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Dear Mr Herbert

A greater role for ORR regulating passenger franchisees in England & Wales

Passenger Focus welcomes the opportunity to comment on the above consultation document.

We support the proposals regarding complaint handling, disabled persons' protection policies and performance monitoring. However, we have serious concerns about the way ORR propose to measure and monitor service quality via a licence provision.

Our detailed comments are structured around the specific questions you ask.

Question 1. May we publish your response?

Yes.

Question 2: Please comment on the general principles against which changes in responsibility for regulation of passenger franchises should be assessed.

From a passenger perspective it is important that adequate safeguards and protections exist. There is little in the way of direct competition between most train companies and where a market cannot regulate itself through competition it is right and proper that regulation is provided from outside.

Passengers are not conscious of whether something is required via a franchise or a licence – the important thing to them is that the protection exists. So, to passengers, the question of who regulates (or enforces a regulation) and where the protections 'sit' is something of a secondary issue. However, we fully accept the importance of having a clear and efficient process of regulation – a more streamlined and efficient system in theory allows for quicker and better targeted protection for passengers.



Our starting point for any review is to focus on the passenger. Internal efficiency is a worthy aim but the key question that must be asked throughout this process and against which we believe each change must be measured is: what impact will this change have on passengers? We believe this should be an explicit criteria for assessing any potential changes to regulation.

Question 3: Do you see any potential benefits or drawbacks in moving towards giving ORR an enhanced role in respect of franchise change?

One of the key difficulties of letting longer-term franchises is in ensuring that they are built on accurate long-term forecasts. We have in the past questioned the accuracy of forecasts submitted during the bidding stage, especially those concerning demand/revenue projections. Unrealistic revenue projections designed to win a franchise can then restrict/threaten the viability of the franchise, as can significant but unforeseen changes in demand.

It is hard to see, for example, how any train company could have accurately predicted events over the past 15-years. The recent recession was not within the control of the industry nor was it easily predictable. The risk, from a passenger perspective, is that we end up with a train company 'limping' along, slashing costs and services to the bare, regulatory minimum. Hence, in our response to DfT's consultation 'Reforming Rail Franchising'¹ we argued that any move towards longer franchises made it absolutely essential that there was a robust mechanism for addressing franchise change.

Change can be a double-edged sword. For instance, implementing Oyster PAYG in London, station enhancements and adding new trains mid-franchise in response to a surge in demand, are all changes that would benefit passengers. We would want franchises to be sufficiently flexible to allow these to happen rather than to hinder their implementation. If franchises are to be longer then the need for change mechanisms becomes even more important – you cannot set everything in stone for 15 years.

However, change mechanisms can also be used to remove franchise provisions/services. Clearly there are risks. Some are already mitigated by other protections (e.g. the statutory processes governing closures), others, however, would be at the discretion of the operator.

One way to mitigate the impact of mid-franchise changes would be to ensure that changes are carried out in an open and transparent manner. Placing the party proposing the change (whether this be the TOC, DfT or Network Rail) under a clear obligation to justify and to consult on any such proposals could help to provide this balance. Providing an independent assessment of costs or an arbitration service during such changes could also be of benefit to this process

¹ Passenger Focussed Franchising. Passenger Focus. October 2010



Question 4: Are there any representations you would like to make concerning ORR's role in holding Network Rail to account?

Passenger Focus will address these issues in more detail as part of the forthcoming Command Paper and ORR's subsequent consultation on Network Rail's licence provision.

However, there is one important principle we would like to flag up at this stage – the need to align incentives with passenger outputs. Incentives can influence behaviour - which makes it all the more important that the correct targets/incentives are chosen in the first place. From our perspective this means focussing incentives on delivering the type of railway that passengers want. It isn't just a case of aligning Network Rail and train company incentives, they must also be aligned with passengers' priorities.

Question 5: Should ORR consider any revisions to its enforcement and penalties policies if it takes on a wider role? In particular, should ORR consider how and whether it could accept commitments to make improvements for passengers as an alternative to levying a penalty?

Passenger Focus has long argued that there should be scope for penalties to be levied in the form of additional commitments/investment rather than via a fine which simply works its way back to HM Treasury.

This was brought to a head following the engineering overruns at Rugby and Liverpool Street in January 2008. It was noticeable that train operators received sizeable compensation for not being able to run advertised services, Network Rail was fined, and yet passengers received little or nothing.

As it is passengers who have to endure inconvenience, frustration and additional expenditure when things go wrong they should also be compensated, be that direct in the form of refunds/discounts or indirectly by enhancements to the rail network.

Question 6: Are there any specific points on which DfT and ORR should set out their proposed approach during the transition period?

Question 7: Should ORR review its funding arrangements in the light of the changes proposed in this consultation?

We have no specific comments

Question 8: Do you have any comments on the proposals for regulating complaints handling procedures?



We support the proposal. Bringing the policy, approval, monitoring and enforcement roles in relation to complaints procedures together in a single place makes sense.

We agree in particular with the suggestion in paragraph 4.21 that the current guidance for handling complaints must be reviewed and look forward to participating in this process. We also believe that this review should focus on opportunities presented by websites such as 'Fix My Transport' and the use of social media. These create opportunities and challenges for the way the industry handles correspondence which we believe need to be addressed in a co-ordinated way. The review could provide a good opportunity to do so.

Question 9: Do you have any comments on any of the proposals for regulating DPPPs?

We support the proposal. Again, we believe there are benefits from bringing responsibility under the control of a single organisation.

Question 10: Do you agree that the regulation of punctuality and reliability performance should be brought together in one place? Could this proposal work and what refinements could be made? Are there any alternative ways of doing this?

Aligning performance incentives is one of the core recommendations of the Rail Value for Money Study. We have already seen the first moves towards alliancing (i.e. Network Rail and the train company coming together to provide a joint-service); and even where this is not happening we already have a well established series of joint performance improvement plans between Network Rail and train companies.

So there is clear evidence of the railway acting in a more co-ordinated way when it comes to performance. As the railway becomes more 'joined-up' we can see the logic in also joining-up regulation and enforcement.

We know from our research that punctuality is exceptionally important to passengers. In 2007² and 2009³ we carried out stated preference research that asked passengers to rank a series of station- and train-based criteria in order of their priority for improvement. Punctuality was third highest in 2007 and second in 2009.

Passenger Focus also conducts the National Passenger Survey (NPS). We consult over 50,000 passengers a year to produce a network-wide picture of passengers' satisfaction with rail travel. Multivariate analysis reveals that punctuality is the single biggest driver of overall satisfaction while the biggest driver of dissatisfaction is the way that the industry manages delays. In very

² Passenger Priorities for improvement in rail services. Passenger Focus. 2007

³ Passenger Priorities for improvement in rail services. Passenger Focus. 2010



simplistic terms, this means that the best way to improve overall passenger satisfaction is to get the trains to run on time.

So having a single body able to provide a co-ordinated, joined up approach to performance has merit. It will be important, however, that there is clarity when it comes to the relationship between franchising and enforcement. We can understand train companies concerns over ‘double-jeopardy’ – i.e. that they risk being punished by DfT and by ORR for the same thing. It will be important that this is addressed in any transfer of responsibility.

It is also important that the issue of transparency is addressed. Transparency generates greater accountability. Giving rail passengers access to performance figures will help them to hold the train company to account and to ask what is being done to improve services in return for the fares they pay.

Good management should not feel threatened by this. Indeed the availability of accurate data may actually help them – a particularly bad journey can linger in the memory and distort passengers’ perceptions. Accurate, relevant data can help challenge these negative perceptions.

However, punctuality data is currently only provided at an overall TOC level which can easily mask significant differences between routes within the same TOC. Providing performance data at a route/service group level (or even on a train by train basis) would help prevent this and focus attention on areas that need improving.

Question 11: What are the key areas that should be covered by service quality measures and commitments? How should Government decide what to include in each franchise? Is there merit in having a core set of requirements that apply to all?

Question 12: Please comment on the specific benefits and disbenefits of the requirements on service quality measurement and commitments being enforced by licence rather than by contract.

Question 13: Do you believe that the proposed licence condition would provide effective and proportionate accountability for delivery of service quality standards? Would a transparency obligation, relying on reputational incentives, be adequate? Or should it be supplemented by a compliance obligation? Should the compliance obligation be subject to doing what is reasonably practicable to deliver it, for instance through a purposive approach similar to that being considered for performance?

Question 14: What would need to be set out in guidelines to ensure credibility and consistency of reporting against service quality measures and transparency for passengers? How do we ensure that we give sufficient clarity and flexibility for franchisees in guidelines?



Question 15: Do you agree with the approach set out on monitoring of compliance with the service quality commitments? In particular do you think that an adapted safety management maturity model could be applied in this context?

Question 16: Do you agree with ORR's proposed approach for service quality commitments of requiring improvement plans as a prelude to formal enforcement action?

We have long advocated more use of qualitative targets within a franchise. Our strong preference is for targets based on what passengers think – the best judge of quality being those who have used the services in question.

The Southern franchise provides a good example of what can be done. It contains a mixture of service quality and passenger satisfaction targets. The latter is split into Customer Service, Train and Station categories. If the company fails to meet the required targets it must produce an action plan designed to rectify it and/or face a potential fine. As well as driving up the quality of service provided, this also promotes a greater sense of accountability between service provider and consumer. Moreover there is no additional cost in producing and monitoring the passenger satisfaction measures used in the Southern franchise as they use Passenger Focus's existing National Passenger Satisfaction Survey (NPS).

We are pleased that the consultation acknowledges the importance of passenger opinion surveys as well as service quality surveys. We also heartily endorse the drive towards transparency and accountability by publishing these targets and the subsequent performance against them.

We would also agree with the statement in paragraph 5.28 that the specific targets are based on what matters most to passengers. Passenger Focus has a wealth of data on passenger priorities and satisfaction – which we have previously shared with ORR. Our submission as part of the Initial Industry Plan⁴ (IIP) summarises much of this work but we would be happy to discuss this again in more detail.

Our experience with the NPS confirms the value of benchmarking. Being able to compare performance across operators and sectors as well as over a period of time has real benefit to passengers. There is a genuine reputational effect in doing so – everyone wishes to be the best at something, no one likes to be the worst. You lose this ability if there is no consistency between franchises or over time. We recognise though that reputation alone may not be enough – we see merit in any licensing regime including provision for compliance as well. Service quality should not be optional.

⁴ <http://www.passengerfocus.org.uk/news-and-publications/document-search/document.asp?dsid=5329>



We have also recently begun breaking NPS results into service groups rather than keeping it at an overall train company level. This has dramatically helped improve transparency as it identifies poorer performing groups of services that previously were masked by overall averages.

Consistency, benchmarking and disaggregation must be core elements of any system used to manage service quality.

Another crucial element is independence and consumer confidence. We note that the proposed wording in the licence requires the licence holder to “[procure where appropriate and] publish passenger opinion surveys on its performance against the commitments relating to its service quality standards”.

We are confused and concerned as to why a train company should procure and produce its own surveys when the National Passenger Survey (NPS) is ideally suited to capture this information.

NPS has a large sample size covering some 25,000 passengers each wave. The sampling plan ensures that it is representative of day of travel, journey purpose (commuter, business and leisure), train company and, of course, by a range of demographic attributes (age, sex, ethnicity etc). As mentioned it can also be broken down into constituent building-blocks to provide even more functionality.

NPS is arguably the longest, continuous data source in use in the rail industry and, by virtue of being carried out by Passenger Focus, has that crucial stamp of independence. It is also being used to drive other initiatives within the industry. Network Rail uses NPS as its measure of satisfaction at major stations; BTP use it to monitor their performance; and it is increasingly being linked to staff bonus schemes. Train companies also recognise the value of NPS and invest a significant amount of money boosting NPS sample sizes and in setting action plans designed to increase scores. In short, NPS has become firmly established as an essential element of performance monitoring and planning.

In 2010 Robert-Miller Associates (comprising three Fellows of the Market Research Society) conducted an independent review of the NPS, comprising both a technical assessment and feedback from 21 TOCs and 9 other NPS user organisations. Key feedback was:

- “it employs a highly cost effective approach to achieving its main goal, which is to provide a consistent measure of key satisfaction parameters at the TOC level and the national level”
- “NPS is widely regarded by stakeholders as very important if not essential”
- “We judge that the NPS is used more widely and more intensively than was the case five years ago”



- “By far the biggest request regarding the future of the NPS was that the sample should be very much bigger”
- “We live for the day it comes, because that’s what decides our next course of action.” (TOC)
- ”NPS is the best industry-wide measure of customer satisfaction.” (Other)

Despite the existence (and value)of NPS the consultation document seems to propose gathering satisfaction via individual TOC commissioned research. Such duplication appears costly and unnecessary, especially at a time when industry costs are under the microscope. We think it would be a far more effective and value for money solution to use NPS. Indeed, by far the optimum solution would be to use some of the resources required to meet the licence obligation to boost the NPS sample, thus achieving even greater economies of scale and value.

We have particular concerns at this aspect of the proposal.

We would be happy to discuss these points in more detail.

Yours sincerely

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