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Department for Business, Innovation and Skills – call for evidence on Improving the Consumer Landscape and Quicker Switching

The Office of Rail and Road (ORR) welcomes the opportunity to respond to this call for evidence.

The ORR is the independent safety and economic regulator for Britain's railways. We regulate Network Rail and aim to promote continuous improvement in safety, performance and efficiency of the railway so that it better meets the needs of users, including passengers and taxpayers. We enforce competition law in relation to the provision of services relating to the railways. We also have powers to enforce some consumer law in the railway sector under Part 8 of the Enterprise Act 2002. In addition we approve, monitor and enforce a number of consumer-facing licence conditions.

Some questions in the call for evidence are not relevant to us, however we have set out our views on those areas where we can add insight, below.

Consumer advice

It is vital that consumers can access independent advice on their rights, and know who to turn to for help and information. Whilst there are a number of different bodies that provide advice and information to rail consumers we do not have evidence to suggest that any overlap is resulting in significant consumer confusion.

Transport Focus and London TravelWatch are the statutory consumer bodies for rail passengers and provide in depth sector specific advice and help to consumers, with their individual complaints, as well as conducting research and providing data. Train operators are required to signpost complainants to these bodies when they send a second response to a complainant. ORR has begun collecting data on how frequently complainants are signposted to the passenger bodies, which will enable us to ensure operators are complying with their obligations in this area and to ensure consumers are not confused about where they should go if they are unhappy with an operator's response to a complaint.



In addition, consumers can access advice on issues such as penalty fares, rights of disabled passengers and claiming for delays from general consumer bodies such as *Which?* and the Citizens Advice Service. We understand that both *Which?* and the Citizens Advice Service signpost consumers to the statutory bodies for further advice and help with specific complaints.

As rail consumers have limited ability to switch between comparable services, much of the advice for rail passengers focuses on passenger rights and claiming compensation for delays or poor service, rather than empowering switching decisions. In addition to the organisations mentioned above, there is a role for train operators and third parties in providing advice on train times, ticket prices, delays and planned engineering works.

Train operating companies also have customer information on their websites giving advice on their services, how to complain, and how to claim refunds and compensation for delays or cancelled services. Recent research carried out by ORR¹ found that this can be of variable quality and ORR is working with train operating companies to make consumer information about delay compensation easier for consumers to find and understand.

Consumer advocacy

By its nature, consumer advocacy puts focus on representing the consumer interest in policy and to government and industry as a whole. We have no evidence of significant problems with the current consumer representation and advocacy arrangements in the rail sector.

ORR itself has a role in ensuring that the rail market is fair – for passengers, freight customers, railway operators and taxpayers. We have powers under consumer law with regard to the railways to ensure consumers are protected and are treated fairly. We have our own expert consumer panel whose role is to provide policy advice and guidance on consumer issues through providing expert input and challenge when policies are being developed.

Advocacy and representation for passengers is provided by the two statutory passenger bodies, Transport Focus and London TravelWatch. As BIS acknowledges, these are specialist bodies that represent the specific interests of rail consumers and have considerable expertise in this complex area. They also have the ability to look across a number of different modes of transport, and are able to participate in industry processes at the point when policies are being developed, for example by participating in industry working groups and through giving input to the franchising process. In addition, passenger representatives are included on ORR's Railway Industry Health & Safety Advisory Committee. We value the expert insight, research and data these bodies provide.

¹ See: <http://orr.gov.uk/publications/reports/rail-compensation-super-complaint-response-report>

This sectoral expertise and data is a rich source of information on consumer issues and operator performance, and provides insight into the issues that are important for passengers and how they see performance on these issues over time. For example, ORR uses the National Rail Passenger Survey (NRPS), which is conducted by Transport Focus, to get a greater understanding of customer satisfaction with rail travel. This forms part of Network Rail's Output Framework for Control Period 5 and is reported to ORR in their Annual Return. It is used to monitor Network Rail's commitment to improving customer service. NRPS information also supports our consumer policy work, for example information derived from the NRPS questions around ticket purchasing were used in our Retail Review of ticketing and our work on the Retail Code of Practice. In addition, the passenger bodies provide expert input to ORR when we exercise our function of approving licence holders' Complaints Handling Procedures and Disabled People's Protection Policies.²

We also work in collaboration on some defined research projects to share costs, resources and expertise on areas of mutual interest – for example our recent joint research project in to passenger experiences of delay compensation³.

Other consumer bodies, such as *Which?*, also play a valuable role in representing some of the concerns consumers have about the rail sector. The recent super-complaint on delay compensation submitted to ORR by *Which?* being an example of their ability to identify and raise issues of concern to consumers. We see the consumer advocacy in the rail sector by bodies such as *Which?* as a valuable addition to the sectoral expertise and complaint handling functions carried out by London TravelWatch and Transport Focus.

Alternative Dispute Resolution

Unlike advocacy, which emphasises representing the consumer interest as a whole, Alternative Dispute Resolution (ADR) allows individual consumers to seek redress when they feel goods or services have not been provided to the standard they would expect. Access to effective redress is a fundamental consumer principle, as without it consumers cannot enforce their rights effectively. We agree that the availability of good quality ADR strengthens consumer protection and therefore improves consumer confidence. In order to be of a good quality we believe that ADR should be free for the consumer and decisions should be binding on the business.

It is also important that ADR providers have the ability and incentive to collect and share data in order to help raise standards. ADR data is an important source of information to the

² ORR is responsible for train and station licences which require the provision of access and travel assistance for disabled and vulnerable passengers and an effective and accessible process for managing passenger complaints.

³ ORR forthcoming research.

regulator and will encourage improvements in service from individual companies and across industry through its publication. This is especially important in the rail sector since consumers have a limited ability to switch, meaning complaints (and complaints data) are especially important for driving change.

The ADR Directive requires Member States to ensure that ADR (provided by a certified ADR body) is available for any dispute concerning contractual obligations between a consumer and a business. The use of ADR is not mandatory under the Directive. There are also requirements on business to provide information about certified ADR providers in certain circumstances, including in the event of an unresolved dispute. ORR has the power to ensure train companies are complying with this information aspect in the rail sector.

Transport Focus and London TravelWatch represent passengers' interests and provide a mediation/conciliation service by assisting passengers to resolve individual disputes with train companies. However, they do not meet the requirements of the ADR Directive and are not certified ADR providers. This means that in practice, currently there is no specific certified ADR body in the rail sector.

In order to comply with the directive, train companies provide information to passengers highlighting a non-sector specific certified ADR provider but explaining that in practice they do not use the certified provider but instead use Transport Focus or London TravelWatch. This approach, though compliant, creates a situation which is not as straightforward and clear for consumers as it could be. It is our view therefore, that there are opportunities to strengthen the current system.

As we have set out above, we believe it is vital consumers have access to an effective, free means of redress, which is binding on the company. This provides certainty and finality to the complaints process. We believe any ADR scheme should give comprehensive coverage for rail passengers, including areas such as penalty fares for example. In our view a detailed assessment is required before reaching a final conclusion on how this could best be done in the rail sector. Any such assessment should include engagement with the passenger bodies themselves, as well as with the Department for Transport and the London Assembly, who are responsible for their funding under statute.

Consumer data

ORR has responsibility for approving and monitoring train operators' own complaints handling procedures. We expect to see procedures that:

- resolve individual complaints promptly and fairly, taking account of the reasonable interests of the complainant, including providing compensation as appropriate; and
- lead to continuous improvement, so that in the medium term the root causes of complaints are addressed and systemic solutions are put in place.

ORR collects data on complaints and makes it publically available on our website. This data is used to inform our quarterly statistics reports⁴, as well as forming the base of our annual rail consumer report⁵. The data we collect ensures there is a clear evidence base, enabling us to monitor train companies' performance over time. It is also important that consumers have access to complaints data in order to hold operators to account.

In the course of our work on complaints we have become aware that in some cases consumers may choose to use third party intermediaries to submit a complaint. Third party intermediaries are of particular interest in the rail sector in two areas: ticket retailing and complaints handling. In this context intermediaries may be innovative, they provide the passenger with choice (passengers should be able to choose/use the channel which best suits their needs), third parties may provide information in new and better or different ways, and they may put competitive pressure on businesses to improve. However, some companies may refuse to deal with complaints raised via an intermediary, instead asking the consumer to provide a direct contact address. This, in effect, circumvents the intermediary.

On the other hand, concerns around third parties are also well recognised, and ORR has not yet taken a final position on this issue. However, in the context of the call for evidence, and in particular the focus on portability of reputation (the ability to move reputational data between platforms) and feedback, we believe the after-sales aspects of third parties merits further consideration.

Enforcement of consumer law

The rail industry is subject to consumer law and ORR is a designated enforcer under Part 8 of the Enterprise Act 2002. Our powers enable us to stop breaches of a range of consumer protection laws where there is evidence of passengers as a group being put at an unfair disadvantage. A key set of rules are the Consumer Protection from Unfair Trading Regulations 2008. These prohibit some practices outright, and contain a ban on practices which contravene the requirements of professional diligence.

We believe a combination of transparency around performance data, increasing consumer awareness, and enforcement, all play their role in strengthening the consumer voice by addressing any information asymmetries that weaken the consumer's ability to push for better service and demand redress when things go wrong.⁶ For example, following the recent super-

⁴ For more information see: <http://orr.gov.uk/statistics/published-stats/statistical-releases>

⁵ See: <http://orr.gov.uk/publications/reports/annual-rail-consumer-report>.

⁶ For more information see [ORR's approach to enforcing general consumer law in services relating to railways](#), March 2010. See also [ORR's economic enforcement policy and penalties statement for Railway licence holders](#), December 2015.

complaint by *Which?* ORR investigations and our subsequent report⁷ led to a number of recommendations that we believe will make passengers more aware of their right to claim compensation for delays and make it easier for them to do so.

Given the nature of the rail industry and the limited ability of passengers to switch rail provider we are not convinced that publishing information on past business performance in isolation will end consumer detriment. However, we do believe that it can, by reputational effect, encourage better performance by train operators and allow bodies with powers to do so to investigate potential enforcement action where significant breaches have occurred.

I hope this information is helpful. If you have any queries or wish to discuss further, please contact Harriet.Gamper@orr.gsi.gov.uk.

Yours sincerely

A handwritten signature in black ink that reads 'Stephanie Tobyn'. The signature is written in a cursive, flowing style.

Stephanie Tobyn

⁷ See: <http://orr.gov.uk/publications/reports/rail-compensation-super-complaint-response-report>.