

Stephanie Tobyn
Deputy Director, Consumers
Directorate of Railway Markets & Economics

E-mail: CHP@orr.gov.uk

19 December 2018

To passenger licence holders, station licence holders, respondents to the consultation [by email], and other interested parties

Dear Stakeholder,

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

Where consumers are unable to reach a satisfactory outcome to their complaint, it is important that they can get redress in a way which is independent of the company. Research has shown that there is a wish on the part of consumers to have greater access to independent redress arrangements, and that there is generally a high level of dissatisfaction with complaints handling and low levels of trust in the rail sector.

On 26 July 2018 we published a consultation¹ on our proposals to amend licence conditions to require rail companies to be a member of an approved Alternative Dispute Resolution (ADR) scheme. This letter sets out our comments on the responses to the consultation, and the changes we now propose to make.

Our proposals are that:

- **membership to an approved ADR scheme will be mandated;**
- **rail companies will be required to join the approved ADR scheme procured by RDG;**
- **key features we expect of the ADR scheme will be incorporated into Complaints Handling Procedures;**
- **franchise operators, open access operators, and Network Rail will be required to be members of the scheme from 1 April 2019;**

¹ <http://orr.gov.uk/rail/consumers/consumer-consultations/changes-to-complaints-handling>

- **the licence requirement should apply to concession operators, station licence holders, and charter operators from 1 June 2019; and**
- **ORR will provide regulatory oversight of the scheme.**

The document builds on the proposals contained in ORR's consultation dated 26 July 2018, and it sets out our reasons for making changes to the passenger train licence and station licence, and the effects our proposals will have.

Annex B of this document contains a draft of the proposed wording which we wish to add to the passenger train licence and station licence. **Please provide your comments on this draft wording by 22 January 2019.**

We will consider any comments received on the draft wording before issuing a formal statutory consultation.

Responses should be sent by **22 January 2019** to:

Consumer Policy
Office of Rail and Road
One Kemble Street
London
WC2B 4AN
CHP@orr.gsi.gov.uk

1. Background

Rail Delivery Group (RDG), working with Transport Focus, London TravelWatch, and ORR as part of an Ombudsman Task Force, developed proposals to introduce an ADR scheme for rail passengers on a voluntary basis by industry. The ADR scheme, known as the Rail Ombudsman, was launched on 26 November 2018.

RDG's proposals have been developed with passenger rail companies and they, alongside Network Rail, are the initial members. Nonetheless, RDG has proactively discussed participation in the scheme with many other rail companies.

RDG has obtained approval for the scheme under the ADR Regulations² from the relevant Competent Authority (in regulated sectors Competent Authorities are the Financial Conduct Authority, Legal Services Board, Civil Aviation Authority, Gambling Commission, Ofgem, Ofcom, and the Chartered Trading Standards Institute (CTSI), which certifies all schemes outside of these sectors). ORR is not a Competent Authority so the ADR scheme in the rail sector has been approved by CTSI. It has also been granted approval by the Ombudsman Association³.

On 26 July 2018 we published a consultation⁴ on our proposals to modify licence condition 6 to mandate membership of the ADR scheme to ensure that consumers are given long-term certainty of the ability to obtain a free and binding means of independent redress.

We sought views in the following areas:

- that mandating membership to an approved ADR scheme will protect dissatisfied customers. In the absence of a statutory ADR scheme it will provide assurance that arrangements are not only robust but enduring;
- that rail companies will be required to join the ADR scheme procured by RDG;
- the key features we expect of the ADR scheme will be incorporated into Complaints Handling Procedures to ensure that it meets the highest standards;

² <http://www.legislation.gov.uk/ukxi/2015/542/contents/made>

³ <http://www.ombudsmanassociation.org/>

⁴ http://orr.gov.uk/_data/assets/pdf_file/0018/25623/changes-to-complaints-handling-guidance-consultation-2017-09-26.pdf

- that rail companies will be required to be members of the scheme from 1 April 2019 to ensure that from that point onwards rail companies will not be able to withdraw their participation in the ADR scheme;
- that the licence requirement should apply to concession operators, station-only, and charter operators (as well as franchise operators and station licence holders including Network Rail); and
- that to ensure that the scheme meets the expectations of passengers there should be regulatory oversight.

We received 26 replies to the consultation; 19 from rail companies, two from the statutory consumer bodies, four from independent organisations, and one from an individual consumer. We thank all those who responded. We list these at Annex A and have published non-confidential responses on our website.

2. Consultation questions, responses, and our decision

2.1 Consultation question - Do you agree that mandating membership to an approved binding ADR scheme would protect dissatisfied consumers? If you do not, please provide evidence to support your answer.

Summary of responses

There was support from some respondents for this proposition, with those in support outlining their belief that membership of an ADR scheme shows commitment to customer service and building greater trust with the customer base. Additionally, it was stated that this relationship could be damaged if an operator had the option of walking away from a voluntary scheme.

Furthermore, the point was made that while the immediate aim is to resolve issues on a case-by-case basis, there is also a need for the scheme to recognise greater systemic trends that it can report back on to all operators. For this reason, the view was offered that membership would be important so that decisions of the scheme served as a precedent for all operators to follow, learn from and implement as part of a continuous improvement cycle.

The responses from the **rail companies** noted that the access to an ADR scheme is of greater significance than whether that scheme has been mandated or not, and suggested that mandating membership would change perception of the scheme itself. They

questioned the accuracy of the belief that a mandated scheme would drive up standards and, citing that the industry had voluntarily established the scheme, considered the suggestion that mandatory membership is essential to prevent disillusioned rail companies leaving to be misleading.

Of the two **statutory consumer bodies**, one commented that the commitment to customer service and trust could be lost if the operator could walk away whilst the other suggested mandating should only happen where there was a failure to comply with complaints handling requirements.

Of the responses from the **independent organisations**, two were clearly in favour of mandating membership whilst another noted both pros and cons. One respondent considered that it was unnecessary due to the existing protections in place and would need clarity on the costs involved. The **consumer** response was in favour of the scheme being mandatory.

ORR decision

Our decision is that the passenger licence and station licence should be modified to require membership of an ADR scheme. We remain of the view that it is in the public interest to mandate membership in order to protect dissatisfied customers. As set out in our July consultation, consumer satisfaction⁵ with complaints handling across train companies is poor, and the levels of trust⁶ amongst consumers in the sector continue to be low. Consumers will benefit from the long-term certainty of the ability to obtain a free and binding means of independent redress, as well as the improvements in standards which should arise from the scheme's ability to look across the sector. We note the recent experience in the aviation sector where CAA has recently been informed by Ryanair of its decision to terminate its membership of the voluntary ADR scheme⁷.

⁵ http://orr.gov.uk/_data/assets/pdf_file/0012/28101/passenger-rail-service-complaints-2017-18-q4.pdf

⁶ <https://consumerinsight.which.co.uk/tracker/trust>

⁷ <https://www.caa.co.uk/News/UK-Civil-Aviation-Authority-begins-enforcement-action-against-Ryanair/>

2.2 Consultation question - Do you agree that rail companies should be required to join the ADR scheme procured by RDG? If you do not, please provide evidence to support your answer.

Summary of responses

The majority of the respondents to the consultation supported the idea that rail companies should be required to join the RDG procured scheme. The basis of much of this support centred on the commonly held belief that an ADR scheme is most effective when operating as the sole provider of redress in the sector.

Rail companies were almost universally in agreement that joining the RDG scheme should be required. They noted the importance of having a clear and understandable single point of access.

Independent organisations supported having a single scheme for the rail sector. They cited the confusion amongst consumers which may ensue from having more than one scheme and noted the experience in other sectors had not resulted in benefits for either consumers or businesses.

ORR decision

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. We do not consider that it is in the public interest to have more than one ADR scheme in the rail sector. This scheme has been procured by RDG via competitive tender, been approved by CTSI as the relevant Competent Authority, and has been given approval by the Ombudsman Association.

As set out in our July consultation, consumers should have a clear and understandable route to the Rail Ombudsman. Having more than one scheme in the sector may present a confusing landscape for example where a journey involves multiple rail companies not all of which are members of the Rail Ombudsman, and deter consumers from exercising their right to seek further assistance. The high standards which are a feature of the Rail Ombudsman may also not be replicated by an additional scheme and could lead to a worse service for some consumers.

2.3 Consultation question - Do you agree with the principles we propose to include in CHPs? Are there any others we should consider for inclusion?

Summary of responses

The vast majority supported the proposition that the principles should be included within the CHPs. There was a request that the independence of any ADR scheme be absolute and made clear to all concerned. It was further recognised that the application of these principles would conform to the criteria of membership for the Ombudsman Association as well as established international best practice.

ORR decision

Our decision is that the principles we set out in the consultation, replicated below, are incorporated into Complaints Handling Guidance ('the Guidance'). We recognise the desire for the independence of the scheme to be made clear and have added this to the principles. We will amend the Guidance in spring 2019 to include that if scheme members are to meet the licence obligation, the scheme they join should demonstrate the following key features:

- Accessible – the consumer should have to make minimal effort in order to get to the scheme;
- Free to the consumer;
- Independent of the scheme members;
- Explains decisions to consumers in a clear and understandable form;
- Makes decisions which are binding on the rail company and with which the rail company abides within the scheme's specified timescales;
- Publishes information about its own performance and the performance of its member companies on a quarterly basis;
- Be a driver for improved complaints handling and performance, identifying and sharing best practice; and
- Provides data to rail companies, ORR, and statutory consumer bodies, to improve complaints handling performance.

2.4 Consultation question - Do you agree that there should be a fixed date by when rail companies are required to be members of the scheme? Do you agree with the proposed timing or would you favour a different date? Please provide evidence to support your answer.

Summary of responses

Most **rail companies** suggested that an implementation date of six months after the commencement date is too soon. It was felt that the industry would be better served by allowing the ADR scheme time to bed in, so that the benefits could be clearly seen and this in turn would allow operators joining to enter on terms that are fair and appropriate to their own circumstances. A small number outlined that it was vital for all operators to offer a similar experience and therefore a single fixed date of entry would go some way to achieving this aim.

The **statutory body** which replied to this question considered that a six month lead in time would allow for a simple and consistent message to be given to passengers. **Independent organisations** supported a target date of 1 April 2019 or six months.

ORR decision

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. For the franchised train operators, open access operators, and Network Rail – all companies which are already members of the scheme - this date should be 1 April 2019.

As noted in our consultation document, a start date of 1 April will allow early joiners to the scheme sufficient time to address any issues with the operation of the new scheme which may arise before the obligation becomes enforceable in the licence.

For all other rail companies our decision is that this date will be 1 June 2019, six months after scheme commencement. Whilst RDG has already proactively contacted many of the rail companies who have yet to join the Ombudsman, as set out in the July consultation we recognise that those companies which have not been party to the development of the ombudsman scheme may require more time to sort out arrangements. We consider that a licence requirement for membership of 1 June 2019, six months after scheme commencement, is a reasonable period in which to do so. Nevertheless, we would encourage companies to join prior to this date to enable familiarisation with new processes and a smooth transition to the licence requirement.

2.5 Consultation question - Do you agree that the licence requirement should apply to concession operators, station-only, and charter operators (as well as franchise operators, and station licence holders including Network Rail)? If you do not, please provide evidence to support your answer.

Summary of responses

Many **rail companies** supported the proposal that the licence requirement should apply to all, and in citing concession operators noted the need to ensure consistency. Some companies, particularly the station and charter operators who responded, remarked on the need for the licence condition to be proportionate to the business on which it has a bearing. One suggested that the outcome of their complaints would be unaltered from that achieved by existing statutory appeals mechanisms whilst a station operator hoped that it would be able to keep its existing membership of the scheme in the aviation sector.

The **statutory consumer bodies** offered differing views. One suggested that widening eligibility would be easier to explain and to understand, and would allow for better data analysis and benchmarking. It supported the inclusion of concession operators citing TfL Rail in particular. The other statutory body did not support the inclusion of concession operators noting the higher satisfaction scores in NRPS and lower number of appeals. It suggested that the cost of membership of the scheme was disproportionate to the cost of tickets, and access to redress may not be as fast as it is with existing arrangements.

The majority of **independent organisations** supported the inclusion of all rail companies with one noting the need to ensure the costs of membership were not prohibitive. Another did not consider it necessary to make membership a mandatory requirement. One **consumer** respondent supported the inclusion of all licensed operators noting that from the viewpoint of the consumer, the status of the operator of the train or station are immaterial.

There was a desire from a number of respondents to widen membership of the Rail Ombudsman to include third-party retailers.

ORR decision

ORR's 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. Consumers using these services should be afforded the same level of protection as those using services provided by franchise operators. This will ensure consistency in redress provision and promote understanding and awareness of the Rail Ombudsman. As set out above, we have allowed a longer time period (1 June 2019)

before these operators are required to join the Rail Ombudsman though we would encourage them to become members sooner than this date.

The current arrangements require the rail company to inform the passenger at eight weeks from receipt of the complaint that they can take their complaint to the Ombudsman; it does not preclude them doing so sooner and we would expect this to happen where the rail company determines at an earlier point that they can do no more to resolve the complaint. Where passengers are dissatisfied with the outcome of their complaint they will have access to a binding means of redress. RDG has agreed arrangements with the Rail Ombudsman to ensure that the fee structure will not have a disproportionate effect on any particular group of members.

The requirement to be a member of the Rail Ombudsman will not affect existing arrangements for example participation in ADR in aviation. Membership will apply to the services provided in the relevant sector.

Our approach is also consistent with that set out in our conclusions document relating to the regulation of station only and charter operators in relation to complaints handling published following consultation on 14 December 2017⁸.

We understand that the scope of the ombudsman scheme could be widened to include third party retailers and travel management companies. We note that RDG is in the process of engaging with these companies. We would encourage these companies to proactively consider taking up this option.

2.6 Consultation question - Do you agree that there should be regulatory oversight of the RDG scheme? What form should ORR's role take? If you do not agree, please provide evidence to support your answer.

Summary of responses

The vast majority of respondents felt strongly that there should be some oversight of the scheme and that this should be carried out by ORR. It was widely believed that this would be necessary to ensure the scheme is working correctly and to ensure the consumer is assured of its independence, transparency and overall fairness in decision making.

⁸ <http://orr.gov.uk/rail/consultations/policy-consultations-by-topic/consumer-consultations/consultation-on-licence-outliers>

Respondents from within the **rail companies** agreed with the proposal and suggested that ORR should become a Competent Authority. This view was echoed by some **independent organisations** and the **consumer respondent**. One of the **statutory consumer bodies** suggested that the ORR align itself with CTSI in terms of its messaging and oversight.

ORR decision

ORR intends to provide regulatory oversight of the scheme as set out in the consultation document. We are open to being designated as a Competent Authority. However, in the absence of regulatory vires to approve or withdraw approval from the scheme, we are keen to ensure that the scheme not only meets these standards but also the expectations of passengers. In addition, in order to address any possible concerns about the scheme's independence, ORR has agreed to be a member of an independent committee which will consider any proposal by RDG to initiate scheme termination procedures on the grounds of poor performance. Should ORR be granted Competent Authority status or regulatory oversight be established in statute, ORR's participation in the independent committee would cease.

2.7 Consultation question - Do you have any comments on the draft Impact Assessment in annex one? Please provide evidence to support your answer.

Summary of responses

In relation to this aspect of the consultation, the majority of the respondents did not offer comments on the impact assessment or provide cost information.

Amongst **rail companies** that did respond there was a view that case volumes would increase rather than decrease although there was an acknowledgement that cases could fall over time as the industry learns from ombudsman decisions. One station operator estimated the costs of their participation did not represent value for money.

Similarly, the impact of the compensation that would be paid by the industry was also referred to. Within this it was stated that while this is unknown, it is not out of the question that this could increase based on the awards made by the scheme or because of the operators increasing their own offers to consumers, in an effort to avoid the costs of such a complaint going to the scheme.

ORR decision

We recognise that case volumes may increase as consumers who expressed their dissatisfaction with rail companies' complaints' handling take the opportunity to seek a resolution via the Rail Ombudsman. Nevertheless, as set out in the Impact Assessment, as rail companies gain valuable insights into how to improve their complaints handling in the future and better understand consumer expectations, this may lead to a decrease in cases.

Respondents to the 26 July 2018 consultation

Arriva Trains Wales
Cross Country Trains
East Midlands Trains
Govia Thameslink Railway
Greater Anglia
Heathrow Express
Merseyrail
Network Rail
North Yorkshire Moors
Northern Railway
Prestwick Airport
Rail Delivery Group
South Eastern Railway
Stagecoach Supertram
TransPennine Express
Tyne & Wear Metro
Virgin Trains
West Coast Railway
West Midlands Trains
London TravelWatch
Transport Focus
Furniture Ombudsman
Ombudsman Association
Transport for London
Which?
John Cartledge



Annex B

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

We propose to modify Condition 6 of the Passenger Train Licence and Station Licence, as set out below. **Please send any drafting amendments or comments on this text to us by 22 January 2019 to: CHP@orr.gov.uk.**

Once we have received amendments and comments on this draft modification, we shall launch a formal statutory consultation on the proposed modification to the relevant licences.

Proposed Changes to Condition 6

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 ORR requires the SNRP holder to carry out a review of the Complaints Procedure 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) promptly carry out a review and submit a written report to 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 the 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.

- 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 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 the 3 month 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 months from the date on which the Relevant ADR Scheme ceased to be Compliant.

For the purposes of this Condition:

“Relevant ADR Scheme” means:

- the alternative dispute resolution scheme procured by Rail Delivery Group (the Rail Ombudsman) or, as the case may be, any Successor Scheme.

“Successor Scheme” means:

- such other alternative dispute resolution scheme as is notified to ORR by the SNRP holder under sub-paragraph (iii) and is accepted by ORR as providing suitable protection for the interests of passengers.

Compliant, in relation to the Relevant ADR Scheme, means:

- that the scheme is approved by the Designated Competent Authority and meets the requirements of ORR's Guidance.

The "Effective date" means:

- 1 April 2019 in respect of franchised Train Operator Companies and Open Access Operators and Network Rail; or
- 1 June 2019 in respect of all other railway companies.

"Designated Competent Authority" means the relevant Designated Competent Authority under The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015

"ORR's Guidance" means ORR's Guidance on the Complaints Handling Procedures as amended from time to time.

Passenger, charter and SNRP licence holders

Abellio East Anglia Ltd	London Midlands Trains Ltd
Abellio ScotRail Ltd	Merseyrail Electrics (2002) Ltd
Arriva Rail London Ltd	Merseyside Passenger Transport Services Ltd
Arriva Rail North Ltd	MTR Corporation (Crossrail) Ltd
The Chiltern Railway Company Ltd	North Yorkshire Moors Railway Enterprises plc
DFT OLR2 Ltd ⁹	Pre Metro Operations Ltd
Direct Rail Services Ltd	Rail Express Systems Ltd
East Midlands Trains Ltd	Rail for London Ltd
EM Trains Ltd ¹⁰	Rail Operations (UK) Ltd
First Greater Western Ltd	Serco Caledonian Sleepers Ltd
First MTR South Western Trains Ltd	SOLR1 Ltd
First TransPennine Express Ltd	SOLR2 Ltd
GB Railfreight Ltd	South Yorkshire Supertram Ltd
Govia Thameslink Railway Ltd	Thameslink Ltd
Grand Central Railway Company Ltd	Trenitalia c2c Ltd
Heathrow Express Operating Co Ltd	Tyne and Wear Passenger Transport Executive
Hull Trains Company Ltd	Vintage Trains Ltd
Keolis Amey Operations/ Gweithrediadau Keolis Amey Ltd	West Coast Main Line Company Ltd
Locomotive Services (TOC) Ltd	West Coast Railway Company Ltd
London North Eastern Railway Ltd	West Coast Trains Ltd ¹¹
London and South Eastern Railway Ltd	West Midlands Trains Ltd
London Underground Ltd	XC Trains Ltd

⁹ Previously known as Cross Country Trains Ltd

¹⁰ Previously known as OQS Rail Ltd

¹¹ Trading name: Virgin Trains

Station licence holders

Abellio East Anglia Ltd
Abellio ScotRail Ltd
Arriva Rail London Ltd
Arriva Rail North Ltd
The Chiltern Railway Company Ltd
DFT OLR2 Ltd
East Midlands Trains Ltd
First Greater Western Ltd
First MTR South Western Trains Ltd
First TransPennine Express Ltd
Glasgow Prestwick International Airport Ltd
Govia Thameslink Railway Ltd
Keolis Amey Operations/ Gweithrediadau Keolis Amey Ltd
London North Eastern Railway Ltd

London and South Eastern Railway Ltd
London Underground Ltd
Merseyrail Electrics (2002) Ltd
Merseyside Passenger Transport Services Ltd
Mitie Technical Facilities Management Ltd
MTR Corporation (Crossrail) Ltd
Network Rail Infrastructure Ltd
Rail for London Ltd
Stobart Rail Ltd
South Yorkshire Supertram Ltd
Trenitalia c2c Ltd
Tyne and Wear Passenger Transport Executive
West Coast Trains Ltd
West Midlands Trains Ltd