

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

Introduction

We consulted on complaints handling guidance and on the proposal to introduce an Alternative Dispute Resolution scheme (**ADR scheme**) and the consequential changes that would be required to rail companies' Complaint Handling Procedures¹ in September 2017.

We published our decision letter² on 8 February 2018 stating that ORR was “minded to” mandate membership of an ADR scheme through the licence, six months after the start of a voluntary ADR scheme. In July 2018³ we consulted on our proposals to modify the model licence to require membership of an ADR scheme.

On 19 December 2018, we published our decision document⁴, in which we confirmed that we would proceed with our proposal to modify passenger and station licences to mandate membership of the ADR scheme, known as the Rail Ombudsman⁵. RDG members⁶ joined the voluntary ADR scheme developed by the Rail Delivery Group in November 2018.

Alongside our December decision document, we sought views on draft wording for the proposed licence modification, prior to proceeding with the statutory notice process required to modify the licences.

On 26 February 2019 we published our proposals⁷ to require membership of an Alternative Dispute Resolution scheme, and a Statutory Notice⁸ issuing our statutory consultation on changes to modify the Complaints Handling condition in licences. In the former, we summarised the public interest arguments for making the changes which had previously been set out in detail in our consultations of 8 February 2018, 26 July 2018, and 19 December 2018.

¹ https://orr.gov.uk/_data/assets/pdf_file/0018/25623/changes-to-complaints-handling-guidance-consultation-2017-09-26.pdf

² https://orr.gov.uk/_data/assets/pdf_file/0005/26699/consultation-on-changes-to-complaints-handling-guidance-decision-letter-2018-02-08.pdf

³ https://orr.gov.uk/_data/assets/pdf_file/0006/28419/2018-07-26-consultation-on-licence-condition-6-complaints-handling-modification.pdf

⁴ https://orr.gov.uk/_data/assets/pdf_file/0013/40036/response-to-adr-consultation-and-draft-wording-for-licence-modification-2018-12-19.pdf

⁵ http://orr.gov.uk/_data/assets/pdf_file/0013/40036/response-to-adr-consultation-and-draft-wording-for-licence-modification-2018-12-19.pdf

⁶ <https://www.raildeliverygroup.com/media-centre/press-releases/2018/469773891-2018-11-26.html>

⁷ https://orr.gov.uk/_data/assets/pdf_file/0013/40504/statutory-licence-modification-consultation-alternative-dispute-resolution-adr-2019-02-26.pdf

⁸ https://orr.gov.uk/_data/assets/pdf_file/0014/40505/statutory-licence-modification-consultation-alternative-dispute-resolution-adr-annex-a-2019-02-26.pdf

In the remainder of this decision document, we summarise, and respond to, the points made by respondents to our 26 February 2019 consultation.

Industry responses to Statutory Notice

We received consent from licence holders to the licence modification. Nonetheless, there were a small number of comments in response to our proposals. We note these, and provide our response, below.

Licensees consented to modifying the passenger licence/SNRP. In giving consent, three licence holders expressed the view that the requirement was unnecessary given the proactive approach taken by industry to this issue.

Four operators noted the implementation date of 'as soon as possible after 1 June 2019' for licencees who are not franchise train operators, open access operators and Network Rail and asked that more time be given to join the scheme. Three of these also referred to the costs that might fall on small operators. We recognise that those companies which have not been party to the development of the ADR scheme, may require more time to join. We also are keen to ensure that the terms of membership should be proportionate especially for smaller operators who do not carry a lot of passengers. In our engagement with the Rail Delivery Group and the Rail Ombudsman, both have acknowledged the need to ensure this is the case and will proactively contact the outstanding operators, some of whom require more time to become members of the ADR scheme, on this basis.

On the basis of the above, the modification to the licence/SNRP for franchise train operators, open access operators and Network Rail will take effect from today's date. In respect of other operators, we have agreed to allow them more time to become members of the ADR scheme. This is to reflect these companies have not been involved in the development of the scheme. The modification to the licence/SNRP for these operators will take effect from 4 November 2019. These changes are reflected in the modification notice that we issued today.

One licence holder commented on the drafting of the modification. It suggested that paragraph (c) (i) be amended to require licencees to notify ORR within 28 days of becoming aware that the ADR scheme is non-compliant rather than 14 days as currently drafted. We do not consider it to be unreasonable for a licencee to provide a notification within 14 days of finding out that the ADR scheme is non-compliant and so do not propose to amend paragraph (c) (i).