

# ANNEX A: ORR Market Review of Third Party Intermediaries in rail compensation.

## Purpose of Annex

1. As set out in our Compensation Submission to the Williams Rail Review, one of our proposals for short-term reform is to consult on the introduction of a new delay compensation licence condition. One of the possible obligations to be consulted on is that train operators could be required to accept claims from Third Party Intermediaries (TPIs) who operate to a new self-regulatory 'TPI Code of Conduct'. This Annex summarises the evidence for this proposal and serves as the final report of our market review into the role of TPIs in delay compensation, which commenced on 20 November 2018<sup>1</sup>.
2. This proposal forms only part of the wider reforms proposed by ORR in relation to improving access to delay compensation processes to passengers. We recognise that this and other proposed reforms are contingent on wider industry changes being considered by the Williams Rail Review and how government chooses to prioritise compensation in its decision-making, given the impact of costs on passengers and taxpayers, other competing priorities and the need to consider wider societal benefits.
3. We adopted the following methodology in our consideration of the role of TPIs:
  - **Review of existing evidence.** We considered past work that ORR has undertaken in this area and any relevant projects conducted by other organisations such as Transport Focus<sup>2</sup>.
  - **Stakeholder meetings.** We held a number of meetings with stakeholders. We spoke to eleven existing claim companies and potential new entrants. We spoke to the majority of train operators. We spoke with regulators administering TPI regulatory schemes in other sectors. We also had regular catch-ups with the DfT and the RDG throughout the process.
  - **Information & data requests.** We issued informal questionnaires to TPIs and train operators. We received five responses from TPIs and 18 responses from train operators, and one from an owning group.
  - **Europe Economics consultancy study.** We commissioned a report to look at the role of TPIs in other UK regulated sectors, namely: water; energy; financial services; and aviation.

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<sup>1</sup> <https://orr.gov.uk/news-and-media/press-releases/2018/orr-reviews-rail-compensation-claims-companies>

<sup>2</sup> See: <http://d3cez36w5wymxj.cloudfront.net/wp-content/uploads/2018/10/09181728/Rail-delays-and-compensation.pdf>.

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## TPIs and what they do

4. TPIs generally act as an intermediary between businesses and their customers<sup>3</sup>. In this Annex, unless stated otherwise, we use the term to refer to those intermediaries who work with passengers and train operators for the purposes of claims made under delay compensation schemes. They provide passengers with an alternative to claiming directly from train operators. TPIs<sup>4</sup> are active in other regulated sectors including, water, energy, aviation, and, finance. Delay compensation TPIs aim to address the key factors hampering passenger access to compensation, as outlined in the ‘Summary of the problem’ section of our Compensation Submission.
5. There are two main types of TPI in the GB rail industry:
  - TPIs that serve passengers directly, facilitating their compensation claims from train operators (**B2C**)<sup>5</sup>; and
  - TPIs that specialise in providing technical solutions to train operators for processing delay compensation claims (**B2B**).

The focus of this Annex is on B2Cs. However, we provide an overview of the role played by B2Bs and have considered evidence regarding their operations, given the similarities in the roles that these two types of companies play.

### Passenger facing services and business models (B2C)

6. The provision of information is the most basic service offered by TPIs. These services enable passengers to register an interest in certain routes, and receive notifications, either by email or through a mobile app, when these trains are affected by delays or cancellations. Features of these services include the ability for passengers to keep a record of their past delays in order to make multiple claims. TPIs are able to obtain the data required to offer these products using the rail industry’s open data standards.
7. More advanced product offerings offer assistance to passengers with the claims process. These products enable passengers to select which delayed trains they were on and then rely on the TPI to make a claim on their behalf.
8. During our review, we were made aware of eight different TPIs offering these types of services to passengers. We are also aware of interest by at least three potential entrants, including businesses already established in the wider transport technology sector.
9. The current players entered the market between 2013 and 2017. Some entered the rail market to provide assistance to individual passengers, whereas others entered the passenger-facing market

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<sup>3</sup> Most commonly, these are individual passengers, although some TPIs focus on business customers.

<sup>4</sup> Taking a number of forms, including switching websites, brokers, and consumer-facing advice platforms.

<sup>5</sup> Another type of B2C TPI has emerged; TPIs that assist travel management companies with compensation claims.

having first offered compensation-related services to train operators. The business models of active TPIs vary, for example:

- One was conceived as a not-for-profit venture;
- Some earn revenue via a monthly subscription fee; and
- Some charge commission on claims with which that TPIs provide assistance.

### **Train operator focused services (B2B)**

10. One possible route to market as a B2C TPI is through initially working on behalf of train operators as a technology solutions provider. These providers operate datasets that draw on industry information sources. In some instances, providers assist train operators with only isolated elements of the compensation process, such as assessing the validity of claims. In other cases businesses support train operators throughout the whole process, including making payments.
11. These companies have played an important role in the industry's move towards online, more automated, processes, and away from a system dominated by manual processes, call centres, and station ticket offices. Over two thirds of the claims that train operators pay to passengers are supported by third party solutions providers of this sort.

## Barriers to entry and expansion

12. In this section, we summarise evidence on some of the key reasons why TPIs are not currently playing a larger role in delay compensation. Data from claims companies suggests that less than 5% of all compensation claims are currently processed via B2C TPIs<sup>6</sup>.

## Train operators' approach to working with TPIs

13. Train operators expressed significant reservations about working with TPIs. Their primary reasons for this approach relate to perceived risk of fraudulent claims and a desire to maintain control of relationships with their customers. Of the 18 train operators who engaged with our review<sup>7</sup>, six told us that they had a current or prospective policy of refusing to deal with B2C TPIs.
14. Some train operators told us that this stance is complicated by it being difficult for them to establish whether a claim has been submitted by a TPI or by a passenger directly, since the same claim form would be used in either case. However, TPIs suggested train operators are generally able to detect their involvement. One TPI stated that passengers claiming through it are obliged to provide an email address that will include the TPI's name. The company described an instance in which a train operator had objected to its involvement in the claims process, and reacted by rejecting the relevant claims, suspending further claims by passengers involved, and asking those passengers to repay a proportion of past compensation.
15. Most TPIs alluded to difficulties that they had experienced in attempting to establish relationships with train operators in order to negotiate greater access to train operator systems. TPIs told us that this backdrop disincentivises investment in marketing, and customers using them and signing up to more expensive services involving claims assistance.
16. The approach of train operators towards TPIs may also act as a deterrent to new entrants. One potential entrant, an established player in other transport markets, told us that it believed opposition by train operators to TPI involvement was such that only a mandatory requirement to deal with TPIs would provide a solution. A further potential entrant characterised a lack of willingness for train operators to engage as a key reason for their lack of investment in product development.

## Standardisation

17. The process for submitting a claim does not currently require information to be standardised. Consequently, there is little scope to automate claims, which can present a barrier to TPIs seeking to reduce passenger 'effort costs', even where train operators do not 'refuse to deal' outright. We

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<sup>6</sup> This total has been influenced by, amongst other things, the marketing efforts and focus of B2C TPIs to date but, in our view, its key driver has been the factors summarised in the paragraphs below.

<sup>7</sup> Respondents included open access operators

note this point is also relevant to one of the medium-term proposals in our Compensation Submission which recommended the creation of standardised web and paper claim forms and the development of a single streamlined GB-portal for claims. A number of TPIs raised this issue. One told us that:

“Operators... continually change their claim submission pages, move fields about, change the names of fields etc. so that any automation software used has to be continually updated to continue to submit claims.”

The same TPI explained that train operators use different systems. It also cited the use of ‘reCAPTCHA’ systems<sup>8</sup> on online claim forms as a barrier. One TPI told us that it is currently able to assist passengers with claims for journeys on only one train operator out of over 20, because only one has an online compensation form that lends itself readily to automation.

18. One train operator told us that if it is not provided with the correct details for passengers by the TPI, it often has to manually request additional details from the claims company which:

“ ...can be time consuming and delay the resolution of the claim. So often, these claims take us longer to process whilst we determine the facts, i.e. who was travelling, on which service was the delay incurred, how would the customer like to receive their compensation, have they claim previously for the same journey – information so very often missed when being submitted by third party claimants

Train operators highlighted the impact this delay could have on dealing with compensation claims within 20 working days (no later than one month of receipt as referred to in NRCOT)

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<sup>8</sup> I.e. screens designed to establish that a computer user is human.

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## Evidence from the GB rail sector

20. In this section, we outline evidence relating to the benefits and risks of increased TPI involvement in the area of delay compensation.

### Benefits generated by TPIs

#### Incentives

21. A key point relating to TPI involvement in delay compensation relates to their incentives. Since TPI revenues are driven by claim rates, they have an incentive to maximise pay-outs; thereby minimising the size of the compensation gap. This encourages them to invest in raising awareness, and developing services to make claiming easier for passengers.
22. Some train operators, however, have fewer commercial incentives to invest in their delay compensation service offering. With few exceptions, any money not spent on delay compensation remains with the train operator. We note that the increase of TPIs operating in this area may be a natural response to a failure by train operators to adequately inform passengers of their rights and/or provide swift and easy processes for passengers to claim compensation. In this respect, TPIs may provide an element of 'competitive pressure' on train operators to improve the relationship that they have with their customers.

#### Innovation

23. TPIs argued that they have brought higher levels of innovation, driven by their greater understanding of, and specialism in, technological developments.

#### Apps

24. Our research found the majority of TPIs offer smartphone solutions for passengers. In comparison, only three train operators offer delay compensation via apps. These are Greater Anglia, West Midlands Railway and Scotrail.<sup>9</sup>
25. Some TPI apps notify users of real time information concerning delays and cancellations. The majority of the apps also notify customers when they are eligible for claims and save their information, making submitting a claim form through the app simple for their customers. Another type of app allows season ticket holders to store a picture of their ticket. When the passenger is faced with a delay, the app automatically submits a claim to the train operator. TPI apps will typically deposit compensation into bank accounts, PayPal accounts and crypto-currency wallets

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<sup>9</sup> RDG have also recently introduced an app called 'Zipabout Connect' which enables National Rail Enquiries to deliver targeted, personalised journey information and disruption support directly to passengers through Messenger in real-time. Zipabout does not have any customer reviews yet.

once a claim has been successful. Evidence suggests passengers value the service offered by TPI apps. Passengers' scoring of these apps is high – Delay Repay Genie has a rating of 4.67/5 based on 302 reviews.<sup>10</sup> Customers' score of the Railguard app on the Apple App store is 4.3/5 stars based on 68 reviews.

## Automation

26. TPIs working with train operators told us they can offer full automation of the compensation process, from claim submission to the receipt of money owed. Anecdotal evidence from one B2B business suggested they can process each claim within 2-3 minutes (in contrast, they suggested, to train operators who take 10-12 minutes). Another TPI told us that it had been able to achieve three times the level of automation achieved by its partner train operator.
27. Train operators and RDG highlighted steps taken to introduce 'one-click' compensation, in line with DfT's announcement on 1 October 2018, as part of the train operator franchise agreement.<sup>11</sup> We understand that since DfT's announcement at present only three TOCs offer 'one-click' compensation, namely SouthWestern Railway, TransPennine Express and GTR. One train operator told us that the B2B claims company that it works with has recently introduced a one-click function to their compensation process for season ticket holders. This has made the process easier, as it relieves passengers from having to complete an application for every journey.
28. Train operators also highlighted the availability of automatic compensation on some services<sup>12</sup>, available for passengers travelling on smartcards and those who purchased certain types of ticket via certain channels.

## Fraud prevention

29. A few B2B TPIs told us about steps taken to improve fraud prevention systems.
30. One company has a system that enables customers to submit claims online via a train company's website or through their mobile site or app which then automatically validates the journey and delay times. Another TPI that operates a B2B and B2C operation has introduced a tool for detecting, and preventing cross-operator fraud. The software analyses claim data against a desired risk weighting and specified thresholds, such as time of travel tolerances, and returns matches. It also creates retrospective alerts, if subsequent claims match newly created claims from other train operators. One potential entrant told us that they plan to introduce journey validation via GPS location tracking installed on customers' phones. They told us this system would then "*sync mobile handsets to specific trains that passengers claim to be travelling on*", enabling them to claim compensation via their apps even before train arrival.

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<sup>10</sup> <https://www.reviews.co.uk/company-reviews/store/delayrepaysnipr-com>.

<sup>11</sup> <https://www.gov.uk/government/news/rail-passengers-to-benefit-from-one-click-compensation>

<sup>12</sup> Available on C2C, Northern, and Virgin Trains.

## Interface with passengers

31. We asked stakeholders about the impact of TPIs on customer experience.
32. One train operator that works with B2B TPIs told us that claims companies “improve customer experience and speed due to automation”. Evidence gathered from customers’ feedback on B2C TPIs suggests that their services reduce the ‘effort’ costs to passengers for claim submissions by providing a more streamlined service. Customers perceive value in off-loading the burden of claiming to a third party. Customer reviews indicated that users of these systems agreed they were effective in reducing the effort it took to claim.
33. The majority of B2C TPIs noted that they help passengers to claim by providing them with notifications about delays that they are eligible to claim for. One TPI goes a step further by providing passengers with all the necessary information about their rights under delay compensation schemes. Other TPIs told us that they run advertising campaigns, and that they often share updates on social media about what is happening in the area of delay compensation.

## Delay compensation for multiple train operators

34. A number of stakeholders suggested that TPI services can be beneficial for passengers who travel on services run by different train operators. TPIs highlighted they are able to process claims for multi-operator journeys on one platform. Their apps also allow customers to track claims made to different operators. In comparison, if a passenger decided to claim compensation for multi-operator journeys via train operators, they would have to approach each separately. One train operator said:

*“The ability to submit claims to multiple operators using the same platform might be beneficial to some of our customers, as our train services overlap and intersect with a number of other franchise operators at different points”.*
35. However, train operators argued “such a platform would only benefit customers who frequently use multiple train operating companies for regular travel and they thought that this would only be a minority of their customers”. Some therefore suggested that this benefit should not be overestimated.
36. One stakeholder highlighted that the creation of one platform through which passengers can claim compensation for multi-leg journeys could place TPIs in a unique position to capture fraud because train operators’ claims processes are not integrated to allow detection in instances where a customer submits a claim against multiple operators.



## Risks associated with TPIs

37. We asked stakeholders for views on the risks of increasing the role of TPIs.

### Fraud prevention

38. The majority of train operators expressed concerns about the lack of fraud prevention systems that TPIs have in place. Train operators told us that they had seen little evidence of measures to control fraud explaining that:

- TPIs lack integration with data and information sources that can be crucial to fraud identification, for example data on contactless travel; and
- Often the details provided by TPIs to train operators lack vital data such as personal details, which makes it difficult to check if a claim is fraudulent.

39. Some train operators took the view that TPIs are commercially driven to maximise the volume of claims in order to maximise profit and therefore “have no incentive to stop fraudulent claims”. One stated:

*“depending on the exact operating model, it is likely to be in a claims company’s interest for its customers to claim delays on as many services as possible, even if they did not actually travel on that exact service. [...] Indeed there might even be an incentive for B2C companies to apply a minimal screening to potentially fraudulent claims ....”*

40. Another train operator told us that “additionally, B2C companies increase the risk of duplicate claims, e.g. if a customer claims directly with a TOC, but also through a third party”.

41. Some TPIs stated they had improved fraud prevention systems. One stated:

*“We ask users to positively select to confirm the train they wish to claim for, and then again to confirm prior to submission that they were on the train and wish to claim. T&Cs ensure that when signing up users will abide by and only claim for trains they were impacted by or on.”*

42. Engagement with stakeholders overall however, indicated that existing TPIs do not prioritise, or devote significant resource into fraud prevention systems.

### Handling passengers’ funds

43. Train operators raised risks around TPIs’ handling and processing of passenger’s funds. One train operator questioned the mechanisms that will be in place to recover the payment and how/when will train operators be compensated in the event that a claim is paid incorrectly. We note that there are currently no duties on TPIs, or safeguards to ensure funds are properly handled, or, to deal with events such as insolvency.

## Transparency around charging

44. B2C TPis operate different business models. Their charges are also dependent on the type of the service included. For example, a TPI can provide a free service for delay notifications but charge a fee for filling in claim forms.
45. Evidence indicates this can be a source of confusion to passengers. Our online research shows that some TPis do not provide any information about the fact that passengers can make a claim directly with TOCs without having to pay a fee. Train operators raised concerns over transparency of charges. One said:

*“there is no specific regulatory requirement for B2C claims companies to be transparent over the level of fees/commission they charge and the fact that DR compensation would be available for free from TOCs”.*

## Relationship between passengers and train operators

46. A number of train operators told us that managing their customer relationship, including in the compensation process, is an important way for them to maximise the customer experience. One told us:

*“..claims being managed by B2C (or B2B) companies, does not allow us to change customer’s negative views after being delayed.”*
47. A number of train operators noted that the information provided by TPis to the operator when submitting the request makes it difficult for customers to claim additional expenses, e.g. taxis, hotel costs. This may prolong claims, as the customer may have to deal with two companies at once.

## Evidence from other sectors

48. As part of our market review, we commissioned Europe Economics (“EE”) to undertake research on TPIs in other sectors. We also spoke to other regulators to gain an understanding of how TPIs worked in their sectors. We considered that evidence of the role played by TPIs in the aviation sector is of particular relevance, given the similar nature of the delay compensation services in question.

## Evidence from the Aviation Sector

49. Research conducted by the CAA in 2013/14, indicated that on average around 10% of passengers on cancelled or delayed flights claimed financial compensation under Regulation EC261/2004. It is the CAA’s understanding that claims rates have increased significantly since then, driven primarily by greater awareness of passenger rights and the activities of claims management companies. It is the CAA’s understanding that the most recent research on this issue indicates that claim rates across the EU have risen to around 50%.

50. Evidence gathered by EE indicated that:

- TPIs inform passengers about their options when their claim has been rejected, such as turning to the relevant authority or alternative dispute resolution body.
- TPIs promote participation of travellers in the claims market by offering incentives to consumers to reach out to those not currently active. For example, one TPI has expressed plans to include a feature allowing consumers to introduce potential claimants to the scheme and receive payment in return.
- Some price comparison websites (“PCWs”), in addition to providing information on the best deals, also act as claims companies by giving information to customers on the compensation process.

51. It is also apparent that in recent years there have been a number of new, innovative software and applications launched by TPIs in the aviation sector, often jointly with fintech or other enterprises. For example:

- In 2017 AirHelp launched its first ‘robot lawyer’, powered by artificial intelligence. An ‘artificial brain’, when fed with the details of a claim, suggests the best options for legal action. The robot lawyer is able to identify jurisdiction within one second and deal with more complex claims, e.g. multi-leg journeys;
- Visa recently announced a partnership with a TPI, AirRefund. In addition to customers benefitting from an easier and quicker claims process, passengers who have purchased their flight tickets using their Visa card would also be charged a lower commission by AirRefund; and
- Chubb European Group partnered with Swiss Re and FlightStats in launching an insurance product in 2017 in relation to flight delay compensation. The product provides wider coverage than under EU compensation rules. Claims are validated using real-time data

provided by FlightStats and payment is received within 72 hours after the passenger has arrived at their destination.

## Concerns

52. EE noted, however, a number of concerns about TPIs in aviation. Evidence suggested that the information on fees can lack transparency or be displayed in an unclear, non-transparent way. A survey by the European Consumer Centre (“ECC”) revealed that only 69% of companies in their sample published their rules or terms and conditions on their websites and only 62% of those companies clearly indicated their applicable fees and charges. The ECC report found for a third of the companies reviewed, no information was available regarding who would be responsible for paying any court fees.<sup>13</sup>

## Evidence from energy, water and financial services markets

53. EE suggested that in the energy and water sectors TPIs bring benefits, in particular, in the form of increased customer engagement. TPIs in these sectors mainly assist customers with switching and encourage consumers to engage by switching to better deals. Evidence suggests that TPIs in both energy and water sectors provide value added services such as monitoring of consumption and data management.
54. In financial services, TPIs play an important role in overcoming information asymmetry by clarifying eligibility and claim processes. There is evidence to suggest TPIs minimise discomfort felt by consumers in engaging with providers or being assertive, and, they help secure redress in more complex cases.
55. As regards risks however, information on commission and charges available to customers in energy, water and financial sectors appears in some cases to be opaque. In some markets such as financial services and energy, aggressive or misleading practices caused concerns before regulatory intervention was taken.

## The use of regulatory safeguards to mitigate risks

56. In other sectors, ‘safeguard’ schemes have been implemented to mitigate risks arising from an increased presence of TPIs. The EE report outlined that these range from direct regulation in the financial sector, through to the introduction of Codes of Practice to provide customer assurance in sectors such as energy and water.

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<sup>13</sup> ECC (2015): “Net Air Passenger Rights Report 2015.”

## Ofgem's 'Code of Confidence'

57. TPIs such as PCWs play an important role helping domestic consumers to engage with their energy suppliers. Ofgem's 2016 consumer engagement survey<sup>14</sup> found that 51% of consumers who had switched or compared in the last 12 months found out about their deal through a PCW.
58. Ofgem has implemented a voluntary 'Code of Confidence' to address concerns around issues such as transparency relating to the role of PCWs in the domestic energy sector.<sup>15</sup> Ofgem's Code sets out minimum requirements for PCWs offering an energy comparison switching service to follow in order to be accredited and display the Ofgem Confidence Code logo. The purpose is to give assurance to customers as to the behaviour of PCWs.
59. Ofgem's first impact assessment revealed that the introduction of the Code helped build consumer trust to receive an independent, transparent, accurate and reliable service from PWCs, encouraging customers to switch and boost competition in the retail market.<sup>16</sup>

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<sup>14</sup> <https://www.ofgem.gov.uk/publications-and-updates/consumer-engagement-energy-market-retail-market-review-2016-survey-findings>

<sup>15</sup> <https://www.ofgem.gov.uk/ofgem-publications/74615/confidence-code.pdf>.

<sup>16</sup> See: [https://www.ofgem.gov.uk/system/files/docs/2018/07/consumer\\_impact\\_report\\_-\\_published0307.pdf](https://www.ofgem.gov.uk/system/files/docs/2018/07/consumer_impact_report_-_published0307.pdf)

## Proposal for reform on TPI involvement

61. In order to draw proposals on reforms to the Williams Rail Review on this issue, we considered and weighed the evidence from the rail sector, and, used the results from the study of TPIs in other sectors.
62. On balance, we consider that TPIs have the potential to play a positive and important role in bringing innovative, consumer friendly services to the market by engaging rail passengers, raising awareness of compensation and assisting them to make claims. We consider TPIs can provide an element of 'competitive pressure' on train operators to improve the relationship they have with their customers. Nonetheless, there may be issues such as lack of transparency of the charges passengers may face when using some TPIs as well as the possibility for increased incidence of fraud, and lack of safeguards to ensure funds are properly handled.
63. We consider that in order to ensure acceptance by train operators, TPIs could be incentivised to meet the obligations set out in a new TPI Code of Conduct to address the aforementioned risks.
64. Subject to the wider industry changes being considered by the Williams Rail Review, we therefore propose that as part of an over-arching licence condition on delay compensation train operators could be obliged to accept claims for compensation from TPIs who are compliant with an agreed TPI Code of Conduct. We will consult upon the content of the TPI Code of Conduct with key stakeholders, train operators and TPIs as part of our development of the delay compensation licence condition. We could administer the scheme going forwards. These formal arrangements would assist in the identification of TPIs who may not meet the required standards and would ensure appropriate safeguards are in place for passengers.

### Next steps

65. This report concludes our market review into the role of delay compensation TPIs. Our proposal has been made to the Williams Rail Review as part of our Compensation Submission. We will take action to implement our proposals alongside other reforms proposed in our Compensation Submission.