



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

26 July 2018

Contents



Executive summary	3
Background	5
Alternative Dispute Resolution	5
Current rail sector arrangements	5
Rail Delivery Group ADR proposal	6
Passenger licence condition 6 - complaints handling	6
Changes to complaints handling guidance – previous consultation and decision	7
Scope of the document	8
Next steps	8
1. Chapter 1 – The case for the licence modification	9
Summary	9
Introduction	9
Mandatory membership is required to protect dissatisfied consumers	9
Mandatory membership benefits consumers and the industry	11
2. Chapter 2 – Draft Licence Requirements	13
Summary	13
Introduction	13
Proposed licence requirements and scheme principles	13
Timing of the licence modification	14
Scope – who should it apply to	14
Next steps	15
3. Chapter 3 – ORR’s monitoring and oversight role	16
Summary	16
Introduction	16
ORR’s role	17
4. Consultation Questions	19
5. Annex 1 – Draft Impact Assessment	20

Executive summary

1. Alternative Dispute Resolution (ADR) schemes provide consumers with a free and independent means of complaints resolution by means of decisions which are binding on the company. Membership of an ADR scheme demonstrates to consumers a strong commitment to customer service and builds trust.
2. Currently in the rail sector, Transport Focus and London TravelWatch provide non-binding mediation, advocating on behalf of individual passengers. However they have no formal powers to compel rail companies to act or compensate individual passengers, and as a result cannot ensure that outcomes for individual consumers are consistent across or within rail companies. The Rail Delivery Group (RDG), working with others as part of an Ombudsman Task Force, has developed proposals for a binding ADR scheme introduced on a voluntary basis.
3. In February 2018, we published our decision¹ following our September 2017 consultation² on the changes to complaints handling guidance necessary to facilitate the introduction of ADR. We stated that we are minded to modify the complaints handling licence condition for rail companies to mandate membership of an ADR scheme.
4. Since the consultation RDG has made substantial progress in the procurement phase of the Rail Ombudsman scheme and we welcome their announcement on 18 July 2018³ that all franchise operators and Network Rail have signed up to join. Nevertheless, we consider it important that consumers are given long-term certainty of the ability to obtain a free and binding means of independent redress and our intention to modify the licence to require membership of an ADR scheme remains unchanged.
5. In this consultation we outline some of the key arguments for mandating ADR membership through licence modification. These include the current high dissatisfaction and low trust for consumers in the rail sector, as well as the benefits to consumers and rail companies of uniform membership, which would be undermined if membership was not a licence requirement. We also expect the ADR scheme to provide a further source of independent data to inform existing and potential areas for advocacy work in the consumer bodies.

¹ http://orr.gov.uk/data/assets/pdf_file/0005/26699/consultation-on-changes-to-complaints-handling-guidance-decision-letter-2018-02-08.pdf

² <http://orr.gov.uk/rail/consumers/consumer-consultations/changes-to-complaints-handling-guidance>

³ <https://www.raildeliverygroup.com/media-centre/press-releases/2018/469774228-2018-07-18.html>

6. We will use this consultation to inform our views further but are currently minded to include all rail companies, including concession operators, station-only, and charter operators.
7. In this document we seek 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;
 - 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.

Background

Alternative Dispute Resolution

8. Government implemented the EU Alternative Dispute Resolution Directive (the Directive) through Regulations⁴ that came into effect 1 October 2015. The Directive required Alternative Dispute Resolution (ADR) to be available for any unresolved disputes but did not make use of ADR mandatory.
9. ADR schemes can provide consumers with a free and independent means of complaints resolution whose decisions are binding on the company. Membership of an ADR scheme demonstrates to consumers a strong commitment to customer service and builds trust. Feedback loops from the scheme to companies should drive improvements in complaints handling and provide a learning opportunity to address issues and prevent complaints arising. ADR schemes also impose a financial incentive and discipline on members who can control the volume of cases going to the scheme via the effective handling of complaints. For regulators it provides an additional source of information about performance and emerging risks in the sector, and for consumer bodies' data to inform their advocacy role.
10. ADR schemes meeting the requirements of the regulations are certified by the relevant Competent Authority (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 an ADR scheme in the rail sector would fall to CTSI to certify. Binding ADR arrangements have become more widespread in both the regulated and non-regulated sectors; as of 23 July 2018, 44 ADR bodies have been approved⁵.

Current rail sector arrangements

11. Transport Focus⁶ is the independent, statutory body established to represent the interests of users and potential users of the railways. London TravelWatch⁷ is the independent, statutory watchdog for transport users in and around London. One of their roles is to act as the appeals body for complainants who are unhappy with the rail company's response to their complaint.
12. In their appeals role, Transport Focus and London TravelWatch provide non-binding mediation, advocating on behalf of individual passengers. In dealing with passenger

⁴ <http://www.legislation.gov.uk/ukxi/2015/542/contents/made>

⁵ <https://ec.europa.eu/consumers/odr/main/?event=main.adr.show2>

⁶ <https://www.transportfocus.org.uk/>

⁷ <http://www.londontravelwatch.org.uk/home/>

appeals they are unable to impose a binding decision on the rail company. They have no formal powers to compel rail companies to act or compensate individual passengers, and as a result cannot ensure that outcomes for individual consumers are consistent across or within rail companies.

13. Under the current arrangements, rail operators are required by the 2015 Directive to advise consumers of the presence of The Consumer Ombudsman. However, rail companies are not compelled to use these arrangements and none of them currently do so. This provides the potential for confusion for passengers seeking redress for their complaint.

Rail Delivery Group ADR proposal

14. The Government made a 2017 manifesto commitment to introduce a Rail Ombudsman, and the previous Rail Minister had been leading discussions regarding the introduction of voluntary binding ADR in the rail sector which builds upon the advocacy arrangements operated successfully by Transport Focus and London TravelWatch. The Rail Delivery Group (RDG), working with Transport Focus, London TravelWatch, and ORR as part of an Ombudsman Task Force, has developed proposals which it envisages will see the introduction of an ADR scheme for rail passengers.
15. RDG publicly committed to having a fully operational independent ombudsman in the rail sector by the summer of 2018⁸. Under its proposals membership of the ombudsman would be on a voluntary basis. RDG intends to seek approval from the Competent Authority under the ADR Regulations, and plan to meet the Ombudsman Association's criteria for membership, which will demonstrate the high standards to which the Rail Ombudsman must adhere.
16. On 18 July 2018 RDG announced that all franchise operators and Network Rail had formally agreed to join the Rail Ombudsman scheme which RDG had procured.

Passenger licence condition 6 - complaints handling

17. Train and station licence holders are required by their operating licence to establish and thereafter comply with a Complaints Handling Procedure (CHP) which has been approved by ORR. We provide guidance⁹ on what ORR will look for when exercising this approval role and when monitoring for continuing compliance.

⁸ <https://www.raildeliverygroup.com/media-centre/press-releases/2017/469773296-2017-10-30.html>

⁹ http://orr.gov.uk/_data/assets/pdf_file/0020/19370/complaints-handling-procedure-guidance-2015.pdf

Changes to complaints handling guidance – previous consultation and decision

18. On 26 September 2017 ORR published a consultation seeking views on the changes to the CHP guidance and CHPs that will be necessary to facilitate the smooth introduction of an ADR scheme. As part of this consultation we asked whether rail companies should be required to be members of an ADR scheme which has been approved by a Competent Authority.
19. With the exception of one respondent, rail companies were in favour of membership of the ADR scheme being on a voluntary basis. The statutory consumer bodies favoured either an approach where membership should be mandatory if it could not be achieved voluntarily or membership being a requirement in the future to guard against withdrawal from the scheme. With the exception of one respondent, all independent organisations and individual consumers supported compulsory membership of an ADR scheme.
20. Our decision letter was published on 8 February 2018. In this we set out our intention to consult on:
 - modifying the complaints handling licence condition to require membership of an approved ADR scheme;
 - obliging membership within six months of the commencement of the scheme and on the inclusion of a fixed date for membership should the start of the scheme be delayed; and
 - the inclusion in the licence condition of key principles for the scheme.
21. Learning from other sectors will help to drive up standards in complaints handling as the ADR scheme is introduced into rail. We therefore made it clear that we will also conduct a best practice review of complaints handling in other regulated sectors with ombudsman schemes this autumn. We will discuss the results and any proposed changes to complaints handling we draw from that review with rail companies in the months following.

Scope of the document

22. In this consultation we seek views on modifying the passenger licence to require membership of an ADR scheme. Our proposals support ORR's strategic objective of Better Customer Service. In particular:
- Chapter 1 - we set out the case for requiring membership via the passenger and station licences of an ADR scheme in the rail sector;
 - Chapter 2 – we seek views on the draft licence requirements including the broad principles for the ADR scheme, the timing of its introduction, who it should apply to, and the proposed enforcement regime.
 - Chapter 3 – we set out ORR's proposed role in monitoring the new ADR arrangements.
 - Annex 1 – we set out a draft high-level impact assessment.
23. This consultation does not include matters relating to the scope of the ADR scheme itself; such matters are being discussed with the Ombudsman Task Force, and RDG propose to seek approval for the scheme from the Competent Authority. Approval requires the scheme to meet standards set out in the ADR Regulations referred to above.

Next steps

24. Responses to this consultation are invited by 20 September 2018 and should be sent in writing or by email to:

Consumer Policy Team

2nd Floor

Office of Rail and Road

One Kemble Street

London

WC2B 4AN

Email: CHP@orr.gsi.gov.uk

25. Following consideration of the responses we will publish our decision and, if appropriate, proceed with the statutory licence modification process.

1. Chapter 1 – The case for the licence modification

Summary

1. In this chapter we set out the case for requiring membership of an ADR scheme in the rail sector via the passenger licence and station licence. We draw upon the evidence of consumer detriment and concern, and the benefits available to different parties which could be derived from membership.

Introduction

- 1.1 ADR is common across many of the regulatory sectors. Consumers, traders and regulators are able to access the advantages that are available from schemes which have been approved by a relevant Competent Authority. Those benefits are of equal importance to participants in the rail sector.
- 1.2 Satisfaction with complaints handling varies between rail companies but is generally low, and trust in the rail sector remains at a disappointing level. We know that providing consumers with access to a dispute resolution service has the potential to increase confidence in the sector.

Mandatory membership is required to protect dissatisfied consumers

- 1.3 There is considerable evidence available which demonstrates that consumers are dissatisfied with the current arrangements for handling complaints in the rail sector and why there is a demand from consumers for access to binding ADR.
- 1.4 We commission an independent research company to carry out a survey of passenger satisfaction with train companies' complaints handling. Satisfaction is measured over a range of indicators relating to the complaints process and outcome. The results show that across the participating companies there is a greater level of passenger dissatisfaction than satisfaction with train companies' complaints handling and the outcome of complaints. One important aspect to note is how the way the complaint is handled affects how the passenger feels about the train company.
- 1.5 Our latest statistical release¹⁰ illustrates the state of consumer satisfaction across companies in the rail sector:
 - 52% were dissatisfied with how their complaint was handled;

¹⁰ http://orr.gov.uk/data/assets/pdf_file/0012/28101/passenger-rail-service-complaints-2017-18-q4.pdf (sample size 41,789).

- 60% of respondents were dissatisfied with their complaint outcome;
- 56% felt more negatively about the train company in light of the way their complaint was handled; and
- only 12% felt more positively about the train company.

1.6 The consequence of poor complaints handling and associated dissatisfaction is clearly demonstrated by its impact on the statutory consumer bodies. We note that rail consumers are increasingly relying on the advocacy arrangements operated by Transport Focus and London TravelWatch as a means of complaints resolution. However they crucially do not have access to a means of binding redress. Across rail companies there has been a 40% rise in appeals closed by Transport Focus and London TravelWatch throughout 2017-18 compared to the year before.

1.7 There is also a low level of trust amongst consumers in the rail sector. Transport Focus has been collecting data on how much passengers trust the train company they travelled with. Transport Focus' survey has found that the overall average for trust is in the region of 40% nationally, with further details available once the full report is published in the following months. The Which? Consumer Insight Tracker¹¹ in May 2018 found that only 27% said they trusted train travel. This is 1% lower than in May 2017, demonstrating a lack of progress in trying to improve levels of trust. Train travel ranked 11th on this measure out of the 13 sectors Which? examined.

1.8 The Consumer Action Monitor omnibus survey further demonstrates consumers' unhappiness with arrangements in the rail sector:

- 20% of consumers say they are resigned to poor service in rail in 2017¹² (a figure which rises to 33% in the 2018 survey¹³ where it is captured on a transport sector basis); and
- 34% of consumers in the 2018 survey say they would be more likely to trust a company that is signed up to an ombudsman scheme.

1.9 A factor that exacerbates the low level of consumer satisfaction in the rail sector is often the lack of alternative service for dissatisfied passengers. The Consumer Action Monitor 2018 found that only 11% of consumers would return to a company if a complaint was handled poorly; in the rail sector most passengers often have very limited scope to seek an alternative service provider.

¹¹ <https://consumerinsight.which.co.uk/tracker/trust>

¹² <https://www.ombudsman-services.org/docs/default-source/cam/cam-2017-report.pdf?sfvrsn=4>

¹³ <https://www.ombudsman-services.org/docs/default-source/downloads/cam-2018-report.pdf?sfvrsn=0>

Mandatory membership benefits consumers and the industry

- 1.10 It is in passengers' interests to secure uniform access to binding redress for the long-term. There are a number of benefits to consumers that arise from requiring rail companies to be members of an ADR scheme including:
- certainty of binding redress;
 - consistency in case outcomes;
 - clarity in the process as redress is signposted and offered rather than signposted and not used by companies;
 - consistency in redress provision and protection across the industry and across sectors; and
 - improvements in performance available to all passengers including those who choose not to complain which arise from addressing issues identified by the ADR scheme to the company.
- 1.11 Mandatory participation would better facilitate the ability for the ADR scheme to drive up industry standards. It would demonstrate to passengers a strong commitment to customer service and build trust amongst passengers and potential users of rail services. Industry will benefit from greater certainty in case outcomes as examples of previous decisions will be published on the ADR website to demonstrate how similar cases will be treated, and consumers may have more confidence in the service through transparency in performance information. ADR schemes can utilise information from cases to help individual businesses improve complaints handling and identify emerging issues and work with the companies to address these.
- 1.12 Partial membership would therefore be detrimental to the industry and the effectiveness of the ADR scheme provider. Without the ability to draw on cases from all rail companies, the ADR scheme provider would be less effective at:
- using data from cases to help individual businesses improve complaints handling by identifying and sharing examples of good practice; and
 - looking across the sector to raise industry standards.
- 1.13 The ADR scheme will provide ORR and the statutory consumer bodies with a further source of independent information to enable both organisations to fulfil their respective functions. This additional and consistent source of data will provide an early indication of emerging risks in the sector and help to identify systemic issues within individual businesses and/or across the sector. It will also inform existing and potential areas for advocacy work in the consumer bodies.

- 1.14 There is a risk that companies may join and later decide to leave the scheme. The more dutiful and better performing companies will likely remain members of a redress scheme, but consumers may be exposed to the companies that stand to lose the most by being part of a system of independent and binding redress. These are the companies that most need to be members.
- 1.15 We are cognisant of the experience in other regulatory sectors where membership of an ADR scheme is not mandatory. For example, the Civil Aviation Authority (CAA) implemented ADR in the aviation sector on a voluntary basis. Though ADR has helped resolve over 10,000 complaints in its first 12 months, as of December 2017 CAA noted that three large carriers (Jet2, Emirates, and Aer Lingus) had failed to sign up¹⁴.
- 1.16 A regulatory measure that requires mandatory membership of an approved ADR scheme would remove the unpredictability as companies join or leave, ensure the consistency needed for consumers, and provide a more conducive environment for an ADR scheme to operate in.

¹⁴ <http://www.caa.co.uk/News/Thousands-more-airline-passengers-are-now-receiving-compensation-thanks-to-Alternative-Dispute-Resolution/>

2. Chapter 2 – Draft Licence Requirements

Summary

2.1 In this chapter we set out the draft licence requirements and changes to Complaints Handling Procedures. We also include details of the intended timing of the modification to the licence condition¹⁵, as well as which companies we believe it should apply to.

Introduction

2.2 Having established in Chapter 1 the strong case for mandating membership of an approved and binding ADR scheme, we believe the optimal way of achieving this would be through a combination of changes to the licence and Complaints Handling Procedure of the rail company.

2.3 Licence holders are required by their operating licence to have Complaints Handling Procedures (CHP) which have been approved by ORR, and we provide guidance on what we look for when exercising this role.

Proposed licence requirements and scheme principles

2.4 RDG has procured a scheme which it considers meets the requirements of the ADR Regulations and will seek approval for the scheme from the relevant Competent Authority as well as pursuing membership of the Ombudsman Association. The scheme therefore will strive to meet the appropriate high standards.

2.5 In light of this we propose that the licence modification will require rail companies to join the scheme procured by RDG which has been approved by a relevant Competent Authority. We do not consider that it is in the public interest to have more than one ADR scheme in the rail sector. We are keen to ensure that consumers have a clear and understandable route to the ADR scheme. There is a risk that having more than one scheme will lead to confusion and limit the scope for awareness raising by the scheme provider. It may also lead to different standards of service between additional schemes and therefore a worse service for some consumers, particularly given it would be the rail company not the consumer who would choose the scheme.

2.6 While we propose to make a licence change requiring membership, the scheme principles can be incorporated in CHP guidance. This will provide a more flexible means than the licence should it be necessary to amend the principles at any point in

¹⁵ Condition 6 of the Station Licence and GB Statement of National Regulatory Provisions: Passenger <http://orr.gov.uk/rail/licensing/licensing-the-railway/model-licences-and-statements-of-national-regulatory-provisions-snrps>

the future. In addition to a licence modification, we propose to include in the CHP guidance that if TOCs 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;
- 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.

Timing of the licence modification

2.7 We consider the most appropriate timing of requiring membership via a licence condition would be from six months after the scheme has started. This approach will allow RDG and rail companies to continue largely unimpeded with their current arrangements for delivering the ADR scheme this year. It will also provide an opportunity for rail companies to address any teething issues which may arise before the obligation becomes enforceable in the licence, and to benefit from the feedback which the scheme will provide.

2.8 Nevertheless, we are cognisant of the need to provide certainty for consumers and industry. In our Complaints Handling Guidance decision letter we stated that we are minded to include a fixed date by when rail companies are required to be members of the scheme. We anticipate that this date will be 1 April 2019 which will ensure that from that point onwards rail companies will not be able to withdraw their participation in the ADR scheme.

Scope – who should it apply to

2.9 We propose that all franchise operators, and station licence holders, including Network Rail and station-only licence holders, and concession operators are in scope of the licence modification. We do not intend to include Eurostar, as it is an international-only operator over several jurisdictions, with an independent and binding ADR system that is already established across these.

2.10 We propose that charter operators also join the scheme, preferably at the same time as the licence condition comes into force although we recognise that they have had limited engagement up to now in the scheme's development. RDG noted in response to our previous consultation that the scheme would be designed to be open to this group of licence holder. Nonetheless, we will consider charter licence holders' participation further in the light of responses to the consultation. We will also engage with RDG to discuss how it will ensure that the fee structure of the scheme will not have a disproportionate effect on any particular group of members. This approach is aligned with the recent conclusions¹⁶ made to keep charter and station-only licence holders in scope of regulation in relation to their licence obligations to have a CHP and Disabled People's Protection Policy (DPPP).

Next steps

2.11 Following consideration of the responses to the consultation questions in chapter 4, we will publish our decision and, if appropriate, proceed with the statutory process to modify Condition 6 of the Station Licence and GB Statement of National Regulatory Provisions: Passenger licences.

¹⁶ http://orr.gov.uk/_data/assets/pdf_file/0018/26325/consultation-on-licence-outliers-conclusions-letter-2017-12-14.pdf

3. Chapter 3 – ORR’s monitoring and oversight role

Summary

- 3.1 In this chapter we set out our future role for monitoring and overseeing the performance of the ADR scheme.

Introduction

- 3.2 In many other regulated sectors there is a statutory requirement for a redress scheme in the sector. For example in the energy sector The Consumers, Estate Agents and Redress Act 2007 gives the Secretary of State the power to make an Order to require regulated providers to become members of an approved redress scheme, and Ofgem (the Authority) a formal role in approving, refusing, or withdrawing approval of a scheme. There is no requirement in statute for a redress scheme in the rail sector and therefore no role for ORR in approving, refusing, or withdrawing approval.
- 3.3 Similarly, the Alternative Dispute Resolution for Consumer Disputes Regulations 2015 (the ADR Regulations) designates particular statutory bodies to be a Competent Authority in the sector for which they have a regulatory role, and the Chartered Trading Standards Institute (CTSI) for all other sectors. ORR is not a designated Competent Authority and any scheme in the rail sector will need to seek approval from CTSI.
- 3.4 The existing statutory legislation, sector specific and the ADR Regulations, provide a basis for establishing a framework for monitoring performance of the approved scheme. For regulated sector specific schemes this is often specified in a detailed Memorandum of Understanding¹⁷ which defines not only the information which will be shared but provides for proactive oversight of the scheme. The ADR Regulations place lesser requirements on approved ADR schemes; to provide certain information annually and every two years. As noted in the example above, regulatory bodies can withdraw their approval of a scheme and there is a similar provision in the ADR Regulations. The introduction of an ADR scheme in rail places passengers on a similar footing to consumers in other sectors. However, in contrast to some, such as energy and telecoms, the rail scheme has not taken a statutory form but will instead be established by RDG on a voluntary basis at least until the licence condition is modified (should this be the outcome of the consultation).

¹⁷ https://www.ofgem.gov.uk/system/files/docs/2017/07/memorandum_of_understanding_-_between_ofgem_ombudsman_-_signed_copy_da.pdf

ORR's role

- 3.5 It is important that the ADR scheme in the rail sector seeks to achieve the highest standards possible. We have set out our expectations for the scheme, to be included in the complaints handling guidance, above. However, the licence and complaints handling obligations fall upon the licensed rail companies not the scheme itself. 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. It is our intention to capture our relationship with the ADR scheme in a Memorandum of Understanding.
- 3.6 We anticipate meeting with the ADR scheme at least quarterly, and for respective senior officials to do so at least annually or sooner where necessary. We have set out some of the benefits we expect to see delivered by the introduction of the scheme in chapter one. We believe that there should be regulatory oversight to ensure that these benefits are realised, not only through receiving information but by sharing our knowledge of current and forthcoming regulatory developments.
- 3.7 We expect the scheme to be another source of information to assist in our monitoring of rail companies, providing to us individual company performance data, issues, and trends, and co-ordinating publication of complaints data in accordance with our own complaints publication to provide an holistic view of performance. Passengers expect rail companies to learn from the complaints they receive; we will be keen to understand how the scheme is using feedback loops with rail companies to drive improvements not only within individual companies but across the sector.
- 3.8 In the absence of regulatory oversight there is a risk that the scheme's independence could be called into question; the scheme has been procured by the industry and it is important that there is no perception that it could exert undue influence on the scheme's decision making, for example by threatening to terminate the contract if the industry is unhappy with a number of adverse decisions.
- 3.9 We therefore intend to proactively monitor the scheme's performance for example its ability to drive improvements in rail companies, and understand the reasons for any challenges the scheme may face. Where the scheme is not meeting the standards which we and passengers expect it is important that it is held to account and where necessary we will seek improvements via RDG. RDG will consider what action may be appropriate under the arrangements it has in place for the scheme.
- 3.10 ORR meets regularly with key stakeholders such as Transport Focus and London TravelWatch to share intelligence about the performance of rail companies including information about complaints. We expect this dialogue in future to provide an opportunity to share respective views about the performance of the ADR scheme including where the scheme may need to improve. We also expect the ADR scheme

to provide regular performance information about rail companies to these statutory consumer bodies; RDG has informed us that the scheme will do so. This will be important to ensure that Transport Focus and London TravelWatch can continue to perform their wider advocacy work on behalf of passengers effectively.

- 3.11 As well as seeking approval for the scheme from the Competent Authority, we understand that RDG is planning to seek accreditation from the Ombudsman Association in order to achieve full ombudsman status for the rail sector scheme. This is welcome and will put the scheme in rail on a similar footing to ombudsman schemes in regulated sectors which already have approval from the Ombudsman Association. We recognise that the scheme in rail differs from those in other regulated sectors where the regulatory oversight is established in statute but trust that the proactive arrangements we intend to put in place will demonstrate the necessary independent regulatory oversight.
- 3.12 As noted above, ORR is not a designated Competent Authority and any scheme in the rail sector will need to seek approval from the relevant Competent Authority, in this case CTSI. RDG intends to seek approval for the scheme from the Competent Authority and we intend to develop a close relationship with CTSI.

4. Consultation Questions

- 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.
- 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.
- Do you agree with the principles we propose to include in CHPs? Are there any others we should consider for inclusion?
- 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.
- 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.
- 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.
- Do you have any comments on the draft Impact Assessment in annex one? Please provide evidence to support your answer.

5. Annex 1 – Draft Impact Assessment

High-level Impact Assessment for licence condition changes to require membership to the ADR scheme (the Rail Ombudsman) [+ for benefit, - for cost]	
	Impact
Consumers	<p>[+] As outlined in Chapter 1, uniform membership of binding ADR will have the following benefits for consumers seeking redress:</p> <ul style="list-style-type: none"> • certainty of binding redress; • consistency in case outcomes; • clarity in the process (binding ADR will be signposted and offered rather than signposted and not used by companies); and • consistency in redress provision and protection across the industry and across sectors. <hr/> <p>[+] There may also be a benefit to the wider consumer base (including those who choose not to complain) from the complaints handling improvements the Rail Ombudsman is expected to facilitate from working with companies and sharing case outcomes.</p> <hr/> <p>[+] The Rail Ombudsman scheme has been designed to be free for consumers. This could save claimants £101-£500 per case compared to the typical costs of using the court system¹⁸ (not taking into account any compensation).</p> <hr/> <p>[+] Though it is difficult to accurately predict the scale of complaint referrals that the Rail Ombudsman may receive, as an indication in 2017/18 the number of cases closed by Transport Focus and London TravelWatch was 5,804, an increase of 40% from the previous year. Rail companies' membership to the Rail Ombudsman will provide consumers with access to binding ADR for these cases should they wish to use it.</p>
Rail Companies	<p>[+] Membership of the Rail Ombudsman provides reputational benefits for companies:</p> <ul style="list-style-type: none"> • membership and compliance with scheme decisions demonstrates a clear commitment to customer satisfaction; and • traders stated in a recent study that ADR disputes are settled quickly and this allows them to maintain their reputation¹⁹. <p>These reputational benefits are particularly relevant in the context of low levels of consumer trust in the rail sector.</p> <hr/>

¹⁸ p.24

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698442/Final_report_-_Resolving_consumer_disputes.pdf

¹⁹ p.49

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698442/Final_report_-_Resolving_consumer_disputes.pdf

	<p>[+] Through having access to case outcomes, rail companies may gain valuable insights into how to improve their complaints handling in the future and better understand consumer expectations.</p> <p>This may lead to a decrease in the number of cases going to the Rail Ombudsman as processes improve.</p> <hr/> <p>[-] We estimate the initial administrative burden of reviewing the proposed licence condition changes to be £40,116 across all the rail companies (£1,146 each).</p> <p>We estimate the ongoing annual administrative burden to be £8,023 across all the rail companies (£229 each)²⁰.</p> <hr/> <p>[N/A] Please note, membership costs to the ADR scheme have not been disclosed and are <u>not</u> included in this impact assessment:</p> <ul style="list-style-type: none"> • for companies that have already joined, we understand that the costs of the scheme have been considered; and • for companies yet to join, we will continue to liaise with RDG and ensure there is not a disproportionate cost to these companies before making our final decision on licence changes. In response to our previous consultation on changes to complaints handling guidance, RDG informed us that they were “designing the scheme so that it will be open to charter operators and station licence holders.”²¹
ORR	<p>[+] Through incorporating scheme principles in Complaints Handling Procedures guidance, ORR is able to ensure that rail companies join a high-standard scheme that meets several criteria we assess to be essential for consumers.</p> <hr/> <p>[+] We intend to make use of the enhanced dataset that uniform membership of the Rail Ombudsman will provide. This will provide further insight to assist in our monitoring role, identifying emerging risks in the sector, as well as any systemic issues within companies or sector.</p>
DfT/Govt.	<p>[+] Licence condition changes to require membership of the Rail Ombudsman aligns with Government’s desire “to see a high rate of business participation in sectors where there are significant levels of consumer complaints.”²²</p> <hr/>

²⁰ Calculated using Standard Cost Model methodology. Based on three people per business reviewing the changes at a passenger rail sector hourly wage of £19.80 (<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/industry4digitsic2007ashtable16> table 16 - 2017 prov.), a non-wage mark-up of 20.6% (<http://ec.europa.eu/eurostat/documents/2995521/8791188/3-09042018-BP-EN.pdf/e4e0dcfe-9019-4c74-a437-3592aa460623>), taking 2 days (16 hours) each to review the changes, across 35 relevant businesses. We estimate ongoing/re-familiarisation costs to be 20% of the initial administrative burden.

²¹ http://orr.gov.uk/_data/assets/pdf_file/0015/26700/responses-to-consultation-on-changes-to-complaints-handling-guidance-february-2018.pdf

²² Ch.154 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/699937/modernising-consumer-markets-green-paper.pdf

	[+] The licence condition changes will provide a foundation for the Rail Ombudsman, a 2017 manifesto commitment, to remain in place and not see companies move in and out of membership.
Transport Focus & London TravelWatch	[+] Requiring membership of the Rail Ombudsman will ensure that a full dataset is available on case outcomes and other areas to help inform the advocacy role of Transport Focus and London TravelWatch.
Rail Ombudsman	[+] Requiring comprehensive membership will enable the Rail Ombudsman to be more effective at: <ul style="list-style-type: none"> • using data from cases to help individual businesses improve complaints handling by identifying and sharing examples of good practice from both the rail sector and other sectors; and • looking across the sector to raise industry standards.



© Crown copyright 2018

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at orr.gov.uk

Any enquiries regarding this publication should be sent to us at orr.gov.uk