

Stephanie Toby
Deputy Director, Consumers

15 January 2016

All Interested Parties

Dear Interested party

Which? super-complaint on passenger compensation – call for evidence

This letter is a call for evidence to inform ORR enquiries into passenger compensation in the rail industry. You are invited to send your views by 7th of February 2016.

ORR enquiries

On 21 December, Which?¹ submitted a super-complaint to ORR² raising concerns that most delayed rail passengers are not aware, nor apply for, the compensation to which they are entitled. As set out in their submission, Which? consider there to be “features of passenger rail markets in Great Britain, including certain conduct by train operating companies (TOCs) and limited competition to franchised operators on many lines” are contributing to this.

Which? has asked for ORR to make enquiries into:

- The extent to which TOCs are contributing to a low proportion of passengers securing their rights to compensation for delays;
- The drivers of TOC behaviour, and the pervasiveness¹ of these drivers within the sector; and
- Changes that are needed in regulation, and ultimately by TOCs, to ensure that passengers are aware of and are able to secure their rights to compensation.

Responses to this call for evidence will contribute to ORR’s enquiries. We would welcome your views and supporting evidence on the following areas:

- The ease of finding information about compensation arrangements and what, if anything, you think could be done to improve awareness of these (including when delays occur);
- The clarity of information on compensation arrangements and how, if necessary, this could be improved;
- Process barriers to claiming compensation and what could be done, if necessary, to make it easier to claim compensation; and

¹ Under section 11 of the Enterprise Act 2002 (the Act), together with The Enterprise Act 2002 (Super-complaints to Regulators) Order 2003 and The Enterprise Act 2002 (Bodies Designated to make Super-Complaints) (Amendment) Order 2005, we are satisfied that the Consumer Association, acting through its brand name Which?, has the right to bring a super-complaint to ORR as the specified regulator for the railway markets.

² *Which? super-complaint to the Office of Rail and Road: Compensation arrangements in the market for passenger rail services*, Which?, December 2015 <http://www.staticwhich.co.uk/documents/pdf/super-complaint-to-the-office-of-rail-and-road-pdf-5-34mb-428633.pdf>

- The method of compensation and how, if necessary, this could be improved, for example, whether paying compensation in a form other than vouchers would be useful or what alternative forms might be suitable.

Please email super-complaint@orr.gsi.gov.uk to respond to these questions by Friday 7th of February 2016.

Background

Passenger compensation

The railway provides an essential service with over 4.5 million passenger journey each day³. As with most consumer services there are redress arrangements for when passengers do not receive the quality of service they expected. When there are significant delays to a passenger's train journey or if their journey is subject to persistent punctuality or reliability problems, they may be entitled to compensation.

The qualifying criteria for and level of compensation a passenger is entitled to depends on the TOC they are travelling with. Broadly, there are two systems. One is based on the National Rail Conditions of Carriage (NRCoC) (although some TOCs may go further than what is required in the NRCoC) and the more recent Delay Repay scheme. The compensation provides redress for passenger, this is particularly important given that unlike many other sectors, rail passengers may be limited in their ability to 'vote with their feet' and may have to continue to use the service provided. The compensation scheme may also provide an incentive to the TOCs to minimise delays and improve the level of service they provide.

The compensation arrangements will only provide redress for rail users if passengers can easily exercise their rights. Passengers need to be aware of their rights and they should feel confident that they are able to claim compensation should they wish to. However, research by ORR published in 2014 found that passenger awareness of compensation rights was low⁴. Furthermore, 83% of respondents said they 'rarely' or 'never' claimed compensation when delayed. Similarly, a Transport Focus report from 2013 found that only 12% of delayed passengers had made a claim for compensation.⁵

Developments in the sector

In recent years there have been developments aimed at improving awareness and uptake of compensation by passengers. These include:

Delay Repay: The most significant development has been the introduction of Delay Repay by the Government through the franchise agreements. Passengers of TOCs who operate Delay Repay are entitled to compensation if their train is delayed by 30 minutes or more regardless of the reason for the delay. Eleven TOCs currently operate Delay Repay⁶.

Cash compensation: Compensation has traditionally been paid to passengers in the form of rail vouchers and this had been identified as a factor that put passengers off from claiming

³ <http://orr.gov.uk/statistics/published-stats/statistical-releases>

⁴ 79% of respondents said they knew 'nothing at all' or 'not very much' about their compensation rights for delays; 18% said they knew 'a great deal' or 'fair amount'. *Rail passenger compensation and rights*, ORR, February 2014

⁵ *Understanding rail passengers – delays and compensation*, Transport Focus, July 2013

⁶ Abellio Greater Anglia; Chiltern Railways; c2c; London Midland; CrossCountry; East Midlands Trains; Virgin Trains East Coast; Virgin Trains West Coast; Govia Thameslink Railway; Southeastern; ScotRail

compensation⁷. However in July 2015 the NRCoC were amended to require that all TOCs had to offer compensation in the form of money on request.

Automatic Delay Repay (ADR): In October 2015 Virgin West Coast launched an ADR system for customers who have purchased advanced tickets through their website or app. Eligible customers are contacted and are then refunded within three days. Virgin predict an increase in compensation pay-out from £1million to £3.8million in the first year⁸.

In addition to these, individual TOCs have taken steps to improve passenger awareness and increase take-up of compensation, such as for example making announcements on board delayed trains and collecting the contact details of delayed passengers.

While these are positive developments, research undertaken by Which? suggests that many passengers remain unaware of their rights and that many passengers who are entitled to claim compensation are not doing so.

The Which? super-complaint

The Which? super-complaint raised concerns that most delayed rail passengers are not aware, nor apply for, the compensation to which they are entitled. They consider there to be “features of passenger rail markets in Great Britain, including certain conduct by TOCs, and limited competition to franchised operators on many lines” are contributing to this. A particular focus of the super-complaint is what Which? regard as the failure of TOCs to inform passengers of their rights and to remove barriers to claiming compensation.

A failure by TOCs to adequately inform passengers of their rights

Following a survey of rail passengers in November 2015, Which? concluded that passengers’ awareness of their rights continued to be low: with a third (34%) of passengers who may have been entitled to compensation actually making a claim. The survey also found that around a third (36%) of passengers remembered being informed of their rights after their last delay. Which? concluded that the majority of passengers who experience a delay are not becoming aware of their rights, either because the TOCs are not proactively informing them or the measures they are using to inform passengers are not effective.

To explore the quality of advice given, Which? also conducted mystery shopping of 102 stations in England and Wales in September 2015. Which? found that:

- In 18% of instances the mystery shopper was given a full explanation for the conditions for claiming a refund due to a delay or cancellation;
- In 62% of visits the mystery shoppers left the station not knowing what they might be entitled to;
- In 63% of cases the mystery shoppers were not told that they could request their compensation in an alternative form to vouchers, even after prompting; and
- In 37% of visits, field workers were either not given any information at all or only part of the information they needed about how long a delay needs to be before a refund would be due.

⁷ *Rail passenger compensation and rights*, ORR, February 2014

⁸ <https://www.virgintrains.co.uk/about/media-room#/pressreleases/virgin-trains-introduce-industry-s-first-automatic-delay-repay-system-1227929>

Which? consider that the lack of knowledge and access to information by station staff could be a barrier to passengers understanding their rights and seeking compensation.

A failure by TOCs to remove process barriers to claiming compensation

Which? suggest a number of elements of the process of claiming compensation are barriers including:

- The time and effort required by the passenger to make the claim;
- Options available to passenger to prove their eligibility and passenger understanding of these options; and
- Default method of compensation, ie vouchers.

Other contributing factors

Which? also considers that the multiple minimum compensation schemes and the franchise arrangements may be contributing to the levels of passenger detriment.

Call for evidence

We will engage with stakeholders during our enquiries in order to inform our understanding and then consider appropriate outcomes, whether that might involve identifying areas for further review, action or indeed deciding no action is necessary. This call for evidence will be a key element of this. We would welcome your views and supporting evidence on the following areas:

- The ease of finding information about compensation arrangements and what, if anything, you think could be done to improve awareness of these (including when delays occur);
- The clarity of information on compensation arrangements and how, if necessary, this could be improved;
- Process barriers to claiming compensation and what could be done, if necessary, to make it easier to claim compensation; and
- The method of compensation and how, if necessary, this could be improved, for example, whether paying compensation in a form other than vouchers would be useful or what alternative forms might be suitable.

Please email super-complaint@orr.gsi.gov.uk to respond to these questions by Friday 7th of February 2016.

You may consider at least some of the information we are requesting is confidential and/or commercially sensitive. In terms of publication and disclosure, ORR is bound by the provisions in Part 9 of EA02. As such we may only disclose certain information for specified circumstances⁹.

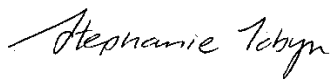
You should also be aware that information you provide to us, including personal information, may be subject to requests for publication or release to other parties or to disclosure in

⁹ Prior to any publication or disclosure of information received in response to this request, ORR will consider the need to protect from disclosure (so far as practicable): any information whose disclosure is contrary to the public interest; commercial information whose disclosure might significantly harm the legitimate business interests of the undertaking to which it relates; and, information relating to the private affairs of an individual whose disclosure might significantly harm the individual's interests. We will also consider the extent to which any publication or disclosure is necessary for the purpose for which we are permitted to make the disclosure

accordance with the access to information regimes¹⁰. While we will of course follow our obligations EA02 relating to information we have gathered in this process, under the FOIA there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In light of this it would be helpful if you could identify to us which particular pieces of information (if any) you regard as confidential or commercially sensitive, and explain why.

Yours sincerely

A handwritten signature in cursive script that reads "Stephanie Tobyn".

Stephanie Tobyn

¹⁰ These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004