Responses to The Rail Ombudsman –ORR proposals to modify licence conditions to require membership of an Alternative Dispute Resolution scheme – January 2019

Organisation
Arriva
East Midlands Trains
First Rail Holdings
GTR
Heathrow Express
Mr John Cartledge
LNER
Network Rail
Rail Delivery Group
The Rail Ombudsman
Southeastern
Stagecoach Group
Transport for London (TfL)
Transport for Wales
TravelWatch SouthWest
Virgin Trains

Consumer Policy
Office of Rail and Road
One Kemble Street
London
WC2B 4AN

22 January 2019
By post & email to CHP@orr.gov.uk

Dear Sirs

Re: Annex B: Draft modification of Condition 6 of the Passenger Train Licence and the Station Licence

I write further to the consultation issued by the ORR on 19 December 2018 in respect of Changes to Complaints Handling. Please accept this response from Arriva UK Trains as being on behalf of all Arriva train operating companies.

Arriva train operating companies have previously expressed their concern at mandating membership to the Rail ADR Scheme on the basis that it detracts from the pro-active nature of the scheme and the recognition that train operating companies actively support providing passengers with an effective escalation route. We have concerns with the proposed amendments to the Passenger Train and Station Licence, which are set out below. If the ORR is still of the opinion that mandatory membership is required, Arriva questions whether it would be more appropriate to be dealt with by way of train operators' franchise agreements or membership terms for the Rail Delivery Group.

In relation to the proposed amendments in Annex B: Draft modification of Condition 6 of the Passenger Train Licence and the Station Licence, Arriva has the following concerns:

1. Clause 5(b) provides that the SNRP holder shall be obliged to "*comply with its obliged to comply with its obligations under the Relevant ADR Scheme and with any decisions that are issued under the Relevant ADR Scheme*". The Relevant ADR Scheme rules, as they currently stand, have numerous obligations on train operators from responding within set timescales,

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providing information and complying with the Ombudsman's decisions. The impact of non-compliance can therefore vary materially from denying a passenger to the compensation the Ombudsman has determined they should receive, to late submission of documents causing a short delay to the process.

Whilst train operators are contractually bound to comply with these rules, we are concerned that a minor infringement of these rules would result in a train operator being in breach of its Passenger and Station licences. We consider that in some circumstances this would be wholly disproportionate bearing in mind the importantance of train operators Passenger and Station licences to their businesses. For example, if a train operator was late in providing a response one particular occasion it would be non-compliant with the Relevant ADR Scheme obligations. In this regard the provision does seem disproportionate and out of context with the purpose of the Passenger and Station licences. If the ORR is still minded to provide such a provision, we would welcome clarification or a change in language, for example, a train operator being afforded the right to correct procedural compliance issues or issued with warnings of non-compliance before action is taken.

2. In relation to the ORR's oversight of the Relevant ADR Scheme we would welcome the ability of train operators to raise concerns about any adverse decisions made by the Ombudsman, either within clause 5 or within the ORR Guidance. We are particularly concerned that should the Ombudsman appear to be routinely making decisions that are not consistent with Delay Repay, passenger charters or laws such as the Consumer Rights Act, then train operators should have the right to have such concerns considered by the ORR. The Relevant ADR Scheme rules do not allow a right of appeal and the consequences of not following Delay Repay, passenger chargers or laws could result in adverse financial decisions against train operators as well as undermining a train operators' ability to deal with complaints in a consistent manner. We are therefore of the opinion that there should be an express right of escalation to the ORR if such decisions are identified and cannot be remedied through the ADR Scheme itself.

Thank you for the opportunity to allow Arriva to comment on the proposed amendments to the licences.

Yours sincerely,

Chris Booth
Head of Legal
Arriva UK Trains

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By email to: CHP@orr.gsi.gov.uk

22nd January 2019

Dear Consumer Policy Team,

East Midlands Trains response to the ORR proposals to modify licence conditions to require membership of an Alternative Dispute Resolution scheme

Thank you for providing the opportunity to feedback on the proposed modifications to the licence conditions mandating membership of an Alternative Dispute Resolution (ADR) scheme.

In the responses to the July 2018 consultation, we agreed with the RDG that mandating membership of an ADR scheme was not necessary. East Midlands Trains Rail continues to support this position.

The industry, through the RDG, has already committed to voluntarily joining the approved ADR scheme, and we can confirm our full support for the scheme. This represents a milestone for the industry. While recognising that some customers do not trust the industry to provide a high-quality customer service, through voluntarily joining the RDG procured ADR scheme, participants are demonstrating their commitment to building that trust. As noted in the responses to the previous consultation, there are several pros and cons to mandating membership but, we support the view that to do so would change the perception of the scheme itself.

The draft wording of the changes to Condition 6 of the Passenger Train Licence and Station Licence requires that, in the (unlikely) event of the Relevant ADR Scheme ceasing to be compliant, the licence holder would work to resecure compliance of the scheme (or source another compliant ADR scheme). Given that the ADR scheme is supposed to be independent of the operators that its decisions would be binding upon, we believe that this requirement could undermine the independence of any future or alternative ADR scheme.

Additionally, we believe membership of the ADR scheme should be extended to third-party retailers because, for 2017/18, 14% of all appeals closed by London TravelWatch and Transport Focus (combined) concerned ticketing and refunds policy, therefore third-party retailer membership would provide consistency in how all complaints/appeals are treated.

Should you require any further comment or information, we would welcome the opportunity to do so.

Yours sincerely

Vishaal Bagga
Head of Customer Experience
East Midlands Trains

For the attention of Stephanie Tobyn
Deputy Director, Consumers
Directorate of Railway Markets and Economics

Consumer Policy
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By Email: CHP@ORR.gsi.gov.uk

First

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25 January 2019

Dear Ms Tobyn

The Rail Ombudsman - ORR proposals to modify licence conditions to require membership of an Alternative Dispute Resolution Scheme

First Rail Holdings writes on its own behalf and on behalf of its subsidiaries trading as Great Western Railway, Transpennine Express, South Western Railway and Hull Trains (the "**Operators**").

The Operators are grateful for ORR's invitation to respond to its consultation on the proposed amendment to Licence Condition 6 (the "**LC6 Amendment**") to mandate membership of the Rail Ombudsman's Scheme (the "**Scheme**") and to deal with associated matters, as explained in ORR's letter of 19 December 2018. The Operators are grateful for ORR's agreement to an extension for making this submission to allow further time for thought and comment on the terms of LC6 Amendment. Those comments are also set out below in the event that ORR is minded to move ahead with the amendment at some stage.

The Operators are already members of the Scheme. They fully support the principle of an ombudsman scheme and are financially and reputationally committed to *this* Scheme. They do not oppose mandated membership of a predictable, properly functioning and fair ombudsman scheme at the appropriate time. However, the primary purpose of this letter is to set out the Operator's strong reasons for requesting that the proposed LC6 Amendment should not be implemented *at this time*. There is a reasonable case for saying the LC6 Amendment is unnecessary and should not be implemented at all. We have read and support the RDG's submission in this respect. However, if ORR is minded to implement it, there is a strong case for a pausing for an appropriate period at this time. For the reasons explained below, we suggest it would be more rational to pause implementation, rather than amend the Effective Date to some later date.

1 SUMMARY

1.1 The Scheme was introduced in November 2018. The ombudsman has started processing claims and the first decisions are beginning to be made. It is in its early stage. It is therefore unsurprising that some uncertainties and/or potential flaws in the Scheme are coming to the fore at this stage, and that these are still being worked through. Examples of some of these issues are provided below.

1.2 For the purpose of this consultation response, only brief summaries of some of the more prominent concerns of the Operators have been provided. This was so as to avoid a more extensive explanation of these issues detracting focus from the key issue (although, for the avoidance of doubt, the Operators are willing and open to discuss any of these issues with ORR in further detail, just as it has been doing with the RDG and other Scheme members). The Operators do not believe the issues to be insurmountable.

1.3 The key issue is the need for time to work constructively through the current issues to ensure that this Scheme is an industry mechanism that works predictably, properly and fairly in the interests of consumers, scheme Members, and the wider industry. The ability to ensure this would be adversely affected by the (unnecessary, and in the Operators submission premature) introduction on the LC6 Amendment mandating Scheme membership.

1.4 In relation to ORR's duties under section 4 of the Railways Act 1993, these uncertainties affect (in particular) industry participants' abilities to plan the future of their businesses with a reasonable degree of assurance and their ability to protect the interests of users of railway services. They may also ultimately affect SoS funds and economic impacts within the industry. In light of the points raised in this letter, and other concerns, the Operators suggest that it must be rational and sensible that there should be additional time to resolve the issues with the current Scheme rules.

2 SUMMARY OF SOME CURRENT CONCERNS

2.1 It is important that the Scheme provides decisions which are consistent (with each other, and with relevant legal principles) and predictable. Failure to achieve this may drive adverse consumer behaviours (contrary to the intention of the Scheme), and create conditions which may have a serious, unfair and disproportionate adverse economic impact on certain industry participants. The current Scheme rules, if applied literally, may result in awards considerably out of proportion with the redress available under ordinary legal principles. The difference is not de minimis; it has the potential to be very large given the total number of journeys made and therefore the multiplier effects of any flaws in the approach taken. A single very serious incident or series of linked incidents of disruption (including those outside the control of the operator(s) involved) has the potential to significantly impact the economic balance of the industry and ultimately SoS funds. The Operators consider that it is vital to seek to resolve this issue to ensure the Scheme rules align with the relevant legal principles.

2.2 Linked to the above, there is currently a structural mismatch or disjunction between the Scheme rules and the functioning of other industry mechanisms, most notably the Claims Allocation and Handling Agreement ("**CAHA**"). In particular, this relates to the part of the Scheme rules concerning (potentially sizable) compensation awards against train operating Scheme members for loss suffered as a result of "*causes within the rail industry control and fully or party outside of the Rail ADR Scheme Member control*". Examples given in the Scheme rules include "*overrunning engineering works; core infrastructure failures; late publication of timetabling information;* [and] *poor quality of management of incidents wholly outside of the control or influence of the Rail ADR Scheme Member".* With Network Rail now a member of the Scheme, and with other industry participants joining, the Operators consider there is an important discussion to be had to ensure the financial consequences of fault, and perhaps even the responsibility for the claim, can be (re-)attributed to the industry parties responsible for the loss, rather than it being borne by an operator (for causes which by definition will be "*fully outside of* [its] *control*"). There are a variety of solutions that might be found to this (via the Scheme or other industry mechanisms). Time should be allowed to explore these.

2.3 Additionally, there is uncertainty as to whether claims under the Equality Act 2010 ("**EA2010**") are, or even should be, within scope of the Scheme. Currently, such claims are expressed as partially inside, but it is unclear to what extent. There are important substantive reasons why EA2010 claims should not be within the Scheme and why the 'half-in/half-out' approach is inappropriate. However, even if they do remain partially within scope, the Operators consider it will be necessary to add clarification to the current drafting of the Scheme rules to deal with this. ORR will be aware of the very serious and impactful nature of EA2010 claims, which are quite different from majority of other passenger rail claims. It is vital (for passenger, operators and others) that the interface between the Scheme and EA2010 claims is clearly delineated and properly understood. This is an area in which a lack of clarity has the potential for serious unintended consequences. The current uncertainty already affects the ability of the operators to advise disabled passengers on suitable resolution options. Clarity is needed.

2.4 It is unsurprising that these, and other, issues have recently come into focus. This is new ground for the industry. The Operators consider that such issues ought to be capable of resolution and have been involved in some preliminary discussions in this respect. It is rational and sensible that there should be additional time to resolve the issues with the current Scheme rules.

3 RATIONALE FOR A BRIEF DELAY IN IMPLEMENTING THE AMENDMENT

3.1 There is no pressing need for the LC6 Amendment to be implemented imminently. As ORR is aware, all train operating companies are already members of the Scheme. They are contractually bound in a way which meets ORR's stated objective of ensuring "[consumer] *certainty of the ability to obtain a free and binding means of independent redress, as well as the improvements in standard which should arise from the scheme's ability to look across the sector*"[1]. The Operators entirely support that objective.

3.2 In addition, there is no need to implement the LC6 Amendment to ensure operators refer consumers to the Scheme. Operators are already legally obligated to refer consumers to an appropriate ADR scheme[2] and, we believe, do so. When considered alongside the operator's contractual commitment to the Scheme, it is obvious that all operators will continue to refer consumers to this Scheme, not least because it is the right thing to do in the circumstances to assist the consumer.

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[1] ORR Letter of 19 December 2019, ORR Decision at 2.1

[2] Pursuant to the ADR for Consumer Disputes (Competent Authorities and Information) Regulations 2015 and the associated ADR (Amendment) Regulations 2015

3.3 ORR's primary reasoning for making this a Licence Condition (and not just a binding contractual commitment backed by a regulatory publicity obligation) appears to be to ensure that all Operators must remain tied into *this* Scheme (specifically) so as to deliver long-term consumer certainty that this Scheme will remain an avenue for redress with which the industry is committed to engaged, and from which it will not walk away.

3.4 The Operators do not object to this in principle. However, if franchise and open access operators, facility owners, Network Rail and others are to be permanently tied into the Scheme, then the industry, and ORR as its regulator, must be certain that the Scheme is working predictably, properly and fairly. In this respect, at present, the Operators have (well founded) concerns that further work is needed. A further period should therefore be allowed to clarify certain issues with the Scheme. Not doing so may cause (avoidable) harm to some industry participants and (despite best intentions) take the industry in a direction from which it will be difficult to change course.

3.5 As ORR has acknowledged, a key purpose of an ADR scheme is to ensure "*certainty of binding redress*", "*consistency in case outcomes*" and "*consistency in redress provision and protection across the industry and across sectors"*. As ORR acknowledges, industry participants are bound into this Scheme, and decisions made by the Ombudsman will soon create precedents from which it will be harder to change course, and which operators will not be permitted to appeal. So it is important to get this right now.

3.6 Finally, it is not clear that making membership a Licence Condition would ensure ORR's objective that consumers should be "*certainty of the ability to obtain…independent redress*" any more than does the current situation. From a consumer's perspective, very few if any will know or be concerned about whether membership of the Scheme is a Licence Condition in addition to a contractual commitment. The majority will not know anything about the Licence Condition mechanism. However, all consumers should be able to appreciate the current message: that the industry came together voluntarily to create and commit to this new independent form of redress. As ORR has acknowledged in its letter of 19 December 2018, many operators have already pointed out that as a matter of "*perception*" it would be preferable to be able to say that this is a scheme was voluntarily created and committed to.

3.7 For this reason alone, it is arguable that the better course of action for ORR would be to pause implementation of the LC6 Amendment to assess whether this is even an issue which needs to be addressed by a Licence Condition right now. If it turns out it is needed, then nothing has been lost by a temporary pause. There is no adverse effect. If it turns out it is not needed, then the effect of implementing the LC6 Amendment now is only to deny TOCs the ability to share in the goodwill and restored consumer confidence that would come from being able to say this was something committed to voluntarily, not because of a mandatory Licence Condition, but because it was the right thing to do.

In light of the points raised above, and other concerns, the Operators submit that it must be rational and sensible that there should be additional time to resolve issues with the current Scheme rules. If, contrary to this suggestion, ORR is minded to press ahead with the LC6 Amendment in the near future, then our substantive comments on the drafting of the proposed Licence Condition are at Appendix 1. However, we consider the better course is to pause implementation of the amendment, since it is vital to ensure that what we have is an industry mechanism that works predictably, properly and fairly before a final decision is taken as to its permanent and mandatory adoption.

We invite ORR to confirm its position on this proposal.

Yours sincerely

Hugh Clancy
For and on behalf of First Rail Holdings Limited

APPENDIX 1 - COMMENT ON THE WORDING OF THE AMENDMENT

The appropriate "Effective Date"

3.8 In light of the submissions above, the Operator's strong suggestion and request is that implementation of the LC6 Amendment should be paused. If, contrary to this, ORR is minded to press ahead with it in the near future, then for the reasons explained above the Operators consider that there is no reasonable justification for proposed Effective Date[3] for TOCs, OAOs and NR being earlier than the Effective Date for all other railway companies (currently proposed as 1 June 2019).

3.9 ORR's consultation responses states that "*it would be in the public interest*" to mandate membership by a set date and that this date "*should be 1 April 2019*". However, ORR has given no reasons why it should be that date. For the reasons stated above, it is respectfully suggested it will be contrary to the public interest to have such a limited time before the Effective Date. More time should be allowed. The Operators suggest that the Effective Date should therefore be no sooner that 1 June 2019, although a better course would be to pause implementation of the amendment altogether.

Paragraph 5(a): Having an "Effective Date" mechanism in LC6

3.10 It would be appropriate for ORR to reconsider whether LC6 paragraphs 5(a) is the best way to achieve the objective of a 'go live' date. No other part of the Licence uses the "Effective Date" mechanism. This is understandable because SNRP holders change over time. The proposed wording of LC6 paragraph 5(a) will be inaccurate and untrue for any future SNRP holder. It may be better to future-proof this drafting. One clear alternative would be to make a statement in advance, giving the intended date of the LC6 Amendment; remove the wording "from the Effective Date" from paragraph 5(a); and then simply implementing the LC6 amendment on the agreed date.

Paragraph 5(b): Compliance with "decisions"

3.11 ORR is respectfully requested to remove the wording "*and with any decisions that are issued under the Scheme*". In the initial instance, it is a rule of the Scheme that its members agree to be bound by decisions, so this wording serves no useful purpose. Better wording achieving the same objective is also proposed for inclusion within the CHP Guidance, so it also unnecessary for this reason. In addition, the proposed wording is unclear. For example, the Scheme rules allow for the Ombudsman to issue decisions which contain recommendations and suggestions. Scheme members will of course consider such recommendations, but it is presumably not intended that they are "*obliged to comply*" with them as a Licence Condition. This would mean they were no longer "recommendations" but in practice mandatory orders. This wording would also be problematic in the unfortunate (and hopefully unlikely) circumstances in which there was a compelling reason to judicially review the Ombudsman (for example if a "*decision issued under the Relevant ADR Scheme*" was manifestly wrong and had serious adverse economic impacts on the industry). It is presumably not intended that non-compliance with a decision taken for that reason would be a breach of Licence Condition.

Paragraph 5(c): Requiring every Licence Holder to provide notification

3.12 ORR should reconsider whether LC6 paragraphs 5(c) is the best way to achieve the presumed objective of ensuring Licence holders continue to use a "*Compliant*" "*Relevant ADR Scheme*". As currently drafted, if the Relevant ADR Scheme ceased to be Compliant, then all of the steps outlined in paragraph 5(c) would be triggered for all Licence holders simultaneously. Would ORR actually want, for example, all Licence holders to provide the notices required by paragraph 5(c)(i) at the same time? This would not actually serve the presumed objective being this wording, which is to ensure that all industry participants would be able to quickly transfer over to a Successor Scheme.

Compliance with new Guidance wording

3.13 It is suggested and submitted that the definition of "*Compliant*" should be amended so it is clear that the part of the CHP Guidance with which the Relevant ADR Scheme must be "*Compliant*" is the section of the Guidance which concerns ADR providers, rather than the entire Guidance (as it is currently worded).

3.14 With regard to the proposed new Guidance wording, the intention to introduce Guidance that the Scheme must be "*Independent of scheme members*" acutely underscores why time should be given now to address concerns and necessary clarifications to the Scheme rules and to get this right from the outset. If such Guidance wording was already in place, there would be a concern that this Guidance wording could be seen as justification for not addressing these or other legitimate concerns because seeking changes might be seen as influencing the Scheme's independence. To be clear, no inference is being made that Scheme would take such a stance. On the contrary, we expect these issues to be keenly discussed. However, it is a further reason for not making this change now. In any event, we submit it would more suitable to amend this proposed wording in the CHP Guidance to "*Able to take decisions concerning consumer claims independently of the scheme members*". This would clarify what we assume is intended by this addition to the Guidance.

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[3] The Operators consider the defined term should be "Effective **D**ate" (with both words capitalised). This may be a typo in the draft of the LC6 Amendment.

Great Northern | GX GATWICK EXPRESS | SOUTHERN | ThamesLink/

28h January 2018

By email: CHP@orr.gsi.gov.uk

Dear Stephanie

Thank you for the opportunity to comment on the ORR's proposed amendment to Licence Condition 6 to require membership of an Alternative Dispute Resolution Scheme (ADR).

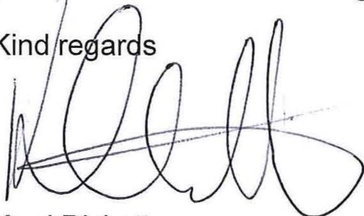
GTR has fully and directly assisted RDG and the industry in the development of the ADR and has voluntarily joined as full members. GTR position is that it does not believe that mandatory membership of an ADR is either necessary or desirable and is not supportive, at this stage, of the ORR's proposed amendment to Licence Condition 6.

The expressed intention when the ADR was being defined, was for the ADR not to extend a TOCs legal liability. The ADR is in its formative stage and the Ombudsman together with the industry are still working through the details. Having only just reached the point at which the TOC internal complaint handling processes could be exhausted or the 8-week from receipt deadline be reached, it is too soon for the industry to have worked through the fine details of case handling and scheme rules. The ADR has yet to be tested and fully scoped in detail: it needs to develop into a fully scoped, tested and fair ADR scheme. In addition, the ORR's proposal to require membership of an ADR as a licence condition potentially creates, due to the ORRs enforcement regime, an additional liability for TOCs, which is contrary to the fundamental basis on which GTR's decision to join was based.

GTR also believes that for the ADR to deliver the cited intentions and benefits for passengers, Network Rail must be mandated to be a full member of the scheme. Currently, Network Rail's membership is limited to managed station liability, with a financial cap of £140k. The rail service cannot be delivered without Network Rail, for example, infrastructure, timetables, information etc. and therefore for the ADR to be effective, fair and deliver demonstrable passenger service improvements then Network Rail should be required to be a 'full' member.

GTR has been provided with a copy of the detailed letter dated 25 January 2019 to the ORR from First Rail Holdings and, subject to the above, is fully supportive of the position and the concerns highlighted in that letter.

Kind regards



Kerri Ricketts

Head of Customer Experience

Govia Thameslink Railway

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Daniel Edwards
Commercial Customer Experience Manager
Heathrow Express Operating Company
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By Email

22nd January 2019

Dear Marcus,

Re: Response to Alternative Dispute Resolution (ADR) consultation and draft wording for licence modification

Many thanks for the opportunity to respond to your response on the proposed changes to our license modification regarding mandating membership of the Alternative Dispute Resolution (ADR) scheme for the rail industry. Heathrow Express continue to recognise this is an important step forward for consistency in complaints handling for rail customers.

As previously mentioned in our response to the consultation, Heathrow Express had not been involved in the design, procurement or delivery of this scheme by the RDG. We are now in touch with the RDG for us to understand more fully what membership will mean to our customers, our colleagues and our business. Therefore, I would request that the license modification for Heathrow Express does not come into effect until 1st June 2019, as per your response to the consultation. This will allow for us to plan entry to the scheme and complete any associated training and updates to procedure that may be required.

Please let me know should you require any further information.

Yours Sincerely,

Daniel Edwards
Commercial Customer Service Manager

From: John Cartledge
Sent: Saturday, December 22, 2018 7:49 PM
To: ORR CHP <CHP@orr.gsi.gov.uk>
Subject: Requiring TOC membership of an ADR scheme

Dear Stephanie Tobyn

Re :The Rail Ombudsman–ORR proposals to modify licence conditions to require membership of an Alternative Dispute Resolution scheme

As a respondent to ORR's earlier consultation on whether participation by licensed passenger train and station operators in an approved ADR (Ombudsman) scheme should be made mandatory, I have noted the letter dated dated 19.12.18 posted on the ORR's website giving your analysis of and conclusions arising from the responses received (though contrary to the indication at the start of the letter, this has not been sent direct to me by e-mail or otherwise).

At the end of the letter you invite comments on the draft wording of ORR's proposed modification to its passenger train and station licences, as set out in Annex 2.

My current purpose in writing is to advise you that the draft wording appears to me to be both adequate and intelligible, and I would have no reason to object to the terms of these licences being revised accordingly.

My only reservation is that ORR is not currently proposing the mandatory extension of the scheme to embrace third-party retailers, but I appreciate that this is outside the scope of the current consultation and would have to be achieved by other means, such as a modification of the Ticketing & Settlement Agreement.

Yours

John Cartledge

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Stephanie Tobyn
Deputy Director, Consumers
Directorate of Markets & Economics
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22nd January 2019

Dear Stephanie,

The Rail Ombudsman – ORR proposals to modify licence conditions to require membership of an Alternative Dispute Resolution scheme

Thank you for the opportunity to reply to the above consultation. I am pleased to provide LNER's responses below.

1. **Our decision is that the passenger licence and station licence should be modified to require membership of an ADR scheme.**

   LNER supports the decision.

2. **Our decision is that the passenger licence and station licence should be modified to require rail companies to join the ADR scheme (the Rail Ombudsman), procured by RDG.**

   LNER supports the decision.

3. **Our decision is that the principles we set out in the consultation…are incorporated into Complaints Handling Guidance ("the Guidance").**

   LNER support the decision, providing clarity is maintained that the Rail Ombudsman decisions are fair and independent without any bias from the scheme members

4. **Our decision is that it would be in the public interest to have a fixed date by when all rail companies will be required by the licence to join the Rail Ombudsman.**

   LNER support the decision

5. **Our decision is that it is in the public interest to require all licensees; station concession, open access, and charter operators to be members of the Rail Ombudsman.**

LNER supports this decision

6. **Do you agree that there should be regulatory oversight of the RDG scheme? What form should the ORR's role take?**

   LNER agree with ORR having regulatory oversight of the Rail Ombudsman scheme, this should be focussed on delivering improvements for customers across Rail sectors

Yours sincerely

Emma Vincent

Head of Customer Contact

London North Eastern Railway

NetworkRail

Network Rail Feedback to ORR's draft station licence wording	
ORR proposal	**Network Rail feedback**
Condition 6: Complaints Handling	We recognise that ORR's current draft wording reflects the licence structure for the majority of affected organisations. We expect that when it issues its statutory consultation ORR will reflect the structure of Network Rail's station licence where Complaints Handling is Condition 5, and Network Rail is 'the licence holder' rather than 'the SNRP'.
5. a) The SNRP holder shall, from the Effective Date, become and thereafter remain, a member of the Relevant ADR Scheme	We would like to reiterate our previously raised concern that mandating membership through the licence may lead to a perception that ORR has had to 'step in' to bring about membership. The current wording that would require Network Rail to 'become' a member of a scheme it has already joined is misleading and could cause reputational damage. We propose that the wording should be updated to reflect our existing membership. Additionally, we have previously raised concern that ORR's proposals seek to restrict competition in the provision of ADR services. Network Rail has joined the ADR scheme procured by RDG and does not currently have any concerns about the effectiveness of that scheme. However, it is possible that another ADR provider would, in the future, be able to equally or better meet the needs of passengers and organisations in providing ADR services, and competition could serve to drive up standards and innovation. In the communications sector, there are two providers of ADR, both of which have been certified. Therefore, we do not believe it is appropriate to mandate membership to one specific ADR provider. We propose that it would be more appropriate for the wording in the licence to require membership of an ADR scheme which is approved by the Designated Competent Authority and meets the requirements of ORR's guidance. Our proposed wording is: *5. a) The licence holder shall, from the Effective Date, remain a member of a Compliant ADR scheme*
5. b) The licence holder shall be obliged to comply with its obligations under the Relevant ADR Scheme and with any decisions that are issued under the Relevant ADR Scheme	The requirement for the licence holder (i.e. Network Rail) to comply with its obligations under the relevant scheme recognises the individual terms under which Network Rail has joined the ombudsman scheme, specifically in relation to our station licence. We agree that this wording is appropriate. We propose that the requirement to comply with obligations and decisions under the ADR scheme would only be appropriate as long as that scheme remains Compliant and that the licence should contain a provision for licence holders in the case that the ADR scheme is found to be non-compliant. Our proposed wording is: *5. b) The licence holder shall be obliged to comply with its obligations under the Compliant ADR Scheme of which it is a member, and with any decisions that are issued under that Compliant Relevant ADR Scheme, unless that scheme is found to be non-Compliant at the time of making the relevant decision*

NetworkRail

5. c) If the Relevant ADR Scheme, at any time, ceases to be Compliant, the SNRP holder must: (i) notify ORR within 14 days after it becomes aware of that fact setting out the arrangements it has put in place to ensure that the interests of passengers are not adversely affected and must, if so directed by ORR, revise those arrangements to take account of any concerns ORR reasonably raises about the protection of passenger interests;	We propose that, given that ORR would be notified by the licence holder in such a scenario where an ADR scheme ceases to be compliant, ORR should communicate that information to the wider industry. We suggest that there should be an additional provision within the licence in which ORR commits to share the information it has received with other members and interested parties within 7 days. This would likely create a different scenario, whereby the licence holder does not need to notify ORR (as ORR has received the information via another member and notified the licence holder) but would still need to put in place and communicate arrangements to protect the interests of passengers. Our proposed additional wording is: *If ORR is notified of non-compliance under condition 5. C), ORR will make all reasonable efforts to notify other members of the ADR scheme of the information it has received.* *If a licence holder becomes aware of non-compliance via ORR, it must then meet the requirements of condition 5. C)*

Rail Delivery Group

National Rail

BRITAIN RUNS ON RAIL

Deputy Director, Consumers
Directorate of Markets & Economics
One Kemble Street
London, WC2B 4AN

25 January 2019

Dear Ms Tobyn

The Rail Ombudsman – ORR proposals to modify licence conditions to require membership of an Alternative Dispute Resolution scheme

Thank you for the opportunity to reply to the consultation.

RDG members have established, funded and joined the new Rail Ombudsman scheme. The scheme is now live and, to date, operating successfully. [redacted] in November 2018 received extremely positive media coverage. Customers now have access to independent ADR of the highest standard empowered to make binding decisions on our members.

RDG has established the scheme and contracted with the supplier on behalf of every franchised TOC, each of which is financially and reputationally committed to participating in the scheme. Our members set great stock in the voluntary nature of the scheme.

The decision-making body for operational oversight of the contract comprises independent members (including the ORR) approved by the Ombudsman Association; the ORR has a direct relationship with the Ombudsman and receives updates on both the performance of complaint handling and the service provided by the Ombudsman to railway customers.

Other ORR licence holders that have not yet joined the Rail Ombudsman are now engaging with RDG with a view to joining the scheme. The conversations are all positive but we recognise that some of these smaller operators are apprehensive and are keen to understand the potential impact on their businesses. Our firm opinion is that these operators should be afforded time to see how the new scheme operates over the coming year and allowed to evaluate the scheme, appreciate its benefits, and join voluntarily.

It remains RDG's position (stated in our previous response in September 2018) that mandatory membership is unnecessary and would detract from the pro-active nature of the scheme. However, should it become clear that there is a problem to solve then it would, of course, be possible for the ORR to consider a licence condition but this is not currently the case. Furthermore, as service providers are subject to the provisions of the ADR Regulations 2015 which already require retailers to inform their customers about ADR, RDG's position is that there is no longer a need for the ORR to require licence-holders to signpost to a point of appeal. Our suggestion is that section 5 of condition 6 of the Complaints Handling Licences be removed and not amended.

The industry is committed to delivering for railway customers and that includes the service we offer when things go wrong. We believe that the best way to ensure this is to work in partnership with the ORR. I value the relationship we have and I will ensure that this continues.

Yours sincerely

Chief Executive

The Rail Ombudsman

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By Email: **CHP@orr.gsi.gov.uk**

21/01/2019

Modification to Passenger Licence Condition 6 (Complaints Handling): a consultation

Dear Sirs

I am writing on behalf of the Rail Ombudsman with regards to your letter of 19 December 2018.

The Rail Ombudsman acknowledges and welcomes the changes which the ORR proposes to make following your consideration of the responses to the above consultation. We note the principles which are to be incorporated in to the ORR's Complaints Handling Guidance and confirm that the Rail Ombudsman has been configured with these criteria in contemplation and our systems and processes are geared to meet these requirements to the high standard which we are pleased to read has been acknowledged by the ORR.

We note the desire that the independence of the scheme is given greater clarity and an addition to the principles has been made as follows: "*Independent of the scheme members*".

We state in respect of this that the Rail Ombudsman is neither a consumer champion or a trade body. We operate independently of both parties to ensure fairness in every case.

We welcome the broadened scope of the scheme and confirm that the Rail Ombudsman is able to accommodate this new membership in order that consumers have a clear and understandable route to alternative dispute resolution with a single point of access.

We will continue to work closely with the ORR and other stakeholders to collectively ensure that consumers are assured of the independence, transparency and overall fairness of our decision making and to assist, in our role, to drive improvements and to promote and share best practice in the rail industry.

Yours faithfully

Judith Turner LL.B (Hons), ACIArb
Legal Counsel & Head of ADR
Dispute Resolution Ombudsman Limited incorporating the Rail Ombudsman

southeastern

Consumer Policy Team
2nd Floor
Office of Rail and Road
One Kemble Street
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WC2B 4AN
Sent via email to CHP@orr.gsi.gov.uk

Susan Ellis
Access Contracts Manager
3rd Floor
Friars Bridge Court
41-45 Blackfriars Road
London
SE1 8NZ

10th January 2019

Dear Colleagues

Southeastern response to ORR's consultation on Alternative Dispute Resolution (ADR) consultation and draft wording for licence modification.

Thank you for the opportunity to review the above consultation.

Southeastern have already updated the wording within our Complaints Handling Procedure to reflect the proposed amendments.

We do however seek clarity on the following points:

1, How can 4(b) be applied to our 26 unmanned stations? These sites do not have sufficient space to display the required information. Therefore we proposed that the wording be amended to the following.

4.b - in a place of reasonable prominence at each ***manned*** *station at which trains operated by the SNRP holder are scheduled to call, display or procure the display of a notice giving the address from which a current copy of the Complaints Procedure may be obtained;*

2, This document is available on our website and we have hard copies available for distribution on request. Our station staff are also able to print a copy if required. Can you please confirm if this is deemed to be sufficient to satisfy the above clause?

If you have any questions regarding Southeastern's response, please feel free to contact my colleague Christine Heynes, Senior Customer Relations Manager (christine.heynes@southeasternrailway.co.uk; 07779 451319).

Yours sincerely

Susan Ellis

Access Contracts Manager

London & South Eastern Railway Limited trading as Southeastern Registered in England No. 04860660
Registered Office: 3rd Floor, 41-51 Grey Street, Newcastle upon Tyne, NE1 6EE

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By email to: CHP@orr.gsi.gov.uk

22nd January 2019

Dear Consumer Policy Team,

Stagecoach Rail response to the ORR proposals to modify licence conditions to require membership of an Alternative Dispute Resolution scheme

Thank you for providing the opportunity to feedback on the proposed modifications to the licence conditions mandating membership of an Alternative Dispute Resolution (ADR) scheme.

In the responses to the July 2018 consultation, our subsidiaries East Midlands Trains and (in partnership with Virgin Group) Virgin Trains, both agreed with the RDG that mandating membership of an ADR scheme was not necessary. Stagecoach Rail continues to support this position.

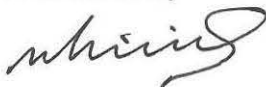
The industry, through the RDG, has already committed to voluntarily joining the approved ADR scheme, and we can confirm our full support for the scheme. This represents a milestone for the industry. While recognising that some customers do not trust the industry to provide a high-quality customer service, through voluntarily joining the RDG procured ADR scheme, participants are demonstrating their commitment to building that trust. As noted in the responses to the previous consultation, there are several pros and cons to mandating membership but, we support the view that to do so would change the perception of the scheme itself.

The draft wording of the changes to Condition 6 of the Passenger Train Licence and Station Licence requires that, in the (unlikely) event of the Relevant ADR Scheme ceasing to be compliant, the licence holder would work to resecure compliance of the scheme (or source another compliant ADR scheme). Given that the ADR scheme is supposed to be independent of the operators that its decisions would be binding upon, we believe that this requirement could undermine the independence of any future or alternative ADR scheme.

Additionally, we believe membership of the ADR scheme should be extended to third-party retailers because, for 2017/18, 14% of all appeals closed by London TravelWatch and Transport Focus (combined) concerned ticketing and refunds policy, therefore third-party retailer membership would provide consistency in how all complaints/appeals are treated.

Should you require any further comment or information, we would welcome the opportunity to do so.

Yours sincerely



Matthew Winnie
Customer Experience Director
Stagecoach Rail

Office of Rail and Road

Consultation on changes to complaints handling guidance

Consultation response by Transport for London

Date: 23 January 2019

Content for response to Proposals to modify licence conditions to require membership of an Alternative Dispute Resolution scheme

Proposed Changes to Condition 6

TfL proposes the following text to be used to modify licence condition 6 on complaints handling:

Condition 6: Complaints Handling

1. The SNRP holder shall establish and thereafter comply with a procedure for handling complaints relating to licensed activities from its customers and potential customers (the "Complaints Procedure").

2. The SNRP holder shall not establish, or make any material change (save in respect of paragraph 3(b)), to the Complaints Procedure unless and until:
(a) the PC and, where appropriate, LTUC has been consulted; and
(b) the SNRP holder has submitted the Complaints Procedure, or (as the case may be) the proposed change, to ORR and ORR has approved it.

3. Where the ORR requires the SNRP holder to carry out a review of the Complaints Procedure, ***(TfL would ask that the ORR provides clarity on the reason for any such review)*** or any part of it or the manner in which it has been implemented, with a view to determining whether any change should be made to it, the SNRP holder shall:
(a) carry out a review within 14 - 28 days and submit a written report to the ORR setting out the results or conclusions; and
(b) make such changes to the Complaints Procedure, or the manner in which it is implemented, as ORR may reasonably require after ORR has received a report under paragraph 3(a) and consulted the SNRP holder, the PC and, where appropriate, LTUC.

4. The SNRP holder shall:
(a) send a copy of their current Complaints Procedure and of any change to it to ORR and the PC, and where appropriate, LTUC;
(b) in a place of reasonable prominence at each station at which trains operated by the SNRP holder are scheduled to call, display or procure the display of a notice giving the address from which a current copy of the Complaints Procedure may be obtained; and
(c) make available free of charge a current copy of the Complaints Procedure to any person who requests it.
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5 a) The SNRP holder shall, from the Effective Date, become and thereafter remain, a member of the Relevant ADR Scheme;

b) The SNRP holder shall be obliged to comply with its obligations under the Relevant ADR Scheme and with any decisions that are issued under the Relevant ADR Scheme; and

c) If the Relevant ADR Scheme, at any time, ceases to be Compliant, the SNRP holder must:

(i) notify ORR within 14 days after it becomes aware of that fact setting out the arrangements it has put in place to ensure that the interests of passengers are not adversely affected and must, if so directed by ORR, revise those arrangements to take account of any concerns ORR reasonably raises about the protection of passenger interests;

(ii) take all such steps as are reasonably practicable, including working together with other members of the Relevant ADR Scheme, to secure that the Relevant ADR Scheme becomes Compliant again, within no more than 3 - 6 months after the date on which the Relevant ADR Scheme ceased to be compliant; and

(iii) (if the Relevant ADR Scheme does not become Compliant again with that time period referred to in sub-paragraph (ii) above), work together with other members of the Relevant ADR Scheme to identify another alternative dispute resolution scheme which is Compliant and notify such scheme to ORR within no more than 6-9 months from the date on which the Relevant ADR Scheme ceased to be Compliant.

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Consumer Policy Team

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One Kemble Street
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18th January 2019

Dear Consumer Policy Team,

The Rail Ombudsman – ORR proposals to modify licence conditions to require membership of an Alternative Dispute Resolution scheme

Thank you for the opportunity to reply to the above consultation. I am pleased to provide Transport for Wales Rail Services response below.

We agree with the ORR decisions on points 2.1 to 2.7.

Comments on proposed changes to condition 6 of the Complaints Handling Licence.

Regarding section 5 (c), in the event that the Relevant ADR Scheme becomes non-compliant and cannot be returned to compliance within 3 months, the 6 months quoted in clause (iii) is unlikely to be sufficient time to procure another provider with full accreditation to that currently in place. We believe that 12-18 months would be a more realistic timescale.

Yours sincerely,

Barry Lloyd

Head of Customer Experience

Transport for Wales Rail Services

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The Rail Ombudsman – ORR proposals to modify licence conditions to require membership of an Alternative Dispute Resolution scheme

TravelWatch SouthWest notes the response of ORR to the consultation in respect of the above, and is broadly supportive. It is, however, unclear from ORR's response what is the position with respect to Eurostar and international rail travel. This was raised by John Cartledge in his response.

To illustrate this point further, we raise these questions as examples of the confusion that can arise if International travel in whole or in part is excluded. There seems no attempt by ORR to recognise the need for seamless international journeys for passengers. In particular, how does ORR envisage (a) complaints and (b) appeals be dealt with in respect of those passengers who travel to join Eurostar using London International CIV tickets, as compared with those who use normal rail tickets to London St Pancras; and, in future, to Old Oak Common, or via HS2 to Euston, but with the intention of travelling on, from London, by rail to the continent? The same questions arise in reverse direction, in respect of a late-running in-bound Eurostar service to London St Pancras, resulting in missed 'connections' using pre-booked tickets to other parts of Britain. In each case, to whom does ORR envisage the passenger having first recourse; and in the case of any appeal, which, if any, would be covered by the proposed ADR scheme?

Yours faithfully

Bryony Chetwode,

Company Secretary - TravelWatch SouthWest CIC

TRAVELWATCH SOUTHWEST CIC

TravelWatch SouthWest was established in 2001 as The South West Public Transport Users' Forum (SWPTUF) to promote the interests of public transport users in the South West of England (comprising the counties of Devon, Dorset, Gloucestershire and Somerset and the unitary authorities of Bath and North East Somerset, Bournemouth, Bristol, Cornwall, North Somerset, Plymouth, Poole, South Gloucestershire, Swindon, Torbay and Wiltshire) - the Forum became a Community Interest Company, limited by guarantee, in August 2005. SWPTUF adopted the trading name of TravelWatch SouthWest in June 2006 and the Community Interest Company changed name to TravelWatch SouthWest CIC in November 2008.

Membership of the **TravelWatch SouthWest CIC** is open to every 'not-for-profit' organisation in the South West of England whose sole or principal purpose is to represent the users of any public transport service or to promote the development of public transport services - membership is also open to other 'not-for-profit' organisations' in the South West England who represent the interests of particular groups of public transport users e.g. the disabled or the elderly. TWSW currently has over one hundred affiliated organisations.

TWSW, which is a social enterprise company, acts as an advocate for passengers to lobby for the improvement of public transport in the region and works closely with local authorities, local enterprise partnerships, business organisations and other stakeholder groups - with the dissolution of the former Rail Passengers Committee for Western England in July 2005, TWSW is the representative body for public transport users throughout the South West of England.

By email to: CHP@orr.gsi.gov.uk

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18th January 2019

Dear Stephanie,

The Rail Ombudsman – ORR proposals to modify licence conditions to require membership of an Alternative Dispute Resolution scheme
Response from Virgin Trains (West Coast)

We welcome the opportunity to provide feedback on the draft wording proposed to modify Licence Condition 6.

We are content with the wording proposed for the most part. We would however suggest that revisions are made to section 5(c). One of the key principles of the Rail Ombudsman is its independence from the rail industry as a whole. RDG has set up a governance procedure that ensures that TOCs cannot exercise any operational interference in the running of the Ombudsman. Therefore, holding each SNRP holder accountable for the Ombudsman's non-compliance as set out specifically in section 5(c)(ii) would directly oppose the fact that it is an independent body. In addition, we would also look to revise information that gives specific timescales in relation to the procurement of a new supplier.

We would suggest the following wording:

> Where the SNRP holder is made aware that the Relevant ADR Scheme is no longer Compliant, the SNRP holder must:
>
> (i) notify ORR within 14 days after it becomes aware of the fact that the Relevant ADR Scheme is no longer compliant. Within 28 days the SNRP holder will set out the arrangements it has put in place to ensure that the interests of passengers are not adversely affected and must, if so directed by ORR, revise those arrangements to take account of any concerns ORR reasonably raises about the protection of passenger interests;
>
> (ii) (if the Relevant ADR Scheme continues to be non-compliant and RDG terminate the contract, then the SNRP holder will either, within 6 months of termination work together with other members of the Relevant ADR Scheme to identify another alternative dispute resolution scheme which is Compliant and notify such scheme to

ORR within no more than 6 months from the date on which the Relevant ADR Scheme ceased to be Compliant, or seek the same unilaterally.

We would also like to place on record our continued belief that Network Rail should also be mandated to fully be part of the Ombudsman scheme. Given that the majority of rail delays are the responsibility of Network Rail, holding TOCs accountable in those cases cannot drive the right behaviour from Network Rail, to the detriment of customers. An alternative would be to give the TOCs a clear mechanism to recoup costs of Ombudsman rulings in these instances from Network Rail.

We look forward to hearing your thoughts.

Yours sincerely,

Prea Duhra
Regulatory Affairs Manager
Virgin Trains