 compensates passengers for a delay of 15-29 minutes, while passengers are eligible for DR30 when they are delayed by 30 minutes or longer<sup>7</sup>. A small number of train companies still use bespoke 'passenger charter' schemes, with varying eligibility thresholds and entitlements.

### ORR role

15. Delay compensation arrangements are subject to relevant legislation<sup>8</sup> and specified via contractual agreements with government, via franchises<sup>9</sup>, and passengers, via the National Rail Conditions of Travel. They are not currently set out in or subject to ORR's licensing regime. This limits our ability to influence directly the behaviour of licence holders in this area. However, ORR is a specified regulator able to receive a super-complaint for the purposes of the Enterprise Act 2002<sup>10</sup> and in December 2015 we received a super-complaint from Which? regarding compensation arrangements for passenger rail services.
16. In our response<sup>11</sup> to the super-complaint, we introduced a number of recommendations to improve train companies' compensation claims processes.

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<sup>5</sup> <https://www.gov.uk/government/collections/public-register-of-rail-passenger-franchise-agreements>

<sup>6</sup> Franchise licence holders have temporarily transitioned from franchise contracts to Emergency Measures Agreements: <https://www.gov.uk/government/speeches/rail-emergency-measures-during-the-covid-19-pandemic>

<sup>7</sup> Annex A of our submission to the Williams Review provides a summary of the existing quantitative evidence. [https://orr.gov.uk/\\_data/assets/pdf\\_file/0018/41427/orr-advice-to-the-williams-rail-review-july-2019-annex-c.pdf](https://orr.gov.uk/_data/assets/pdf_file/0018/41427/orr-advice-to-the-williams-rail-review-july-2019-annex-c.pdf)

<sup>8</sup> Specifically, the Consumer Rights Act 2015, and the EU Rail Passenger Rights Regulation 1371/2007

<sup>9</sup> <https://www.gov.uk/government/speeches/rail-emergency-measures-during-the-covid-19-pandemic>

<sup>10</sup> The Enterprise Act 2002 (Super-complaints to Regulators) Order 2003 is at <http://www.legislation.gov.uk/en/uksi/2003/1368/contents/made>

<sup>11</sup> [https://orr.gov.uk/\\_data/assets/pdf\\_file/0009/21141/which-super-complaint-response-report.pdf](https://orr.gov.uk/_data/assets/pdf_file/0009/21141/which-super-complaint-response-report.pdf)

These included the introduction of five standards identified as good practice, on which we reported the progress made by train companies in our Annual Consumer Report<sup>12</sup>. We also updated our guidance on meeting the passenger information licence condition to recognise the importance of giving passengers good information about compensation in the event of a delay. In making these recommendations, we stated that if they did not deliver the required improvement we would need to revisit this area.

17. In 2017, RDG developed and published on the National Rail Enquiries website its compensation best practice guide. RDG also convened a cross-industry forum to share knowledge and develop common criteria for minimum standards, best practice, and future aspirations.
18. In February 2019, the Williams Review asked ORR to advise on what more could be done by rail operators to make it easier for customers to access the compensation they are entitled to, and whether more regulatory powers are required to ensure that it happens.
19. Only a minority of passengers receive the delay compensation to which they are entitled. According to research commissioned by DfT and Transport Focus, the percentage of eligible passengers who claimed delay compensation stood at 35% in 2018; a figure which was unchanged from 2016.
20. In considering our response to the Williams Review, we drew upon a substantial evidence base to help us to identify the factors that are hampering passengers' access to delay compensation. This evidence showed that the main reasons for the low claim rate are that a majority of passengers are unaware of their entitlement to claim, and even when passengers are made aware that they can do so, there can be a perception that the claims process is too onerous relative to the compensation the passenger can expect to receive.
21. In our published advice<sup>13</sup> to the Williams Review we set out a number of short, medium and long-term reforms designed to better protect the interests of passengers as well as promoting positive behaviours amongst train companies. In particular, our focus was on making passengers aware of their entitlement to delay compensation and making it easier for them to do so. We also identified the positive role that third party intermediaries (TPIs) can play in increasing awareness and take-up of delay compensation.
22. Our short-term recommendation for reform was the introduction of a licence condition on delay compensation, bringing this area more squarely within our regulatory remit.

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<sup>12</sup> [https://orr.gov.uk/\\_data/assets/pdf\\_file/0003/28245/measuring-up-annual-rail-consumer-report-july-2018.pdf](https://orr.gov.uk/_data/assets/pdf_file/0003/28245/measuring-up-annual-rail-consumer-report-july-2018.pdf)

<sup>13</sup> [https://orr.gov.uk/\\_data/assets/pdf\\_file/0005/41396/orr-advice-to-the-williams-rail-review-july-2019.pdf](https://orr.gov.uk/_data/assets/pdf_file/0005/41396/orr-advice-to-the-williams-rail-review-july-2019.pdf)

This would require train companies to adhere to a delay compensation code of practice, within which would be an obligation to accept claims for compensation from TPis.

23. Since publication of the Williams response we have been developing our proposals for the content of these documents. We have spoken to consumer bodies including Transport Focus, London TravelWatch, and Which?, as well as the Rail Delivery Group (RDG) and train companies via RDG's complaints working group, and TPis to help inform our proposed arrangements.

## Scope of the document and how to respond

24. In this consultation we seek views on modifying the passenger licence to introduce a new licence condition on delay compensation. Our proposals support ORR's strategic objective of Better Customer Service. In particular:

- Chapter 1 – we set out the case for the delay compensation licence condition
- Chapter 2 – we set out proposals for the content of the delay compensation code of practice to increase passenger awareness of these arrangements
- Chapter 3 - we set out proposals for the content of the delay compensation code of practice to improve the processes for claiming
- Chapter 4 - we set out proposals for the content of the delay compensation code of practice regarding continuous improvement and reporting
- Chapter 5 - we set out proposals for the content of the delay compensation code of practice for a greater role for TPis
- Annex A – we set out our initial draft of the delay compensation licence condition
- Annex B – we set out our draft delay compensation code of practice
- Annex C – we set out our draft TPI code of conduct
- Annex D – collated consultation questions
- Annex E – we set out our draft regulatory and equalities impact assessments

## Responding to this consultation

25. Responses to this consultation are invited by Friday 28 August 2020, and should be sent by

**email to:** [compensation.consultation@orr.gov.uk](mailto:compensation.consultation@orr.gov.uk)

**post to:** ORR compensation consultation,

Office of Rail and Road

25 Cabot Square

London

E14 4QZ

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

27. ORR has actively considered the needs of blind and partially sighted people in accessing this document in PDF format. The text is available in full on the ORR website, and may be freely downloaded. Individuals and organisations can use free Adobe Reader accessibility features or screen readers to read the contents of this document.

28. If you need this document in a different format such as large print, easy read, audio recording or braille, please contact our Customer Correspondence Team via:

**web enquiry form:** <https://orr.gov.uk/contact-us#form>

**email enquiries:** [contact.cct@orr.gov.uk](mailto:contact.cct@orr.gov.uk)

**telephone:** 020 7282 2000

**postal address:** ORR compensation consultation,

Office of Rail and Road

25 Cabot Square

London

E14 4QZ

29. We will consider your request and will endeavour to get back to you with the accessible format within 20 working days.
30. We plan to publish all responses to this consultation on our website. Should you wish any information that you provide, including personal data, to be treated as

confidential, please be aware that this may be subject to publication, or release to other parties or to disclosure, in accordance with the access to information regimes.

31. In view of this, if you are seeking confidentiality for information you are providing, please explain why. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on ORR.
32. If you are seeking to make a response in confidence, we would also be grateful if you would annex any confidential information, or provide a non-confidential summary, so that we can publish the non-confidential aspects of your response.

### **Next steps**

33. Following consideration of the responses we will publish our decision and, if appropriate, proceed with the statutory licence modification process.

# 1. Delay Compensation Licence Condition

## Summary

34. In this chapter, we set out the case for introducing a licence condition on delay compensation. We draw upon the evidence of consumer detriment and concern, and the benefits available to passengers and train companies which could be derived from the licence condition.

## Introduction

35. There is considerable evidence available which demonstrates that the current arrangements for ensuring passengers can exercise their rights to delay compensation are not working properly. These problems are longstanding and efforts to date have not secured the necessary improvements.

### **Measures taken have not improved the take-up of delay compensation**

36. We know that a minority of passengers receive the compensation for a delay to which they are entitled. Our analysis of the ‘compensation gap’ - the difference between the number of passengers eligible to receive delay compensation relative to the number of passengers who actually receive it - indicates that around one third of passengers who experience a qualifying delay receive the delay compensation to which they are entitled.
37. In our response to the Which? super-complaint in 2016<sup>14</sup> we introduced a number of measures to improve train companies’ compensation claims processes. We also updated our guidance on meeting the ‘passenger information’ licence condition to recognise that giving passengers good information about compensation in the event of delay is accepted as an important component of the overall passenger experience<sup>15</sup>.
38. As part of our response to the super-complaint we said that if our recommendations did not deliver the required improvement we would need to revisit this area. Whilst some progress has been made, there has not been a significant increase in the percentage of passengers who claim. According to research<sup>16</sup> commissioned by DfT and Transport Focus, the percentage of eligible passengers who claimed delay compensation stood at 35% in 2018; a figure which was unchanged from 2016.
39. Despite the increased focus in recent years on delay compensation, and the changes which have been introduced, we have yet to see any discernible increase in the take-

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<sup>14</sup> [https://orr.gov.uk/\\_data/assets/pdf\\_file/0009/21141/which-super-complaint-response-report.pdf](https://orr.gov.uk/_data/assets/pdf_file/0009/21141/which-super-complaint-response-report.pdf)

<sup>15</sup> [https://orr.gov.uk/\\_data/assets/pdf\\_file/0015/4353/information-for-passengers-guidance-on-meeting-the-licence-condition.pdf](https://orr.gov.uk/_data/assets/pdf_file/0015/4353/information-for-passengers-guidance-on-meeting-the-licence-condition.pdf)

<sup>16</sup> <http://d3cez36w5wymxj.cloudfront.net/wp-content/uploads/2018/10/09181728/Rail-delays-and-compensation.pdf>

up rate for delay compensation by eligible passengers. Evidence shows that the main reasons for this continuing gap between those who could claim and those who do so, are that a majority of **passengers are unaware** of their entitlement to claim, and even when passengers are made aware that they can do so, there can be a perception that the **claims process is too onerous**. We explore these two issues further in the sections below.

### **Measures to improve passenger awareness of delay compensation are necessary**

40. A significant barrier to increasing the number of claims for delay compensation is the relative low awareness amongst passengers that they are eligible for compensation, and how to go about claiming it. In 2016<sup>17</sup> more than half (57%) of those eligible to claim did not do so because they were unaware of their eligibility to claim. This increased to 58% in 2018, although this increase may be partially explained by the transition of some train companies to DR15.
41. Therefore, if we are to increase the number of passengers claiming delay compensation, raising their awareness of their entitlement to do so is key. To that end, evidence<sup>18</sup> shows that proactive steps taken by train companies to inform passengers of their eligibility to claim has a positive impact on increasing awareness. Almost four-in-ten of those aware of their entitlement to claim cited some form of action by the train company as the prompt for knowing they were eligible to claim for their most recent delay.
42. More recently, Transport Focus Panel research<sup>19</sup> in October 2019 showed that 31% of panellists who experienced a delay in the last six months, which entitled them to delay compensation, say that the train company made them aware of this entitlement when they were delayed.
43. The importance and impact of providing information about delay compensation is further illustrated by research which shows that more than half (52%) of those aware of their entitlement to claim stated they 'already knew the rules'. From this, it is reasonable to conclude that these passengers have perhaps previously claimed. This is because once a passenger has claimed they are likely to claim consistently in the future.
44. This suggests that if steps are taken to make passengers aware of their eligibility to claim, and how to claim, then they retain that knowledge and it increases the probability they will become a repeat claimant going forward.

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<sup>17</sup> <http://d3cez36w5wymxj.cloudfront.net/wp-content/uploads/2018/10/09181728/Rail-delays-and-compensation.pdf>

<sup>18</sup> Transport Focus and DfT research, 2018. <http://d3cez36w5wymxj.cloudfront.net/wp-content/uploads/2018/10/09181728/Rail-delays-and-compensation.pdf>

<sup>19</sup> <https://d3cez36w5wymxj.cloudfront.net/wp-content/uploads/2020/02/06201629/Delay-Repay-compensation-transport-user-panel-survey.pdf>

45. It is apparent that steps taken to date to increase passenger awareness of compensation have failed to deliver a significant increase in the percentage of passengers who claim. Many passengers still do not receive the information necessary to know whether they are eligible to claim delay compensation and how to do so.

### **Measures to improve the process for claiming delay compensation are necessary**

46. Another barrier to increasing the number of claims is the processes supporting delay compensation, which passengers have to navigate and engage with as part of doing so.
47. One reason for this is the complexity of the claim process itself. More than 1 in 4<sup>20</sup> passengers who choose not to claim delay compensation give the reasons for not doing as it would take too much time or the process is too complicated. Another survey<sup>21</sup> suggests that nearly a third of passengers consider it is too much effort to claim.
48. This perception that the claims process is onerous is supported by evidence<sup>22</sup> that suggests that some train companies require up to 24 information fields to be completed in order for an online claim to be processed. The number of separate pieces of information required, and inconsistency in the type of information sought by train companies, creates a barrier to claiming delay compensation.
49. The complexity of the claims processes can also lead to errors being made by passengers when completing delay compensation claims forms. This can lead to these claims being rejected by the train company. Our most recent published monitoring data<sup>23</sup> shows that across train companies almost 16% of delay compensation claims were not approved.
50. We are aware that the higher the value of the ticket, the more likely the passenger is to claim<sup>24</sup>. If passengers weigh up the effort to claim relative to the amount of delay compensation that they are likely to receive, then it would be reasonable to assume that removing unnecessary or perceived complexity in the claims process should incentivise more passengers to claim.
51. Research also suggests that simplicity in form-design and process can significantly affect response rates<sup>25</sup>. For example, optimising online form-design for mobile

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<sup>20</sup> <http://d3cez36w5wymxj.cloudfront.net/wp-content/uploads/2018/10/09181728/Rail-delays-and-compensation.pdf>

<sup>21</sup> <https://www.which.co.uk/news/2019/04/are-you-missing-out-on-hundreds-of-pounds-in-rail-compensation/>

<sup>22</sup> <https://www.which.co.uk/news/2019/05/revealed-how-train-companies-are-adding-unnecessary-hassle-to-claiming-compensation/>

<sup>23</sup> <https://dataportal.orr.gov.uk/media/1735/delay-compensation-claims-factsheet-2019-20-q3.pdf>

<sup>24</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/751380/rail-delays-and-compensation-report-2018-revised.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/751380/rail-delays-and-compensation-report-2018-revised.pdf)

<sup>25</sup> <https://www.local.gov.uk/sites/default/files/documents/Response%20Playbook%20Final.pdf>

devices, or limiting the required information fields, can make a form easier to use. Something of particular importance in facilitating usage is the ability for passengers to use a personalised account that, once created, will allow a customer to save their account and contact details to accelerate the speed of future claims<sup>26</sup>.

## The role of TPIs

52. Third Party Intermediary firms (TPIs) have recently ‘entered the market’ to provide a service to passengers by facilitating claims for rail delay compensation. These firms offer services to passengers who may have experienced a delay; assisting and in some cases processing passengers’ claims, often in exchange for a commission or subscription fee. The primary value they add, for the passenger, is by alerting them to when they may be entitled to compensation, and reducing the effort they have to put into the claims process.
53. Currently there are only a handful of TPIs active in the delay compensation market. ORR conducted a TPI market review in 2019<sup>27</sup>, incorporating the findings into its broader recommendations to the Williams Review on how to narrow the ‘compensation gap’ in rail. Evidence from other sectors, notably aviation, shows that TPIs can have a significant impact on levels of compensation received. A small number of passengers already use these firms in rail, suggesting there is consumer demand for such services. We also consider that TPIs have the potential to bring innovation into the delay repay market, placing competitive pressure on licence holders to improve their own ‘in-house’ offerings. Weighing the evidence from rail and other sectors, we are of the view that TPIs have the potential to play a positive and important role in bringing innovative and consumer friendly services to the market by engaging passengers, raising awareness and assisting individuals to make claims.
54. However, set against these potential benefits there are risks. There is some evidence of behaviour and conduct among some existing TPI companies that is harmful to both customers and train companies. Examples include a lack of transparency about fees and inadequate protections against duplicate or fraudulent claims. Indeed, some TPIs accepted that they did not have any systems in place to protect against fraudulent claims being issued. Licence holders are wary of TPI involvement in the market, and have in some instances cited these factors as justification for refusing claims submitted.

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<sup>26</sup> <https://d3cez36w5wymxj.cloudfront.net/wp-content/uploads/2020/02/06201130/Make-Delay-Pay-improving-compensation-for-rail-passengers.pdf> page 15

<sup>27</sup> Our full analysis of the evidence relating to TPIs is set out in our market review conclusions at Annex A of: [https://orr.gov.uk/\\_data/assets/pdf\\_file/0016/41425/orr-advice-to-the-williams-rail-review-july-2019-annex-a.pdf](https://orr.gov.uk/_data/assets/pdf_file/0016/41425/orr-advice-to-the-williams-rail-review-july-2019-annex-a.pdf). We also had regard to a report compiled by Europe Economics on how TPIs operated in other sectors and lessons that could be applied to the delay repay market: [https://orr.gov.uk/\\_data/assets/pdf\\_file/0011/41510/europe-economics-delay-repay-claims-companies-market-review-april-2019.pdf](https://orr.gov.uk/_data/assets/pdf_file/0011/41510/europe-economics-delay-repay-claims-companies-market-review-april-2019.pdf)

55. In light of the above, and our assessment of the evidence, our objective is to harness the potential benefits of greater TPI involvement whilst retaining important protections for passengers, train companies and taxpayers.

### **Proposal for a delay compensation licence condition**

56. We have set out above the reasons why we consider it to be in the public interest to introduce a licence condition on delay compensation.
57. ORR has licence responsibilities across consumer areas including complaints handling, assisted travel, and passenger information. This provides for consistency in treatment and protection for passengers in these key consumer areas. A licence condition for delay compensation would be in line with our approach to these other important consumer areas.
58. We propose that the licence condition will require train companies to comply with a CoP on delay compensation. The CoP will establish baseline standards which we expect train companies to not only meet but to seek to exceed. It provides for greater transparency in the requirements placed upon train companies and what passengers should expect from them, as well as providing a set of obligations against which we will monitor compliance. Where train companies are unable to meet these standards, the licence condition provides a clear route for regulatory action.
59. We can see no reason why there should be a differentiation in licence requirements between train operators under government contract, and open access and concession operators. Whilst different delay compensation arrangements apply to the former, passengers using open access and concession operators services should be afforded the same level of protection as franchised<sup>28</sup> train operators.
60. In Annex A we set out our initial thinking on what form the licence condition may take. Following consideration of responses to this consultation, we would expect to circulate a draft of the licence condition for comment prior to proceeding with the statutory licensing process.
61. In the following chapters and annexes we set out the draft requirements for the CoP and the TPI Code of Conduct.
62. We will keep under review whether there is a continuing need for a delay compensation licence condition and delay compensation code of practice. Where performance consistently exceeds this baseline or future innovation delivers a better outcome for passengers, we will consider whether the licence condition should be

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<sup>28</sup> <https://www.gov.uk/government/speeches/rail-emergency-measures-during-the-covid-19-pandemic>

amended or removed to reduce the burden of regulation where it is no longer required.

## Consultation questions

Q1. Is there any evidence that we have not considered which may be relevant to this chapter?

Q2. Should open access and concession operators (as well as franchise<sup>29</sup> holders) be subject to the proposed licence condition? Should it apply to other holders of a passenger SNRP<sup>30</sup>?

Q3. Do you have any comments on our initial draft of the delay compensation licence condition (in Annex A)?

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<sup>29</sup> <https://www.gov.uk/government/speeches/rail-emergency-measures-during-the-covid-19-pandemic>

<sup>30</sup> Train companies in Great Britain who hold a Statement of National Regulatory Provisions

## 2. Increasing Passenger Awareness

### Summary

63. In this chapter, we set out the case for making improvements to ensure that passengers are aware of their rights to delay compensation. We also set out the draft proposals in the CoP designed to achieve those improvements.

### Introduction

64. Having established in chapter one the strong case for introducing a licence condition requiring adherence to a CoP on delay compensation, we now set out the content of the CoP designed to increase passenger awareness.
65. We are aware that there is a role in raising awareness for other industry parties beyond that envisaged for train companies in the CoP. We recommended in our response to the Williams Review that as the statutory sectoral consumer body Transport Focus be funded to further promote delay compensation to passengers via a national campaign. Its subsequent Make Delay Pay<sup>31</sup> campaign across a range of social media has been running across a variety of media.

### Proposals for increasing awareness

66. The purpose of this section of the CoP is to establish clear baseline expectations for how and when train companies should provide information on delay compensation to passengers as well as the nature of that information. We focus here on two principal areas: general provision of information (including online and throughout the course of a passenger's booking and journey); and information during disruption – when research shows the importance of awareness is most acute. Whilst this establishes the baseline, we anticipate that train companies will continue seeking to improve their service beyond this level. Our draft requirements for passenger information are set out in provision one of the draft CoP which can be found in **Annex B** of this document.

### General provision of information

67. The CoP articulates a basic expectation of train companies: that they must ensure that information on delay compensation is clearly accessible to passengers, and prospective passengers, in the course of their booking and journey. In so doing, this provides an opportunity to increase awareness amongst passengers not only when

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<sup>31</sup> <https://d3cez36w5wymxj.cloudfront.net/wp-content/uploads/2020/02/06201130/Make-Delay-Pay-improving-compensation-for-rail-passengers.pdf>

they actually want to claim delay compensation but also more generally about the existence of these arrangements.

68. We set out below the proposals for general requirements for the provision of information via the different contact channels we would expect passengers to use, as well as the content of that information. Many of these requirements reflect current good practice within the industry, so compliance with these provisions should not be unduly onerous.

#### *Online*

69. We propose that train companies provide a dedicated webpage with all relevant information on delay compensation. Providing information and/or a prominent link to a delay compensation page on the homepage of the train company's website will ensure that passengers are readily able to access relevant information. In so doing, we expect train companies to provide clarity in different compensation arrangements: delay compensation; ticket refunds; and claims under the Consumer Rights Act 2015.
70. Research conducted by Transport Focus<sup>32</sup> shows that most train companies now have a prominent link on their website homepage for delay compensation information. Therefore, we do not consider that enshrining this baseline within the CoP will be a burden on train companies, and will bring those companies who do not currently provide this information prominently up to the same standard. We would expect a link to this information to be provided as part of the purchasing process via notification of e-ticket bookings, and for train companies to refer to this information in social media communications.

#### *Stations*

71. Passengers must be able to get information on delay compensation at the station. As noted in chapter one, research<sup>33</sup> shows that 1 in 10 passengers become aware of their eligibility through posters at the station or on the train. Such information is also helpful in raising general awareness of delay compensation arrangements. Therefore, we propose that train companies make appropriate use of different media including for example posters, information screens, leaflets etc. at stations to provide information about their delay compensation arrangements. We do not specify exactly what method should be used to provide information – train companies are best placed to determine that based on the size, facilities and staffing levels at stations. For example, we would not expect leaflets to be provided at unstaffed stations but we would expect other means such as posters to be used instead.

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<sup>32</sup> Transport Focus and DfT research, 2018. <http://d3cez36w5wymxj.cloudfront.net/wp-content/uploads/2018/10/09181728/Rail-delays-and-compensation.pdf>

<sup>33</sup> Transport Focus and DfT research, 2018. <http://d3cez36w5wymxj.cloudfront.net/wp-content/uploads/2018/10/09181728/Rail-delays-and-compensation.pdf>

### *On board*

72. In common with expectations of the means of providing information at stations, passengers must be able to get information on delay compensation whilst they are on the train. Train companies already make use of the space, materials and technology at their disposal to provide passengers with promotional and operational information whilst on board. We propose that companies make appropriate use of these same means, including posters, vinyls, information screens and announcements, to provide passengers with information on delay compensation. We are aware that some already do this.

### *In person*

73. We propose that, with certain qualifications, rail staff should be able to provide passengers with relevant information about their entitlement to delay compensation. Research<sup>34</sup> shows that one in four passengers become aware of their eligibility to delay compensation via information from rail staff either directly or through announcements. It is reasonable for passengers to expect customer-facing staff to be able to provide accurate information on delay compensation. This includes staff who work in stations, on board trains, and in call centres including those who respond to contacts via station help points. However, our mystery shopping exercise showed that only 34% of passenger / staff enquiries yielded an accurate response in all four key areas (delay thresholds, compensation levels, payment methods and process)<sup>35</sup>.
74. We recognise that in certain situations providing this may be more difficult, for example train dispatch staff at busy stations. In these circumstances, the member of staff should be able to redirect the passenger to an individual who will be able to provide the required information or, where that person is not available to provide precise details, of where the information can be accessed. Staff must be able to respond to passenger queries about delay compensation. As noted above, we have tested the ability of staff to respond to passenger queries about delay compensation previously and may do so in future to monitor performance in this area.

### *Information requirements*

75. It is important that there is commonality in the information provided to passengers about delay compensation across the different methods of communication. Information provided online, in the station, on board and in person should be consistent. Our proposals require train companies to set out details about the delay compensation scheme (including delay thresholds and entitlements), how to claim

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<sup>34</sup> Transport Focus and DfT research, 2018. <http://d3cez36w5wymxj.cloudfront.net/wp-content/uploads/2018/10/09181728/Rail-delays-and-compensation.pdf>

<sup>35</sup> [https://orr.gov.uk/data/assets/pdf\\_file/0007/25297/measuring-up-annual-rail-consumer-report-july-2017.pdf](https://orr.gov.uk/data/assets/pdf_file/0007/25297/measuring-up-annual-rail-consumer-report-july-2017.pdf)

and what to do when a claim is rejected, as well as the arrangements applying to season ticket holders (where they are different).

76. We recognise that providing such detailed information in-person may, in certain situations for example by staff on the train, be more difficult. Nonetheless, we consider that providing this level of information in response to a passenger enquiry is a reasonable expectation.

### **Proactive provision of information during disruption**

77. In addition to the above requirements on the general provision of information, the CoP also requires train companies to proactively provide their passengers with information on delay compensation during service disruption. This is obviously a critical point at which passenger awareness of their potential eligibility and entitlements can be most effectively communicated<sup>36</sup>. Research<sup>37</sup> by Transport Focus highlights the wishes of passengers to be told of their right to claim via announcements, the handing out of forms, and via text and email.
78. We recognise that incidents of disruption can present a number of challenges to the railway. Train companies will often already be providing passengers at crowded stations with service information, and we acknowledge that rail staff will have a number of competing priorities at such times. Announcements at large or busy stations with multiple platforms and frequent service operations regarding delay compensation may also be problematical. However, we are aware that many train companies are able to provide information about entitlement to delay compensation during or after disruption, for example via announcements on board the train both during the course of the journey and on arrival at the station.
79. Noting the importance of providing information about delay compensation at the time of or shortly after the disruption, we expect train companies to make reasonable efforts to do so. Therefore, we propose that this includes:
- a. In-train announcements when a train's arrival at a station may be above the relevant time threshold for delay compensation on that service. This may also include announcements via information screen displays.
  - b. Where staffing levels allow, on board or in-station distribution of delay compensation details.

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<sup>36</sup> Transport Focus and DfT research, 2018. <http://d3cez36w5wymxj.cloudfront.net/wp-content/uploads/2018/10/09181728/Rail-delays-and-compensation.pdf>

<sup>37</sup> <https://d3cez36w5wymxj.cloudfront.net/wp-content/uploads/2019/07/19125658/Make-Delay-Pay-report.pdf>

- c. Where service patterns and passenger numbers permit, in-station announcements where a train's arrival may be above the relevant time threshold for delay compensation, or where there is generalised disruption.
  - d. Online, including via social media and, where appropriate, email or text to passengers who may have been affected.
80. During disruption it is important that train companies prioritise the most important information that will allow passengers to make a claim. We propose that the company makes reasonable efforts to provide, as a minimum, information about the delay compensation scheme, the length of the delay and the passenger's potential entitlements, how to claim and where to find out more information. We would expect the train company to be able to demonstrate that it provided this information or made reasonable efforts to do so, should ORR seek evidence of how it complied with this requirement.

## Consultation questions

Q4. Do the proposals for the provision of information

- online
- on board
- in stations
- in person

provide sufficient clarity and assurance for train companies and passengers?

Q5. Is the list of the information requirements comprehensive? What, if anything, should be added (or removed)?

Q6. Are the requirements for proactive provision of information by train companies during disruption clear and proportionate? Are there any further requirements which should be specified?

Q7. Any there any other requirements you consider would be necessary and proportionate to improve passenger awareness of delay compensation?

## 3. Improving Claims Processes

### Summary

81. In this chapter, we set out the case for making changes to improve the processes for claiming delay compensation. We also set out the draft proposals in the CoP designed to achieve those improvements.

### Introduction

82. Having established in chapter one the strong case for introducing a licence condition requiring adherence to a code of practice on delay compensation, we now set out the content of the CoP designed to improve the processes through which passengers claim.

#### Proposals for improving the claims process

83. The purpose of this section of the CoP is to establish clear baseline expectations for the way in which the process for delay compensation works, with the objective of making it simpler and quicker for passengers to claim. We focus on two key aspects: the appropriate timescales for processing a claim, and the information requirements that are necessary and proportionate for a claim to be processed. Our draft requirements for improving the claims process are set out in Provision two of the draft CoP in **Annex B** of this document.

##### *Timescales for processing delay compensation claims*

84. It is important that passengers have clarity as to how their claim for delay compensation will be handled and the timescales within which claims will be processed.
85. The working industry standard is for claims to be processed within one month from claim submission to decision. We monitor performance using 20 working days as a proxy for the one month requirement within National Rail Conditions of Travel (NRCoT)). This is currently an area where train company performance is generally strong with the great majority of claims being processed within this timescale<sup>38</sup>. It is not clear to us that retaining a requirement to process claims within 20 working days is stretching or reflective of companies' actual performance. A more demanding, reduced timescale of for example 15 or 10 working days may incentivise more passengers to claim and overcome any perception that the claims process is slow. We propose to use this CoP, and the consultation process, to establish the

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<sup>38</sup> <https://dataportal.orr.gov.uk/media/1735/delay-compensation-claims-factsheet-2019-20-q3.pdf>

appropriate timescales for train companies to process claims, and whether they should be tightened.

86. There may be occasions where the train company needs to contact the passenger to obtain information which has not been provided at the outset. We consider it reasonable that the company should make such a request within five working days. The necessity to seek this information should become increasingly rare as a result of the improvements in information requirements set out in the section below are realised. For this reason, in our view, it is not reasonable to ‘stop the clock’, effectively pausing the requirement to process the claim. This will also act as an incentive on train companies to ensure that their requirements for information are clear and proportionate. Nonetheless, we recognise that train companies cannot leave claims open indefinitely; we propose that claims can be closed if the passenger does not respond to the request for further information 20 working days after the request was made, although we would expect flexibility to be applied where necessary for example where the claimant has been in hospital.

### *Communication*

87. Effective communication by the train company in the handling of the delay compensation claim will help ensure that passengers have confidence in the process. This extends to giving the claimant a route to follow-up on the progress of their claim. Our proposals require train companies to inform passengers when their claim is taking longer than the set time to process, together with the reasons for it doing so and a date when the claim is likely to be completed. Similarly, we want companies to be clear on the reasons why a claim has been rejected and what the passenger can do to challenge the decision; more than 15% of claims are currently not approved<sup>39</sup>.

### **Claims process information requirements**

88. We expect train companies to ensure that the information they seek is the minimum they require to successfully process and approve a delay compensation claim. The process should be simple and, wherever possible, standardised across claim methods and ticket types. We recognise that this is an area where flexibility and discretion on the train company’s part will always be necessary to allow for innovative technology-based solutions. Nonetheless, we note research<sup>40</sup> which suggests that some may require up to 24 pieces of information; this is clearly not proportionate and may be a barrier to passengers accessing the claims process.
89. We have therefore put forward a purposive approach, with the onus placed upon the train company to make clear why a specific piece of information or form of evidence

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<sup>39</sup> <https://dataportal.orr.gov.uk/media/1735/delay-compensation-claims-factsheet-2019-20-q3.pdf>

<sup>40</sup> <https://www.which.co.uk/news/2019/05/revealed-how-train-companies-are-adding-unnecessary-hassle-to-claiming-compensation/>

is required. We also make clear our expectation that train companies will give due consideration to alternative forms of evidence, provided that the proof offered is of an equivalent standard and sufficient to demonstrate the passenger's delayed journey, and will allow the company to monitor for duplicate or fraudulent claims.

#### *Williams Review – medium-term improvements*

90. In our response to the Williams Review, we recommended that train companies work together with Transport Focus to create a single standard form for claiming compensation. This should be simple and require only the essential information necessary to process a claim. This should, as far as possible, be the same for passengers claiming via a paper form as through other means.
91. We further recommended that RDG consider the development of a single streamlined system for passenger compensation accounts via a central provider such as National Rail Enquiries (NRE). This provider could operate a central portal for compensation claims and provide a 'warm transfer' of information to the relevant train company's system.
92. We also recommended that train companies automate their claims processes to the greatest possible extent, including the use of automated (one-click) claims processes so that more passengers can access compensation in ways that are convenient to them.
93. We consider that these remain viable options for improvement in the medium-term and encourage the relevant parties to consider how they can deliver these improvements.

#### **Physical format claims**

94. As far as possible, the process for claiming via a physical form should replicate, and be no more burdensome, than the online process. For example, the claim forms should be the same unless there is good reason for it to be otherwise. Nonetheless, we recognise that there are advantages to digital, online or app-based form processes for train companies and passengers, but it is important for companies to make adequate provision for users who have a preference or need for physical paper formats. As such, we set out the minimum expectation for train companies, including on availability of claim forms at staffed stations and to download, and how such forms can be submitted.

## Accessibility of claim format

95. We recognise as well that passengers with specific disabilities or other protected characteristics may be unable to easily use or access either physical or online claim methods. We set out a clear high-level requirement for train companies to take the needs of these claimants into account to ensure that they are able to access the delay compensation process.

## Online claims process

96. The majority of claims are submitted online (including via smartphone apps), and it is vital that train companies make this as straightforward as possible for claimants. We recognise that technology, with the efforts of companies, has brought considerable change, innovation and improvement in recent years, and we want to make sure that the CoP does not prevent them from continuing to do so. A small proportion of passengers, for example, are also already benefiting from automatic - or more automated - forms of compensation where smartcards are in operation, or tickets have been bought in advance and passenger contact details are known<sup>41</sup>. Evidence indicates this has led to an increase in the claims and payouts of delay compensation. However, these improvements have been slow to emerge and have not been replicated universally across the network.
97. We also want to establish minimum standards in this area, which the CoP sets out. These basic requirements tie-in with those that were set out in the chapter on provision of information. We expect a prominent link to the claims process to be available from the homepage of the train company's website, and clear information, including FAQs, for the passenger about all relevant aspects of delay compensation scheme and claims process, including the appropriate requirements for evidence of travel.
98. We also want to emphasise our expectation that, where train companies allow for passengers to establish online or app-based accounts to save their details for the purpose of booking tickets, then passengers should also be able to use these same (or equivalent) accounts to claim compensation. This should include the possibility for season-ticket holders to save the details of that ticket. This will facilitate ease of claim for passengers, particularly those that regularly travel with the same train company.

## Payment methods

99. There are existing obligations on train companies in the National Rail Conditions of Travel (Condition 34) and in consumer law. We expect companies to continue to comply with these requirements.

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<sup>41</sup> <https://www.southernrailway.com/help-and-support/journey-problems/delay-repay-compensation/auto-delay-repay>

## Consultation questions

Q8. Do you have a view on the timescales, and associated requirements for contacting passengers, that we have proposed?

Q9. Are the proposals on information requirements clear and proportionate? Do they provide sufficient flexibility to reflect the variety of claim and ticket types, whilst addressing the risk of unduly onerous information requirements?

Q10. Is the provision on alternative forms of evidence clear - does it allow adequate flexibility for innovative solutions?

Q11. Is the provision on physical format claims clear and proportionate?

Q12. Are the requirements with regards to online claim processes clear, proportionate and comprehensive?

Q13. Any there any other requirements you consider would be necessary and proportionate to improve the claims process?

## 4. Continual improvement and reporting

### Summary

100. In this chapter, we set out our expectation that train companies should seek to improve, and report upon, their performance. We also set out the draft proposals in the CoP designed to ensure that they do so.

### Introduction

101. Having established in chapters two and three the baseline CoP requirements for improving awareness and process, we now set out the content of the CoP designed to drive continuous improvement in train companies' delay compensation arrangements and to report on how they are performing in relation to delay compensation.

#### **Improvement and innovation as a characteristic of customer-focused sectors**

102. ORR wants to see a rail sector that is focused on the interests of its passengers. We want train companies to seek to improve all aspects of the customer experience. This includes, where passengers have experienced delay, the provision of compensation.

103. The CoP establishes baseline expectations across the train companies. Properly implemented, it will give passengers greater confidence that train companies will meet good standards in how they deal with delay compensation. However, we want the industry to strive for excellence in this area, rather than only aiming for compliance with common-denominator requirements.

104. Continual improvement will require train companies to monitor their own performance. The analysis of this performance data will help companies to identify areas for improvement, and potential options for how these areas might be addressed. Where new initiatives are trialed, we want to see the experience being shared for the benefit of the broader industry and travelling public. Shared reporting of performance data with industry colleagues, passengers and ORR will facilitate benchmarking and accountability.

105. Clear, consistent and regular publication of performance data will also help to raise public awareness of delay compensation, and allow ORR to monitor train companies' performance. As such, we have set out details of how we expect them to report on their progress, both to their passengers, and to ORR.

#### **Continual improvement**

106. Innovation will be necessary to keep pace with the opportunities and challenges presented by new technology and changing customer expectations. We want to

provide headroom for train companies to continue getting better in the way they deliver compensation services. We are using the CoP to establish a clear expectation that they do so.

107. We are aware that train companies already have, to varying degrees, developed delay compensation processes that benefit their passengers and encourage them to claim. For example:

- Southeastern have implemented upgrades that allow passengers to save an app-based account. This provides for easier claims, the ability to track multiple claims, and a PayPal option that will pay money within an hour of the claim being approved. They also provide an option for payment via e-voucher, which allows the passenger to accumulate small payments of compensation before they are redeemed.
- Some train companies provide an option to the passenger to donate their compensation directly to charity. According to research<sup>42</sup>, only 25% of passengers claimed when the value of their ticket was less than £5 compared with 43% when it was greater than £5. Whilst passengers may not feel that claiming for small amounts is worthwhile, they may be incentivised to do so where this option exists.

108. Train companies themselves are well placed to explore the potential of new, different approaches. Provisions 3 and 4 of the CoP, attached at **Annex B**, set out our expectation that they continue to do so, and we propose that they report to ORR on a yearly basis about the steps that they have taken to improve passenger awareness of delay compensation and the claims process.

## Reporting for passengers

109. To help improve passenger awareness, and provide a measure of public accountability about their performance, we propose that train companies publish performance data online on a quarterly basis, alongside other information related to delay compensation. We anticipate that clear information about the volume of compensation payments and response times may serve to encourage passengers to submit a claim.

110. To aid passengers' understanding of performance, train companies may also wish to provide further information, such as data on punctuality performance, and narrative information, for example the impact of storms, enhanced compensation arrangements, etc. to provide further context. Any such additional information should

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<sup>42</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/751380/rail-delays-and-compensation-report-2018-revised.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/751380/rail-delays-and-compensation-report-2018-revised.pdf)

serve to clarify the train company's performance against the key metrics outlined above.

111. Train companies may also wish to consider whether to publish alongside this data the steps that they have taken to improve passenger awareness of delay compensation and the claims process.

## Reporting to ORR

112. ORR currently collects 'core data' performance information on delay compensation from train companies for every rail period, which we consolidate and publish online. To monitor compliance with the new provisions within the CoP we will, however, require companies to gather and submit information in further areas.
113. Firstly, to help monitor train companies performance on the awareness and process provisions of the CoP, we propose that train companies survey claimants on whether (and, if so, how) they received delay compensation information as part of their booking and journey, and the ease of the claims process.
114. These survey questions should be included as an automated, optional part of the online claim process. We anticipate this information being gathered and submitted to ORR on a quarterly basis.
115. Secondly, as noted above, we propose that train companies provide an annual summary of steps taken to help improve passenger awareness and to make the claims process better for passengers. This may comprise a qualitative description of initiatives and activities, alongside any quantitative data on their efficacy. We anticipate publishing this information as part of or alongside our Annual Rail Consumer Report.
116. ORR may also undertake or commission additional targeted surveys or research, which may include mystery shopper exercises. We will raise any issues that we identify with train companies, and take escalation action as appropriate in accordance with our existing policies.

## Consultation questions

Q14. Do you have a view on the requirement that train companies report annually on the steps taken to improve awareness and processes for delay compensation?

Q15. What is your view of our proposals for passenger surveys:

- is it proportionate to survey every claimant for their views on awareness and process?
- If not, what might the alternatives be e.g. specified number or percentage?

- Should these be standardised?
- How frequently should they be undertaken?

Q16. Are there any other matters upon which it would be helpful to seek information?

## 5. Third Party Intermediaries

### Summary

117. In this chapter, we set out our proposals for introducing a requirement in the delay compensation CoP to oblige train companies to accept claims from Third Party Intermediaries (TPIs). We also set out the draft proposals in the CoP designed to achieve those improvements, together with the requirements of the Code of Conduct to which TPIs must adhere.

### Introduction

118. In chapter one, we set out the case for increasing the involvement of TPIs in the delay repay market, albeit in a controlled manner to mitigate identified risks. We set out below our proposals for implementation of this objective.

119. We propose to introduce:

- A requirement on train companies (the detail of which is set out in the CoP) to work and reasonably cooperate with reputable TPIs; contingent on
- TPI compliance with a new Code of Conduct (TPI Code), which will establish a set of agreed standards for the conduct of TPIs.

120. Provision five of the CoP, (attached at **Annex B**) sets out the relevant requirements on licence holders. The requirements to which TPIs must adhere in order to benefit from this 'access to the market' are set out in the proposed 'TPI Code' at **Annex C**.

121. We propose ways in which train companies should work with TPIs and, for TPIs, standards of good practice in areas such as probity, fraud protection, and transparency. We also consider options for governance and dispute resolution. The proposed TPI Code covers, based on engagement with industry, parameters and protections around how TPIs provide their services to customers and how they should interact with train companies.

122. ORR has engaged with TPIs, discussing their current standards and aspirations for a TPI Code. This included a roundtable workshop on the developing policy proposals. The effectiveness of the TPI Code will rely on constructive engagement between TPIs and train companies. We have seen positive signs in this respect during our engagement with industry.

### CoP obligations for licence holders

123. Our draft CoP includes a general requirement on train companies to work and cooperate with those TPIs who are compliant with the TPI Code, to the extent

necessary to enable the TPIs to provide services to passengers. This co-operation must both facilitate passenger claims and help to swiftly identify and resolve any issues or questions of non-compliance with this CoP or the associated TPI Code.

124. In the case of TPIs who submit claims on behalf of passengers:

- Train companies must not refuse to receive delay claims made on behalf of passengers by any compliant TPI;
- Train companies must treat delay claims submitted via compliant TPIs on the same basis as claims submitted by passengers. Communications and payments must be made via the TPI where the passenger has indicated their preference for this; and,
- The 20-day timescale for processing a claim submitted via a TPI will run from when a train company receives a claim from the TPI, until the train company has communicated its decision to the TPI.

125. Where train companies identify problems with a TPI, including suspected issues with duplicate or fraudulent claims, they must raise this issue with the relevant TPI (or TPIs) before taking any action. Where a train company is reasonably of the view that a TPI is not compliant with the provisions of the TPI Code, and attempts to address this via engagement have not been successful, it may then decide to stop accepting claims submitted via that TPI. Train companies may wish to notify ORR if such a circumstance arises.

126. We consider that in most cases failure to comply with the TPI Code will be obvious. For instance, it will be clear to train companies when claims submitted on behalf of passengers fail to meet the required evidential standards. TPI compliance with their transparency obligations will be discernible from viewing their passenger facing website or app. As TPIs would be required to be members of the Ombudsman scheme under our proposals, any misuse or mishandling of passenger money may become discernible through passenger complaints. TPIs are also required under the Code to respond to reasonable enquiries from train companies (or their association the Rail Delivery Group) about their compliance.

127. In the event of a train company refusing to accept its claims, a TPI may decide to register a complaint with ORR about the train company's compliance with its obligations under this CoP. ORR will consider such cases on their merits, which will likely, in the first instance, involve an assessment of whether a TPI is compliant with the Code.

### **Standardisation of forms and facilitation of automation**

128. In the case of TPIs who help passengers to make claims through train companies' own websites (e.g. through mobile apps which automatically fill out fields on train

companies claim forms), train companies must take appropriate steps to enable compliant TPIs to facilitate the automation of claiming by passengers. In our draft CoP, we have not set out a specific means by which train companies should do this. The number of train companies involved and the varying approaches that they may take to website development would make such a prescriptive step, in our view, disproportionate.

129. One potential way forward might be for individual train companies to standardise the data required for claims and create an Application Programming Interface (API).

## TPI Code requirements

130. In order to benefit from the opportunities offered by our proposed CoP requirement on train companies, TPIs in turn would need to demonstrate compliance with the requirements of the TPI Code. In order to benefit from increased market access, we propose that TPIs should abide by specified criteria and behavioural standards. These are covered in detail in **Annex C**, but in summary they include requirements for:

- **Transparency:** TPIs must provide relevant key information to their customers, in a reasonably prominent fashion.
- **Process:** TPIs shall take reasonable steps to ensure that the claims which they facilitate are legitimate claims for journeys that the passenger has attempted to make. This will include monitoring for duplicate claims, unfeasible patterns of travel, or unlikely volumes of claims. Where a train company reasonably suspects fraudulent claims may have been issued, TPIs are required to respond to enquiries, and demonstrate their use of proactive systems to detect fraudulent activity. TPIs must demonstrate reasonable cooperation with train companies to resolve any issues with functionality, and the efficient processing of claims.
- **Evidence:** TPIs will ensure that claims include sufficient evidence of travel, clearly establishing that a passenger was on, or attempted to travel on, a delayed or cancelled train. We would expect that this would require, as a minimum, copies of the relevant tickets forming the subject of the claim, proof of purchase, or another form of acceptable evidence, such as verifiable GPS/Bluetooth tracking data.
- **Data Quality:** TPIs will ensure all information necessary to progress the claim is correctly and accurately submitted, with reference to the CoP and industry best practice guide.
- **Claim Status:** Where relevant, TPIs will make provision for passengers to enquire about the status of their claim by providing a unique claim reference

number, or where appropriate make enquiries to train companies on the passenger's behalf.

- **Payment method:** TPIs will specify to the train company any preferred payment method requested by the passenger, in line with the options available. To ensure that claims can be tracked correctly, TPIs will use a standard reference protocol to enable TPIs, licence holders and passengers to track and verify both claim and payment. TPIs may hold funds on behalf of passengers, if stringent criteria including the separation of accounts and prompt payments are met.
- **Data protection:** All parties must comply with the requirements imposed by relevant data protection regulations.
- **Rail Ombudsman:** In order to be considered compliant, TPIs will agree to be included in the Rail Ombudsman's scheme for customer complaints.

131. TPIs who do not wish to demonstrate compliance with the TPI Code will retain the option of continuing to operate using their current business model, albeit will not have the advantage of guaranteed acceptance by train companies.

132. The content of this TPI Code does not affect a train company's existing obligations with regards to delay compensation, as set out in franchise<sup>43</sup> contracts, passenger charters, or the National Rail Conditions of Travel. Nor does it affect a TPI's or train company's responsibilities under general consumer law, such as the Consumer Protection from Unfair Trading Regulations 2008, or Consumer Rights Act 2015, competition law, or other relevant legislation including data protection law.

## Implementation

### Cooperation and industry-led approach

133. Train companies must, as set out above, work with compliant TPIs. TPIs, under their TPI Code, have a reciprocal obligation of cooperation.

134. Compliance with the TPI Code should be determined by industry - rather than regulator - led means, guided by the text of the TPI Code. Namely:

- It will be for TPIs to make the case that they are compliant; and
- Train companies, working with TPIs, will have to decide whether they agree (or not) with the case that has been made, and how if at all TPI proposals would need to be amended in order to become compliant. It will be up to train companies to decide how they organise themselves to carry out such work. Decisions on compliance should be made in a way that leads to certainty for all concerned and to timely and robust decisions.

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<sup>43</sup> <https://www.gov.uk/government/speeches/rail-emergency-measures-during-the-covid-19-pandemic>

- Train companies and TPIs are obliged under their respective Codes to reasonably engage and cooperate with each other in this regard.

135. ORR will keep open the possibility of a more formal ‘positive accreditation’ regime. In our view the implementation of a formal regime would place significant resource burdens on industry, TPIs and ORR itself. At this stage we therefore propose that the most proportionate and appropriate means of implementation of the TPI Code should be industry-led. However, if this proves to be ineffective, we will consider putting in place a greater role for ORR, or another suitable body to engage in more proactive superintendence of this market.

### **Compliance and steering committee**

136. The effectiveness of the TPI Code and the TPI market regime will be subject to at least annual review by a Steering Committee, whose membership will include representatives from train companies, TPIs, ORR and passenger representative groups. Any recommendations for changes will be submitted to ORR for consideration. This Steering Committee will be particularly looking to share innovations and improvements to the customer experience.

137. The effectiveness of the TPI Code will rely on constructive engagement between TPIs and train companies. This will be a ‘new’ market, and the behaviour of its players difficult to predict. We anticipate, however, that train companies will be incentivised to accept claims from credible TPIs (failure to accept a claim from a compliant TPI otherwise risking ORR licence enforcement). TPIs in turn will be incentivised to actively demonstrate their compliance to train companies and consumers in order to reduce risks of refusal and disruption to their business.

138. Train companies will, however, retain the ability to refuse claims from TPIs who they consider have failed to meet the TPI Code. In such circumstances train companies or TPIs may wish to approach ORR for guidance. In such cases we anticipate a staged approach to mediation, monitoring and escalation. ORR retains discretion as to how it considers and deals with any individual complaint.

### **Dispute Resolution**

#### *Passengers*

139. In order to be considered compliant with the TPI Code, TPIs will agree to be bound by decisions of the Rail Ombudsman for passenger complaints. If a passenger has any complaints about a TPI’s handling of their claim they should contact the TPI in the first instance. If that fails to reach a resolution then, under our proposals, they will have the option to take the matter to the Rail Ombudsman.

### *Between licence holders and TPIs (and the role of ORR)*

140. As set out in the CoP, if a train company or other party has concerns about a TPI's ongoing compliance with the terms of this TPI code, it shall raise those concerns with the TPI concerned in the first instance. If those concerns are not resolved the relevant party may raise the issue with ORR. In such cases, train companies should take a reasonable and evidence-based decision on whether to refuse claims from the TPI in question. Under our proposals, in any subsequent investigation into whether a train company has breached its obligation to accept claims from TPIs, ORR will not take a 'strict liability' approach. Rather, even in cases where a TPI is found to be compliant on investigation, we would take all the circumstances into account. In reaching any determination of whether a train company has breached its licence, ORR would have regard to: how reasonable it was for train companies to suspect a lack of compliance with the TPI Code (noting any assessment of evidence the licence holder had available at the time); how swiftly the train company notified ORR; and, any action the train company took to work with the TPI to ensure they were compliant.
141. Where ORR has concerns that a TPI is not compliant with the TPI Code, including as a result of a complaint from a train company or other party to this effect, it will in the first instance investigate the matter, seeking appropriate assurance from the TPI.
142. In cases where its concerns are not quickly resolved, ORR may make appropriate recommendations to ensure that the TPI is compliant. Ultimately, ORR may endorse the train company's decision not to accept claims from that TPI.
143. Where a TPI has concerns about the behaviour of a train company, in dealing with claims that the TPI has submitted, it should raise these concerns with the train company in the first instance. If these issues are unresolved, the TPI may raise such concerns with ORR. ORR will take appropriate and proportionate action to resolve the issue, including use of licence enforcement powers if it considers it necessary.
144. The cause of dispute being raised should focus on the behaviour and practices of the TPI or train company in relation to delay repay claims processing only. Individual customer complaints regarding a train company's decision on their claim are already covered by the separate Rail Ombudsman scheme.

## **Consultation Questions**

Q17. What are your general comments on the proposals, bearing in mind ORR's twin objectives to harness the potential benefits of greater TPI involvement whilst retaining important protections for passengers, train companies and taxpayers?

Q18. What are your comments on specific substantive policy proposals with regards to the appropriate standards for TPI firms, , as listed below

- Transparency
- Process
- Evidence
- Data quality
- Payment method
- Data protection

Q19. What are your views on the proposed implementation regime, including the expectation that TPIs and train companies should work cooperatively to ensure compliance with the TPI Code, and the proposed mechanism for resolving disputes.

Q20. What, if any, further measures do you consider necessary and proportionate to achieve the objectives?

## Annex A: Draft Delay Compensation Licence Condition

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

“1. The SNRP holder shall comply with a Delay Compensation code of practice published by ORR.

2. The SNRP holder must accept and process claims for Delay Compensation received from Third Party Intermediaries who meet the requirements of the code of conduct published by ORR for Third Party Intermediaries.

3. ORR will consult on proposals for any substantive changes to the Delay Compensation code of practice and will publish a revised Delay Compensation code of practice, as it considers appropriate, following such consultation.

For the purposes of this condition:

Third Party Intermediary – A company that facilitates passenger claims for delay compensation, typically either by alerting a passenger to their potential eligibility and / or submitting a claim for delay compensation on behalf of a passenger.

## Annex B: Draft Code of Practice

### Delay Compensation Code of Practice

- Overview
- Scope and definitions
- Provisions
  - 1) Informing passengers
  - 2) Processing of claims
  - 3) Continual improvement
  - 4) Monitoring and reporting
  - 5) Third Party Intermediaries

### Overview

- a. This Delay Compensation Code of Practice (CoP) sets out good practice requirements with regards to delay compensation for passengers. It is designed to improve passengers' access to the delay compensation to which they are entitled, through measures that will raise awareness, improve processes, and enable passengers to submit claims via authorised parties.
- b. Licence holders must observe the requirements in this CoP as a condition of their passenger licences, as established in the Statement of National Regulatory Provisions (SNRP), condition 13<sup>44</sup>.
- c. The provisions of this CoP are designed to establish a common level of good practice. Licence holders may go beyond the requirements set out in the CoP, and we do not expect licence holders to discontinue or reduce existing policies where their existing standards exceed those of the CoP.
- d. ORR shall monitor licence holders' compliance with this CoP. Where ORR considers it necessary, it will investigate incidences of non-compliance, and escalate as appropriate in accordance with ORR policy<sup>45</sup>.
- e. ORR shall maintain the CoP, and monitor how licence holders' policies are working in practice to ensure that passengers benefit from the commitments made by licensees in this area. ORR will consult on proposals for any substantive changes to the CoP and will publish a revised CoP, as it considers appropriate, following such consultation.

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<sup>44</sup> <https://orr.gov.uk/rail/licensing/licensing-the-railway/background-to-operator-licensing>

<sup>45</sup> [https://orr.gov.uk/\\_data/assets/pdf\\_file/0018/4716/economic-enforcement-statement.pdf](https://orr.gov.uk/_data/assets/pdf_file/0018/4716/economic-enforcement-statement.pdf)

## **Scope and definitions**

### **Scope**

- a. This CoP applies to all passenger train companies in Great Britain who hold a Statement of National Regulatory Provisions (SNRP)<sup>46</sup>
- b. The requirements of this CoP do not affect licence holders' other legal obligations or passengers' legal entitlements, including those established in consumer law, contracts, or other licence conditions. In particular, this CoP should be considered alongside the requirements of: the Consumer Rights Act 2015; operator SNRPs; the Third Party Intermediaries code of conduct (TPI Code), and the provisions of the Rail Ombudsman.

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<sup>46</sup> This includes passenger train operator licences and also European passenger train operator licences, where the conditions appear in their corresponding Statements of National Regulatory Provisions (SNRPs)

### Definitions

- **Claim:** a request, initiated by a passenger, and submitted either directly by the passenger or via a Third Party Intermediary, for the delay compensation to which they may be entitled under the conditions of the licence holder's Delay Compensation Scheme. A claim for delay compensation is distinct from a complaint, or refund application, that passengers may make about other aspects of their journey.
- **Claimant:** for the purposes of this code, the claimant is the party that submits the claim to the licence holder. Typically either the passenger themselves, or a third party acting on the passenger's behalf.
- **Delay Compensation Scheme:** a scheme designed to compensate passengers for late arrival at their destination (above a given threshold). Each licence holder has a delay compensation scheme, setting out the relevant entitlements, eligibility requirements and claim processes for passenger delay compensation on their services. This may take the form of a standard 'delay repay' scheme such as DR15 or DR30, or bespoke 'passenger charter' arrangements. Delay compensation is distinct from a ticket refund for a journey not undertaken or compensation paid on any other basis, for example to resolve a complaint about other aspect of a journey.
- **Licence Holder:** For the purposes of this CoP, a passenger train operator with a passenger licence and a Statement of National Regulatory Provisions that includes Condition 13.
- **National Rail Conditions of Travel (NRCoT):** The respective legal rights and obligations for all train companies and passengers, with regards to tickets, information and compensation.
- **Passenger –** For the purposes of this CoP, and in accordance with the purpose of delay compensation as set out in contracts and passenger charters, the passenger is the ticket-holding traveller, who may be entitled to appropriate delay compensation for delay that they have experienced. A claim must be initiated by a passenger.
- **Third Party Intermediary (TPI) –** An entity that facilitates passenger claims for delay compensation, typically by alerting a passenger to their potential eligibility and / or submitting a claim for delay compensation on behalf of a passenger. Such bodies who act as TPIs whilst also providing other services for passengers, such as ticket retailing, are nonetheless considered as TPIs for the purpose of this code, and are required to comply with its requirements.

## Provision 1: Information for passengers

*Purpose: to raise passenger awareness of delay compensation.*

*General provision of information*

- a. Licence holders must ensure that information about delay compensation is clearly available to passengers; before their journey, in the course of the booking, and during and after their journey.
- b. Such information must include details about delay compensation entitlements and claim processes, displayed clearly and prominently.
- c. Such information must be made available to passengers in (at least) the following ways
  - i. Online, to include:
    1. a direct link to the delay compensation claim process, to be displayed on the licence holder's homepage, and;
    2. a direct link included with notification of e-ticket bookings.
  - ii. At stations, to include posters, leaflets, display screens and, where applicable, via help points.
  - iii. On board, including posters, vinyls or display screens.
  - iv. In person, including on board, in-station, online and telephone, customer-facing staff.
- d. For paragraphs (a-c) above, and subject to sub-paragraph (e) below, such information must include appropriate details of:
  - i. The delay compensation scheme operated by the licence holder, and the level of delay compensation to which the passenger may be entitled.
  - ii. The methods by which passengers can claim delay compensation.

## **Annex B – Draft Delay Compensation Code of Practice for Licence Holders**

- iii. The information that passengers will need to provide as part of their claim.
  - iv. What the passenger can expect as part of the delay compensation process including timescales and payment options.
  - v. How the passenger can contest a rejected claim.
  - vi. Appropriate details of delay compensation arrangements for season ticket holders
  - vii. Where further details can be found.
- e. Where the nature of the manner in which the information is being provided or displayed prevent the provision of all these aspects, the licence holder must provide details of where such further information can be found.

## Annex B – Draft Delay Compensation Code of Practice for Licence Holders

### *Proactive provision of information during delay*

- f. When there is delay or disruption, licence holders must make reasonable efforts to proactively inform passengers that they may be eligible for delay compensation. Such steps must include, as appropriate
  - i. In-train announcements when a train's arrival at a station may be above the relevant time threshold for delay compensation on that service. This may include voice announcements and / or information screen displays.
  - ii. In-train distribution of delay compensation details.
  - iii. Announcements at stations where a train's arrival may be above the relevant time threshold for delay compensation on that service. This may not be appropriate at large or busy stations with multiple platforms and frequent service operations, or unstaffed stations.
  - iv. Online and via social media – general messaging about compensation rather than being linked to a specific service.
- g. For paragraph (e) above, such information shall include appropriate details of:
  - i. the delay compensation scheme operated by the licence holder, the length of the delay and the passenger's entitlements.
  - ii. how to claim delay compensation.
  - iii. What evidence passengers will need to retain as proof of travel.
  - iv. where passengers can find further information.

## Provision 2: Processing claims

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

### **Timescales and communications**

- a. Licence holders must process all correctly completed claims within 20 working days, from receipt of claim to communication of decision and payment, where relevant.
- b. Where the relevant information to process the claim has not been provided, for example due to a lack of appropriate evidence of travel, the licence holder must inform the claimant as soon as possible, and no later than 5 working days after receipt of the initial claim.
- c. Where the claimant does not respond to this notification within 20 working days, the licence holder may reject the claim. The licence holder must communicate this to the claimant.
- d. Licence holders must make provision for claimants to enquire about the status of a claim.
- e. Where the processing of an individual claim takes longer than 20 working days licence holders shall ensure that claimants are notified of the status of the claim, the reasons for the delay, and anticipated timescales for resolution.
- f. Where a licence holder rejects a claim, it must provide written justification to the claimant, and details about how the decision can be contested
- g. Where the claimant is not the passenger, communications from the licence holder must be via the claimant.

### ***Claims process – information requirements***

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

### ***Physical format claims process***

- k. Licence holders must ensure that it is possible for passengers to submit claims in physical format, through completion of a form.
- l. Physical format forms must be made available to passengers:
  - i. In stations that are staffed.
  - ii. For download.
- m. Licence holders must ensure that it is possible for passengers to submit physical format claims:
  - i. In person at staffed stations.
  - ii. By post, to an address displayed clearly in stations alongside relevant delay compensation material or on the claim form and online.

### ***Online process***

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

### ***Accessible claim format***

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

### ***Payment methods***

- q. Licence holders must comply with the National Rail Conditions of Travel provisions on repayment, and any other consumer law requirements on the manner of how compensation is paid.

### **Provision 3: Continual Improvement**

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

- a. ORR expects licence holders, individually and collectively, to continue seeking to improve the service that they provide to respond with innovation to the opportunities and challenges presented by technology and customer expectations.
- b. As part of their regular reporting (see condition 4), licence holders must provide an annual update of steps that they have taken to improve customer awareness of delay compensation, and improvements that they have made to the claims process.
- c. A summary of progress in this area may be published by ORR as appropriate.

## **Provision 4: Reporting**

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

### **Reporting for passengers**

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

### Reporting to ORR

- d. Licence holders must survey claimants about their awareness of their rights to delay compensation and the ease of the process. This survey must be included as part of the process for every claim, and must be optional for the claimant. This information must be provided to ORR on a quarterly basis.
- e. Licence holders will provide to ORR an annual summary of steps taken to improve passenger awareness of delay compensation, and the claim process.
- f. Licence holders must collect and provide ORR with further relevant performance data set out in ORR core data monitoring guidance. Further detail on the format and frequency of data for submission is provided in the core data guidance<sup>47</sup>.
- g. ORR may take further action including commissioning research, to monitor licence holder performance on delay compensation.

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<sup>47</sup> <https://orr.gov.uk/rail/consumers/core-data>

## **Provision 5: Third Party Intermediaries (TPIs)**

*Purpose: to ensure that train companies work with reputable Third Party Intermediary firms, so that passengers can, if they choose to, use these firms' services*

- a. Passengers may choose to use the services of commercial Third Party Intermediary firms (TPIs), who offer services ranging from the provision of information on delay compensation, to submitting claims on a passenger's behalf.
- b. ORR has developed a Code of Conduct for Third Party Intermediary firms (TPI Code)<sup>48</sup> which establishes standards of conduct, including transparency, probity, and constructive engagement with licence holders.
- c. General Requirements
  - i. Licence holders must work and co-operate with those TPIs who are compliant with the TPI Code, to the extent necessary to enable the TPIs to provide services to passengers.
  - ii. Both licence holders and TPIs must engage constructively with each other to ensure, so far as possible, the smooth and efficient processing of legitimate passenger claims, and the payment of delay compensation to the passenger.
  - iii. Both licence holders and TPIs must engage constructively to help identify and resolve any issues or questions of non-compliance with this CoP or the associated TPI Code.
- d. In the case of TPIs which assist passengers to make their own claims through train companies' own websites (e.g. through mobile apps which automatically fill out fields on train companies claim forms), licence holders must format and standardise the data required for claims to enable compliant TPIs to facilitate the automation of claiming by passengers.

## Annex B – Draft Delay Compensation Code of Practice for Licence Holders

- e. In the case of TPIs who submit claims on behalf of passengers:
  - i. Licence holders must not refuse to receive delay claims made on behalf of passengers by any compliant TPI.
  - ii. Licence holders must treat delay claims submitted via compliant TPIs on the same basis as claims submitted by passengers.
  - iii. Communications and payments must be made via the TPI where the TPI informs the licence holder that the passenger has consented to this.
  - iv. The 20 day timescale for processing a claim submitted via a TPI will run from when a licence holder receives a claim from the TPI, until the licence holder has communicated its decision to the TPI.
- f. Where licence holders identify problems with a TPI, including suspected issues with duplicate or fraudulent claims, they must raise this issue with the relevant TPI (or TPIs) before taking any action, and give them sufficient time to rectify the issue or respond before taking further action.
- g. Where a licence holder is of the view that a TPI is not compliant with the provisions of the TPI Code, and an attempt to address this via engagement have not been successful, then the licence holder may decide to stop accepting claims submitted via that TPI. The TPI may then decide to register a complaint with ORR about the licence holder's compliance with its obligations under this CoP. ORR will consider such cases on their merits.

## Annex C: Draft TPI Code

- Overview
- Scope and definitions
- Provisions
  - 1) Transparency
  - 2) Processes
  - 3) Monitoring and reporting
  - 4) Third Party Intermediaries

## Overview

- a. This delay compensation Third Party Intermediary Code of Conduct ('TPI Code') establishes a set of standards for the conduct of Third Party Intermediary companies ("TPIs") who facilitate passenger claims for delay compensation from licence holders.
- b. The TPI Code establishes agreed standards for TPIs: how they provide their services to customers and how they interact with licence holders. It is linked to other documents, in particular the licence condition on delay compensation, and associated Code of Practice (CoP) for licence holders.
- c. Under the conditions of their licence, and the associated delay compensation Code of Practice, licence holders must process claims received via Third Party Intermediaries (TPIs), provided they can demonstrate their suitability through compliance with the provisions of this TPI Code.
- d. The content of this TPI Code does not affect a licence holder's existing obligations with regards to delay compensation, as set out in contracts, passenger charters, or the National Rail Conditions of Travel. Nor does it affect a TPI's or train company's responsibilities under general consumer law, such as the Consumer Protection from Unfair Trading Regulations 2008, or Consumer Rights Act 2015, competition law, or other relevant legislation including relevant data protection law.

## Definitions

- **Claim:** a request, initiated by a passenger, and submitted either directly by the passenger or via a Third Party Intermediary, for the delay compensation to which they may be entitled under the conditions of the licence holder's Delay Compensation Scheme. A claim for delay compensation is distinct from a complaint, or refund application, that passengers may make about other aspects of their journey.
- **Delay compensation scheme** – a scheme designed to compensate travelling passengers for delay on their journey (above a given threshold). Each licence holder will have a delay compensation scheme, setting out the relevant entitlements, eligibility requirements and claim processes for passenger delay compensation on their services. This may take the form of a uniform 'delay repay' scheme such as DR15 or DR30, or bespoke 'passenger charter' arrangements. Details of a licence holder's delay compensation scheme must be made available to passengers. In accordance with the licence condition on compensation
- **Licence Holder:** For the purposes of this TPI Code, a passenger train operator with a passenger licence and a Statement of National Regulatory Provisions that includes Condition 13. Licence holder obligations with regards to TPI firms are set out in the accompanying delay compensation code of practice (CoP)
- **Passenger** – for the purposes of this code, and in accordance with the purpose of delay compensation as set out in contracts and passenger charters, the passenger is the ticket-holding traveller, who will be entitled to appropriate delay compensation for a delay .that they have experienced. A claim must be initiated by a passenger.
- **Third Party Intermediary (TPI)** – An entity that facilitates passenger claims for delay compensation, typically either by alerting a passenger to their potential eligibility and / or submitting a claim for delay compensation on behalf of a passenger. Such bodies who act as TPIs whilst also providing other services for passengers, such as ticket retailing, are nonetheless considered as TPIs for the purpose of this code, and are required to comply with its requirements.

## Provision 1: Transparency

*Purpose: to ensure TPI customers receive clear information.*

- a. TPIs must provide relevant information to their customers, in a reasonably prominent fashion, to include the following:
  - i. Clear information about process and timescales for submitting claims, to include guidance on eligibility, entitlements, and requirements for evidence of travel.
  - ii. Clear information on fees charged by the TPI, for example for membership or commission.
  - iii. Where a subscription model is in place, clear information on the payment timings and how this subscription can be cancelled.
  - iv. Clear acknowledgement that fraudulent or duplicate claims will not be accepted by licence holders, and may constitute fraud, and that licence holders and TPIs will cooperate in monitoring for such claims, including those that have been submitted via more than one channel.
  - v. Clear acknowledgement that passengers can, if they wish, choose to submit a claim directly to licence holders, free of charge.
  - vi. Information about how a passenger can contest a claim outcome made by the licence holder via the Ombudsman.
  - vii. Information about a passengers' statutory rights against licence holders, including those beyond the scope of delay compensation schemes.

## Provision 2: Process and timings

*Purpose: To ensure timely and accurate claim processes*

- a. TPIs will submit a (correctly completed) claim to the licence holder within 3 working days of the passenger initiating the claim.
- b. TPIs will communicate a licence holder's decision on the claim to the passenger within 3 working days of receiving the licence holder's decision.
- c. Any time taken by the TPI to process the passenger's claim will not be included within the licence holder's deadline, as set out in the CoP.
- d. TPIs will make provision for passengers to enquire about the status of their claim, and where appropriate make enquiries to licence holders on the passenger's behalf.
- e. TPIs shall cooperate with licence holders to facilitate smooth and timely processing of claims. This shall include steps to ensure that claims and evidence are submitted in a format and method that facilitates necessary checks and processing.
- f. TPIs will not facilitate fraudulent or duplicate claims. TPIs shall take reasonable steps to ensure that the claims that they facilitate are legitimate claims for journeys that the passenger has attempted to make. This will include monitoring for duplicate claims, unfeasible patterns of travel, or unlikely volumes of claims. TPIs should be able to demonstrate sufficient processes or procedures enabling them to undertake this task.
- g. TPIs will cooperate with licence holders and, as appropriate, other TPIs to ensure that information about duplicate claims or suspicious behaviour is shared.

## Provision 3: Evidence and data

- a. TPIs will make clear the accepted forms of ticket evidence to the passenger, and will ensure that claims include appropriate evidence that a passenger was on, or attempted to travel on, a delayed or cancelled train.
- b. TPIs will ensure that submitted claims include clear and specific confirmation from the passenger that they travelled, or attempted to travel, on the delayed or cancelled service, and that the passenger has not submitted a claim via other channels.
- c. TPIs and licence holders must comply with the relevant requirements of data protection legislation.

## Provision 4: Payment Method

- a. TPIs will specify to the licence holder any preferred payment method requested by the passenger, in line with the options available. To ensure that claims can be tracked correctly, TPIs will use a standard reference protocol to enable TPIs, licence holders and passengers to verify claim and payment. TPIs may hold funds on behalf of passengers, provided
  - i. Accounts containing passenger money are held separate from business accounts;
  - ii. Passenger money accounts are protected adequately from the risk of business failure; and
  - iii. Due payments into passenger accounts are made promptly (and in any event no longer than 3 working days) unless passengers expressly consent, having been fully informed of any applicable risks, for their funds to be held in an account with the TPI.

## Provision 5: Implementation framework

- a. ORR will maintain and publish this TPI code. Licence holders must process claims submitted via TPIs that meet the requirements of this code.
- b. ORR will convene a stakeholder panel, comprising representatives from licence holders, TPIs and passenger interest groups. This group will meet at least once a year, and will review the ongoing efficacy of the TPI Code and make suggestions for how it could be improved.
- c. Both licence holder and TPI must engage constructively with each other to ensure, so far as possible, the smooth and efficient processing of legitimate passenger claims, and the payment of delay compensation to the passenger.
- d. Where licence holders identify problems with a claim or claims received via a TPI, including claims that may be duplicate or fraudulent, they must raise this issue with the relevant TPI (or TPIs). Where TPIs identify issues with a licence holder's handling of a claim, in accordance with the requirements of the CoP, then they must raise these issues with the licence holder in question.
- e. Both licence holder and TPI must engage constructively to help identify and resolve any issues or questions of non-compliance with this TPI Code or the associated CoP for train companies.
- f. Where a licence holder is of the view that a TPI is not compliant with the provisions of the TPI Code, and attempts to address this via engagement have not been successful, then they may decide to stop accepting claims submitted via that TPI. The TPI may then decide to register a complaint

## Annex C – Draft TPI Code

with ORR about the licence holder's compliance with its obligations under the CoP. ORR will consider such cases on their merits.

## Annex D: List of consultation questions

### Licence condition

Q1. Is there any evidence that we have not considered which may be relevant to this chapter?

Q2. Should open access and concession operators (as well as franchise<sup>49</sup> holders) be subject to the proposed licence condition? Should it apply to other holders of a passenger SNRP<sup>50</sup>?

Q3. Do you have any comments on our initial draft of the delay compensation licence condition (in Annex A)?

### Awareness

Q4. Do the requirements and drafting for the provision of information

- online
- on board
- in stations
- in person

provide sufficient clarity and assurance for train companies and passengers?

Q5. Is the list of the information requirements comprehensive? What, if anything, should be added (or removed)?

Q6. Are the requirements for proactive provision of information by train companies during disruption clear and proportionate? Are there any further requirements which should be specified?

Q7. Any there any other requirements you consider would be necessary and proportionate to improve passenger awareness of delay compensation?

### Claims process

Q8. Do you have a view on the timescales, and associated requirements for contacting passengers, we have proposed?

Q9. Are the provisions on information requirements clear and proportionate? Do they provide sufficient flexibility to reflect the variety of claim and ticket types, whilst addressing the risk of unduly onerous information requirements?

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<sup>49</sup> <https://www.gov.uk/government/speeches/rail-emergency-measures-during-the-covid-19-pandemic>

<sup>50</sup> Train companies in Great Britain who hold a Statement of National Regulatory Provisions

## Annex D – List of Consultation Questions

Q10. Is the provision on alternative forms of evidence clear - does it allow adequate flexibility for innovative solutions?

Q11. Is the provision on physical format claims clear and proportionate?

Q12. Are the requirements with regards to online claim processes clear, proportionate and comprehensive?

Q13. Any there any other requirements you consider would be necessary and proportionate to improve the claims process?

### Continual improvement and reporting

Q14. Do you have a view on the requirement that train companies report annually on the steps taken to improve awareness and processes for delay compensation?

Q15. What is your view of our proposals for passenger surveys?

- Is it proportionate to survey every claimant for their views on awareness and process?
- If not, what might the alternatives be e.g. specified number or percentage?
- Should these be standardised?
- How frequently should they be undertaken?

Q16. Are there any other matters it would be helpful to seek information upon?

### Third Party Intermediaries

Q17. What are your general comments on what is proposed, bearing in mind ORR's twin objectives to harness the potential benefits of greater TPI involvement whilst retaining important protections for passengers and taxpayers?

Q18. What are your comments on specific substantive policy proposals with regards to the appropriate standards for TPI firms, as listed below

- Transparency
- Process
- Evidence
- Data quality
- Payment method
- Data protection

Q19. What are your views on the proposed implementation regime, including the expectation that TPIs and licence holders should work cooperatively to ensure compliance with the Code, and the proposed mechanism for resolving disputes.

## **Annex D – List of Consultation Questions**

Q20. What, if any, further measures do you consider necessary and proportionate to achieve the objectives?

### **Drafting**

Q21. Do you have any proposed amendments to improve the drafting and clarity of the licence condition, delay compensation code of practice, or TPI code?

## Annex E: Regulatory Impact Assessment and Equality Impact Assessment

### Regulatory impact assessment

This high-level regulatory impact assessment (RIA) summarises the key considerations that we have taken into account in developing our proposals for the delay compensation licence condition, code of practice and TPI code.

The table sets out the individual proposals, and the potential impact of these policies for passengers and train companies, alongside any other factors that have been taken into account (including impact on government and TPI firms).

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

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

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

## Annex E: Regulatory Impact Assessment and Equality Impact Assessment

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

## Annex E: Regulatory Impact Assessment and Equality Impact Assessment

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

## Annex E: Regulatory Impact Assessment and Equality Impact Assessment

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

## Annex E: Regulatory Impact Assessment and Equality Impact Assessment

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

## Annex E: Regulatory Impact Assessment and Equality Impact Assessment

Policy Area	Evidence and proposals (full details in consultation document)	Impact on		
		Consumers	Licence holders and industry(+)	Other
<p><b>A greater role for third party intermediaries (TPIs) who meet the standards of a new Code of Conduct</b></p>	<p>Evidence from rail and other sectors on the potential for TPIs to drive improvements if comprehensive safeguards are in place.</p> <p>Licence holders must work and co-operate with those TPIs who are compliant with the Code of Conduct.</p> <p>TPIs must put in place safeguards regarding transparency; process; evidence; data quality: claim status: payment methods; data protection; and the Rail Ombudsman.</p>	<p>[+] Passengers benefit from the services offered by TPIs.</p> <p>[+] Risks around transparency of TPI pricing and information are mitigated by the Code of Conduct.</p>	<p>[-] Administrative effort required in order to work with TPIs and monitor TPI compliance with the Code.</p> <p>[+] Clarity about regulatory standards for TPI firms, and increased protection against adverse practices by non-compliant TPIs.</p>	<p>[+] TPIs can add to their current portfolio of services.</p> <p>[+] Clarity about appropriate standards for provision of TPI services, and engagement with train companies.</p>

## Equality Impact Assessment

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

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

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

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

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

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

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

## Annex E: Regulatory Impact Assessment and Equality Impact Assessment

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

## Annex E: Regulatory Impact Assessment and Equality Impact Assessment

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

## Annex E: Regulatory Impact Assessment and Equality Impact Assessment

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



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