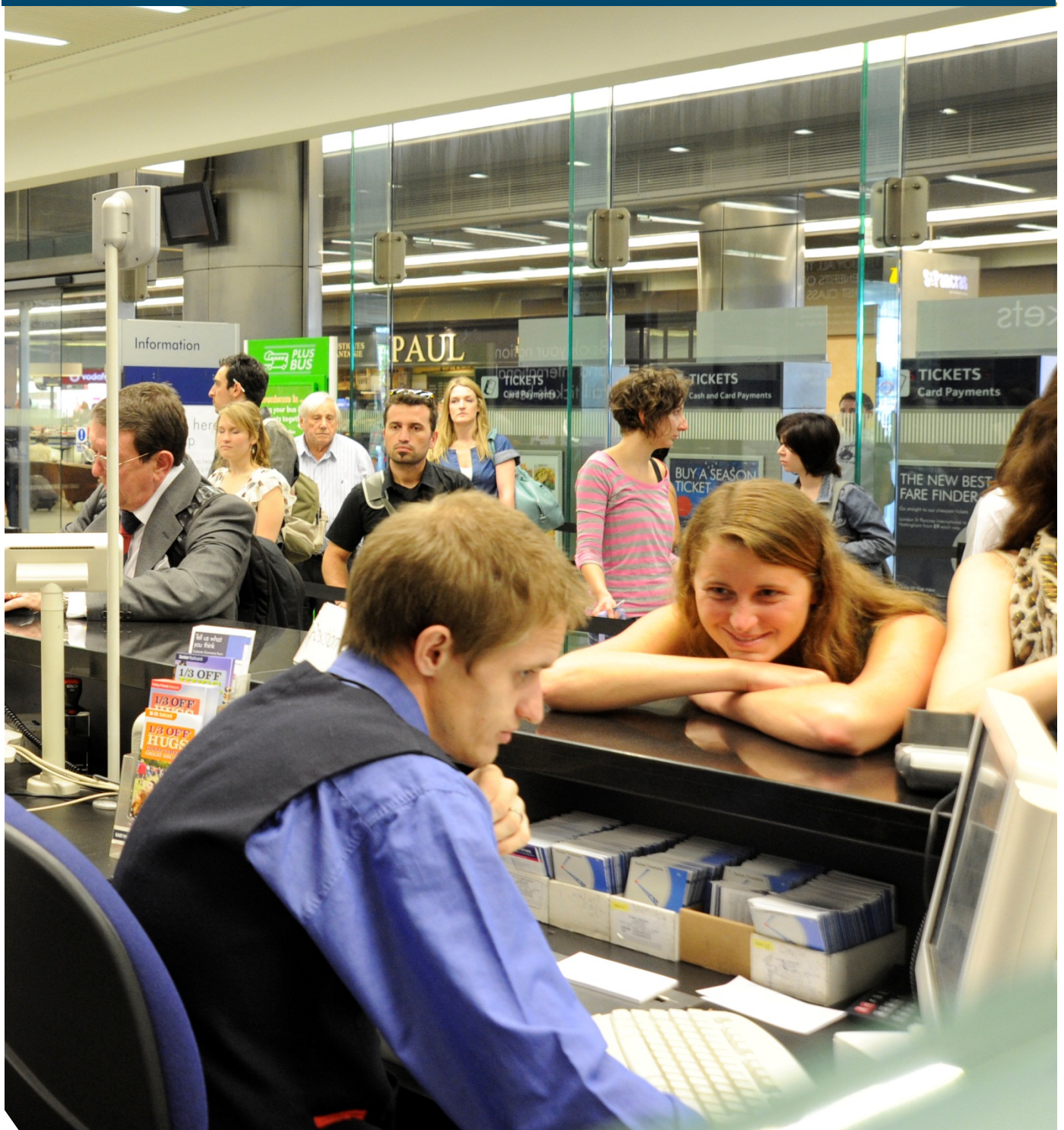


Passenger compensation and refund rights for delays and cancellations

February 2014



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Executive summary

1. The Office of Rail Regulation (ORR) is the independent safety and economic regulator for Britain's railways. Amongst our objectives, we seek to promote a better service for customers and an increasingly dynamic and commercially sustainable sector.
2. We are also designated as a consumer law enforcement authority¹. As such, we want to see that passengers are treated fairly, receive the information they need to make informed decisions, and enjoy the rights to which they are entitled. While we can take enforcement action where we have evidence of widespread or systemic problems, we want to see passengers empowered, so that they can engage with their service supplier who can then respond to improve the quality of their service.
3. As the consumer authority for the industry, we decided to look at passengers' awareness of the rail industry arrangements for compensation for delays and refund rights, and the extent to which they exercise their rights under these arrangements.
4. We found that passengers' awareness of their rights is low, with only one in five of those taking part in the survey we commissioned saying that they were confident they had a reasonable understanding of the industry specific arrangements for compensation and refunds, while two in five said they knew nothing at all about them.
5. A lack of readily available or easily accessible information appears to be a key reason for this, with only around one in five saying that they thought information was readily available when there are delays and around half saying that they were not particularly confident that they could even find the information if they looked for it.
6. The survey also identified a number of other issues associated with the process of exercising compensation and refund rights, including: uncertainty as to whether a claim would be successful and confusion around the process; the length of time required to make a claim; and that compensation is paid in vouchers.

¹ Under the Enterprise Act 2002 (Part 8 Designated Enforcers: Criteria for Designation, Designation of Public Bodies as Designated Enforcers and Transitional Provisions) Order 2003, S.I. 2003 No. 1399, <http://www.opsi.gov.uk/si/si2003/20031399.htm>

7. All of this has an impact on the extent to which passengers exercise their rights, with only 11% of our survey participants saying that they 'always' or 'usually' claim compensation when they are delayed, 15% saying that they 'rarely' claim and 68% saying they 'never' claim compensation.

8. With regard to the use of rail travel vouchers as compensation, not only does this appear to have a negative impact on passengers' propensity to claim, our research also suggests that it has a negative effect on the amount of compensation that is ultimately converted by passengers against a ticket.

9. While passengers' awareness and take up is low, there are a number of initiatives underway to ensure there are improvements in this area.

10. The Association of Train Operating Companies (ATOC) and individual train companies have already, or are planning to adopt, measures designed to address some of these problems. For example, some train companies have already adopted a more pro-active approach to providing information, such as making announcements on trains when there are delays and/or collecting the details of passengers travelling on delayed trains. ATOC has also produced a 'toolkit' for train companies, which sets out a range of measures that train companies can adopt to help raise their passengers' awareness of the rights and facilitate access to them.

11. We look to the industry to show leadership in the relationship with their passengers to ensure that they are getting the rights and information to which they are entitled and therefore welcome ATOC's plans to review the impact of its toolkit in the summer of 2014². Our research will help train companies to take stock of the current low levels of awareness and take-up of passenger compensation and refund rights, and provides evidence of what passengers say would improve the situation.

12. The success of these measures can only be judged by the extent to which they increase passengers' awareness of their rights and, ultimately, lead to an increase in passengers' exercising their rights. It will be important to see a demonstrable improvement in consumer awareness and take up of their compensation and refund rights. We will engage with ATOC during its review and decide on the next steps after it is complete.

13. In the meantime, we will be looking to see what more we can do to help raise passengers' awareness of their rights, working with passenger and consumer groups to see how we can improve the information and advice that we all provide to passengers.

² ATOC has told us that this will be a multi-stage review and will include: seeking feedback from train companies on how useful they found the toolkit; whether any measures they deployed as a result of the toolkit resulted in increased levels of compensation being claimed; and seeking feedback from other stakeholders. In light of the responses it receives, ATOC will consider the efficacy of the toolkit, whether it needs to be revised, and whether any further action can be taken by ATOC, TOCs or other stakeholders.

14. In this regard, we have also recently agreed with the Department for Transport³, building on our previous work on ticket complexity⁴, to work with the industry and passenger and consumer bodies to oversee the development of a code of practice to provide guidance to those selling train tickets on meeting consumer law and industry standards in relation to the provision of information to customers. It is intended that this code be in place by the end of 2014.

³ See the Department for Transport's publication 'Rail Fares and Ticketing: Next Steps', 9 October 2013, para. 3.49, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/249001/fares-ticketing-next-steps.pdf

⁴ <http://www.rail-reg.gov.uk/server/show/ConWebDoc.10937>

1. Introduction

Passenger protection in the railways

1.1 The Office of Rail Regulation (ORR) is the independent safety and economic regulator for Britain's railways. Amongst our objectives⁵, we seek to promote a better service for customers and an increasingly dynamic and commercially sustainable sector.

1.2 We are also designated as a consumer law enforcement authority⁶. As such, we want to see that passengers are treated fairly, receive the information they need to make informed decisions, and enjoy the rights to which they are entitled. While we can take enforcement action where we have evidence of widespread of systemic problems, we want to see passengers empowered, so that they can engage with their service supplier and hold them to account when things go wrong.

1.3 While we can take action where practices are causing harm to consumers at large, train companies have the primary role in responding to their customers' needs. As retailers of train tickets, they are an important source of information and the first point of call for individual passengers who have a problem with the service they have received.

1.4 Where passengers are not satisfied with the response from their train company they can contact Passenger Focus⁷ or London TravelWatch⁸, the independent watchdogs for the industry, who can provide advice about their rights and can assist them with their complaint.

1.5 Outside the rail industry, bodies such as Which?⁹ also provide useful advice on passenger and consumer rights more generally.

⁵ See our five strategic objectives 2013-14, <http://www.rail-reg.gov.uk/server/show/nav.77>

⁶ Under the Enterprise Act 2002 (Part 8 Designated Enforcers: Criteria for Designation, Designation of Public Bodies as Designated Enforcers and Transitional Provisions) Order 2003, S.I. 2003 No. 1399, <http://www.opsi.gov.uk/si/si2003/20031399.htm>

⁷ <http://www.passengerfocus.org.uk/>

⁸ <http://www.londontravelwatch.org.uk/home/>

⁹ <http://www.which.co.uk/>

Why did we conduct this research?

1.6 Consumers generally enjoy a minimum level of protection when buying goods and services. For example, the Supply of Goods and Services Act¹⁰ requires that services must be provided with “*reasonable care and skill*”. Where this is not the case, consumers may seek redress from their supplier, such as a reduction in the price.

1.7 In addition to such general rights, consumers of rail services¹¹ may benefit from certain industry specific arrangements when trains are delayed or cancelled. These rights are set out in the National Rail Conditions of Carriage¹² (NRCoC) and individual train companies’ Passenger’s Charters¹³ and form part of the contract between the passenger and the train company.

1.8 As a consumer law enforcement body, we are interested in understanding the extent to which rail passengers are aware of, understand, and exercise their rights because the value of any system of rights is dependent not only on the content of the rights but also on the ability of those to whom the rights apply being able to assert them¹⁴.

1.9 It was for this reason that we decided to look at passengers’ awareness of the rail industry arrangements for compensation for delays and refund rights, and the extent to which they exercise their rights under these arrangements.

1.10 In doing this, we also wanted to take the opportunity to provide some clarity around the arrangements, the roles of the various parties involved, and to provide some helpful pointers for consumers, as well as to highlight what is being done raise consumers’ awareness of, and facilitate access to, their rights.

The structure of this report

1.11 This report is structured as follows.

¹⁰ [Supply of Good and Service Act 1982](#), Section 13 “*In a contract for the supply of a service where the supplier is acting in the course of a business, there is an implied term that the supplier will carry out the service with reasonable care and skill.*”

¹¹ For ease of reference, subsequently referred to as ‘passengers’

¹² www.nationalrail.co.uk/static/documents/content/NRCOC.pdf

¹³ http://www.nationalrail.co.uk/times_fares/ticket_types.aspx#charter

¹⁴ “...so long as consumers’ rights are not transparent, they will not be accessible by consumers. In turn, having rights that are not accessible can be tantamount to not having rights at all. Therefore, for consumer empowerment, not only should consumers have the necessary rights, but they should also be aware of these rights and be able to access these rights when they need to.”

Benchmarking the Performance of the UK Framework Supporting Consumer Empowerment through Comparison against Relevant International Comparator Countries, A report prepared for BERR by the ESRC Centre for Competition Policy, University of East Anglia, August 2008 <http://www.bis.gov.uk/files/file50027.pdf>

1.12 Chapter 2 of the report provides an overview of the rights that passengers have under industry specific arrangements, when trains are delayed or cancelled. These are explained in further detail, along with some key pointers for passengers, in Annex 1.

1.13 Chapter 3 explains the key findings of our research on the extent to which passengers are aware of their rights, reasons for this, and other barriers to them exercising their rights, as well as setting out what they think could be done to improve the situation.

1.14 Chapter 4 sets out our conclusions and next steps, including some of the measures that individual train companies have adopted, or are planning to adopt, which address some of the problems we have identified, and the work being done by the Association of Train Operating Companies (ATOC) to share best practice across the industry. It also outlines a number of other work streams that touch on this area, including the development of a code of practice for ticket retailers on the information they should provide to customers.

1.15 Adding to the overview in Chapter 2, Annex 1 provides some key pointers for passengers with regard to the rail specific compensation and refund arrangements as well as explaining these in more detail.

1.16 Annex 2 provides an overview of the intra-industry compensation arrangements and explains the differences between these and the passenger facing arrangements.

2. Overview of compensation and refund arrangements

2.1 Under rail industry specific arrangements¹⁵, where a passenger has bought a ticket for a rail service and that service is delayed or cancelled, then the passenger may be entitled to a refund or compensation, depending upon a number of factors, including, for example: whether the delay occurred before or after the service departed; whether they chose to travel; or the length and/or cause of the delay.

2.2 These arrangements, which form part of the contract between the passenger and the train company, are outlined below and explained in more detail in Annex 1 but, put simply, if your train is delayed or cancelled (or your reservation will not be honoured) and you choose not to travel then you are entitled to a refund. If, however, you travel and are delayed reaching your final destination, then you may be entitled to compensation. The arrangements also vary depending on the type of ticket, most notably between season and non-season tickets.

Non-season tickets

Refunds

2.3 Under Condition 26 of the National Rail Conditions of Carriage¹⁶ (NRCoC), a passenger is entitled to a refund on their ticket (with no administration charge) if their train is delayed, cancelled or their seat reservation will not be honoured, and they decide not to travel.

2.4 Condition 26 also explains the various means of returning a ticket, including where and to whom a ticket may be returned, and the form in which the refund will be paid (the same form as was used to purchase the ticket).

2.5 The amount of refund to which a passenger will be eligible will depend upon any use they have made of their ticket. So, if they have used part of their ticket before deciding not to continue their journey, this may be taken into account when calculating any refund.

¹⁵ National Rail Conditions of Carriage and individual train companies' Passenger's Charters

¹⁶ www.nationalrail.co.uk/static/documents/content/NRCOC.pdf

2.6 A refund may also be sought in other circumstances, for example, where the passenger changes their mind about travelling for reasons other than delay or cancellation, for example, their plans change, although this may be subject to an administration charge of up to £10 and will depend upon the type of ticket held. Advance tickets, for example, are not refundable in such circumstances¹⁷.

Compensation

2.7 There are two types of industry scheme for compensating passengers for a delay to their journey. These are the traditional 'Charter' scheme, based on the arrangements set out in Condition 42 of the NRCoC, and the newer 'Delay Repay' scheme. Currently, about half of franchised¹⁸ train companies operate the Charter scheme¹⁹, while the other half operates the Delay Repay scheme²⁰. It is the stated policy of the Department for Transport to move all franchised operators to the Delay Repay scheme as new franchises are let or opportunities arise within existing franchises.

2.8 Both schemes provide compensation in the form of rail travel vouchers²¹ on the basis of a given period of delay but there are important differences between the two, such as: the length of the delay at which compensation is triggered; the amount of compensation payable; and circumstances in which compensation may not be paid.

Season tickets

2.9 Season tickets, and annual season tickets in particular, can represent a significant financial investment on the part of the passenger and it is therefore all the more important that they fully understand what they are buying.

¹⁷ See Advance ticket terms and conditions – http://www.nationalrail.co.uk/times_fares/ticket_types/46546.aspx Note: although not refundable, in most cases the journey can be changed prior to travel (up to departure) for a £10 fee plus any difference in the fare payable (although this may not be possible in the case of tickets printed at home or downloaded to a mobile device where different rules apply). Southern does allow customers who have purchased Advance tickets on-line to be refunded with no administration charge, for any reason, if this is done before the ticket is collected

¹⁸ Nearly all rail passenger services are operated under a franchise awarded by the Government

¹⁹ Arriva Trains Wales; c2c; Chiltern Railways (mixture); First Great Western; First ScotRail; First TransPennine Express; Northern; South West Trains

²⁰ Southeastern; Southern; East Coast; London Midland; CrossCountry; East Midlands Trains; First Capital Connect; Greater Anglia; Chiltern Railways (mixture); Virgin Trains

²¹ Rail travel vouchers can be used to buy tickets for any journey on the national rail network and are typically valid for 12 months. ATOC has told us that some TOCs do offer cash alternatives. London Midland, for example, will provide a cheque for any claim over £30, on request and, where a passenger has accumulated over £30 worth of travel vouchers, these may be exchanged for a cheque – see London Midland's Passenger's Charter <http://www.londonmidland.com/about-us/listening-to-passengers/passengers-charter/>

2.10 For example, some season tickets bring with them additional value, over and above what might be expected, such as the benefits attached to a 'Gold Card'²², but there are also some important restrictions and terms and conditions that passengers should be aware of when buying and using their season ticket.

Refunds

2.11 The arrangements for refunds on season tickets are set out in Condition 36 of the NRCoC and differ from the arrangements for other types of ticket.

2.12 Whether a refund will be given on a season ticket depends on a number of factors, including the length of time for which the ticket is still valid. Given the way in which refunds are calculated, the amount paid will not usually be in equal proportion to the price of the ticket and, in some cases, there may be no refund payable.

2.13 It is also important to note that refunds are not usually made on a duplicate ticket that has been issued to replace a lost or stolen season ticket (see 'duplicate season tickets' below), although applications for such refunds will be considered in certain circumstances²³.

Compensation

Charter schemes

2.14 Under the traditional compensation scheme included in Passenger's Charters, there is no automatic entitlement to compensation for individual delays for monthly and annual season ticket holders.

2.15 'Compensation', is generally based on average performance over a 12 month period and if average performance for either reliability or cancellations falls below a certain level then a discount²⁴ is offered on the price of the passenger's next season ticket.

Delay Repay

2.16 Under Delay Repay, season ticket holders may claim for individual delays in the same way as non-season ticket holders – but there is no automatic reduction in the price of a season ticket at renewal. The amount that season ticket holders receive for each delay is based on a calculation of how much they pay for each journey.

²² http://www.nationalrail.co.uk/times_fares/ticket_types/46573.aspx

²³ Where the original season ticket is returned to the train company which issued the duplicate ticket within one month of it being notified of the loss; where the original and replacement tickets were electronic tickets and it was possible to cancel the original ticket; or in circumstances such as the redundancy, pregnancy or prolonged illness of the holder – see Condition 36 of the NRCC, <http://www.nationalrail.co.uk/static/documents/content/NRCC.pdf>

²⁴ Usually 5% or 10% depending on whether the performance falls below one or both measures

Duplicate season tickets

2.17 Although not the focus of this report, it is important that passengers are aware of the arrangements relating to the issuing of duplicate season tickets when they are lost or stolen, which are set out in Condition 34 of the NRCoC. In particular, that no more than two duplicates will be issued in a twelve month period.

2.18 As mentioned above, the issue of a replacement season ticket may also affect passengers' ability to get a refund if they decide they no longer need their season ticket.

Intra-industry v passenger facing compensation arrangements

2.19 In addition to the passenger facing compensation arrangements described above, arrangements also exist to compensate train companies when there is disruption to the rail network. These arrangements, which are described in Annex 2, are part of the industry incentive structure and are entirely separate from the passenger facing arrangements.

3. Awareness and take-up of rights

3.1 The previous chapter focused on explaining the rights that passengers have when trains are delayed or cancelled. This chapter considers the extent to which passengers are aware of, and exercise, those rights, as well as their suggestions for improvements to reduce or remove the barriers to making a claim.

3.2 In doing so, it draws on the findings of the research we commissioned at the beginning of 2013, which is published alongside this report, which involved a cross-section of passengers and included a survey (of around 1000 passengers), 100 telephone interviews, and 4 focus groups, to provide a mix of quantitative and qualitative data, as well as information provided to us by train companies.

Key findings

3.3 The research was not train company specific but asked participants about their experience of making rail journeys generally. As such it provides a general picture.

3.4 Our survey shows that only one in five survey participants were confident they had a reasonable understanding of the industry specific arrangements for compensation and refunds, while two in five said they knew nothing at all about them.

3.5 It would appear that one of the key reasons for this is a lack of information – with only 18% of survey participants saying they thought information was readily available when they were delayed and 68% saying it was ‘rarely’ or ‘never’ available.

3.6 In addition, while around half of our survey participants were reasonably confident they could find the information if they needed it, a similar number were not confident they could find it.

3.7 The survey also identified a number of other issues associated with the process of exercising compensation and refund rights, including: uncertainty as to whether a claim would be successful and confusion around the process; the length of time required to make a claim; and that compensation is paid in vouchers.

3.8 All of this has an impact on the extent to which passengers exercise their rights, with only 11% of our survey participants saying that they ‘always’ or ‘usually’ claim compensation when they are delayed, 15% saying that they ‘rarely’ claim and 68% saying they ‘never’ claim compensation.

3.9 With regard to the use of rail travel vouchers, not only does this appear to have a negative impact on consumers' propensity to claim, our research also suggests that it also affects the amount of compensation that is ultimately realised. For example, during the course of our work, we asked train companies what percentage of vouchers issued are redeemed against new ticket purchases and were given estimates that ranged between 55% and 85%.

3.10 All of this is outlined in more detail below and covered in full in the research we commissioned which is published alongside this report.

Awareness of rights

3.11 By way of setting a benchmark against which to compare passengers' levels of awareness of the rail specific arrangements outlined in the previous chapter, the survey began by asking participants how much they knew about their rights to a refund and/or compensation when buying goods or services generally.

3.12 As can be seen from Figure 1 (below), awareness of rights was low, with only 4% of survey participants saying they knew 'a great deal' about their general refund and compensation rights, while only 22% said they knew 'a fair amount'. A further 45% said they knew 'not very much', while 27% said they knew 'nothing at all'.

3.13 As can be seen from Figure 2 (below), participants' awareness of the rail specific arrangements for compensation is not hugely out line with their levels of awareness of their more general rights, with only 3% saying they knew 'a great deal', although the number saying they knew 'fair amount' was a little lower, at 15%. 40% saying they knew 'not very much' about rail compensation arrangements, while the number saying they knew 'nothing at all' was higher, at 39%.

3.14 These results are supported by other work in this area, which found, for example, that *"the vast majority of respondents were unaware of the existence of compensation schemes at a general level. Those who were aware usually had TOC-specific knowledge based on personal experience of claiming. Regular rail users who had experienced delays (but had not claimed) had, at best, latent awareness of compensation entitlement."*²⁵

3.15 As shown in Figure 3 (below), the position with regard to refund rights is much the same, with only 4% of respondents saying that they knew 'a great deal' about their rights to a refund and 15% saying 'a fair amount', while 36% said they knew 'not very much' and 40% said they knew 'nothing at all'.

²⁵ Train Operator Compensation Schemes Qualitative Research, Passenger Focus, June 2011 - http://www.passengerfocus.org.uk/media/03f6922a97bff32001a3b0d18c66cf59ef047ba2/compensation_report_june_2011.pdf, p.11

Figure 1 - Awareness of general rights

How much, if anything, do you know about your general refund and compensation rights?

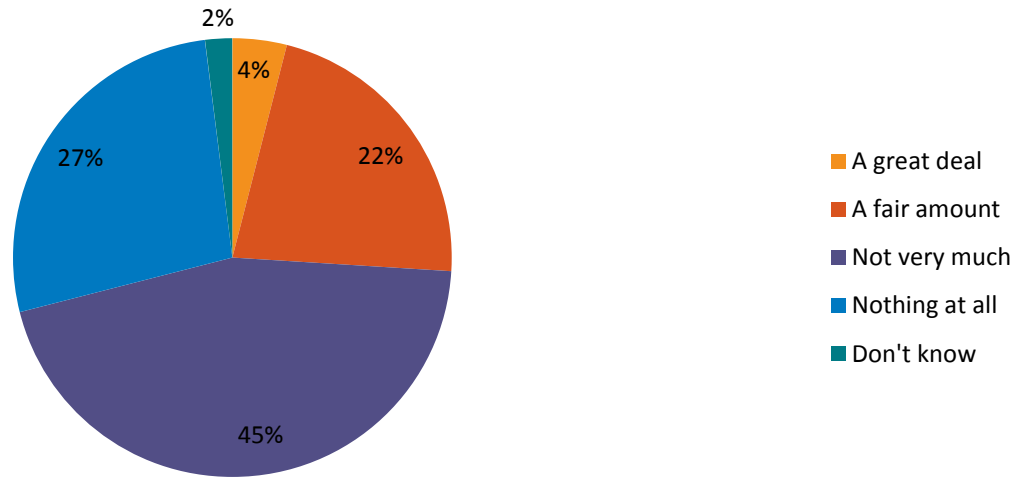


Figure 2- Awareness of rail specific compensation arrangements

How much, if anything, do you know about the compensation arrangements that might apply if you are delayed reaching your destination?

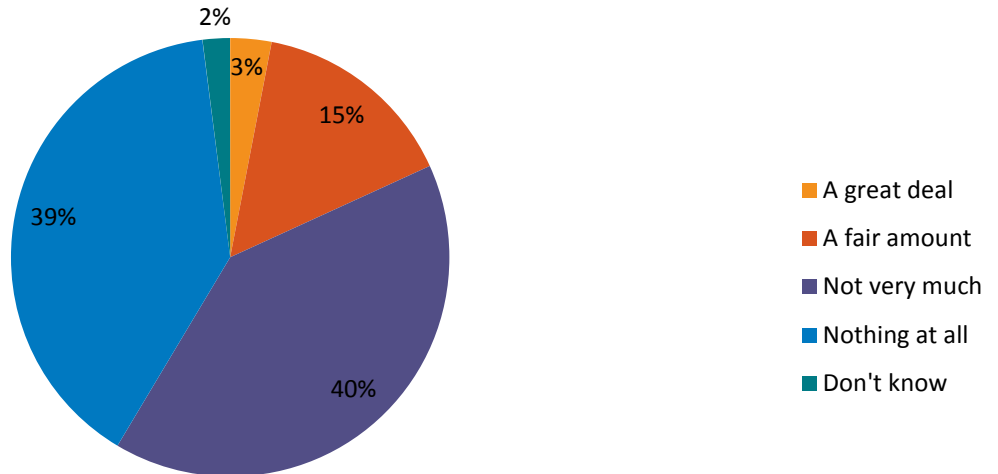
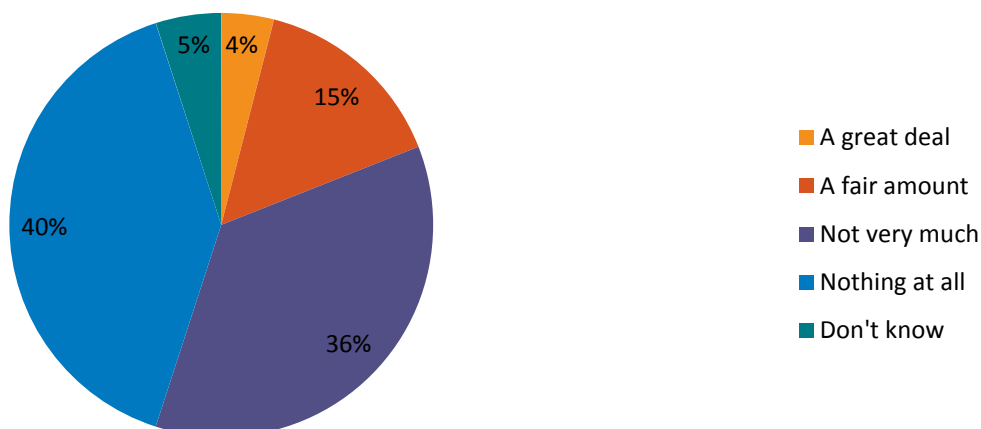


Figure 3 - Awareness of rail specific refund rights

How much, if anything, do you know about your rights to get a refund on your train ticket if you decide you no longer wish to use it?



Availability of information and other barriers to exercising rights

3.16 Having established that only one in five survey participants were confident they had a reasonable understanding of their rights and two in five said they knew nothing at all about their rights, the survey went on to explore the reasons for this.

3.17 Not surprisingly, the availability of, and access to, information was a key factor. When asked to what extent they thought information about compensation arrangements is readily available when they have been delayed in reaching their destination (see Figure 4 below), only 18% of survey participants said they thought it was 'always' or 'usually' available, while 41% said it was 'rarely' available and 27% thought it was 'never' available.

3.18 While 68% of participants therefore thought information was 'rarely' or 'never' readily available when they have been delayed, 51% said they were either 'very confident' or 'fairly confident' that they could find information about compensation arrangements if they needed it – although 45% said they were 'not very confident' or 'not at all confident' that they could find it – see Figure 5 (below).

3.19 Again, the picture is very similar with regard to the availability of information about refund rights, with 21% of survey participants saying that information about their right to a refund is 'always' or 'usually' available, 41% saying it is 'rarely available' and 25% saying it is 'never available'.

3.20 However, as with information about compensation arrangements, 50% of survey respondents said they were 'very confident' or 'fairly confident' that they could find information about compensation

arrangements if they needed it – although 27% said they were ‘not very confident’ and 17% said they were ‘not at all confident’ that they could find it.

3.21 Similar problems with the availability of information have been highlighted elsewhere, Passenger Focus having found “....*significant gaps in the provision of information related to applying for and gaining compensation... ..As it stands, passengers have little idea of how to make a claim until they have occasion to do so. Some mentioned difficulties experienced when searching TOC websites for information about compensation as a further disincentive to make a claim*”, adding that “*there was low awareness of communications referencing compensation schemes in stations or on trains.*”²⁶

3.22 It therefore seems clear that passengers’ inherent knowledge of their rights is low and that this is due, at least in part, to an inability to access the information that exists and a lack of more readily available information when delays occur.

3.23 In addition to the problems caused by a lack of awareness and/or the lack of information about their rights, the survey also identified a number of other issues associated with the process of exercising compensation and refund rights (see Table 1 below), including: uncertainty as to whether a claim would be successful and confusion around the process; the length of time required to make a claim; and that compensation is paid in vouchers.

3.24 A similar picture emerged in the focus groups, where participants expressed concerns about their ability to find information at stations, the ease of finding it on websites, and the pro-activity of train companies in providing information. While some participants said they had experienced instances of train companies taking a proactive approach, for example, handing out claims forms when there is a delay, this was seen as the exception rather than the rule.

²⁶ http://www.passengerfocus.org.uk/media/03f6922a97bff32001a3b0d18c66cf59ef047ba2/compensation_report_june_2011.pdf, p.13

Figure 4 - Availability of information

To what extent, if at all, do you think information about the compensation arrangements is readily available, when you are delayed reaching your destination?

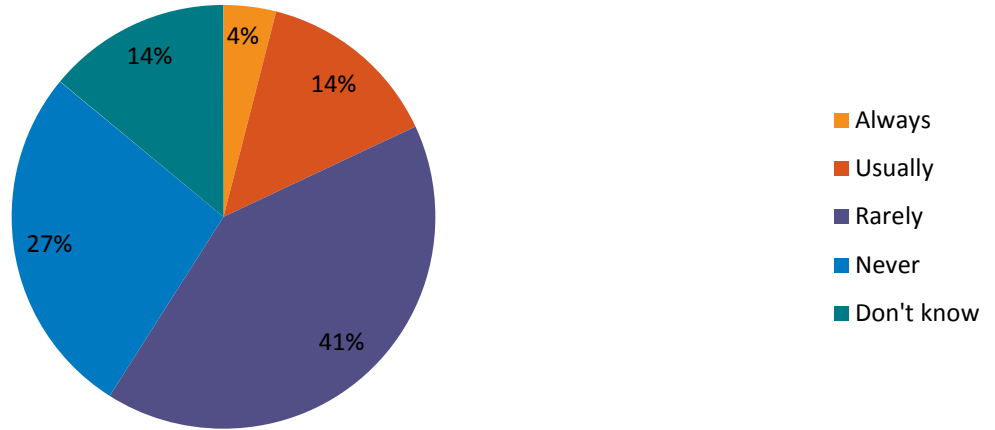


Figure 5 - Availability of information

How confident, if at all, are you that you could find information about the compensation arrangements if you needed it?

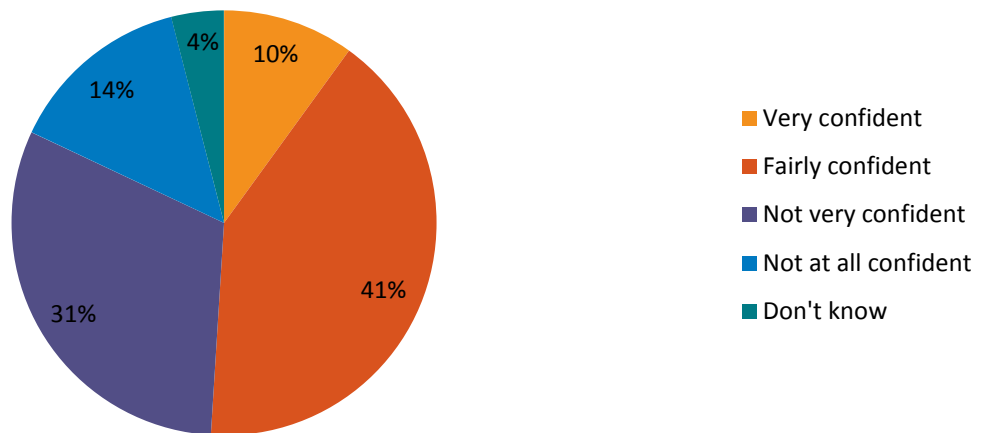
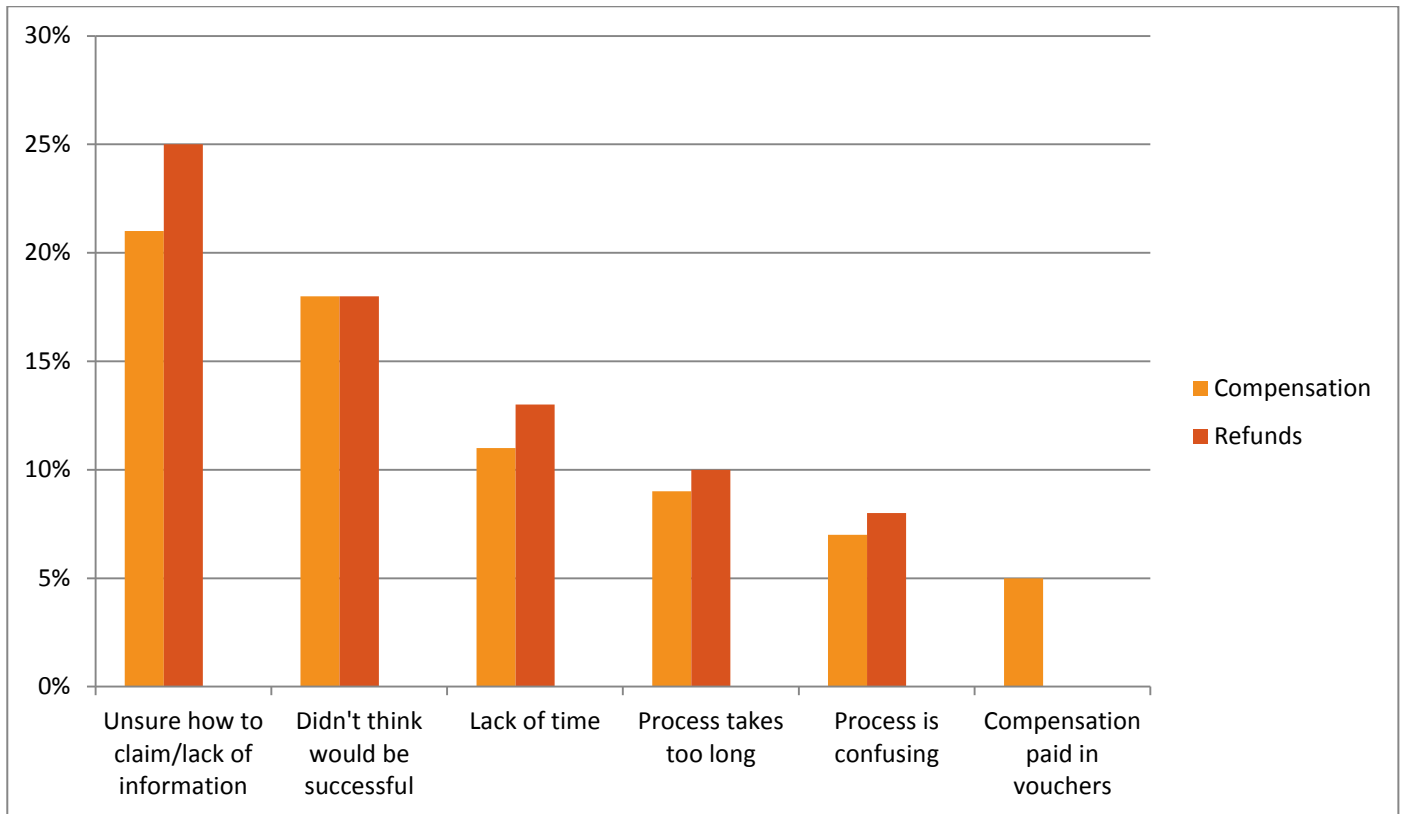


Table 1 – Reasons for not claiming compensation/refund



Level of take-up

3.25 Having explored participants' levels of awareness of their compensation and refund rights, the factors that contribute to this, and other barriers to exercising their rights, the survey moved on to examine the impact this had on participants' behaviour.

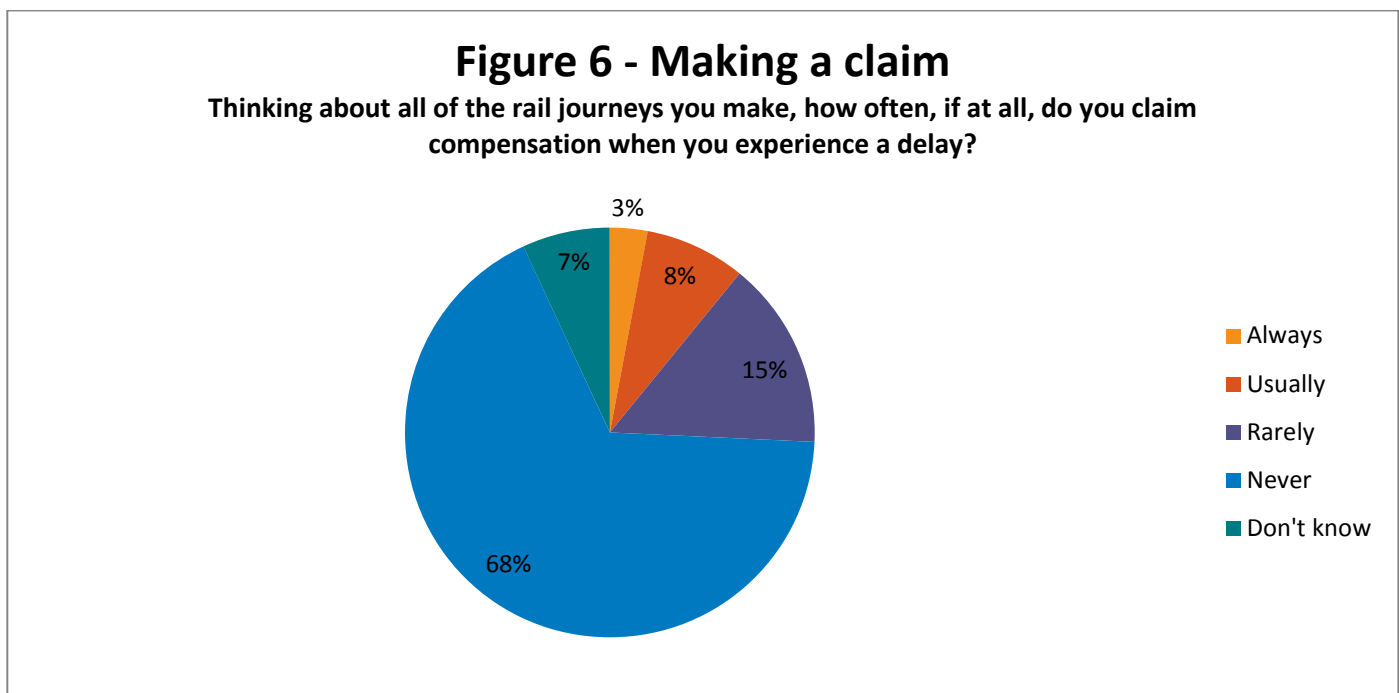
3.26 As can be seen from Figure 6 (below), only 11% of survey participants said they 'always' or 'usually' claim compensation when they are delayed, with 15% saying that they 'rarely' claim compensation and 68% saying they 'never' claim compensation.

3.27 While there may be some reasons for this, for example participants may include those travelling on a season ticket with a train company which operates a Charter scheme, or those who have experienced delays below the relevant time threshold, and therefore do not claim because they know they would not be eligible for compensation, this cannot explain away such a high proportion of participants who never claim. Indeed, in response to earlier questions about awareness of their rights, 79% of respondents said they knew 'not very much' or 'nothing at all' about the compensation arrangements when they experience a delay, which suggests that they are therefore unlikely to know whether they are entitled to compensation or not.

3.28 In addition, this level of take-up is corroborated by other work, which found, for example, that 88% of those surveyed who had been delayed by more than 30 minutes said they did not claim compensation (44% of these said they did not even think about it, while 30% said they did not think they would be eligible)²⁷.

3.29 As well as these findings, which suggest that the extent to which consumers exercise their rights is limited by their lack of awareness, our own work also suggests that take-up of compensation is further limited by issues around the process of making a claim and the fact that it is paid in rail travel vouchers.

3.30 With regard to the use of rail travel vouchers, not only does this appear to have a negative impact on consumers' propensity to claim, albeit not to the same extent as some other issues (see Table 1 above), but our research also suggests that it affects the amount of compensation that is ultimately realised. For example, during the course of our work, we asked train companies what percentage of vouchers issued are redeemed against new ticket purchases and were given estimates that ranged between 55% and 85%.



Passengers' suggestions for improvements

3.31 With regard to what participants thought could be done to make accessing compensation and refunds easier, the responses were very much focused on improving information (see Table 2 below) – making it clearer and more readily available, and improving assistance from train companies – including automating

²⁷ 'Understanding rail passengers – delays and compensation, July 2013, <http://www.passengerfocus.org.uk/media/f10bd81297bb9f5b3bd03b0db094ac202ee7577f/Understanding%20rail%20passengers%20-%20delays%20and%20compensation%20-%20FINAL.pdf>

the claims process and providing more proactive assistance when trains are delayed (74% of participants having said that train companies do 'not very much' or 'nothing at all' to proactively provide information about compensation when there are delays).

3.32 We also asked participants through which channels would they prefer to be kept informed about their compensation and refund rights, the results of which showed a strong preference for electronic means, such as email and internet, as well as for information at stations (see Table 3 below).

3.33 With regard to the processes for completing claims for compensation and refunds, survey participants expressed a strong preference for online processes, although the ability to complete claims via more traditional methods such as at stations and by way of paper forms was also valued (see Table 4 below).

Table 2 – What would make accessing compensation/refunds easier?

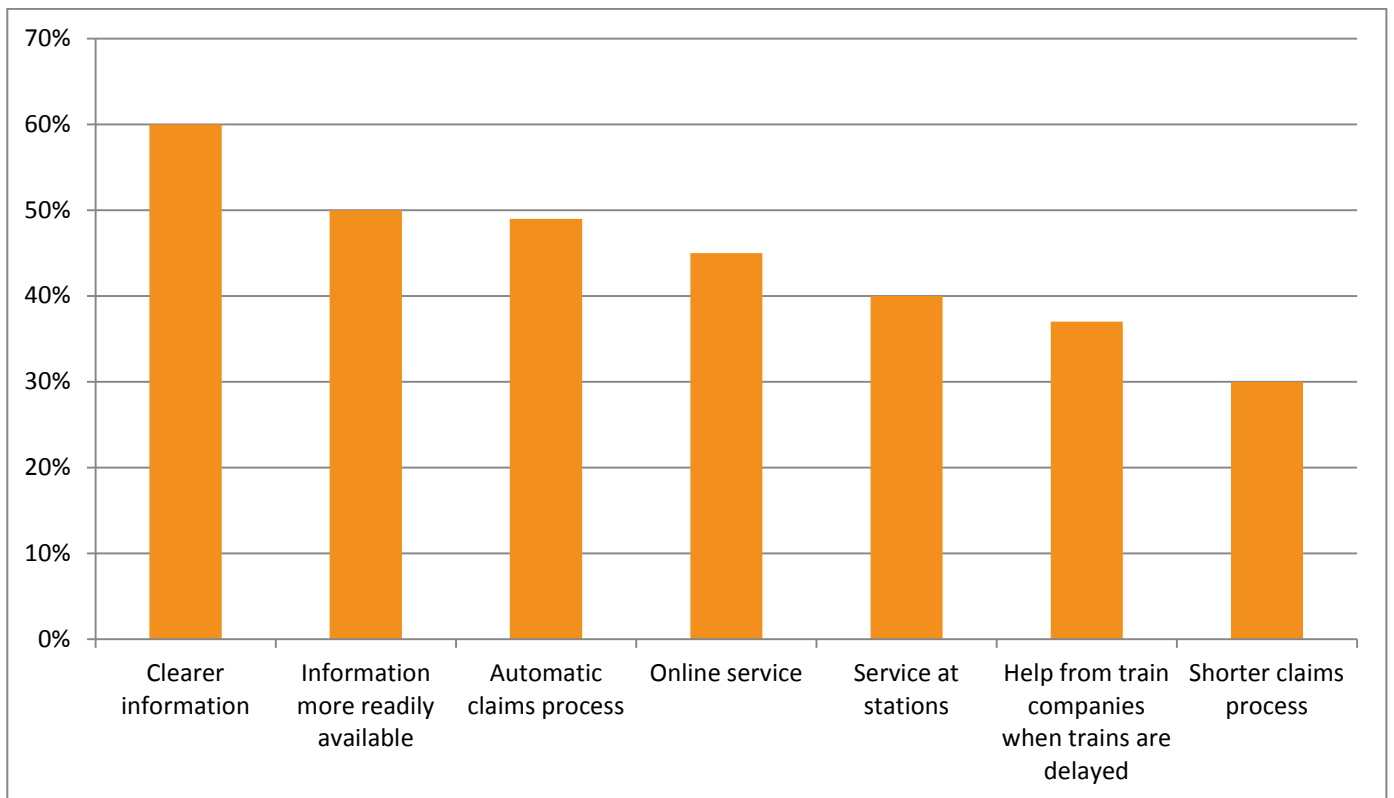


Table 3 – Through what channels would you prefer to be informed about your rights?

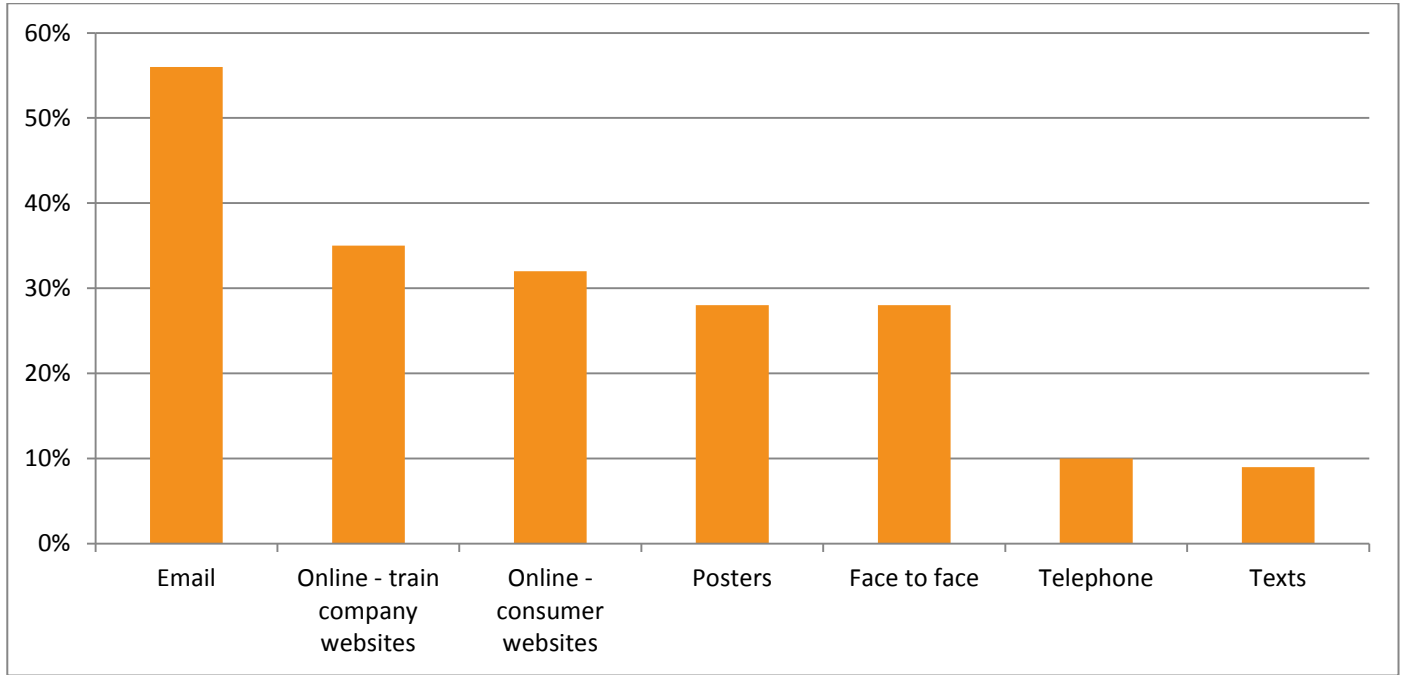
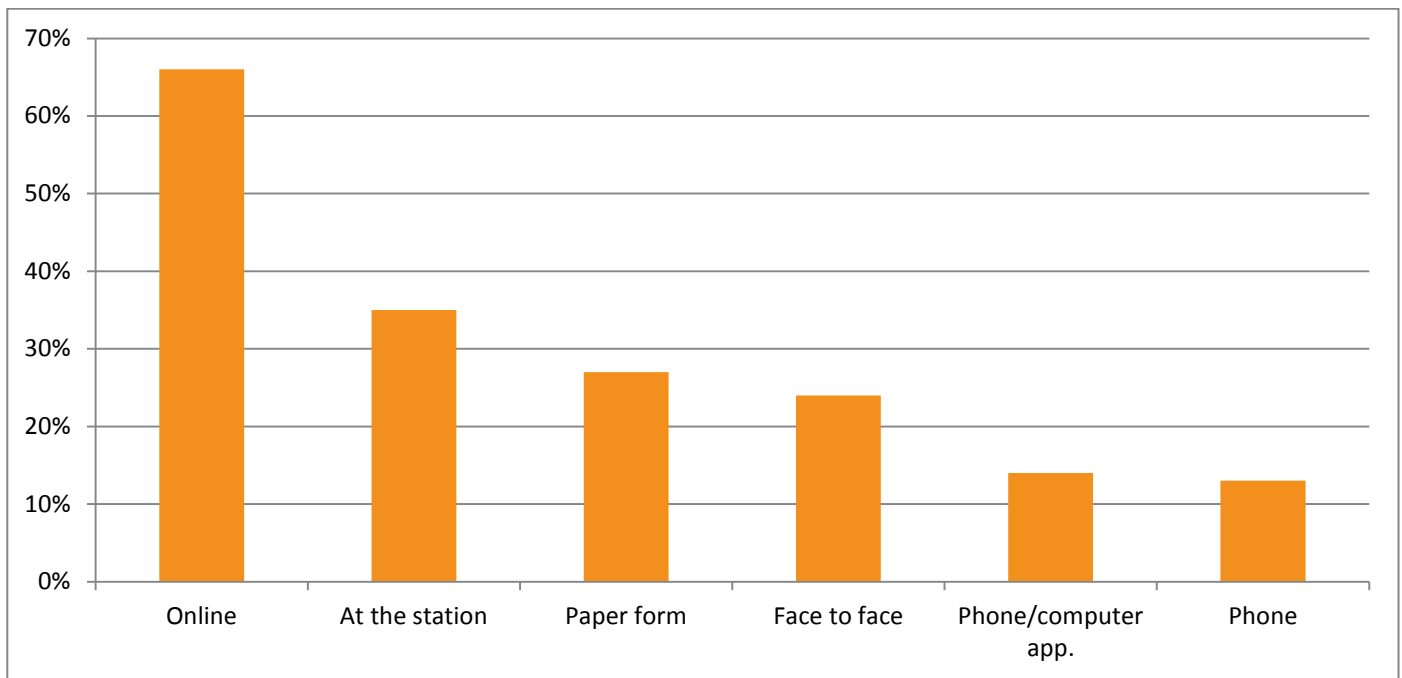


Table 4 – In what format would you most want to complete the claims process?



4. Industry initiatives and next steps

Individual train company initiatives

4.1 As mentioned previously, as part of our work, we wrote to all train companies seeking information about what they do now, or are planning to do in the next twelve months, to help raise passengers' awareness of, and facilitate access to, their rights.

4.2 From the 18 responses²⁸ we received, it is apparent that most train companies provide information about compensation arrangements and refund rights in their Passenger's Charters, which are generally available to view or download on their websites²⁹, at station ticket offices, or via their customer services, as well as providing information on specific pages of their websites.

4.3 In addition, some train companies told us that they have already adopted, or are planning to adopt, more proactive measures, for example, using social media, such as Twitter and Facebook, as a means of directing customers to compensation arrangements and/or that they make announcements about compensation on board trains when delays reach the relevant threshold.

4.4 Some also said that they proactively collect the details of passengers on delayed trains, so that they can contact them after the event and/or hand out claim forms on trains during delays or have staff on hand to distribute forms at stations after a delay. Indeed, one train company told us that it has built such measures into its formal plans for dealing with passenger information during delays.

4.5 Others told us that they have been trailing 'e-voucher' schemes, which allow passengers to use the voucher to buy tickets online and therefore access some of the cheaper offers, something which traditional rail travel vouchers do not permit.

4.6 However, many such measures appear to be relatively recent developments and do not appear to be applied as universally as the more 'passive' measures, such as simply providing information on websites or making it available on request at stations. While there may be valid reasons for this, for example, it may not

²⁸ Arriva Trains Wales, c2c, Chiltern, CrossCountry, DB Regio Tyne and Wear, East Coast, East Midlands Trains, Eurostar, First Capital Connect, First Great Western, First ScotRail, First TransPennine Express, Grand Central, Greater Anglia, Heathrow Express, Merseyrail, South West Trains, Virgin Trains

²⁹ http://www.nationalrail.co.uk/times_fares/ticket_types.aspx#charter

always be feasible for train company staff to pass through a train taking passengers' details, it should be possible to make announcements drawing passengers' attention to their rights.

4.7 Likewise, our research would suggest that simply putting information on a website, or even making it available on request, is not sufficient to effectively communicate information to consumers, who clearly think there is scope for train companies to do more. For example, making information on websites easy to understand, and easier to find, such as by providing obvious links from the home page or by placing a specific 'banner' or 'notice' on the home page during or after disruptions.

ATOC initiatives

4.8 In addition to the actions identified above, the Association of Train Operating Companies (ATOC), working with the train companies, has produced a 'toolkit', setting out a range of measures that train companies could adopt to help raise awareness of compensation rights and the process for making a claim.

4.9 The 'toolkit' includes many of the measures identified by participants in our survey as well as many of those which train companies have told us they have already adopted or are planning to adopt, such as: basic use of the internet as a means to provide information or as part of the claims process; enhanced use of the internet, for example, specific announcements on the home page when there are or have been delays or automation of the claims process; on-board announcements during disruption; and use of social media.

4.10 It is also worth mentioning two other recent ATOC initiatives designed to improve the information provided to passengers.

4.11 The first is the publication of a revised 'National Rail Guide to Tickets'³⁰, which includes: tips on getting the best value; information on different ticket types and discounts; and information on compensation and refund rights. Second, ATOC has developed and is in the process of rolling-out new ticket stock, which includes details of how to access ticket information, such as compensation and refund rights.

4.12 The success of these measures can only be judged by the extent to which they increase passengers' awareness of their rights and, ultimately, lead to an increase in passengers' exercising their rights. It will be important to see a demonstrable improvement in consumer awareness and take up of their compensation and refund rights.

³⁰ http://www.nationalrail.co.uk/times_fares/ticket_types.aspx#which

Next steps

4.13 We welcome ATOC's plans to review the impact of its toolkit in the summer of 2014³¹. We will engage with ATOC during its review and decide on the next steps after it is complete. In the meantime, we will be pursuing a number of other initiatives with the aim of improving the information that is provided to passengers about their rights. These are outlined below.

Review of the National Rail Conditions of Carriage

4.14 ATOC and the train companies are also in the process of reviewing the National Rail Conditions of Carriage (NRCoC). Although we do not have a formal regulatory role in the approval of the NRCoC³², we do expect to be consulted on a revised version shortly. At that time, we will take a view on the extent to which the revised conditions remain fit for purpose and meet the minimum requirements of the law, including, for example, whether they are fair, and the suitability of the form in which compensation is paid.

Code of Practice on retail information

4.15 In addition, in our role as consumer authority, we have agreed with the Department for Transport to oversee the development of a code of practice on the provision retail information³³, to provide clarity to those selling rail tickets about their legal and regulatory obligations in terms of providing consumers with the information they need to choose the best ticket for their journey and that this information is clear and not misleading, including information on the types of fares, the differences between them and any restrictions, as well as key terms and conditions, such as compensation and refund rights. This will build on our previous work on ticket complexity³⁴.

4.16 We will work with train companies, ATOC and passenger and consumer groups as we take this work forward over the coming months. We expect the code to be in place by the end of 2014.

Improving our own information for passengers

4.17 Finally, we will be looking to use the information we have gathered and set out in this report to see what more we can do to improve the information that we provide on our website or when responding to complaints to help raise consumers' awareness of their rights, as well as working with passenger and

³¹ ATOC has told us that this will be a multi-stage review and will include: seeking feedback from train companies on how useful they found the toolkit; whether any measures they deployed as a result of the toolkit resulted in increased levels of compensation being claimed; and seeking feedback from other stakeholders. In light of the responses it receives, ATOC will consider the efficacy of the toolkit, whether it needs to be revised, and whether any further action can be taken by ATOC, TOCs or other stakeholders.

³² The NRCoC are an annex to an intra-industry agreement called the Ticketing and Settlement Agreement (TSA) - <http://www.atoc.org/about-atoc/rail-settlement-plan/governance/>. The TSA is an agreement between train companies, over which the Secretary of State for Transport exercises control.

³³ See paras. 3.34 to 3.54 of Rail fares and ticketing: next steps, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/249001/fares-ticketing-next-steps.pdf

³⁴ <http://www.rail-reg.gov.uk/server/show/ConWebDoc.10937>

consumer bodies to see how we can ensure that consumers get clear and consistent advice whomever they contact.

Annex 1 – passenger compensation and refund arrangements

Key points

Refunds (non-season tickets)

- When trains are delayed or cancelled (or a seat reservation will not be honoured) and a passenger chooses not to travel (or to complete their journey) they are entitled to a full refund – minus any use made of the ticket
- Train companies may give refunds in other circumstances (depending on the type of ticket – e.g. Advance tickets are non-refundable other than when trains are delayed or cancelled) but this may be subject to an administration fee of up to £10

Compensation (non-season tickets)

- A passenger may be eligible for compensation when they travel and experience a delay to their journey
- There are two types of passenger compensation arrangement in operation on the railways – ‘Charter’ schemes and ‘Delay Repay’ – they have different criteria, offer different levels of compensation, and which one applies depends on the train company in question, as set out in its Passenger’s Charter
- Both schemes pay compensation in the form of rail travel vouchers

Charter schemes

- ‘Charter’ schemes are based on the compensation arrangements set out in condition 42 of the National Rail Conditions of Carriage (NRCoC)³⁵, which sets out the minimum that passengers can expect – but individual train companies may offer more generous terms (such as higher levels of compensation or a lower delay threshold), which will be set out in their Passenger’s Charter
- Under the NRCoC passengers may be eligible for compensation if they arrive more than 60 minutes late at their destination (with some train companies, more than 30 minutes late) – although this will depend on whether the cause of delay is within the train company’s control

³⁵ www.nationalrail.co.uk/static/documents/content/NRCOC.pdf

- In the case of a single ticket, compensation will be at least 20% of the price of the ticket

Delay Repay

- Delay Repay compensation kicks in at 30 minutes delay
- The amount of compensation payable increases with the length of delay – 50% of the relevant ticket (or portion of ticket) at 30 minutes and 100% at 60 minutes
- It is a ‘no fault’ scheme – compensation is payable regardless of the cause of the delay

Season tickets

Refunds

- The refund arrangements for season tickets are set out in Condition 36 of the NRCoC and depend on the length of time left on the ticket and whether a duplicate ticket has been issued

Compensation

- Compensation arrangements for season tickets vary depending upon whether the relevant train company operates a Charter scheme or Delay Repay scheme, as set out in its Passenger’s Charter
- Charter schemes provide compensation in the form of an ‘automatic’ reduction in the price of an annual season ticket at renewal, where relevant performance targets have not been met, whereas under Delay Repay schemes season ticket holders must claim compensation for individual delays in the same way as other ticket holders

Additional detail

1. Under rail industry specific arrangements³⁶, where a passenger has bought a ticket for a rail service and that service is delayed or cancelled, then the passenger may be entitled to a refund or compensation, depending upon a number of factors, including, for example: whether the delay occurred before or after the service departed; whether they chose to travel; or the length and/or cause of the delay.

2. These arrangements, which form part of the contract between the passenger and the train company, are explained in more detail below but, put simply, if their train is delayed or cancelled (or your reservation will not be honoured) and the passenger chooses not to travel then they are entitled to a refund. Whereas, if they travel and are delayed reaching their final destination, then they may be entitled to compensation.

³⁶ National Rail Conditions of Carriage and individual train companies’ Passenger’s Charters

Refunds rights (non-season tickets)

3. Under Condition 26 of the NRCoC³⁷, a passenger is entitled to a refund on their ticket (with no administration charge) if their train is delayed, cancelled or their seat reservation will not be honoured, and they decide not to travel.
4. Condition 26 also explains the various means of returning a ticket, including where and to whom a ticket may be returned, and the form in which the refund will be paid (the same form as was used to purchase the ticket).
5. The amount of refund to which a passenger will be eligible depends upon any use they have made of their ticket. So, if they have used part of their ticket before deciding not to continue their journey, this may be taken into account when calculating any refund.
6. A refund may also be sought in other circumstances, for example, where the passenger changes their mind about travelling for reasons other than delay or cancellation, for example, their plans change, although this may be subject to an administration charge of up to £10 and will depend upon the type of ticket held. Advance tickets, for example, are not refundable in such circumstances³⁸.

Compensation (non-season tickets)

7. There are two types of industry schemes for compensating passengers for a delay to their journey. These are the traditional 'Charter' scheme and the newer 'Delay Repay' scheme. Currently, about half of franchised³⁹ train companies operate the Charter scheme⁴⁰, while the other half operates the Delay Repay scheme⁴¹. It is the stated policy of the Department for Transport to move all franchised operators to the Delay Repay scheme as the opportunity arises, such as when new franchises are let.
8. Both schemes provide compensation in the form of rail travel vouchers⁴² on the basis of a given period of delay but there are important differences between the two, as explained below.

³⁷ www.nationalrail.co.uk/static/documents/content/NRCOC.pdf

³⁸ See Advance ticket terms and conditions – http://www.nationalrail.co.uk/times_fares/ticket_types/46546.aspx Note: although not refundable, in most cases the journey can be changed prior to travel (up to departure) for a £10 fee plus any difference in the fare payable (although this may not be possible in the case of tickets printed at home or downloaded to a mobile device where different rules apply). Southern does allow customers who have purchased Advance tickets on-line to be refunded with no administration charge, for any reason, if this is done before the ticket is collected

³⁹ Nearly all rail passenger services are operated under a franchise awarded by the Government

⁴⁰ Arriva Trains Wales; c2c; Chiltern Railways (plus Delay/Repay); First Great Western; First ScotRail; First TransPennine Express; Northern; South West Trains

⁴¹ Southeastern; Southern; East Coast; London Midland; CrossCountry; East Midlands Trains; First Capital Connect; Greater Anglia; Chiltern Railways (plus discounts); Virgin Trains

⁴² Rail travel vouchers can be used to buy tickets for any journey on the national rail network and are typically valid for 12 months. ATOC has told us that some TOCs do offer cash alternatives. London Midland, for example, will provide a cheque for any claim over £30, on request and, where a passenger has accumulated over £30 worth of travel vouchers, these may be exchanged for a

'Charter' schemes

9. Charter schemes are underpinned by the compensation arrangements set out in Condition 42 of the NRCoC.

10. According to Condition 42, where delays, cancellations or poor service arise for reasons within the control of a train company, you are entitled to compensation in accordance with the arrangements set out in that train company's Passenger's Charter.

11. The amount of compensation offered by each train company may vary from company to company, so you need to check the relevant train company's Passenger's Charter⁴³. As a minimum, where a passenger arrives more than 60 minutes late at their destination station they will be entitled to compensation in the form of travel vouchers in accordance with the table below⁴⁴:

Ticket held	Amount in vouchers
Single ticket	20% of the price paid
Return ticket with delay on outward or return journey	10% of the price paid
Return ticket with delay on both the outward and return journey	20% of the price paid
7-day season ticket for each day a delay occurs	20% of the price paid ÷ 7

12. It is important to note that, for the purposes of Condition 42, reasons not within a train companies' control include:

- acts or threats of vandalism or terrorism;
- suicides or accidents involving trespassers;
- gas leaks or fires in lineside buildings not caused by a train company or a rail service company or any of their staff or agents;
- line closures at the request of the police or emergency services;
- exceptionally severe weather conditions;
- riots or civil commotion; and
- fire, mechanical or electrical failure or a defect (except where this is caused by a Train Company or Rail Service Company or their staff or agents, or as a result of the condition of a Train Company's trains).

cheque – see London Midland's Passenger's Charter <http://www.londonmidland.com/about-us/listening-to-passengers/passengers-charter/>

⁴³ Links to all train company Passenger's Charters can be found on the National Rail Enquiries websites – http://www.nationalrail.co.uk/times_fares/ticket_types.aspx#charter

⁴⁴ ATOC has told us that, in practice, it is always higher than this and passengers should therefore check the relevant train company's Passenger's Charter

Delay Repay

13. The 'Delay Repay' scheme is a newer scheme and is specified by the Secretary of State for Transport as part of the franchise agreement with the train company.

14. The compensation that can typically be expected when there is a delay is as follows:

- where a passenger arrives at their destination station 30-59 minutes late, compensation to the value of at least 50% of the cost of a single ticket or 50% of the cost of either portion of a return ticket ('portion' means either the outward or return part of a return ticket);
- where a passenger arrives at their destination station 60 minutes late or more, compensation to the value of at least 100% of the cost of a single ticket or 100% of the cost of either portion of a return ticket; and
- where a passenger with a return ticket arrive at their destination station more than 120 minutes late, on either portion, compensation to the value of at least 100% of the cost of a return ticket.

15. The main differences between the Delay Repay scheme and the arrangements set out in the NRCC relate to:

- the length of delay at which compensation kicks-in (at 30 minutes delay instead of 60 minutes);
- the amount of compensation paid (at least 50% of the relevant portion of a ticket); and
- that it is not 'fault based' (train companies will pay compensation on the basis that the relevant delay has occurred, regardless of the cause of the delay⁴⁵).

Season tickets

16. Season tickets, and annual season tickets in particular, can represent a significant financial investment on the part of the passenger and it is therefore all the more important that consumers fully understand what they are buying.

17. For example, some season tickets bring with them additional value, over and above what might be expected, such as the benefits attached to a 'Gold Card'⁴⁶, but there are also some important restrictions and terms and conditions that passengers should be aware of when buying and using their season ticket.

⁴⁵ Although this does not include delays caused by the passenger arriving too late at the first point of train departure, for example, because they are stuck in traffic or a local bus was late

⁴⁶ http://www.nationalrail.co.uk/times_fares/ticket_types/46573.aspx

Refunds

18. The arrangements for refunds on season tickets are different from the arrangements for other types of ticket.

19. The circumstances in which a refund will be given on a season ticket are set out in Condition 36 of the NRCC. The availability of a refund depends on a number of factors, which can be summarised as follows:

- a refund will only be made if the season ticket is returned to the train company from which it was bought; and
- in the case of a season ticket valid for a month or more when issued, there must be at least seven days' validity remaining or, in the case of any other season ticket, at least three days' validity remaining.

20. Refunds are calculated from the date the season ticket is returned (although if the customer is ill and unable to hand the ticket in earlier, the refund will be calculated from the date the illness started – on the production of evidence to that effect) and will be the difference, if any, between:

- the price paid for the season ticket; and
- the total cost of the combination of tickets that would have needed to make one return journey a day up to the date the season ticket was handed in, less a reasonable administrative charge (not exceeding £10).

21. Importantly, this means the amount paid will not usually be in equal proportion to the price of the ticket and, in some cases, there may be no refund payable.

22. Also, it is important to note that refunds are not usually made on a duplicate ticket that has been issued to replace a lost or stolen season ticket (see 'duplicate season tickets' below), although applications for such refunds will be considered in certain circumstances⁴⁷.

Compensation

Charter schemes

23. Under the traditional compensation scheme included in Passenger's Charters, there is no automatic entitlement to compensation for individual delays for monthly and annual season ticket holders.

⁴⁷ where the original season ticket is returned to the train company which issued the duplicate ticket within one month of it being notified of the loss; where the original and replacement tickets were electronic tickets and it was possible to cancel the original ticket; or in circumstances such as the redundancy, pregnancy or prolonged illness of the holder – see Condition 36 of the NRCC, <http://www.nationalrail.co.uk/static/documents/content/NRCOC.pdf>

24. 'Compensation', is generally based on average performance over a 12 month period and if average performance for either reliability or cancellations falls below a certain level then 'compensation' is offered in the form of a discount⁴⁸ on the price of the passenger's next season ticket.

Delay Repay

25. Under Delay Repay, season ticket holders may claim for individual delays in the same way as non-season ticket holders – but there is no automatic reduction in the price of a season ticket at renewal. The amount that season ticket holders receive for each delay is based on a calculation of how much they pay for each journey.

Duplicate sason tickets

26. Although not the focus of this report, it is important that passengers are aware of the arrangements relating to the issuing of duplicate season tickets when they are lost or stolen, which are set out in Condition 34 of the NRCoC. In particular, that no more than two duplicates will be issued in a twelve month period.

27. As mentioned above, the issue of a replacement season ticket may also affect the passenger's ability to get a refund if they decide they no longer need their season ticket.

⁴⁸ Usually 5% or 10% depending on whether the performance falls below one or both measures

Annex 2 – industry compensation arrangements

Difference between intra-industry and passenger compensation arrangements

1. Intra-industry and passenger compensation serve different purposes:
2. The intra-industry arrangement, known as 'Schedule 8', is designed to compensate train operators for the impact of poor performance on their long term revenue. This is an important protection to operators and it also helps reduce the risk premium factored into franchise bids, and as a result reduces the cost of franchising to the taxpayer.
3. Passenger compensation arrangements are designed to provide redress for passengers when they are delayed. Franchise and other industry agreements require franchised train operators to compensate passengers for delays to their journeys.
4. While they both reflect performance on the network, Schedule 8 and passenger compensation arrangements therefore perform very different roles. There is no direct linkage between the two, with Schedule 8 relating to the compensation and incentive arrangements between train companies and Network Rail, and the passenger facing arrangements being a means of compensating passengers for delays to their journeys.
5. Schedule 8 payments are based on the extent average minutes of lateness deviates from a pre-determined benchmark, and can involve bonuses or compensation, depending on how well Network Rail and train operators perform. Payments are determined by formula, based on the average number of minutes trains are late, whereas passenger compensation is paid if the train travelled on is subject to a significant delay and a claim is made.
6. In recent years, Schedule 8 compensation has been typically higher than passenger compensation. This reflects the fact that Network Rail has not been meeting its performance targets. If, during the next control period:
 - Network Rail and train operators perform in line with our expectations, net Schedule 8 payments will be zero, whereas there will still be instances when passenger compensation is paid as a result of significant delays; or

- Network Rail's performance exceeds expectations, train operators will have to pay bonuses to Network Rail but also pay passenger compensation as a result of significant delays caused by Network Rail, albeit a lower amount than if Network Rail's performance was below expectations.

7. Further information on Schedule 8 and other industry incentive arrangements can be found in our recently published document, which sets out Network Rail's outputs and funding for 2014-19 -

<http://www.rail-reg.gov.uk/pr13/publications/final-determination.php>

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