

# **Rail Ombudsman operating model**

A report for ORR

Lucerna  
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## 1.0 Introduction

The [2021 Williams-Schapps Plan for Rail](#) states that ORR will take over responsibility from the Rail Delivery Group (RDG) for sponsoring the Rail Ombudsman.

The current Rail Ombudsman was established in November 2018. It is a contractual agreement between RDG, on behalf of its members, and the Dispute Resolution Ombudsman Ltd (DRO). The contract was entered into following a competitive procurement process run by RDG. ORR introduced a licence condition in July 2019 to make membership of the RDG sponsored Rail Ombudsman mandatory for ORR licence holders.

In a [letter dated 26 April, 2022](#), ORR set out its intention to consult stakeholders on the operating model for a Rail Ombudsman during the summer of 2022, following which it will run a competitive tender process to find a supplier for the Rail Ombudsman scheme.

ORR commissioned Lucerna to review the arrangements that make up the current Rail Ombudsman scheme and identify areas where changes to the current model might bring about benefits.

In taking over the sponsorship of the Rail Ombudsman scheme, ORR has the opportunity to take a fresh look at the current arrangements and, with the benefit of being able to look back over three years of operations, bring about improvements to drive further benefits for passengers and the rail industry.

The current Rail Ombudsman is a small ombudsman compared to some of the other ombudsman schemes in the UK but it is an important one. In making our recommendations, we have been mindful of how the Rail Ombudsman scheme sits in the ADR landscape of the UK and the role the ORR might play in taking advantage of this opportunity to push the boundaries of best practice.

This report sets out the results of our work and describes an ombudsman operating model that ORR can use as the basis of further engagement with its stakeholders.

### 1.1 Scope of our work

We took as our starting point the current Rail Ombudsman scheme, and identified the key features of the overall arrangements that should make up a Rail Ombudsman operating model.

- Section two of this report discusses the overall role of the ombudsman, and we suggest how this could be better specified to deliver maximum value to passengers and the rail industry.
- Section three covers the jurisdiction of the scheme, including compulsory and voluntary jurisdictions for companies, service jurisdiction, and decision making jurisdiction.
- Section four deals with governance, from overarching governance arrangements, and how the provider of the scheme should interface with other bodies, to performance management and transparency requirements.
- Section five sets out the expected demand for the service, and discusses how the industry might pay for the ombudsman scheme.

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- Section six covers the management of cases and recommends how case management process flows should be established, and how best to ensure the provider has sufficient industry knowledge, service standards and desirable features of a Case Management System (CMS).
- Section seven covers other elements required and, in particular, discusses how any future provider should ensure excellent standards of clear communications and accessibility.

### 1.2 Methodology for our work

We agreed a range of evidence sources with ORR to inform our work and reviewed that evidence through the lens of our own experience of ombudsman and dispute resolution schemes and by harnessing the knowledge and experience of ORR staff.

We reviewed the current specification of the Rail Ombudsman in detail identifying those features best specified as part of an operating model and those best specified through ORR's competitive tender process.

Key evidence sources include:

- the existing specification of the Rail Ombudsman scheme, provided by RDG;
- the terms of reference for the governance structures of the existing scheme;
- the recommendations of the [RedQuadrant report](#) to ORR which reviewed the performance of the current Rail Ombudsman after its first year of operation;
- desk research into good practice and comparative analysis against other ombudsman schemes; and
- the requirements of ombudsman accreditation authorities.

We also held interviews with rail stakeholders to collect evidence on what has worked well under the current arrangements and to identify areas where stakeholders felt arrangements could be improved.

Nothing we report should be taken as an assessment or comment on the performance of the current supplier as this is beyond the scope of this review.

We have used the term ombudsman throughout to mean a rail Alternative Dispute Resolution (ADR) scheme. This is for convenience as the current rail ADR scheme is an ombudsman scheme but also because we recommend any future operator obtains Ombudsman Association approval.

### 1.3 List of organisations and people interviewed

We would like to thank all those who engaged with us throughout this work, particularly ORR staff, RDG, and DRO, who we found constructive and insightful in their contributions and willingness to share expertise.

The following people and organisations kindly gave up their time for our programme of interviews:

- The Chartered Trading Standards Institute (CTSI);
- The Department for Transport (DfT);
- Dispute Resolution Ombudsman (DRO);
- First Group;

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- Go Ahead Group;
- Jon Walters (Citizens Advice and Chair of the Rail Liaison Panel);
- Keith Richards (Disabled Persons Transport Advisory Committee and Chair of Scheme Council);
- London TravelWatch;
- Mersey Rail;
- Ombudsman Association;
- Ombudsman Services;
- Rail Delivery Group (RDG);
- Prestwick Airport;
- Southeastern Railway; and
- Transport Focus.

## 2.0 Overall description and key features

The current Rail Ombudsman scheme has many key characteristics that are common across UK ombudsman schemes including that it:

- provides a dispute resolution service that is free to passengers;
- acts as an impartial arbitrator for companies and passengers in resolving disputes;
- is run by a not for profit organisation;
- issues decisions that are binding on companies but which do not affect the statutory rights of passengers who remain free to pursue their disputes through other means if they are not satisfied with the outcome.

We recommend these characteristics are retained in their current form, they are standard characteristics common to ombudsman schemes and no-one we spoke to expressed a different view.

Some issues arose in terms of improving key features of the current arrangements including:

- making more explicit the role of the Rail Ombudsman in delivering a wider benefit over and above its dispute resolution role;
- whether the *single front door* service of the ombudsman works well in terms of delivering a smooth customer experience;
- how best to control costs;
- what accreditations should be required; and
- the length of the contract to supply.

We discuss these issues in turn below.

### 2.1 Role of the Rail Ombudsman

The role of the Rail Ombudsman today isn't specifically described apart from in terms of specifying what services a provider should establish and operate, for example, a not for profit ADR service.

#### ***Role of the Rail Ombudsman: discussion***

The most obvious role of an ombudsman scheme is the resolution of individual disputes between a customer and a firm. This role is well defined and is often described as the 'primary' or 'main' role of an ombudsman. as is evident from this quote from the [\*Ombudsman Association Terms and Rules\*](#).

*"The [Ombudsman] Association will only give recognition to Ombudsman's Offices whose primary role is to handle complaints by individuals about maladministration, unfair treatment, poor service or other inequitable conduct by those subject to investigation."*

Clearly this role delivers a direct benefit to each individual consumer who seeks redress from an ombudsman scheme and has their case upheld. This is a small percentage of all consumers. Where firms have incentives to respond to their customers and handle complaints efficiently, it is to be expected that only a small percentage of all complaints should be referred to an ombudsman.

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If, however, the role of an ombudsman scheme is limited to only resolving complaints that are referred to the ombudsman significant wider benefits are not being capitalised upon. It is now broadly accepted by major UK ombudsman schemes (as evidenced in annual reports and strategic statements) that the other key benefits that ombudsman schemes should aim to deliver include:

- contributing to the improvement of complaint handling in member firms; and
- drawing out evidence and intelligence, from the complaints they see, about systemic problematic issues across an industry that should be investigated further.

In this way, ombudsman schemes not only benefit the consumers who refer a complain to them but also benefit every consumer that complains to a firm and every consumer that buys services in an industry.

Some people we spoke to were very supportive of defining the Rail Ombudsman's role in such a way that delivering these wider benefits are explicitly included. One stakeholder added, as a caveat to a supportive view, that they would like to see industry expertise harnessed to deliver any solutions to identified problems as it should not be assumed that an ombudsman has greater expertise in improving services than companies themselves.

### ***Role of the ombudsman: recommendation***

We recommend that the role of the Rail Ombudsman explicitly includes as part of its core role:

- being a source of evidence and intelligence, drawn from its role resolving disputes, on issues that may cause consumer detriment in the rail industry including, in particular, the overall passenger experience of raising a complaint about a rail service.

In carrying out this role, it should occupy a space between the regulator and consumer advocacy groups and, in a highly collaborative way, provide insightful and useful information to the rail industry, individual companies, ORR, Transport Focus and London TravelWatch.

The Rail Ombudsman should facilitate others finding solutions to problems, particularly by those with greater sector knowledge and expertise including those in the industry, but should view active lobbying for solutions as outside of its remit and at all time maintain a balanced and impartial stance between companies and passengers.

The contract should place an obligation on the ombudsman to explore and meet, within reason, the needs of the industry, ORR, Transport Focus and London TravelWatch for evidence and intelligence and – subject to an approval process for costs – align its systems and data collection accordingly.

We also recommend that ORR places an obligation on train operating companies to co-operate with the ombudsman in carrying out this wider role as well as, of course, its dispute resolution role.

We discuss in more detail the interface between the ombudsman and Transport Focus, and the ombudsman and London TravelWatch later (*4.3 Interface with Consumer Advocacy Bodies*).

## 2.2 Single front door

The current arrangements include the ombudsman providing a *single front door* in that it provides a triage service which receives all disputes from passengers, identifies disputes outside its scope and transfers these to an alternative body where available.

### ***Single front door: discussion***

We can see the benefits of a single front door from a passenger point of view, in terms of clear signposting and direction, but there are some disadvantages. Some stakeholders told us that the handover of complaints to other bodies didn't always provide a passenger with the best experience. For example, if it is obvious that the issue is not something that the ombudsman would be able to deal with (such as a matter of policy set across the whole industry that would fall within the remit of an advocacy body) so was definitely going to be referred on, it still was referred to the ombudsman in the first instance.

Other people told us that when a dispute contained some issues within scope of the ombudsman and some within scope of another body (for example a complaint both about a service the ombudsman could deal with and a wider policy matter outside the ombudsman's remit) the way these cases were dealt with may appear disjointed and confusing for the passenger.

### ***Single front door: recommendation***

In line with our earlier recommendation for positioning the ombudsman as a source of evidence and intelligence, and a more explicit role for it in identifying consumer detriment in particular across complaint handling, we recommend that the ombudsman takes responsibility for testing how the triage function operates in practice.

This should include testing signposting and messages with passengers and taking into account the views and needs of companies and other stakeholders, including Transport Focus and London TravelWatch. The ombudsman should facilitate improvements and solutions where needed including, if necessary, recommending that the scope of the single front door should be reduced if that would bring an overall benefit to passengers.

## 2.3 Controlling costs

We heard, in many of the interviews that we carried out, some concerns around controlling costs when the current scheme was established. Some stakeholders told us that there were problems because the volume of complaints was lower than expected, and others said that going forward a more robust process of forecasting and controlling costs is needed.

More generally, we heard very different views around the ongoing costs of a Rail Ombudsman. Some stressed the need to tightly control costs but others said comparing the cost of the current Rail Ombudsman (which its [2020 Annual Review](#) put at £1.2m) with the scale of the industry (£20.7bn according to [2021 ORR data](#)) tightly controlling costs should not be the focus - delivering a well-respected, well-functioning ombudsman that contributes to passenger trust in the rail industry should be the priority.

### ***Controlling costs: discussion***

We agree with the point of view that the costs of the current Rail Ombudsman are modest compared to the industry, and we understand why stakeholders may be concerned if costs



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seem unpredictable. We do not consider that such an important sector as rail should have an ombudsman scheme with a minimum specification, but we do think that costs should be under control through robust and transparent processes and industry stakeholders should be confident that this is the case.

The ability to reasonably accurately forecast case numbers, if significant costs or revenue depend on it (aside from planning efficient operations generally), is a key part of good planning capability for any ombudsman service.

The current provider of the Rail Ombudsman scheme told us that:

*In terms of the go-forward approach to costing for providing ombudsman services to the rail industry it is our strongly held belief that any scheme requires an annual review and agreement to costs for a twelve-month period based on a budget prepared by the provider and reviewed and agreed by the relevant service recipients. It is imperative that some level of flex is allowed for contingencies as this has proved to be challenging throughout the tenure of the DRO.*

Depending on the length of the contract, it may be unreasonable for a provider to be able to predict with great certainty the budget required over a number of years, particularly since we recommend a more defined role for the ombudsman than today in terms of evidence and intelligence.

### **Controlling costs: recommendations**

We recommend that implementing the following may help control costs, improve accountability, and increase the confidence of rail industry stakeholders that costs are controlled:

- a requirement in ORR's tender documents that bidders demonstrate robust financial capabilities, including the capability and skills to engage across the industry and estimate future complaint volumes;
- that the ombudsman consults stakeholders on its estimated required budget each year, accounting for any increases and specifying where it has been able to save costs, and this is subject to final ORR approval;
- that ORR bills industry for the main costs of the scheme, transferring this revenue to the ombudsman, ensuring a joint ownership of expenditure by both ombudsman and ORR;
- a clear change control process is specified in the contract with the provider, and this is managed robustly, to control changes in budget, timescales for delivery of services, or other terms and conditions.

In making the recommendation that ORR invoices industry on behalf of the ombudsman we aim to capture a principle about joint ownership of expenditure on the ombudsman scheme. The details, for example whether it is more practical for the ombudsman to invoice case fees and ORR fixed fees, is a matter of preference for ORR and the successful bidder.

## **2.4 Accreditations**

The current arrangements require the supplier of ADR services for the rail industry to be an Ombudsman Member of the Ombudsman Association and obtain approval from the Chartered Trading Standards Institute (CTSI).

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The Ombudsman Association specifies in its Criteria for the recognition of Ombudsman offices that five key criteria are:

- independence;
- fairness;
- effectiveness;
- openness and transparency; and
- accountability

In addition, the Ombudsman Association expects Ombudsman Members (it has different types of members) to comply with its Principles of Good Governance and Principles of Good Complaint Handling.

The stakeholders we spoke to, who had a view on required accreditations, thought these should continue to be required. Some held very firm views that in order to maintain and improve passenger trust it was important that the Rail Ombudsman had high levels of accreditation and retained the use of the title Ombudsman, which is supported by Ombudsman Association accreditation.

### ***Accreditations: discussion***

We agree with the views that it is important for a rail ADR scheme to hold high levels of relevant accreditation, and recommend that Ombudsman Association accreditation and approval from CTSI (on behalf of the Secretary of State) are required.

The timescale for a successful bidder acquiring these accreditations is a little uncertain as the time to approve applications varies from case to case. So, we also recommend that, under its contract with the service provider, ORR is able to agree to an extension of the target timescale for acquiring accreditations (and reaccreditations which are required periodically).

### ***Accreditations: recommendations***

We recommend that the successful bidder should:

- obtain Ombudsman Association accreditation as an Ombudsman Member within 6 months of award of the contract; and
- obtain approval from CTSI within 3 months of award of contract.

With ORR able to agree to extend the deadline for accreditations and any reaccreditations required in the future.

## **2.5 Contract length (and implementation from start of contract)**

A non-statutory ombudsman scheme supplies services under a contract and so parties to it should, with a reasonable notice period, be able to terminate that contract.

### ***Contract length: discussion***

The length of contract that ORR offers and the conditions for extension or termination are matters for it to decide in accordance with any legislation, including for example public

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procurement, it is obliged to comply with. From the point of view of an operating model the following factors should be taken into account:

- the set up and establishment time, and cost, for an ombudsman scheme is not trivial;
- any interruption of supply could not easily be solved by finding a new supplier at short notice;
- a successful ombudsman scheme is likely to develop and mature over time, and its performance is likely to be enhanced by the supplier building collaborative relationships with the rail industry and other stakeholders.

While ORR may have a timescale for implementation in mind it seems sensible to leave open for competition implementation timescales, to allow suppliers in different circumstances the ability to set out plans depending on their individual circumstances.

### ***Contract length: recommendations***

We recommend that, from an operating model view point:

- a supplier of Rail Ombudsman services should operate under a contract expected to last at least 5 years;
- the contract should allow ORR to extend the term beyond 5 years;
- when either side wish to exit the contract during the term of the contract notice of termination should be required to be at least 6 months or longer with contractual arrangements that guarantee continuity of supply for passengers while new arrangements are put in place;
- ORR states a target timescale for implementation but allows bidders to put forward individual plans for implementation.

We note that our recommendation is in line with the Ombudsman Association's specification that the term of office of an ombudsman should be of sufficient duration not to undermine independence and the appointment should be for a minimum of five years.

### 3.0 Jurisdiction and scheme rules

This section covers the major features of the scheme rules: the jurisdiction of the Rail Ombudsman; the maximum award limit; and timescales for resolving disputes.

#### 3.1 Company jurisdiction

We refer to companies that are obliged to join an ombudsman scheme as companies within the ombudsman's *compulsory jurisdiction*, and those who are not obliged to join but decide to do so anyway within an ombudsman's *voluntary jurisdiction*.

The current ORR licence condition obliging the licence holder to join the rail ADR scheme applies to all train operating companies carrying passengers, including open access operators (apart from Eurostar which, as at May 2022, is covered by the [SNCF voyageurs mediator](#)), and station operators including Network Rail managed stations. Some of these companies have joined the scheme via RDG and some have joined by contracting directly with the current scheme provider, DRO.

National Rail Enquiries is a member of the current scheme but does not hold a licence issued by ORR.

#### ***Company jurisdiction: discussion***

Some stakeholders we spoke to thought that very small train operators should not be obliged to join a Rail Ombudsman scheme. They said that the burden on these operators was disproportionate and limiting the obligation to larger train operators would be more appropriate. Some said that, from the passenger's point of view, complete coverage of all rail journeys is appropriate and there is no reason why all passenger carrying operators shouldn't be covered.

Others were keen that the ombudsman provided complete coverage of all rail industry players and so should extend to ticketing retailers.

We agree with the views we heard that complete coverage of passenger rail journeys is appropriate in terms of clear messages to passengers about routes to redress that may help in maintaining and building confidence in the rail industry.

Financial burdens on smaller operators can be dealt with by setting fees and case fees appropriately and we discuss this later (5.2 *Fixed and variable fees*) So, the remaining burden consists of arrangements to join the scheme, which do not seem to us to be an undue burden compared to the benefit of a comprehensive route to redress for passengers and improving the rail industry for passengers. We do not regard providing access to a second-tier complaint stage as a burden as this is just part of handling complaints that arise in the course of doing business.

We also agree that, in terms of a voluntary jurisdiction, the Rail Ombudsman should be open to allowing any rail industry organisation that provides passenger facing services to join such as ticketing retailers.

#### ***Company jurisdiction: recommendation***

The ombudsman should provide a scheme that is suitable for all rail industry players to join, either within its compulsory jurisdiction or within its voluntary jurisdiction. This should include:

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- all passenger carrying train operating companies;
- Network Rail;
- other station operators;
- open access operators; and
- third party retailers that sell rail tickets, or other rail products, including information services.

The nature of a voluntary jurisdiction means the scope of services and the ombudsman decision making jurisdiction are for the company volunteering and the ombudsman to determine, so the rest of this section covering services and decision making apply to companies within the ombudsman's compulsory jurisdiction.

### 3.2 Service jurisdiction

The current scheme rules setting out the in-scope services are set out in Annex 1 under the following headings:

- Train service performance;
- Customer service staff;
- Retailing and refunds;
- Information;
- On train issues;
- Station issues;
- Car parking (limited scope);
- Complaints handling;
- Safety and security;
- Consumers with reduced mobility;
- Discrimination under the Equality Act 2010; and
- Penalty Fares and other failure to purchase schemes (limited scope).

In summary, in-scope services are broadly limited to matters arising between a rail passenger and a provider of rail services, with broader policy issues defined out of scope and falling to Transport Focus or London TravelWatch. There are other exclusions for matters that fall to the Claims Allocation and Handling Agreement Registrar, the Rail Safety and Standards Board, the Health and Safety Executive and the police.

#### ***Service jurisdiction: discussion***

Most stakeholders we spoke to thought the current definitions of in-scope and out of scope services were appropriate, although one thought the jurisdiction too narrow and one thought that the scope of services should apply to all services provided by Network Rail. One drew our attention to the need to look at whether penalty fares and car parking charge notices issued at station car parks should be within the Rail Ombudsman's remit.

DRO raised with us a number of detailed points around the definitions of in and out of scope services that we cover later (*3.4 Scheme rules, and ownership of the scheme rules*).

We consider that, broadly, the current set of in-scope services covered by the Rail Ombudsman is appropriate because we think that a boundary defining the remit of the ombudsman as dealing with matters that arise between a company and a passenger in rail is a coherent and practical boundary.

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While we could imagine very different service jurisdictions – for example, an ombudsman that covered all of travel – there are practical constraints on this exercise of defining an operating model for a Rail Ombudsman. For example, some existing jurisdictional boundaries are defined by the remits of Transport Focus and London TravelWatch, or other bodies, and these remits cannot be altered by changing the rules of the Rail Ombudsman scheme.

In addition, potentially changing provider of the Rail Ombudsman scheme and at the same time attempting to change the overall service jurisdiction of the scheme seems to us to be taking unnecessary implementation risks. In our view, it would be best to transfer the sponsorship of the Rail Ombudsman scheme to ORR, with its current service jurisdiction, and potentially wide-ranging changes to the service jurisdiction should be considered over time.

Given that we think maintaining the ombudsman scheme, at first under ORR's sponsorship, to one that deals with matters between passengers and companies, it follows that we do not think that all services provided by Network Rail should fall within scope of the ombudsman and limiting Network Rail's obligation to its station licence, where it provides services direct to passengers, remains appropriate. Matters of compensation between train operators and Network Rail should be for industry players to resolve and matters between rail industry players and citizens (rather than passengers of rail services) should rightly fall outside the Rail Ombudsman's remit, at least for now.

The questions that were raised around penalty fares and car parking can also be resolved by considering the remits of other, existing, schemes.

The quality of interactions in issuing a penalty fare, and the issuing of failure-to-purchase notices, falls within the current Rail Ombudsman's jurisdiction but the issuing of the penalty fare itself and all appeals relating to the basis on which a penalty fare has been issued falls outside. There is an existing 3 stage appeal process in place for penalty fares. There are two appeals bodies ([Appeals Service](#) and [Penalty Services](#)) and an [independent appeals panel](#). Duplicating these arrangements would be wasteful, so the out of scope penalty fare matters should remain outside the scope of the Rail Ombudsman.

Some aspects of car parking at stations are within the Rail Ombudsman's remit, for example the sale of car parking tickets by station staff, but wider policy matters fall within Transport Focus' remit. There is some debate about the relevant appeals body for parking charge notices issued at station car parks. This debate is not about whether the Rail Ombudsman's jurisdiction should cover these notices, but whether the Railway Bylaws allow the jurisdiction of parking appeal schemes to cover parking charge notices issued at station car parks. In any case, it appears to us that there is a strong argument for grouping parking charge notices with other parking penalty appeals mechanisms rather than with rail services.

### ***Services jurisdiction: recommendations***

In terms of ORR taking over the sponsorship of the Rail Ombudsman, we think a practical way forward is to retain the scheme as one that deals with matters between passengers and companies in rail and any changes to widen the service jurisdiction should be considered over time.

### 3.3 Decision making

A key feature of ombudsman schemes is they make fair, impartial decisions after considering the arguments of both sides. The current Rail Ombudsman has some constraints around decision making by obliging the ombudsman to take into account:

- industry arrangements;
- the rights and obligations contained in consumer legislation;
- the individual circumstances and any other factors which from time to time may be relevant in assessing the passenger's legal entitlement;
- common law precedents and principles; and
- the relevant national law, for example English or Scottish law, as applicable.

The scheme rules go on to state:

*Decisions will be made on the civil burden of evidence, that is 'on a balance of probabilities', considering the information which has been provided. This means that one party's claim will be considered more probable than the other, based upon the evidence supplied. All Decisions will be underpinned by the principles of natural justice and moral fairness and the Service Provider will make a Decision based on what is fair and reasonable in all the circumstances of the Dispute.*

#### **Decision making: discussion**

We heard some concerns that the current Rail Ombudsman had departed, from time to time, from rail industry policies. Most stakeholders we spoke to, as we explored the decision-making freedom of the ombudsman, said that the structure and the funding of the rail industry was such that it would be unworkable to allow the ombudsman to depart from policies set by DfT, devolved authorities, ORR, or the National Rail Conditions of Travel (NRCoT).

In the unique circumstances in any individual case, an ombudsman should be free to decide that – despite industry arrangements or contract terms – redress should be made to an individual consumer. This is not the same as saying that an ombudsman can disregard policies set by a regulator or the contract between a company and a customer, but that an ombudsman can consider that *in an individual case* the circumstances are such that a fair outcome requires redress to be made.

While freedom of decision making for the Rail Ombudsman must be maintained the complexities and practical constraints of the rail industry are such that allowing an ombudsman freedom to depart from policies that govern the rail industry *as a matter of routine* would be unworkable.

So we consider that the decision-making jurisdiction of the current scheme remains appropriate, but steps could be taken to clarify what *industry arrangements* mean, for example:

- the contract between the provider and the consumer, including (where relevant) the National Rail Conditions of Travel;
- any regulations or requirements specified by ORR that applied the Rail ADR Scheme Member's provision of service at the time when the event or events occurred that gave rise to the dispute;
- the service specification for a franchise a train operator negotiated with its relevant franchising authority.

### ***Decision making: recommendations***

The current decision-making jurisdiction of the Rail Ombudsman is appropriate. It is constrained, to some degree, by the need to take into account policies that govern the rail industry, consumer legislation and the law.

The Rail Ombudsman should be under an obligation – in line with its evidence and intelligence gathering role described earlier – to collect, and report on, evidence that suggests any failings in industry wide policies that are to the detriment of consumers.

### **3.4 Scheme rules, and ownership of the scheme rules**

In this section we cover how the scheme rules should be drafted for publication and then maintained, and we also cover two other aspects of the scheme rules that we have not covered elsewhere: the maximum award limit; and the timescales for the ombudsman to resolve disputes.

#### ***Ownership of the scheme rules: discussion***

The current scheme rules, set out in Annex 1, are not published. In our view, they should be published. We see no reason why passengers or any other interested party should not be able to inspect these and any associated policies such as how the ombudsman establishes appropriate compensation levels. It seems to us that this is necessary to meet basic transparency requirements.

As we have recommended that the scheme rules are published, drafting these in clear language which is accessible to passengers becomes important. In line with our later recommendations that the Rail Ombudsman should meet high standards of clear communication, we recommend that drafting the published version of the scheme rules should fall to the provider of Rail Ombudsman services.

It would be inappropriate for an ombudsman scheme to be able to change its own jurisdiction or key features of its service which are established by reference to the contract to supply the services, and any changes to these would require consultation with stakeholders, ORR approval, and be dealt with via a change control process in the contract.

Having said that, an ombudsman works with its scheme rules every day, and is clearly best placed to identify poor wording, or aspects of the rules that could be clarified in order to provide consumers and firms with a better service. For example, DRO has provided us with many suggestions for improvement, most of which are too detailed to cover in an operating model, but these should be considered at some point.

Key features of the service, and definitions of jurisdiction, should be specified in the contract to provide services, and the supplier should not be permitted to change these without approval via a change control process. Other aspects of the rules are effectively set by ORR policies, for example the timescales for companies considering complaints. Some rules, such as the ombudsman's case handling processes, could be maintained by the ombudsman consulting on changes and these being subject to a simple process of agreement or rejection by ORR.

#### ***Ownership of the scheme rules: recommendation***

We recommend that the Rail Ombudsman:



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- has the responsibility for drafting a published version of the scheme rules in language that is accessible to passengers;
- should consult stakeholders on any proposed changes;
- keeps its own scheme rules and associated documents up to date, seeking approval for proposed changes from ORR, including via a change control process in its contract where necessary.

### 3.5 Maximum award limit

The maximum award limit is currently £2,500 per consumer, excluding any refunds. So, for example, a consumer might seek to claim a refund of the purchase price of a ticket which might exceed £2,500 and a compensation award which cannot exceed £2,500.

In the jurisdiction set out in the scheme rules today, there is a limit on in-scope disputes that relate to discrimination under the Equalities Act 2010, in that the dispute is in scope only where the financial settlement may be less than or equal to the maximum award limit.

#### **Maximum award limits: discussion**

The maximum award limits for the current Rail Ombudsman are below those of some other schemes.

**Table 3.1 maximum award limits for major UK ombudsman schemes**

*Not all data is available for all schemes – so some boxes are blank*

Service	Maximum award limit	Average, or typical, award
Financial Ombudsman Service	£350,000	
Property Ombudsman	£25,000	> £500
Legal Ombudsman	£50,000	
Ombudsman Services (energy, telecoms)	£10,000	£50

**Sources:** Financial Ombudsman Service website, [Compensation page](#)

The Property Ombudsman website, [final decision and compensation page](#)

The Legal Ombudsman website, [Scheme Rules](#)

Ombudsman Services website, [Time and Trouble awards page](#)

**Table 3.2 average and maximum award limits for current Rail Ombudsman scheme**

Rail Ombudsman	Average award	Largest award
Quarter 3 2021	£80	£622
Quarter 2 2021	£80	£773*
Quarter 1 2021	£85	£500*
Quarter 4 2021	£67	£1,000*
Quarter 3 2020	£273	£6,323*
Quarter 2 2020	£266	£4,530*

\* award includes a refund of season ticket

**Source:** [Rail Ombudsman statistical reports](#)

The average award made by the Rail Ombudsman is well below the limit of £2,500 and the largest awards include the refund of season tickets, which is not subject to the maximum

award limit. So although the maximum award limit is below some other schemes, this does not seem to have caused any problems in practice.

One stakeholder expressed a view about the maximum award limit, and that was in the context of the limit on in-scope disputes that relate to discrimination under the Equalities Act 2010, pointing out that this may act as a barrier to the ombudsman taking on these types of dispute. We understand that there has been only one case relating to discrimination under the Equalities Act 2010 where the maximum award limit has been problematic but the Rail Ombudsman was able to deal with it.

### ***Maximum award limits: recommendation***

We recommend that the maximum award limit of £2,500 remains appropriate. If in the future, the Rail Ombudsman collects evidence that the limit is problematic, then the ombudsman and ORR could consult rail stakeholders on making a change.

## **3.6 Timescales for resolving disputes**

Current arrangements require the Rail Ombudsman to issue decisions within 40 Working Days of the date on which the dispute was accepted as an in-scope dispute.

### ***Timescale for resolving disputes: discussion***

In a [2021 policy report](#), Which? has described ADR schemes in the UK as having “built-in” delays and has been critical of: the timescales for referring complaints to ADR schemes; time targets for resolution by ADR schemes starting after the scheme has received the case file from the company involved; and the overall timescale for resolving disputes.

A [2018 survey commissioned by BEIS](#), reported that:

*ADR in the UK processes tend to be slightly shorter than courts processes....despite this, 31 per cent of consumers that used ADR said the process took longer than expected, compared to 13 per cent of consumers who used the courts.*

**Table 3.3 average time taken to resolve disputes: UK Removals, Energy and Communications ombudsman schemes**

*Not all data is available for all schemes – so some boxes blank*

	<b>Average time taken to resolve disputes (from receipt of complaint)</b>	<b>Total average time taken to resolve disputes</b>
Removals Industry Ombudsman Scheme 2020 - 21	43 days	43 days
Ombudsman services energy 2020 - 2021		41 days
Ombudsman services communications 2020 - 2021	80 days	
Communications & Internet Services Adjudication Scheme (CISAS) 2020 - 2021		37 days

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Sources: [Removal Industry Ombudsman scheme, Schedule 5](#)  
[Annual Activity Report for Ombudsman Services: Energy, July 202 – June 2021](#)  
[Annual Activity Report for Ombudsman Services: Communications, July 2020 – June 2021](#)  
[CISAS, ADR annual report, 1 July 2020 – 30 June 2021](#)

**Table 3.4 average time taken to resolve disputes: Financial Ombudsman Service**

Financial ombudsman service	Resolved within 3 months %	Resolved within 6 months %	Resolved within 9 months %	Resolved within 12 months %
2020/21 all cases	44	70	81	87
2019/20 all cases	56	7	84	90

Source: [Financial Ombudsman Service, Annual Report and Accounts, 31 March 2021](#)

**Table 3.5 average time taken to resolve disputes: Legal Ombudsman**

Legal Ombudsman Average days to close*:	April 20	March 21
Low complexity case	182 days	285 days
Medium complexity case	281 days	372 days
High complexity case	526 days	616 days

Source: [Legal Ombudsman, Annual Report and Accounts, March 2021](#)

\*Figures are calculated at the end of each month

The current Rail Ombudsman compares favourably with the data presented above. In its [2021 Annual Activity Report](#) it stated that the average time taken to close in-scope disputes was 26.2 days.

When prompted, some stakeholders said (referring to general dispute resolution performance) that the current arrangements were satisfactory. One said that reducing the ombudsman's time to resolve cases might be a challenge given that the role involved resolution between two parties, which is not the same situation as companies dealing directly with a complaint from a customer.

Given the expectations of passengers, as discussed above, it seems to us that reducing the Rail Ombudsman's target below the current one of 40 working days is likely to be appropriate. Although this would mean that ORR is setting more challenging targets than some other schemes have, the general trend for greater performance expectations in this area is clear.

It also seems to use that this aspect could usefully be one where ORR invites bidders to put forward their best proposals.

### ***Timescale for resolving disputes: recommendations***

We recommend that ORR states an ambition to reduce the time target for cases resolved by the Rail Ombudsman and invites bidders to put forward their best proposal, to be considered in the context of the overall bid, including case handling strategies, quality standards, and the overall cost of the service.

## 4.0 Governance

RDG specified the current Rail Ombudsman scheme and ran the first procurement exercise that led to the appointment of DRO to run the scheme. As RDG is responsible for managing the contract with DRO, it was considered important to put in place governance arrangements that assured the independence of the Rail Ombudsman (from both industry and consumers).

This led to the establishment of an overarching body responsible for governance and assurance - the Rail ADR Scheme Council. The Council comprises representatives of all of the scheme members (the train operating companies and Network Rail) and a number of independent members (representatives from Transport Focus, London Travelwatch, Disabled Passengers Transport Advisory Committee, DfT and ORR). The independent members have a 51% majority on the Council.

Separate from this, the Rail ADR Service Board is responsible for managing day to day strategy and operations of the scheme including business planning, performance monitoring, financial matters and internal controls. This role is in effect fulfilled by DRO's corporate board.

Finally there is a Rail Sector Liaison Panel comprising industry and consumer representatives. The Panel has a consultative role and is designed to provide advice on matters which require rail industry input and expertise.

### 4.1 Independent Board

Most ombudsman schemes operate a model of governance that relies on an independent board of directors. The Board generally has a clear responsibility for:

- the overarching scheme strategy (including assuring its independence);
- holding management to account for effective delivery (against the strategy and/or against its statutory remit); and
- assurance of sound financial management and 'going concern'.

The governance arrangements under an independent board include standard assurance committees with clearly defined roles such as an Audit, Risk and Assurance Committee and a Remuneration Committee.

There is a significant body of best practice guidance on corporate governance that supports this approach ranging from [Corporate governance in central government departments: code of good practice](#) to the [UK Corporate Governance Code](#) which is published by the Financial Reporting Council and is updated regularly.

It is normal, where ombudsman schemes have independent Boards, for these not to be involved in individual case decisions, but for a specified person often given the title of chief ombudsman or ombudsman, to have overall responsibility for decision making on individual cases.

#### ***Independent board: discussion***

There are a number of well-established statutory schemes that adopt this structure such as the Financial Ombudsman Scheme, the Pensions Ombudsman and the Legal Ombudsman. Other schemes have recognised the value of this model and are moving closer towards it – for example the Housing Ombudsman Service – see case study below.

### **Case study: Housing Ombudsman Service**

The Housing Ombudsman Service was set up as a 'corporation sole' – meaning the powers and duties of the scheme were vested in the ombudsman. Under the legislation the ombudsman set up a Panel of Advisors made up of representatives of both tenants and landlords as part of its governance structure.

After an initial period of operation and a consultation process there were a series of changes to improve the governance of the scheme, in particular to create more focus on strategy and performance which was seen as lacking. The changes move the Housing Ombudsman service closer to the independent Board model.

The new structure dissolved the Advisory Panel, and replaced it with a:

- new Advisory Board\* of 6 independent non-executives and 3 executive directors;
- new 'Sector Expert Group' with sector representatives; and
- a 'Resident Panel' of 600 residents with twice yearly meetings and smaller group events.

\*the Board is advisory rather than having full corporate board responsibilities because of the statutory status of the Housing Ombudsman Service as a 'corporation sole'.

Non-statutory schemes also tend to adopt this governance structure, with either a standard independent Board (eg Ombudsman Services and DRO for ombudsman services other than rail) or an independent board of trustees (eg the Centre for Effective Dispute Resolution).

Many stakeholders we spoke with agreed that a clear governance structure based on the independent Board model would be appropriate for a Rail Ombudsman. Most came to this view because of drawbacks they saw in the existing scheme governance including: the existing current Scheme Council was not focussed on the right issues or at the right level; the Council had insufficient resources to be effective; and members may not have sufficient time to devote to the role as all had full time roles outside of the Council.

Some stakeholders did not consider the Council is sufficiently independent as it includes representatives of organisations who have vested interests. There was also a view that the Scheme Council had crucial rail sector operational expertise that was helpful to the ombudsman and access to this expertise should be built into any governance structure for the future Rail Ombudsman.

These views are consistent with those in [the Review of the Rail Ombudsman, Redquadrant, 2020](#) on behalf of the ORR, which recommended

*The governance of the Scheme, via the Scheme Council, needs to be improved, with a particular focus on ensuring that the Scheme contractor and the Scheme provider can be held to account for their respective roles.*

### **Independent board: recommendation**

We recommend:

- that the Rail Ombudsman should be governed by an independent Board and the scheme should be required to comply (or explain non-compliance) with the UK Corporate Governance Code;

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- the Board should have the requisite skills experience and knowledge to carry out its functions effectively and the ORR should be able to require the Rail Ombudsman to rectify any skills, experience or knowledge gaps within a specified time;
- the Board should not involve itself in individual case decisions, but should appoint a person with overall responsibility for decision making.

Whilst it would be normal practice for Board members to be remunerated, the ORR may wish to consult on whether stakeholders support this.

As the Rail Ombudsman is not a statutory scheme, the Board should be set up and its Chair appointed by the ombudsman and members subsequently appointed by the Board. The Board should comprise a majority of independent non-executive directors who should not have any conflicts of interest that impair their independence

The Rail Ombudsman should comply with the UK Corporate Governance Code or explain non-compliance (eg the Code contains certain provisions in relation to shareholders, ombudsman schemes that are not for profit may not have shareholders so this would explain non-compliance with those provisions). This will ensure the Board of the Rail Ombudsman follows up to date best practice guidance and the concerns that have been raised about the existing Scheme Council will not arise. For example. the Code requires amongst other things:

- clear leadership from the board and clarity of company purpose;
- clear division of responsibility between the board and the executive;
- independence including a majority of independent non-executive directors;
- appropriate assurance and control including the establishment of Audit, Risk and Assurance, and Remuneration Committees; and
- effective engagement with stakeholders.

Given the complexity of the rail sector and the concerns amongst some stakeholders we spoke with, we recommend that the Rail Ombudsman is explicitly required to ensure that its Board has the requisite skills, experience and knowledge to carry out its functions effectively. This may include rail sector experience and passenger experience. This goes beyond the UK Corporate code requirement that *the board and its committees should have a combination of skills, experience and knowledge*.

The Rail Ombudsman should demonstrate its compliance with this requirement in its regular performance reporting to ORR. The contract between ORR and the Rail Ombudsman should have a provision that, where ORR considers this condition is not being met, it can require the Rail Ombudsman to rectify this within a timescale to be specified by ORR.

We recommend that access to operational experience is retained through the establishment of new liaison panels (*4.4 Liaison Panels*).

### **4.2 Independent Assessor**

Most ombudsman schemes have in place an Independent Assessor who is appointed by the Board with a remit to hear service complaints from users of the scheme. The Independent Assessor does not review the outcome of ombudsman decisions.

It is normal for the Independent Assessor to report on his/her activities on an annual basis and for that report to be published. This is a well understood role and is accepted as an important safeguard for users of the scheme.

### ***Independent assessor: discussion***

The current scheme has an Independent Assessor and most stakeholders we spoke to considered that this aspect of governance was generally working well. Some stakeholders identified areas that could be improved including:

- how long the process took; and
- improving awareness of the fact that the Independent Assessor could hear service complaints from companies as well as consumers.

### ***Independent assessor: recommendation***

We recommend that:

- the Rail Ombudsman Board should be required to appoint an Independent Assessor to hear complaints from companies and consumers about the service provided by the Rail Ombudsman;
- the Independent Assessor should prepare and present an annual report to the Board and this should be shared with the ORR as part of performance monitoring and should be published.
- the Rail Ombudsman should be required to appropriately promote the presence of the Independent Assessor with consumers and companies.

As well as hearing complaints from companies and consumers, the Independent Assessor should be able to review the quality of case handling and internal processes of the Rail Ombudsman as well as undertake any ad hoc reviews and reports the Board may request.

## **4.3 Interface with Consumer Advocacy Bodies**

There are two consumer advocacy bodies in the rail sector, Transport Focus and London TravelWatch. Both bodies describe themselves as ‘watchdogs’ and advocate and campaign on behalf of passengers. They seek to influence decision makers and policy makers to deliver better outcomes for passengers. They also deal with some complaints that are out of the scope of the Rail Ombudsman.

The consumer advocacy bodies sit on the current Scheme Council and also have bilateral relationships with the current Rail Ombudsman, including receiving data from the ombudsman which can help inform their own functions. The Rail Ombudsman is currently required to have data sharing agreements with the advocacy bodies.

As we discussed earlier (2.2 ) the Rail Ombudsman provides a ‘triage’ service whereby all customer complaints are directed first to the ombudsman and where appropriate are then handed off to the consumer advocacy bodies.

### ***Interface with consumer advocacy bodies: discussion***

Apart from comments about the triage arrangement, some stakeholders told us that the development of data sharing between the Rail Ombudsman and the advocacy bodies had been the subject of considerable debate and had developed over time. We heard that the advocacy bodies were keen to have very granular complaint information and the Rail

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Ombudsman was seeking to strike a balance between its own functions and the needs of the advocacy bodies.

One advocacy body told us that the access it had to the Rail Ombudsman case system was of a very high standard, albeit it did not contain all of the individual case documentation that body wanted to access. We also heard that advocacy bodies wanted earlier sight of case information and ombudsman reports on individual company performance.

Some stakeholders who commented on the governance arrangements thought that the advocacy bodies (along with others on the Scheme Council) were there representing their organisation and so were not contributing to independent governance.

### ***Interface with consumer advocacy bodies: recommendation***

Our recommendation on the role of the advocacy bodies in governance arrangements is captured earlier (*2.1 Role of the Rail Ombudsman*). Our recommendation on the role of the Rail Ombudsman in providing insightful and useful information to the advocacy bodies has already been set out, as has our recommendation in relation to the triage service (*2.2*). No further wording is needed on those issues.

We recommend that the Rail Ombudsman should be required to:

- consult with the advocacy bodies to identify their requirements, including near real time provision of data; and
- put in place data sharing agreements with the consumer advocacy bodies to meet their needs.

Other key points of interaction with the consumer advocacy bodies are addressed in our recommendations on liaison panels (*4.4 Liaison Panels*) performance management (*4.5 Performance Management*) and stakeholder satisfaction surveys (*4.6 Stakeholder satisfaction*).

## **4.4 Liaison Panels**

Whilst it is important for an ombudsman scheme to engage effectively with all of its stakeholders, two stakeholder groups are particularly important - the firms within the ombudsman's jurisdiction and the customers of those firms.

In the rail sector there is currently one Rail Liaison Panel with both consumer and industry representatives.

### ***Liaison panels: discussion***

It is good practice for schemes to set up structured forums to engage directly with these two groups. Whilst sometimes the two groups may meet together, it is more common to have separate forums – one for firms and one for consumers. This is sensible as there is considerable imbalance of resources between the groups and the views of firms who are well resourced, may 'drown out' the consumer voice.

For example, the Financial Ombudsman Service has a Customer Liaison Group which meets twice a year and then has multiple separate industry forums designed for the various financial services markets it operates in. In the case of the Housing Ombudsman Service



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(see case in *4.1 Independent Board*) we can see that scheme moving away from a single forum and establishing separate engagement forums for tenants and landlords.

Many stakeholders we spoke with told us the current Rail Liaison Panel is valuable, allowing the Rail Ombudsman to gain understanding of how the rail sector works so that proposed remedies can be practical and implementable. Others described the forum as generally useful for exchanging information and views. One stakeholder noted that it is important for the ombudsman to have access to rail operation expertise, some of which may sit on the Liaison Panel but some of which also sits on the Scheme Council.

Some stakeholders were concerned that the panel, while informative, acts as a ‘talking shop’ and it is unclear what its purpose is or what value it adds in the current governance structure.

### ***Liaison panels: recommendation***

Formal arrangements to engage with these two critical stakeholder groups can add value to an ombudsman scheme if properly constituted. To be effective the groups need to have:

- clear terms of reference and remit;
- sufficient resources of the right calibre to engage effectively with the ombudsman; and
- a structured ‘feedback’ mechanism to the ombudsman.

We recommend that the ombudsman be required to establish two liaison panels:

- a passenger panel that is representative of the consumers of its members (which should include Transport Focus and London TravelWatch); and
- a member company panel.

The panels should have formal terms of reference and clear functions which should include:

- advising the ombudsman on emerging trends and issues from the perspective of that stakeholder group; and
- advising on how the ombudsman can deliver on its functions especially its role of driving improvements for all passengers.

The ombudsman should be required to ensure the panels have the necessary resources to carry out their functions effectively, including secretariat resources and, where appropriate, the ability to engage independent expert advice.

We also recommend that ORR consult on giving the Liaison Panels a function of making advisory statements to the Rail Ombudsman Board to which the Board would be required to respond, setting out any actions it proposed to take in response to those statements. If such a function were to be assigned to the Panels then the statements and the Board response should be published.

## **4.5 Performance Management**

In general, the independent Board of an ombudsman scheme is responsible for holding the scheme to account for delivery of its KPIs in the first instance. Statutory schemes are accountable to Parliament either directly, like the Financial Ombudsman Service, or via a sponsoring Government Department.

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Schemes with Ombudsman Association accreditation are reviewed to ensure they continue to meet the accreditation standards every three years and those accredited by CTSI are reviewed every two years to confirm they continue to be compliant with the ADR Regulations requirements.

Some schemes are accredited by a different named competent authority, for example Ombudsman Services: Energy is accredited by Ofgem which is a competent authority under the [Alternative Dispute Resolution for Consumer Disputes \(Competent Authorities and Information\) Regulations, 2015](#). Ofgem then holds the energy ombudsman to account for delivery of its KPIs through a range of reporting requirements, regular meetings and by commissioning independent reviews from time to time.

### ***Performance management: discussion***

We heard that, as a consequence of the current governance arrangements for the Rail Ombudsman, performance reporting involves some duplication. For example, performance is reported at the Scheme Council, at the Rail Liaison Panel, to ORR and to RDG as contract manager. Whilst the same performance data can be re-used this level of duplication is time and resource consuming.

We also heard that the current scheme has designated account managers who have regular bilateral meetings with its scheme members to discuss a range of issues including (but not limited to) performance of the scheme; stakeholders said this arrangement works well.

With ORR taking on the role of sponsor (and contract manager) of the Rail Ombudsman one level of duplication will automatically be removed as RDG will no longer play the role of contract manager.

### ***Performance management: recommendation***

Under the recommended governance structure, the independent Board of the Rail Ombudsman will, as part of its role, hold the scheme to account for delivery of its service standards in the first instance.

Given our recommendation on accreditations (2.4 *Accreditations*), the scheme will be reviewed by the CTSI every two years and the Ombudsman Association every 3 years against their respective accreditation criteria.

As well as its normal management reporting to its independent Board, the Rail Ombudsman should be required to report on its performance in at least the following ways:

- regular performance reports submitted to ORR as contract manager against the service standards set in the contract;
- regular (at least every three months) performance meetings between ORR and the ombudsman;
- periodic meetings with each scheme member for feedback and review of performance – the ombudsman and members to determine frequency;
- periodic reporting to the Passenger and Industry Liaison Panels (which include London TravelWatch and Transport Focus) - the frequency of this to be set after consulting with the Panels; and

- periodic bilateral meetings with the consumer advocacy bodies to review performance against the specific services provided to them – namely data and intelligence sharing.

We also recommend that an independent review of the Rail Ombudsman be carried out every two years with the findings and the scheme's response to those findings being published.

This performance management framework will be supported by our recommendations around transparency obligations (4.7 *Transparency*) and stakeholder satisfaction surveys (4.6 *Stakeholder satisfaction*).

### **4.6 Stakeholder satisfaction**

Whilst reporting against service standards is an important measure of performance, ombudsman schemes are increasingly making use of stakeholder surveys to measure satisfaction with their services, publishing the results in or alongside their annual reports.

#### ***Stakeholder satisfaction: discussion***

Increasing use of stakeholder surveys is in line with a more general trend in corporate governance where firms are seeking to comply with the UK Corporate Governance code which states

*In order for the company to meet its responsibilities to shareholders and stakeholders, the board should ensure effective engagement with, and encourage participation from, these parties.*

These surveys are separate from and different to research and surveys for specific purposes, for example, the testing of the consumer experience of the complaint handling process we describe earlier (2.1 *Role of the Rail Ombudsman*).

The current scheme is required to carry out annual consumer satisfaction surveys and quarterly member satisfaction surveys. The consumer survey is required to be carried out by an independent third party and published each year and the member survey must be published quarterly.

We also note that the RedQuadrant report for the ORR recommended that the current scheme make more use of consumer experience monitoring.

*Recommendation 13: Consider developing consumer experience monitoring to measure experience more regularly through surveying and experience measures.*

*Recommendation 14: Use more consumer experience monitoring to identify areas for improvement in relation to fairness and impartiality.*

#### ***Stakeholder satisfaction: recommendation***

We recommend that the Rail Ombudsman is required to carry out regular stakeholder surveys to monitor satisfaction with its services including:

- passenger satisfaction surveys;
- member satisfaction surveys; and

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- consumer advocacy body surveys (given there are only two bodies, the nature of these surveys will be different from consumer and member surveys).

The ombudsman should be required to draw up action plans to improve satisfaction where a need is indicated and monitor and report progress against those actions.

The ombudsman should share the survey results, action plans and monitoring of progress against actions with ORR and the Liaison Panels as part of its performance monitoring.

The results of the surveys should be published at least annually in or alongside the ombudsman's annual report.

In line with our recommendations elsewhere, the ombudsman should adopt a methodology of testing its communications, accessibility, and processes with consumers, with an aim of continuous improvement.

### 4.7 Transparency

The general trend of corporate reporting is towards ever more transparency so that stakeholders can scrutinise and hold business in general to account.

#### ***Transparency: discussion***

The areas across which annual reporting is required under the UK Corporate Governance Code are under constant review and include governance, financial information, risk and assurance, and more recently Environmental, Social and Governance and Diversity and Inclusion reporting.

Across ombudsman schemes the amount of information published varies but can include information in four categories:

- governance information such as annual reports, financial reports, budgets and business plans, in some case board and committee minutes and minutes of engagement forums (or summary minutes);
- performance data such as stakeholder satisfaction survey results, performance against KPIs and the findings of independent reviews;
- complaint and decision data such as volumes and outcomes over time by firm or by sector, individual case studies and in some cases full adjudication decisions (anonymised); and
- reports on systemic or thematic issues based on the evidence and intelligence the ombudsman gains through its complaint handling and evidence and intelligence roles.

Transparency around the ombudsman's governance and performance helps stakeholders hold the scheme to account and builds confidence in its independence.

Transparency of case data, outcomes and decisions fulfils a different purpose. Where there is customer choice, the information can help consumers shop around based on the firm's performance. For example, the Legal Ombudsman identified this as a key benefit in its [2019 discussion paper on transparency and reporting impact](#).

Even where customer choice is limited, this type of information is very valuable. Third parties such as independent consumer bodies (as well as the rail consumer advocacy bodies) can scrutinise the data to help identify systemic issues and raise them in the appropriate forums to help improve the experience of all passengers. For example, Which?

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the consumer association used complaint data amongst other things to inform its super complaint to ORR in 2015 that promoted the roll out of automatic compensation for delays across the rail sector.

The Ombudsman Association also encourages member schemes to be open and transparent as part of its [Guide to principles of good complaint handling](#).

Stakeholders we spoke with generally supported the principle of transparency with one pointing to the amount of information published by the Financial Ombudsman Service as '*super useful to the market*' (the Financial Ombudsman publishes detailed case data and all ombudsman decisions in full, appropriately anonymised).

### **Transparency: recommendation**

There would not appear to be any reason why a Rail Ombudsman operating model should not include providing clear corporate governance information from the beginning of its operations. However, the amount of case and decision data a scheme can publish will tend to increase over time as systems, processes and sector knowledge matures.

While it is right that a Rail Ombudsman operating model should aim for best practice in transparency, it may be appropriate to phase in some transparency requirements over a reasonably short time and this timescale can be established as the new arrangements are implemented.

The Rail Ombudsman should be required to publish the following information;

#### Governance:

- annual reporting that complies (or explains non-compliance) with the UK Corporate Governance Code - this will ensure that the transparency concerns around the existing scheme governance are addressed, as the report will include information on the independent Board and financial information; and
- an annual budget for consultation with its members as recommended earlier (2.3 *Controlling costs*).

#### Performance:

- performance against the KPIs set in the contract with ORR;
- the findings of any biennial independent reviews and the ombudsman's response;
- passenger, member and consumer advocacy body satisfaction survey results;
- any advisory statements from the Liaison Panels to the scheme Board along with the Board's response and progress on any action plans for improvement;
- the Independent Assessor's annual report; and
- any reports or monitoring required by accreditation bodies (Ombudsman Association and CTSI).

#### Complaints data:

- case numbers and outcomes by company published each quarter; and
- case studies illustrating the ombudsman approach to representative cases at least each year.

#### Reports

- reports on systemic issues the ombudsman has identified from its complaints data and intelligence every six months.

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We also recommend the ORR asks bidders to set out their views on the costs and benefits of publishing all (appropriately anonymised) formal adjudications/decisions.

## 5.0 Demand and fees

This section discusses the expected demand for disputes resolution services from the Rail Ombudsman scheme, and how the industry should pay for the scheme.

### 5.1 Demand and variations in demand

We have already covered the need for the Rail Ombudsman to have the skills to engage across an industry and estimate future complaint volumes (2.3 *Controlling costs*). This section deals with historic case numbers, and the ability of the Rail Ombudsman to scale operations as required.

#### ***Demand: discussion***

The tables below set out some context for the size of the current Rail Ombudsman.

**Table 5.1 dispute volumes for Ombudsman Services**

Scheme	Domestic complaints within scope of OS:C	Domestic complaints within scope of OS:E
Ombudsman services 2020 - 2021	20,962	71,282

Sources: [Annual Activity Report for Ombudsman Services: Communications, July 2020 - June 2021](#)  
[Annual Activity Report for Ombudsman Services: Energy, July 2020 - June 2021](#)

**Table 5.2 dispute volumes for Communications & Internet Services Adjudication Scheme**

Scheme	Domestic disputes within scope
Communications & Internet Services Adjudication Scheme (CISAS) 2020 - 2021	21,638

Source: [CISAS, ADR annual report, 1 July 2020 – 30 June 2021](#)

**Table 5.3 dispute volumes for the Financial Ombudsman Service**

Scheme	New enquiries	New complaints
Financial Ombudsman Service 2020 - 2021	454,259	278,03

Source: [Financial Ombudsman Service: Annual complaints data and insight, 2020/21](#)

**Table 5.4 dispute volumes for the Property Ombudsman**

Scheme	New disputes received
The Property Ombudsman 2020 - 2021	19,737

Source: [The Property Ombudsman: ADR regulations and Service Standards Report, 2020-2021](#)

**Table 5.6 dispute volumes for the Rail Ombudsman scheme**

Date range	New cases referred to the Rail Ombudsman	Cases evaluated by the Rail Ombudsman
Oct 2021 - Dec 2021	883	836
July 2021 - Sept 2021	549	413
April 2021 - June 2021	232	234
Jan 2021 - March 2021	235	299
<b>Total 2021</b>	<b>1899</b>	<b>1782</b>
Oct 2020 - Dec 2020	436	433
July 2020 - Sept 2020	596	690
April 2020 - June 2020	785	799
Jan 2020 - March 2020	1284	1343
<b>Total 2020</b>	<b>3101</b>	<b>3265</b>
Oct 2019 - Dec 2019	1057	995
July 2019 - Sept 2019	808	700
April 2019 - June 2019	631	617
Jan 2019 - March 2019	726	Not available
<b>Total 2019</b>	<b>3222</b>	

Source: [Rail Ombudsman statistical reports](#)

The Rail Ombudsman scheme operates in an important industry, and is important, but it is small compared to some other schemes. This has some consequences, in particular:

- fixed costs are likely to be a higher percentage of such an ombudsman’s budget compared to some other schemes;
- there is likely to be a limit in terms of how much the operator of a small scheme, which is still required to provide all the services and have the same accreditations of a full ombudsman scheme, can scale down;
- even a large percentage increase in case numbers should be easily within the capabilities of systems and processes scaled to the levels required for rail, with scaling up efforts primarily around staff;
- given variable costs will be mostly staff costs, suppliers should be able to put in place arrangements to scale up (although not down below a certain level) by using pools of contract staff, or over a modest amount of time by employing more staff, relatively easily.

All ombudsman schemes have to plan for expected or unexpected increases and decreases in cases. Well managed schemes should have early warning systems in place via relationships with industry players, that will alert them to large scale system failures (or similar) that may lead to them receiving more cases.

The timing of some events that may impact on case numbers are predictable. For example, in the future, ORR may consider proposals to reduce the time that companies have to handle complaints (before referral rights to the ombudsman are triggered) down from 40 days to 20 days. This very well may result in a temporary increase in cases at the ombudsman, as companies adjust their processes. But with proper industry engagement,



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data collection, and skilled forecasting, events such as these should be easily manageable by suppliers with suitable experience.

No-one that we spoke to thought that case volumes at the Rail Ombudsman would change significantly in the future. Notwithstanding the impact of the Covid-19 pandemic, most stakeholders thought case volumes are now broadly stable and would remain relatively small (compared to other schemes). One stakeholder said case volumes would not increase in the future because there has been a shift in the profile of rail travellers, and people travelling for leisure were much less likely to complain compared to commuters.

We asked stakeholders about whether low case volumes would hinder an ombudsman from drawing out systemic issues for the industry. Most stakeholders either didn't have a view, or disagreed with the proposition, saying that it should be possible for the ombudsman to highlight themes for further investigation even if the volume of cases the ombudsman saw didn't amount to definitive evidence of a problem.

One stakeholder told us that the current Rail Ombudsman had a big impact on how rail companies handle complaints, with senior staff reviewing every case that was referred to the ombudsman, and this impact was permanent – companies would continue to adjust their approach to complaint handling to stay in line with the decisions of the future Rail Ombudsman.

### ***Demand: recommendations***

We recommend:

- the broad scale of the Rail Ombudsman scheme is now known with reasonable certainty;
- there are likely strong reputational effects in the rail industry and this, coupled with the nature of the product and the nature of regulation, means that rail is unlikely to see the kind of events that have led to substantial spikes in ombudsman cases seen in other industries (eg financial services);
- the capabilities of bidders to manage variations in case numbers should be assessed through ORR's tender process – these skills are a core requirement of a supplier of ombudsman services and experience should be a key part of the competitive process for choosing a supplier;
- ORR's tender process requires bidders to explain how their costs vary depending on increases and decreases in case numbers, and set out their contingency plans for handling expected and unexpected increases in case numbers, including the point at which relaxation of KPIs or target timescales for handling complaints may be required.

## **5.2 Fixed and variable fees**

The way companies pay for the Rail Ombudsman scheme today is set out in annex 2. Larger companies pay a fixed membership fee per year of £10,000, case fees are set according to the total number of cases the ombudsman receives – currently £24.50 for simple cases, and £49 for complex cases.

The rest of the required budget for the Rail Ombudsman, not covered by fixed fees or case fees, is allocated on the basis of what is called a *polluter pays* charge – that is, charges to

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recover costs are allocated for payment depending on the number of disputes each firm dealt with at the ombudsman.

Companies are responsible for paying any refunds, compensation or other awards the Rail Ombudsman might make.

### ***Fixed and variable fees: discussion***

In its [2021 review](#), the current Rail Ombudsman had a total income of £1,105,110 and handled the following cases:

**Table 5.7 cases handled by Rail Ombudsman 2021**

	<b>Q 4 Jan - March 2021</b>	<b>Q1 April - June 2021</b>	<b>Q2 July - Sept 2021</b>	<b>Q3 Oct - Dec 2021</b>	<b>Total</b>
In scope complex	142	87	103	224	556
In scope simple	39	21	80	261	401
Out of scope (ineligible)	76	85	183	285	629
Out of scope (transferred TF)	40	6	20	19	85
Out of scope (transferred LTW)	2	35	27	47	111
<b>Total (all)</b>	<b>299</b>	<b>234</b>	<b>413</b>	<b>836</b>	<b>1782</b>

Source: [Rail Ombudsman statistical reports](#)

In 2021, the unit case cost for in-scope rail cases was £1,155 and for all cases £620.

The COVID-19 pandemic may have influenced these numbers, and 2019 may be a better year to consider unit cost figures. In 2019, the budget of the Rail Ombudsman was £1,562,054 and the ombudsman handled the following cases:

**Table 5.8 cases handled by Rail Ombudsman 2019**

	<b>Q4 Jan to March 2019</b>	<b>Q1 April - June 2019</b>	<b>Q2 July - Sept 2019</b>	<b>Q3 Oct - Dec 2019</b>	<b>Total</b>
In scope complex	107	179	230	335	851
In scope simple	88	125	169	277	659
Out of scope (ineligible)	202	185	225	308	920
Out of scope (transferred TF)	202	38	18	13	271
Out of scope (transferred LTW)	71	90	58	62	281
<b>Total (all)</b>	<b>670</b>	<b>617</b>	<b>700</b>	<b>995</b>	<b>2982</b>

Source: [Rail Ombudsman statistical reports](#)

In 2019, the unit cost of in-scope rail cases was £1,034 and for all cases £524.

Sufficient information is not available for many other schemes to present comprehensive comparisons, but information about unit costs for the Legal Ombudsman and Financial Ombudsman service is presented below.

**Table 5.9 Legal Ombudsman unit costs**

	2020/21	2019/20
Total cost of the ombudsman scheme (A) £'m	13.16	12.30
Total cases resolved during the year (B)	4704	6384
Unit cost all cases (A divided by B)	£2798	£1927

Source: [Legal Ombudsman annual report 2021](#)

**Table 5.10 Financial Ombudsman unit costs**

	Year ended March 2021
Total cost of the ombudsman scheme (A)	264.5m
Operating income (A*)	245.6m
Complaints resolved (B)	249,144
Unit cost all cases (A divided by B)	£986
Unit cost all cases (A* divided by B)	£1066

Source: [Financial Ombudsman Service, Annual Report and Accounts, March 2021](#)

The figures for the Legal Ombudsman and Financial Ombudsman Service are for cases resolved - we expect these include resolving jurisdiction cases, so the relevant comparator for the Rail Ombudsman is the unit cost for all cases.

Relevant factors when considering these comparisons of unit costs are that:

- both the Legal Ombudsman and the Financial Ombudsman Service are operating with large backlogs of historic cases while the Rail Ombudsman has no backlog;
- both the Legal Ombudsman and the Financial Ombudsman Service probably handle more complex cases than the Rail Ombudsman;
- the Financial Ombudsman Service has some efficiencies of scale not available to either the Legal Ombudsman or the Rail Ombudsman.

**Table 5.11 Percentage of budget raised through case fees**

Scheme	Unit cost (all cases)	Case fee	Case fee/unit cost	% of budget/income raised via case fees
Financial Ombudsman Service (2021)	£1,066	£750	70%	63%
Legal Ombudsman* (2021)	£2,798	£400	14%	6%
Rail Ombudsman (2021)	£620	£35**	6%	3%

Sources: [Financial Ombudsman Service, Plan and budget, 2021-22](#)  
[Legal Ombudsman, Scheme Rules Consultation, February 2022](#)  
[Legal Ombudsman Services, Annual Report and Accounts, 2020-2021](#)

\* The levy (fixed fee) paid by legal firms is adjusted for case fees, that is, the more case fees are charged, the lower the levy. \*\* Blended calculated case fee.

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Current rail case fees are set at such a level that they are likely to have little impact on the behaviour of those paying them and make only a modest contribution to the budget of the ombudsman. As most of its budget comes from annual and polluter pays fees, the Rail Ombudsman has a steady and predictable income stream.

In some other schemes, the case fee effectively acts as a polluter pays charge. In rail, this polluter pays charge (paid in addition to the annual fee of £10,000 or less) varies by case volumes handled by the Rail Ombudsman for each operator - 80% of the costs of the Rail Ombudsman are recovered by this polluter pays charge.

Figures provided to us by RDG shows that in 2021, under the current arrangements, 2 companies paid 51% of the costs of the Rail Ombudsman, and 4 companies paid 70% of the costs.

In some circumstances, a polluter pays method of funding an ombudsman scheme would make sense, particularly where:

- there is a need to control, or reduce cases, going to an ombudsman that is under pressure from high case volumes; and/or
- costs that vary with cases are a significant percentage of the ombudsman's costs.

Neither of these factors are present in the context of the current Rail Ombudsman scheme. There is no backlog of cases at the current Rail Ombudsman, and the volume of cases is modest compared to the size of the rail sector. Given the small size of the scheme, most of the costs of a provider of the Rail Ombudsman scheme will be fixed costs.

Leaving aside the need to control case numbers, or the ratio of fixed and variable costs of an ombudsman scheme, the presence of such a scheme should benefit all consumers in a sector. First, simply because a route to access to justice is of benefit in terms of consumer confidence and trust in a sector and, second, because the presence of an ombudsman should influence the behaviour of all firms in a positive way.

That said, a polluter pays allocation can be important in terms of a perception of fairness. We can see in the legal sector, as the Legal Ombudsman struggles to reduce a backlog and cope with pressures that are pushing its budget upwards, the [Law Gazette reports](#) that some legal regulators are keen on a 'if you use it, you pay for it' approach. The Council for Licenced Conveyancers (CLC) is reported in the [Law Gazette](#) has having recently changed its arrangements so it can recharge more of the cost of the Legal Ombudsman to the firms that generate the most complaints.

While for perceptions of fairness some element of polluter pays could be retained, it seems that other options might better align the charges for the Rail Ombudsman scheme with the benefits and costs of the scheme.

However, whether the charges of the Rail Ombudsman are set with reference to case numbers, or to the size of operators (by either passenger journeys or operating expenditure), the largest train operating companies will end up paying most of the cost of the ombudsman. This is illustrated in table 5.12 at the end of this section.

So the choice, if ORR decides to depart from the current polluter pays charges, is simply about which of the largest train operators should cover most of the costs of a Rail Ombudsman scheme.

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From an operating model point of view, this decision would matter if, today, the polluter pays charges deter companies from risking cases going to the ombudsman by, for example, adopting policies that made payments to passengers who seemed likely to persist with their case. We think it is unlikely that the polluter pays charges have this effect in rail, and reputational impacts are probably more significant, but ORR should consult on this point in particular. In the event that a single operator did experience a large-scale incident that drove significant numbers of cases to the ombudsman the polluter pays charge may become more meaningful.

It seems sensible to retain some level of annual fee that is payable by all members, to give all companies some interests in securing the benefits of the ombudsman scheme. This could be based around the level of charges that are set today, with smaller operators (those with less than 1% of passenger miles for example) paying some level of fee based on turnover and the larger operators paying more.

In our view, loading cost recovery onto case fees is unlikely to be sensible way forward unless there is a balancing exercise with other fees – that is, the income stream of the ombudsman is secure regardless of case volumes. Otherwise, given the low case volumes, a small variation in cases may create a significant variation in income for the Rail Ombudsman.

There are many variations that could be put forward in terms of adjusting the charges between annual fees, and case fees, and polluter pays charges. But, broadly, the issues can be discussed by considering three options.

### **Option one: recover most of the costs of the ombudsman by the current polluter pays allocation**

This option is the same as the arrangements today. All companies pay a modest annual fee, set in bands for size of company, and most of the costs are recovered by additional charges on companies depending on the work their passengers cause in terms of cases at the ombudsman. Charges could be set in advance based on the previous period, and refunds or extra charges used to balance out once actual case numbers are known.

The advantages of this option are that it could be seen as the fairest way to recover costs, and in the event an operator experienced an incident that drove significant numbers of cases to the Rail Ombudsman, the charge may influence behaviour of that operator. Keeping the current arrangement at first, under ORR's sponsorship, may be sensible to reduce any risk of case number fluctuating during a set up period.

The disadvantages are that this charge allocation does not accurately reflect the benefit of the ombudsman to the whole rail industry and does not have a strong relationship to cost causation.

The impact of this choice today is that a small number of large operators pay most of the costs of the Rail Ombudsman.

### **Option two: recover most of the costs of the ombudsman by charges that reflect the size of the operator, either by passenger journeys or operating expenditure**

Under this option, there could be a low case fee, and most of the costs recovered by annual charges on companies depending on their size, measured by either passenger journeys or numbers, or operating expenditure.

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The advantage of this option is that it is a better reflection of the benefits of the ombudsman to the rail industry.

One disadvantage is that in the event an operator experienced an incident that drove significant numbers of cases to the Rail Ombudsman, there would be no charges that reflected this (although there could be charges introduced in exceptional circumstances that covered any extra costs incurred by the Rail Ombudsman). Another disadvantage is this option still does not have a strong relationship to cost causation, although is probably slightly better than option one.

The impact of this choice is that a slightly bigger number of large operators (compared to option one) would pay most of the costs of the Rail Ombudsman.

Operating expenditure (turnover) could be chosen over a measure of passenger journeys on the basis that the scheme is open to more than just train operating companies, although either way most of the costs will likely fall to the largest train operating companies.

### **Option three: recover most of the costs of the ombudsman via case fees, and flex annual fees (depending on the outcome of case numbers) to secure the required income for the ombudsman**

Under this option, annual charges could be modest and set in bands for size of company much as it is today (i.e. a mix of journey volumes and turnover), and case fees set high at a level expected to recover most of the costs of the ombudsman. A balancing exercise at the end of the year could provide refunds on annual charges, or increase annual charges, to ensure the required income of the ombudsman is met.

The advantages of this option are that it could be seen as a fair way to recover costs, and in the event an operator experienced an incident that drove significant numbers of cases to the Rail Ombudsman, high case fees may influence behaviour of that operator.

The disadvantages are that this charge allocation does not accurately reflect the benefit of the ombudsman to the whole rail industry and does not have a strong relationship to cost causation.

The impact of this choice is similar to option one, as it would still reflect a polluter pays cost recovery. The case fees would seem high compared to other schemes handling more complex cases (see unit cost discussion above).

To avoid smaller operators paying large increases over what they pay today, they could have a number of free cases, as is the case in financial services, where smaller providers only pay a case fee for the 4<sup>th</sup> case upwards each year.

### ***Fixed and variable fees: recommendation***

We do not recommend a particular way forward in terms of annual fees, case fees and the polluter pays charge but instead recommend that ORR consult the rail industry with open questions covering in particular:

- the current impact of the polluter pays charges on companies' behaviour, if any;
- the merits of retaining some annual charges for all operators, regardless of whether or not they have cases with the ombudsman;

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- preferences for funding the ombudsman scheme via polluter pays charges, or by allocating costs according to size of operator (for example passenger journeys or operating expenditure); or by increasing case fees with a balancing exercise with annual fees to secure the required budget of the ombudsman;
- whether it is desirable to allow bidders to provide the Rail Ombudsman scheme to put forward their preferred solution, taking into account the overall cost they propose and the profile of their fixed and variable costs.

**Table 5.12 statistics of passenger train operators, 2021**

Train operating company	Passenger journeys (millions)	Number of in scope complaints at ombudsman 20/21	Operating expenditure	% of passenger journeys	% of complaints at the ombudsman 20/21	% of operating expenditure
Govia Thameslink Railway	76.1	95	416.7	20%	10%	17%
Great Western Railway	17.9	211	263.3	5%	22%	11%
Southeastern	40.2	19	224.8	10%	2%	9%
South Western Railway	45.7	16	214.6	12%	2%	9%
Greater Anglia	19.0	27	193.1	5%	3%	8%
Avanti West Coast	6.2	218	162.6	2%	23%	7%
London North Eastern Railway	4.2	77	128.0	1%	8%	5%
West Midlands Trains	13.6	10	117.6	4%	1%	5%
Northern Trains	21.9	53	112.4	6%	6%	5%
London Overground	59.2	0	96.3	15%	0%	4%
East Midlands Railway	5.1	35	88.2	1%	4%	4%
ScotRail	14.4	33	77.6	4%	3%	3%
CrossCountry	6.7	23	76.1	2%	2%	3%
TfL Rail	18.0	0	74.9	5%	0%	3%
TransPennine Express	5.4	48	52.1	1%	5%	2%
c2c	15.0	14	50.9	4%	1%	2%
Merseyrail	9.0	2	41.0	2%	0%	2%
Chiltern Railways	4.6	7	38.0	1%	1%	2%



**Table 5.12 (continued) statistics of passenger train operators, 2021**

Train operating company	Passenger journeys (millions)*	Number of in scope complaints at ombudsman 20/21**	Operating expenditure***	Percentage of journeys	% of complaints at the ombudsman 20/21	% of TOC operating expenditure
TfW Rail	5.0	30	34.4	1%	3%	1%
Caledonian Sleeper	0.1	16	5.7	0%	2%	0%
Grand Central	0.2	6		0%	1%	
Hull Trains	0.1	5		0%	1%	
<b>Total</b>	<b>388</b>	<b>945</b>	<b>2468.3</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>
Network rail	n/a	5			0.53%	
National rail enquiries	n/a	1			0.11%	

Sources: [Summary of key statistic for TOCs, 2021, ORR](#)  
[Rail Ombudsman statistical reports](#)  
[Income and expenditure for each rail franchise \(£million\) 2020 - 21](#)

## 6.0 Case management operations

In this section we cover four major aspects of case management operations that are significant enough to be included in an operating model:

- case management process flows;
- staff qualifications and industry knowledge;
- service standard KPIs; and
- case management system.

### 6.1 Case management process flows

The current arrangements set out the following process for complaint handling by the Rail Ombudsman:

- the ombudsman receives a complaint and a case reference number is generated;
- the ombudsman will assess the complaint and decide whether it is something it can look into and is in-scope of its jurisdictions;
- if the complaint is not something the ombudsman can review it will either advise the passenger on where to take it next, or transfer it to a body that may be able to help;
- if deemed in-scope the ombudsman will contact the service provider to ask for a formal response to the complaint, the case will then be assigned for further investigation;
- the ombudsman will assess the application and the scheme member's response weighing up the evidence provided;
- mediation will be the first stage where the ombudsman will try and encourage the parties to reach an agreement, if an agreement is achieved the case will be closed;
- if mediation can't be achieved, then the case will move to the second stage which is adjudication;
- the ombudsman will make an independent decision on the case based on the evidence and information provided;
- once the final decision is made the case is deemed as closed and will be binding on the service provider (scheme member) if the passenger accepts within 20 working days.

#### ***Case management process flows: discussions***

The processes set out above are, in our experience, standard for many ombudsman schemes. They include:

- a stage that determines jurisdiction;
- a stage that redirects out of scope cases to other bodies as appropriate;
- an effort to resolve the case quickly between the parties (early resolution); and
- a more formal process if early resolution of the case is not possible.

In our view an attempt at early resolution is critical because, if successful, this saves time, effort and cost.

#### ***Case management process flows: recommendations***

We recommend that:

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- the four broad stages of case processes are maintained, but how these are delivered is up to the successful bidder to determine;
- ORR's tender process should allow bidders scope to put forward innovations, particularly around early resolution and the redirection of out of scope cases;
- in line with our earlier recommendations, the ombudsman should monitor users' satisfaction with its processes (including for out of scope cases), and test its processes with passengers, acting on findings in an effort to continuously improve its service.

### 6.2 Staff qualifications and industry knowledge

This was the one area of case operations that stakeholders generally commented on, both unprompted and prompted.

Some stakeholders we spoke to said that costs could be saved in the current arrangements by making sure that highly qualified, and expensive, staff are used strategically, and so the most could be made by limited numbers.

One stakeholder said that the quality of the service provided by an ombudsman scheme was dependent on the quality of its staff, and having more qualified staff meant that people could be more easily deployed between roles to respond to changes in demand, so the nature of staff provided by ombudsman schemes is a key differentiator.

Many stressed to us the importance of the ombudsman understanding the rail industry and were keen to see arrangements put in place to train staff and keep their knowledge up to date.

#### ***Staff qualifications and industry knowledge: discussion***

Earlier specifications, such as the requirement for Ombudsman Association approval, means bidders will already have to meet certain standards for qualifications for case handlers and case decision makers. In addition to these, we think the level of staff qualification and arrangements for training staff should be a key aspect of competition in ORR's tender process.

It is clearly the case that there is a trade-off between cost and quality in terms of the number of highly qualified staff employed, and given the importance that interviewees attached to specific rail knowledge, bidders should rightly be free to put forward their own solutions that they feel will convince rail industry players that they are capable of understanding the industry.

We can imagine a range of different ways this could be done, from the choice of backgrounds of key staff to bespoke training courses, and we think a decision on the best solution should be made in the context of the overall bids to supply the service.

#### ***Staff qualifications and industry knowledge: recommendations***

We recommend that ORR's tender process should:

- set out that bidders must include plans to make sure their staff have relevant rail industry knowledge, but allow bidders scope to put forward their own proposals for ensuring this is the case;

- require bidders to set out the level of qualifications their staff will have, and allow bidders to explain the benefits and costs of their chosen staffing plans.

### 6.3 Service standard KPIs

The current arrangements set the following key service standards in table 6.1.

**Table 6.1 service standards**

Category	Condition	Target
Phone	% of calls answered	95%
	Answered within 60 seconds	70%
	Answered with 5 mins	98%
Telephony availability	Uptime	99.9%
Post	Responded within 3 days	95%
Email	Auto respond within 24 hours	100%
Webform	Respond within 24 hours	100%
Website	Availability	99.9%
CMS	Availability	99.9%
Triage (single front door)	Response to consumer 3 days	95%
	Response to member 3 days	95%
	Out of scope transfer 3 days	95%
	Member rejection responses 5 days	95%
Case handling	Disputes without objection	40 working days
	Disputes with objection	45 working days

No-one raised any unpromoted points with us about these services standards, and when prompted, people said they thought they were appropriate and worked well.

#### ***Service standards: recommendations***

We recommend that the current set of operational KPIs remain appropriate – when coupled with our overarching recommendation that the main measure of success for the ombudsman should be measured in terms of whether it meets the needs of passengers – and these cover:

- call answering targets;
- telephony availability;
- replies to post;
- replies to email;
- response to webforms;
- website availability;
- CMS availability;
- targets for responses and transfers in the triage stage (single front door); and
- case resolution timescales.

### 6.4 Case Management System

A good case management system is key to the effective operation of any ombudsman scheme. Bidders’ track records in successfully implementing and maintaining these systems

should be a central point in ORR's tender process, and that process should allow bidders to put forward their proposed solutions including functionality available to stakeholders.

No-one raised, unprompted, any issues with the specification of the current case management system. When prompted, stakeholders either didn't express a particular view, or expressed satisfaction. We reported earlier on views from consumer advocacy groups for the desire for more data, and have already captured these points in our recommendations, so these are not covered again here although are relevant for the implementation of a CMS.

### ***CMS: recommendations***

We recommend that the required CMS should:

- allow passengers, and companies, to view, update, and track cases including accessing, downloading, and uploading their own documents and information;
- provide companies with an overview of all cases with information relevant for its own management of these cases such as status, outstanding tasks, and outcomes;
- provide passengers with useful progress information and expected timescales for further steps;
- facilitate the handling of cases split between more than one company, or between the ombudsman and other bodies;
- assist users to adhere to deadlines through a system of notifications of case opening, task requirements, and closure;
- capture all relevant communications between the parties and ombudsman involved in a case;
- be easy to use, with accessible user guides;
- be scalable to handle reasonably expected increase in case loads;
- be flexible, and cost effective in terms of adding extra functionality.
- be secure to access, provides secure storage of information and data, displays appropriate data to users and protects the data a user should not be able to access;
- deliver to the ombudsman, companies, and other appropriate stakeholders management information relating to casework but also other information such as: case outcomes; complaint types; time to resolve cases; stages of resolution; and this information is tailored to the needs of stakeholders.

ORR's tender process should allow bidders the freedom to put forward their own solutions, innovations, and explain the costs and benefits of their proposed CMS.

We also recommend that ORR allows in its implementation timescale, opportunity for the successful bidder to consult with stakeholders on needs, and the cost of additional or extra functionality in the future is handled through budget consultations and change control processes in the contract.

## 7.0 Other required elements

Previous sections of this report contain the main elements of the ombudsman scheme that comprises an operating model suitable for ORR to use as the background for its consultation. For completeness, some other elements which we recommend ORR cover in its Statement of Requirements for ombudsman services are included here.

### 7.1 Confidentiality and data protection

The Rail Ombudsman should:

- adhere to all relevant data protection legislation, regulations and requirements of accreditation bodies;
- fully train its staff in handling confidential data, and protecting that data;
- implement robust policies, processes and systems for storing, retaining and handling data;
- agree and maintain data sharing agreements with companies and relevant stakeholders;
- communicate effectively, and in clear language, with users about its data protection policies in particular taking care that automated or recorded messages are meaningful to consumers;
- not use data from the provision of a Rail Ombudsman scheme for any other purpose.

### 7.2 Signposting to the Rail Ombudsman

As part of its overall role we recommend earlier (*2.1 Role of the Rail Ombudsman*) the ombudsman must ensure that passengers are made aware of the scheme at appropriate points, and those messages accurately reflect the ombudsman's role.

### 7.3 Clarity of communications

A key feature of the Rail Ombudsman should be the clarity and accessibility of its communication with passengers (and all stakeholders). This includes: the language that the ombudsman uses in all of its communications; and the provision of information about the scheme, how to use the scheme, and how that information is accessed.

### 7.4 Passenger initiating disputes and communicating with the ombudsman

Passengers should be able to contact the ombudsman to refer a dispute, ask a question, or obtain information by: email; letter; telephone (free or local rate numbers); via a website; and be directed from social media channels appropriately.

### 7.5 Companies and stakeholder communicating with the ombudsman

In addition to the relationship management arrangements we set out earlier, on a day to day basis the ombudsman should be accessible and responsive to companies and stakeholders, both in terms of methods of communication, response times and access to appropriate staff (including case handlers and senior staff).

### 7.6 Telephone System

In line with the KPIs specified earlier, the ombudsman must be contactable by telephone. While for reasons of efficiency consumers may be encouraged to use online services, obtain

information or provide information, the ombudsman must be accessible by telephone for those who do not wish to use online services (also see more detailed accessibility requirements).

### 7.7 Rail ADR Service Website

The ombudsman must provide a website that is easy to use (including on mobile and other devices), clear and accessible in line with the clarity of communication requirements specified earlier.

### 7.8 Social media

The ombudsman must have a suitable social media strategy, so it effectively: directs users to information; highlights appropriate information; directs users to alternative channels; and responds to (and redirects as appropriate) complaints made in public on social media.

### 7.9 Accessibility

A key feature of the Rail Ombudsman should be excellent accessibility and it must have a culture of testing this. It must of course meet all relevant standards and obligations, for example under the Equality Act 2010, but it must also respond to any evidence (and actively seeks that evidence) that its accessibility could be improved.

At a minimum, the ombudsman must put in place:

- large print, braille and easy to read versions of key documents and information, and help passengers access these;
- accessible alternatives for website, and other digital content (including the CMS) that are in line with The Web Content Accessibility Guidelines (WCAG 2.1 level AA), and accommodate users with impairments to their:
  - vision
  - hearing
  - mobility
  - thinking and understanding

Including assessing the need for compatibility with screen readers, voice over software, and in-browser accessibility functions;

- a text relay service or other equivalent provisions and consider the need for video relay service;
- training for its staff in disability and vulnerability awareness, and resources that equip its staff to be able to meet the needs of consumers who may need extra or bespoke assistance; and
- signposting to and communication via translation services where required.

### 7.10 Language

The ombudsman must ensure that it treats Welsh speakers no less favourably than English.

### **7.11 Compensation framework**

The current specification requires the Rail Ombudsman to create and maintain a compensation framework that sets out factors that the ombudsman takes into account in awarding compensation. This is appropriate and should be worded in such a way that companies and passengers have clear expectations, but the ombudsman's discretion to depart from it in any individual case must be unhindered. This compensation framework should be published and available to passengers, companies and all stakeholders.

### **7.12 Exit management**

As part of ORR's implementation of a Rail Ombudsman scheme, ORR and the successful bidder should agree the terms of exit of the supplier and set this out in a plan that includes:

- continuity of service during a planned exit period;
- transfer of services to a new supplier;
- periods of ongoing assistance after transfer;
- obligations to transfer, and delete, data and information;
- any charges or payments to be made associated with exit; and
- providing data and information about how services have been supplied.

### **7.13 Business continuity and disaster recovery**

As part of ORR's implementation of a Rail Ombudsman scheme, the successful bidder to supply the scheme should set out its business continuity and disaster recovery plans for the ORR's approval, including:

- categorisation of different levels and types of disruption and the plans for maintaining, or re-establishing, the supply of services in different scenarios;
- data storage and backups;
- system backups;
- risk analysis and mitigations;
- recovery processes and procedures; and
- arrangements for testing of plans and procedures and reporting on these.

### **Other elements: particular recommendations**

Earlier, we explained how the ombudsman should be a source of evidence and intelligence and seek to test the provision of services with passengers. We intend this culture to extend to cover all of its activities, and the ombudsman should test its own operations and strive to continuously improve the service it offers.

This means that, across all its services, but in particular for communications and accessibility, the Rail Ombudsman should use as the measure of its success whether it meets the needs of passengers. While ORR may set out some minimum standards, or standards the ombudsman must meet, this does not release the ombudsman from testing its services with passengers, and making sure that it achieves excellent standards.



## Annex 1 Current Rail Ombudsman scheme rules

### Rail ADR Service Rules and Eligibility Criteria

- SCOPE

This document is comprised of the following:

1.1. [Part A](#): Rail ADR Service Rules;

1.2. [Part B](#): Eligibility Criteria.

### 2. DEFINITIONS

In this document, the following definitions shall apply:

<b>“Accepted”</b>	refers to a Decision being accepted by a Consumer in accordance with Paragraph 10 of Part A;
<b>“Adjudication”</b>	the process by which, in the event that Simple Resolution and Mediation having been unsuccessful in reaching agreement between the Rail ADR Scheme Member and the Consumer, the Service Provider’s adjudication service (comprised of suitably qualified professionals) will decide cases between Consumers and Rail ADR Scheme Members;
<b>“ADR”</b>	alternative dispute resolution;
<b>“advertised”</b>	the service or amenities as described by the Rail ADR Scheme Member at the time the Consumer purchased, or attempted to purchase, their ticket;
<b>“Advertised Timetable”</b>	any timetable including any short-term or interim timetable published on National Rail Enquiries by a Rail ADR Scheme Member up to 10pm prior to the day of travel;
<b>“application”</b>	the submission of an application by a Consumer that meets the acceptance and Eligibility Criteria;
<b>“CAHA Registrar”</b>	Claims Allocation and Handling Agreement Registrar;
<b>“catastrophic event”</b>	any event (such as the collapse of a tunnel or the closure of part of the network due to a terrorist attack) that cannot be resolved within one Working Day that prevents a Rail ADR Scheme Member from providing most or all of its advertised services on a part or the whole of its network;
<b>“Charters”</b>	the Passenger Charters of each Rail ADR Scheme Member containing the terms under which the Consumer travels;

<b>“Compensation Framework”</b>	the compensation framework in the context of the contractual obligations of Rail ADR Scheme Members which sets out the approach for issues in which direct loss has been incurred by a Consumer as a result of an In Scope Dispute, but also for Decisions relating to Time & Trouble Awards, as set out in Annex B;
<b>“Complex Resolution”</b>	a stage in the Rail ADR Process where, the opportunities for Simple Resolution having been exhausted, the Service Provider must use Mediation and, where applicable, Adjudication to resolve an In Scope Dispute;
<b>“Consumer”</b>	an individual who has undertaken, or has attempted to undertake, a journey on a Scheduled Rail Service, and has purchased (or has had purchased on their behalf), or has attempted to purchase, a ticket for that journey;
<b>“Consumer Legislation”</b>	Consumer Rights Act 2015, Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013; Equality Act 2010; Consumer Protection from Unfair Trading Regulations 2008, Electronic Commerce (EC Directive) Regulations 2002 and any other legislation, regulation or statutory instrument which may from time to time be enacted which would confer rights upon the Consumer and obligations on the Rail ADR Scheme Member that applies to the Rail ADR Scheme Member’s provision of service at the time when the original Dispute was triggered;
<b>“Consumer with Reduced Mobility”</b>	a Consumer who has a permanent or temporary physical, mental, intellectual or sensory impairment which, in interaction with various barriers, may hinder their full and effective use of transport on an equal basis with other passengers or whose mobility when using transport is reduced due to age;
<b>“Data Protection Legislation”</b>	(1) unless and until the General Data Protection Regulation ((EU) 2016/679) (“ <b>GDPR</b> ”) is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and (2) any successor legislation to the GDPR or the Data Protection Act 2018 and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or other relevant supervisory authority;

<b>“Deadlock Letter”</b>	the letter sent by a Rail ADR Scheme Member to a Consumer when the Rail ADR Scheme Member believes that it has exhausted all possibilities of resolving a Dispute and there is no further progress possible. Amongst other things, the letter will state this, that the Rail ADR Scheme Member can do no more and that it is its final position. It will also sign-post the Consumer to a means of ADR;
<b>“Decision”</b>	a decision by the Service Provider on the fair outcome of an In Scope Dispute that is binding on a Rail ADR Scheme Member;
<b>“Dispute”</b>	any complaint to which a Consumer has (in their opinion) had an unsatisfactory response from a Rail ADR Scheme Member in relation to which they wish to apply, or an application has been made, to the Rail ADR Service in accordance with the Rail ADR Process;
<b>“Eligibility Criteria”</b>	the eligibility criteria for Disputes to be considered under the Rail ADR Service set out in Part B;
<b>“Exceptional Personal Circumstances”</b>	evidenced significant life events for the Consumer (including bereavement, severe illness and hospitalisation) or prior arrangements (including where the Adjudication is issued at a time when the Consumer is away from their place of residence or where there is an accessibility-related circumstance) that prevent the Consumer from being able to comply with the mandated Rail ADR Service response times in the Eligibility Criteria;
<b>“Frivolous Dispute”</b>	a Dispute that has no serious purpose or value. It may be trivial and investigating it would be out of proportion to the seriousness of its subject;
<b>“Industry Arrangements”</b>	(a) where the Rail ADR Scheme Member is an Operator, the express terms of the contract between the Rail ADR Scheme Member and the Consumer as set out in the NRCoT, and, where applicable, the Charters. In addition, and insofar as they form the basis of the contract, the following provisions may be relevant in determining contractual liability: TSA (Ticketing and Settlement Agreement made between the Operators named in the Schedule to that Agreement dated 23 July 1995 as subsequently amended from time to time), the Rail ADR Scheme Member’s Disabled Persons Protection Policy (DPPP) and any other applicable terms and conditions which form part of the contract

between the Rail ADR Scheme Member and the Consumer. The versions of the above policies approved by the ORR that are in use at the time of travel or ticket purchase will apply;

- (b) where the Rail ADR Scheme Member is not an Operator (for example, a third party retailer of rail tickets), then the documents establishing their duties will be identified on their entry to the Rail ADR Service and used by the Service Provider when adjudicating In Scope Disputes;

<b>“In Scope Dispute”</b>	a Dispute accepted as being ‘in scope’ of the Rail ADR Service in accordance with Part B;
<b>“Lead Adjudicator/Ombudsman”</b>	the Lead Adjudicator/Ombudsman appointed by the Service Provider as part of the Rail ADR Service governance requirements;
<b>“major route enhancement”</b>	engineering work that requires the suspension of services on a part of the rail network for a period lasting a week or more;
<b>“Maximum Award Limit”</b>	has the meaning given in Paragraph 70 of Part B;
<b>“Mediation”</b>	the process by which, assisted by an independent view from the Rail ADR Service, a settlement in relation to an In Scope Dispute can be negotiated to which both the Consumer and the Rail ADR Scheme Member agree;
<b>“negotiated settlement”</b>	where the parties in a Dispute have reached a mutually acceptable resolution to the case independent of the Service Provider;
<b>“nominated representative”</b>	an individual who has been nominated by the person raising a Dispute to act on their behalf (and who does not act on behalf of a claims handling business which helps people and/or organisations to make or process claims related to rail travel);
<b>“Notification of the Dispute Being In Scope”</b>	original notification of the Dispute being accepted as an In Scope Dispute by the Service Provider in accordance with Paragraph 10 of Part A;
<b>“NRCoT” “Operator”</b>	National Rail Conditions of Travel; any passenger train operating company who is a signatory to the Ticketing and Settlement Agreement made between the Operators named in the Schedule to that Agreement dated 23 July 1995 as subsequently amended from time to time;

<b>“Planned”</b>	changes that have been scheduled in advance and which were advertised at the time the Consumer purchased their ticket;
<b>“Quality of Interaction”</b>	the extent to which staff interacting with the Consumer did so courteously and demonstrated the levels of skill, knowledge and care that can be reasonably expected;
<b>“Rail ADR Process”</b>	the process for dealing with Disputes under the Rail ADR Service as set out in these Rail ADR Service Rules;
<b>“Rail ADR Scheme Member”</b>	the Operators, Network Rail Infrastructure Limited (in relation to services provided directly to Consumers at its managed stations), Train Information Services Limited (the entity responsible for National Rail Enquiries) and other organisations in the rail industry who participate in the Rail ADR Service;
<b>“Rail ADR Service”</b>	the not-for-profit ADR service for the rail industry offering Consumers and Rail ADR Scheme Members an out-of-court alternative to dispute resolution to be provided and administered by the Service Provider;
<b>“Rail ADR Service Board”</b>	the board responsible for the executive management of the Rail ADR Service which will be constituted of a majority of independent non-executive directors and chaired by an independent non-executive director;
<b>“Rail ADR Service Website”</b>	the Service Provider’s website for the Rail ADR Service through which the Service Provider will provide Consumers and Rail ADR Scheme Members with easy access to information concerning the Rail ADR Service;
<b>“Rail Sector Liaison Panel”</b>	the panel of rail industry representatives that the Service Provider will establish as part of the Rail ADR Service governance requirements;
<b>“Scheduled Rail Service”</b>	any rail service scheduled in Great Britain which is in the National Rail Timetable;
<b>“Service Provider”</b>	the provider of the Rail ADR Service appointed by RDG from time to time;
<b>“Simple Resolution”</b>	a stage in the Rail ADR Process giving the Service Provider the opportunity to quickly resolve an issue when it is clear that:

- a) there has been an administrative error (such as correspondence being sent to a wrong address or a compensation voucher accidentally not being included in a letter); or
- b) the grounds for the In Scope Dispute match previously settled In Scope Disputes for the Rail ADR Scheme Member subject to the In Scope Dispute so the outcome is already understood by the Rail ADR Scheme Member and Service Provider; or
- c) the Service Provider agrees a negotiated settlement within the 10 Working Day period the Rail ADR Scheme Member has to return the case file to the Service Provider (as referred to in Paragraph 6.3 of Part A); or
- d) the In Scope Dispute can be resolved without Mediation or Adjudication because the grounds for finding in favour of the Rail ADR Scheme Member are clear from the application of the Rail ADR Service Rules;

**“Statutory Appeals Bodies”**

Transport Focus and London TravelWatch;

**“Time & Trouble Award”**

redress for the time and trouble that the Consumer has reasonably incurred as a result of the Dispute. The principles used to calculate Time & Trouble Awards are set out in the Compensation Framework;

**“unplanned service alterations”**

temporary alterations to the advertised service (such as diversions, changed calling patterns, altered journey times and rail replacement services) usually introduced because of disruption or unforeseen circumstances. These alterations are unlikely to have been known about or advertised at the time the Consumer purchased their ticket;

**“user”**

any person authorised to use the Rail ADR Service Website and/or the Rail ADR Service including the Service Provider, a Rail ADR Scheme Member, Consumers and Statutory Appeals Bodies;

**“Vexatious Dispute”**

a Dispute where it is apparent that the Consumer is pursuing a Dispute, or persistently pursuing a Dispute, without merit and purely intends to cause inconvenience, harassment or expense to a Rail ADR Scheme Member and/or the Service Provider;

**“Working Day”**

any day other than a Saturday, Sunday or bank holiday in England and Wales.

## PART A: RAIL ADR SERVICE RULES

### 1. GENERAL

- The operation of the Rail ADR Service is overseen and assured by the Rail ADR Service Board, which ensures the independence, effectiveness and integrity of the Rail ADR Service. The Rail ADR Service will be the first point of contact for Consumers who are not happy with the response to a complaint they have received from a Rail ADR Scheme Member.
- All Decisions made on the outcome of In Scope Disputes will be taken by individuals trained in dispute resolution, consumer rights and the experience of Consumers in the rail industry. These individuals are employed by the Service Provider and are independent of the Rail ADR Scheme Members.
- A full list of Rail ADR Scheme Members will be provided to the Service Provider by RDG and will also be available on the Rail ADR Service Website.
- The use of the Rail ADR Service is free to Consumers (except for any incidental costs incurred such as postage, telephone or internet costs, although these may be included in any Decision made). The Rail ADR Scheme Members will be responsible for all fees arising from and funding the Rail ADR Service.
- An application to the Rail ADR Service can only be made after the Consumer has exhausted the Rail ADR Scheme Member's complaints procedure.
- A Decision made by the Rail ADR Service is binding on a Rail ADR Scheme Member only if the Consumer contacts the Rail ADR Service to formally accept the Decision within 20 Working Days of the date of the Decision being issued to both parties. In Exceptional Personal Circumstances the Service Provider can exercise its discretion to allow a longer acceptance period as referred to in Paragraph 2.02 of this Part A.
- Any Decision made applies only to the Dispute pursuant to which the Decision was made. The Service Provider will be consistent in reaching its Decisions, however every In Scope Dispute will be resolved in light of the facts pertaining to it and the applicable factors referred to in Paragraph 2.0 of this Part A.
- **APPLICATION ELIGIBILITY**
  - A Consumer is eligible to make an application to the Rail ADR Service.
  - Applications to the Rail ADR Service will be accepted from Consumers or their nominated representatives. If a Consumer wishes to appoint a nominated representative to act on their behalf, this must be confirmed by either themselves or their nominated representative when registering their application to the Rail ADR Service. If a Consumer has appointed a nominated representative, the Consumer can no longer apply to the Rail ADR Service in relation to the same Dispute as the case will have been transferred to the nominated representative. Only one application per Dispute can be made.

## Rail Ombudsman operating model for ORR

- Applications can be accepted by any Consumer who is 16 years of age or older; Consumers who are 15 years of age or younger must be represented by a parent, guardian or nominated representative who is 16 years of age or older.
- Applications from groups of people known to each other who are travelling together and are party to a Dispute (eg a family on a trip or colleagues on a business trip) will be accepted.
- The Service Provider cannot accept 'class actions', that is an application made on behalf of unrelated people on unrelated journeys (even if they are on the same train) claiming for the same problem.
- Consumers can apply to the Rail ADR Service in relation to an incident that occurred on or after the launch date of the Rail ADR Service as follows:
  - up to 12 months after having received a Deadlock Letter or the final response from the Rail ADR Scheme Member;
  - the Service Provider may accept Disputes later than 12 months after a Deadlock Letter or the final response from the Rail ADR Scheme Member:
    - in Exceptional Personal Circumstances; or
    - where there has been a franchise change and the Dispute relates to the previous franchise holder to enable relevant data to be obtained where agreed with the incoming franchise holder.
- The Consumer must have given the Rail ADR Scheme Member an opportunity to resolve the complaint and have either received a Deadlock Letter or failed to reach agreement with the Rail ADR Scheme Member within 40 Working Days from the date the Rail ADR Scheme Member first received the complaint. If the failure by the Rail ADR Scheme Member to resolve the complaint within 40 Working Days is because the Consumer has not responded within an appropriate timescale to the Rail ADR Scheme Member's reasonable requests for further information or documentation, the Service Provider may refuse the Dispute until the Rail ADR Scheme Member has had what it determines is a reasonable opportunity to respond to the Consumer in full.
- Disputes will be assessed to see if they are eligible for the Rail ADR Service in accordance with the Eligibility Criteria.
- The Service Provider will come to its Decision on the information provided to it by the Consumer and the Rail ADR Scheme Member. If any party fails to provide the information required of it within the timescale set, then the Service Provider will make its Decision using the information provided. The circumstances in which a party fails to provide information will also inform the Decision.
- **SCOPE**
  - The power to determine whether a Dispute falls within the scope of the Rail ADR Service in accordance with these Rail ADR Service Rules rests with the Service Provider. A Rail ADR Scheme Member may raise an objection to a Dispute being deemed within scope of the Rail ADR Service (as referred to in Paragraph 2 of this Part A) which the Service Provider is obliged to consider. However, following this consideration the Service Provider's decision on scope will be final.



## Rail Ombudsman operating model for ORR

- If a Dispute is not eligible for the Rail ADR Service, the Service Provider will notify the Consumer of the reasons for this and will pass it on (where such an arrangement exists) to the relevant body that can assist with it.
- Consumers cannot make an application to the Rail ADR Service about an issue if they have already accepted a settlement from a Rail ADR Scheme Member with regard to that issue which was stated by the Rail ADR Scheme Member to be in full and final settlement of their claim or using other wording which has an equivalent meaning.
- Consumers cannot resubmit Disputes to the Rail ADR Service that have already been resolved or refused by the Rail ADR Service unless new evidence becomes available. This does not prevent Consumers submitting a Dispute about a different issue on the same journey which was not addressed by the original submission, provided they have already given the Rail ADR Scheme Member an opportunity to resolve the complaint in accordance with Paragraph 20 of this Part A.
- The Service Provider will share issues related to the quality of how a Rail ADR Scheme Member has managed the impact of known limitations of current on train amenities and in relation to Consumers with Reduced Mobility on a specific journey with Transport Focus or London TravelWatch to progress at a strategic level.
- **APPLYING TO THE RAIL ADR SERVICE**
  - To apply to the Rail ADR Service, the Consumer (or their nominated representative) must:
    - confirm that they have received a Deadlock Letter and provide the date and reference number of such a Letter; or
    - provide a summary of their Dispute accompanied by evidence that they have complained in writing to a Rail ADR Scheme Member and that 40 Working Days have passed since the date the Rail ADR Scheme Member first received the complaint without a resolution being reached. In the event of the Consumer not having retained evidence they must be able to provide enough information to enable the Service Provider to establish whether a Dispute was raised with a Rail ADR Scheme Member; the Rail ADR Scheme Member will endeavour to support reasonable requests for this information; and
    - state the nature of the remedy that they require, such as:
      - an explanation or apology;
      - an action relating to a ticket;
      - any other action or actions to be taken; and/or
      - some form of compensation or refund.
  - Referring to the Rail ADR Service does not remove the Consumer's duty to pay a Rail ADR Scheme Member any amounts that are due, for example the applicable fare for journeys that have been made but have not been paid for.
- **VEXATIOUS AND FRIVOLOUS DISPUTES**
  - The Service Provider may refuse to deal with a Frivolous Dispute.
  - The Service Provider will refuse to accept a Vexatious Dispute.

- **ACCEPTANCE & CASE COMPILATION**

- The Service Provider will assess whether each Dispute it receives meets the Eligibility Criteria. If it fails to meet the Eligibility Criteria, it will be logged and the Consumer will be advised as to what the next steps are. Disputes within the scope of Transport Focus and/or London TravelWatch or other bodies such as the CAHA Registrar, the parking appeals body as appropriate or other bodies will be forwarded to those organisations in accordance with the processes relevant to those bodies agreed as part of the Implementation Services. Such Disputes shall be sent so that they are received by those bodies no later than 3 Working Days after the Service Provider received the Dispute.
- If a Dispute relates to a combination of issues, some of which are in scope of the Rail ADR Service and some of which are in the scope of other bodies, the Service Provider must progress the issues within its scope and liaise with the other bodies.
- The Service Provider must adopt the primary point of contact role for Consumers whose Disputes are in scope for 2 or more bodies (but out of scope for the Rail ADR Service) and must endeavour to ensure the Consumer is well-informed and well-served by all bodies involved.
- The date from which a Dispute is accepted as an In Scope Dispute by the Service Provider will serve as the basis from which all subsequent response times set out in these Rail ADR Service Rules will be calculated.
- Once a Dispute is accepted as an In Scope Dispute, the Service Provider will contact the relevant Rail ADR Scheme Member and request its case file and a summary explanation of its handling of the case to date, which will act as a notification that the Dispute has been accepted as an In Scope Dispute by the Service Provider. The Rail ADR Scheme Member has 10 Working Days from receipt of the Notification of the Dispute Being In Scope to provide this information unless it wishes to object to the Dispute on grounds of scope (as referred to in Paragraph 20 of this Part A). In Scope Disputes that are not completed within 40 Working Days because a Rail ADR Scheme Member does not respond to the Service Provider within that timescale shall be reported to RDG and the applicable Target Service Level may be waived by RDG in relation to that In Scope Dispute.
- During the 10 Working Day period referred to in Paragraph 20 of this Part A, the Rail ADR Scheme Member may seek to settle the In Scope Dispute with the Consumer. If a settlement is reached, the Service Provider must receive confirmation from the Consumer and the Rail ADR Scheme Member that both parties are satisfied with the outcome and the In Scope Dispute will be closed as a negotiated settlement and classed as a Simple Resolution.
- Should a case contain any information that cannot be shared due to data protection considerations, the Rail ADR Scheme Member must provide a suitable summary of the relevant outcomes to the Service Provider so that the Service Provider is sufficiently informed to come to a Decision.
- Once the case files are received, the Service Provider will review the case to identify whether there are grounds for a Simple Resolution.

- **OBJECTIONS**

- On receiving a Notification of the Dispute Being In Scope, a Rail ADR Scheme Member can object if it considers the case to be out of scope of the Rail ADR Service. To do this it will need to demonstrate how the Dispute falls outside of the scope set out in the Eligibility Criteria. The Rail ADR Scheme Member shall have 5 Working Days from receipt of the Notification of the Dispute Being In Scope to raise an objection.
- Within 5 Working Days of receiving an objection from the Rail ADR Scheme Member, the Service Provider will review the objection and either uphold or overrule it. If an objection is upheld, the In Scope Dispute will be withdrawn from the Rail ADR Service and the Rail ADR Scheme Member and the Consumer will be notified. If the objection is overruled, the Service Provider will notify the Rail ADR Scheme Member who will have a further 5 Working Days from receipt of such notification to provide its case file so that the case file is received by the Service Provider no later than 15 Working Days after receipt of the Notification of the Dispute Being In Scope.
- There is no right of appeal against the Service Provider's final decision on scope for either the Consumer or the Rail ADR Scheme Member.
- The Service Provider will report on the number of upheld and overruled objections. In the event of overruled objections the Service Provider will have 45 Working Days to resolve these In Scope Disputes.

- **DISPUTE RESOLUTION**

- The Service Provider will seek to achieve a Simple Resolution of an In Scope Dispute wherever practical and appropriate. Sometimes the grounds for an In Scope Dispute may match previously settled In Scope Disputes for the Rail ADR Scheme Member subject to the Dispute ('an echo case'). It is noted that in relation to echo cases:
  - an echo case would apply where multiple identical claims are brought in relation to the same incident/event which affects multiple Consumers in the same way. In theory, the assessment and outcome that applies to one Consumer would apply to them all. This means that subsequent cases relating to the same incident would not require full investigation and the initial assessment can be applied to other cases. Therefore, as the outcome is already understood by the Rail ADR Scheme Member and the Service Provider, if previous In Scope Disputes which are echo cases have not been upheld, a Decision in favour of the Rail ADR Scheme Member will be issued without the In Scope Dispute being progressed to Mediation or Adjudication;
  - indicators that an echo case may apply are:
    - the factual circumstances are clear;
    - the factual circumstances are identical;
    - the Consumers have purchased the same ticket type;
    - an absence of any differentiating circumstances;
    - an absence of Aggravating Factors and Alleviating Factors.
- If a Simple Resolution is not possible, the Service Provider will attempt a Complex Resolution and thereby facilitate Mediation and, where applicable, Adjudication.

## Rail Ombudsman operating model for ORR

Mediation shall be between the parties subject to the In Scope Dispute; this will be in a format appropriate to the parties involved and the nature of the In Scope Dispute.

- Mediation will be based on the facts of the case as presented. All parties will have the opportunity to correct any inaccuracies or provide clarifying evidence within a fixed period specified by the Service Provider.
- The aim of Mediation is to provide an outcome that is mutually acceptable to both parties. Any such outcome will be binding on the Rail ADR Scheme Member.
- Adjudication will be inquisitorial, seeking responses and encouraging the participation of both parties to the In Scope Dispute equally.
- The Service Provider's adjudicators/ombudsmen must investigate certain factors including:
  - an assessment of current evidence;
  - expert advice;
  - appropriate remedy based in law and/or fairness;
  - compensatory entitlement.
- Decisions must be assessed for fairness, accuracy and consistency before being issued to the parties in the In Scope Dispute and all findings must be reported in a register of every Decision made by the Service Provider.
- The Service Provider must assess each In Scope Dispute on a case by case basis and will make Decisions taking account of the following:
  - the Industry Arrangements;
  - the rights and obligations contained in Consumer Legislation;
  - the individual circumstances and any other factors which from time to time may be relevant in assessing the Consumer's legal entitlement;
  - common law precedents and principles;
  - the relevant national law, for example English or Scottish law, as applicable.
- Decisions will be made on the civil burden of evidence, that is 'on a balance of probabilities', considering the information which has been provided. This means that one party's claim will be considered more probable than the other, based upon the evidence supplied. All Decisions will be underpinned by the principles of natural justice and moral fairness and the Service Provider will make a Decision based on what is fair and reasonable in all the circumstances of the Dispute.
- Subject to compliance with the overall timescales established in these Rail ADR Service Rules, the Service Provider can:
  - request further evidence from the Consumer or Rail ADR Scheme Member and set time limits by which this evidence must be provided;
  - receive and consider any evidence that it decides is relevant to the case in hand;

## Rail Ombudsman operating model for ORR

- proceed with the Adjudication if any party subject to the In Scope Dispute does not behave in a way that is compliant with these Rail ADR Service Rules;
  - end the Adjudication if, in its opinion, all or part of the In Scope Dispute is best resolved in another forum or dealing with such a type of In Scope Dispute would otherwise seriously impair the effective operation of the Service Provider as an ADR entity;
  - end the Adjudication if the Consumer and Rail ADR Scheme Member have reached a negotiated settlement outside of the Rail ADR Process;
  - determine whether a Rail ADR Scheme Member has complied with a Decision in the event a dispute arises between parties as to whether this has happened.
- Rail ADR Scheme Members will agree to honour any offer of redress that they have given to a Consumer when they enter into Mediation. However, if the In Scope Dispute proceeds through to Adjudication and the Service Provider decides that the Consumer is entitled to less than they were originally offered, the Rail ADR Scheme Member will only be bound to award the lower amount and the original offer may be withdrawn by the Rail ADR Scheme Member which means the Consumer may not be able to rely upon the better offer. The Service Provider will make this clear to the Consumer when the Consumer contacts the Rail ADR Service.
  - The Service Provider will issue all Decisions within 40 Working Days of the date on which the Dispute was accepted by the Service Provider as an In Scope Dispute unless:
    - additional evidence or independent advice is necessary for a Decision to be made;
    - an objection, subsequently overruled by the Service Provider, has been received from a Rail ADR Scheme Member as referred to in Paragraph 7 of this Part A; or
    - there are Exceptional Personal Circumstances and the Service Provider exercises its discretion to agree a different timescale as referred to in Paragraph 10 of this Part A.
  - The Service Provider will develop a culture of expertise in all matters relating to the Consumer experience on the railways so that it is able to facilitate resolutions without recourse to other parties. From time to time however the Service Provider may, at its discretion, seek the advice from an independent expert approved by the Lead Adjudicator/Ombudsman. The costs of sourcing such expertise will be borne by the Service Provider (but this is not intended to apply where the Service Provider considers it is necessary to seek advice from an independent expert in relation to gathering evidence in order to make a Decision).
  - Decisions will be provided in a format appropriate to the Consumer to all parties in the Dispute setting out:
    - a summary of the reasons for the Decision;
    - the source of any independent expert advice that has informed the Decision;
    - the amount of the award and how it was justified;
    - the timescale in which the Rail ADR Scheme Member must deliver redress once the Decision has been Accepted by the Consumer;

- a requirement for the Consumer to accept the Decision via the Rail ADR Service within 20 Working Days of the date of the Decision being issued (or longer in Exceptional Personal Circumstances at the discretion of the Service Provider).
- The Decision will also state that the Consumer is not bound by the Decision and other channels remain open to them to pursue their claim. However, it will also state that if the Decision is Accepted by the Consumer, the terms of the Decision will be in full and final settlement of the Dispute.
- A Decision only becomes binding on a Rail ADR Scheme Member once the Consumer has confirmed that they have Accepted it.
  - If the Consumer rejects the Decision either in full or in part, then the Decision is not binding on the Rail ADR Scheme Member.
  - If the Decision is not Accepted by the Consumer, then the Decision is not binding on the Rail ADR Scheme Member. In such circumstances, if the Rail ADR Scheme Member chooses not to implement the Decision then the case cannot be resubmitted to the Service Provider.
  - If the Decision requires the Rail ADR Scheme Member to act in relation to the Consumer, and the Consumer has Accepted the Decision, the Rail ADR Scheme Member must complete the necessary action(s):
    - within 14 days of when the Consumer Accepted the Decision (and the Consumer provided the necessary details so that a payment can be made) if the matter disputed relates to a refund or a price reduction; or
    - within 20 Working Days of when the Consumer Accepted the Decision (and the Consumer provided the necessary details so that a payment can be made) for all other matters unless an alternative timescale agreed by all parties that has been both communicated to and approved by the Service Provider.
  - Apart from amending a Decision following an error, the Service Provider will not enter into correspondence relating to the content of a Decision.
  - As part of its Adjudication, the Service Provider can also recommend that a Rail ADR Scheme Member should:
    - review or change its corporate policy(ies) or procedure(s) material to the cause of the Dispute; and/or
    - implement a course of action (such as staff training) designed to prevent the Dispute happening again.
- **REMEDIES AND COMPENSATION FRAMEWORK**
    - The Compensation Framework shall:
      - set out the objectives of compensation and the basic criteria that must be satisfied for a compensation award to be considered which will include setting out the scope of assessments, any exclusions, limitations and evidence required;
      - set out the rationale for grading the impact of the Rail ADR Scheme Member's actions which will be based on an assessment of what is fair and proportionate

with consideration to the nature and extent of the complaint, whether the issues are isolated or repeated as far as that Consumer is concerned, the impact on the Consumer, the speed and quality of the Rail ADR Scheme Member's response (as is reasonable taking into account the Rail ADR Scheme Member's response times stipulated in its franchise agreement) and the actions taken by the Consumer to minimise the impact suffered;

- operate as a guide to ensure clarity and consistency of approach.
- The Service Provider will provide an appropriate remedy where merited which both:
  - provides redress in accordance with the Consumer's entitlements under the applicable Industry Arrangements; and
  - recognises the basis for a Time & Trouble Award taking into account the factors referred to in Paragraphs 7 to 9 of this Part A.

In assessing whether (and what) compensation is an appropriate remedy, any support, refund and other remedy already given by Rail ADR Scheme Members to Consumers will be considered. For example, information, help with re-planning onwards journeys, alternative transport, overnight accommodation, refreshments provided on a free of charge basis etc.

- The list below contains a non-exhaustive outline of the types of remedies that the Service Provider can consider:
  - an explanation;
  - an acknowledgement that there was/is a problem;
  - an apology;
  - something to be done about a ticket or tickets if possible (such as reissuing a ticket for a travel on an alternative day);
  - a refund;
  - complimentary travel;
  - a token of apology (such as flowers or retail vouchers); and/or
  - compensation.
- In addition to any redress provided pursuant to Paragraph 7.0 of this Part A, under the Rail ADR Service there is a maximum limit of £2,500 per Consumer party to an In Scope Dispute as a compensation award ("**Maximum Award Limit**"). A compensation award made by the Service Provider up to Maximum Award Limit may include:
  - any amounts for reasonably contemplatable, mitigated loss (ie loss that the Consumer could have reasonably foreseen and taken steps to avoid) suffered due to the Rail ADR Scheme Member's breach which the Consumer can evidence (and which is not excluded under the Compensation Framework); and/or
  - a Time & Trouble Award,

in accordance with the terms set out in the Compensation Framework.

For example, a Consumer might seek to claim a refund of the purchase price of a ticket (pursuant to Paragraph 70 of this Part A which might exceed £2,500) and a compensation award (which must not exceed £2,500).

- The Service Provider has no powers to make an award of costs to any third party in respect of professional and/or other services engaged by a Consumer in relation to making an application to the Rail ADR Service.
- The Service Provider shall:
  - recompense Rail ADR Scheme Members for any amounts awarded to a Consumer following the resolution of a Dispute in accordance with the Rail ADR Process where any such award was due to an administrative error that cannot be rectified; and
  - pay a reasonable administration fee to the affected Rail ADR Scheme Member for handling any such amounts.

### ● NEGOTIATED SETTLEMENT

If at any stage during the Rail ADR Process, there is a negotiated settlement, then evidence of this should be provided to the Service Provider. Once the Service Provider has evidence that the Consumer has received the remedies agreed in the negotiated settlement, the case will be closed.

### ● COMPLIANCE

- The Rail ADR Scheme Member must provide the Consumer with all of the redress awarded by the Service Provider (other than a refund or a price reduction in accordance with Paragraph 70 of this Part A) either:
  - within 20 Working Days of the Decision being Accepted by the Consumer; or
  - within a timescale agreed by all parties subject to the In Scope Dispute that has been communicated to the Service Provider.
- If the Rail ADR Scheme Member is unable to provide the required redress within the relevant timescale, it must notify the Consumer and the Service Provider of this, together with the reasons and an expected date when redress will be instated. In these circumstances, the Service Provider may award further redress to the Consumer if further demonstrable inconvenience has been caused to the Consumer by the delay subject to the Maximum Award Limit.
- The Rail ADR Scheme Member must notify the Service Provider when it has provided the Consumer with all of the redress awarded.
- If the Service Provider is notified that a Rail ADR Scheme Member has failed to provide the redress required of it, the In Scope Dispute is deemed not to have been settled. The Service Provider will escalate the matter to the Managing Director of that Rail ADR Scheme Member. If that Rail ADR Scheme Member then continues to offer no redress, the matter will be escalated to the Rail ADR Service Board which will decide on the most appropriate course.



- **COMPLAINTS ABOUT THE SERVICE PROVIDER**

- Consumer complaints about the quality of service provided by the Service Provider should be sent to the Lead Adjudicator/Ombudsman. If the Lead Adjudicator/Ombudsman is unable to resolve the problem, he shall refer the matter to the Independent Assessor commissioned by the Rail ADR Service Board for consideration. This procedure cannot be used to challenge a Decision with a view to having it overturned.
- Rail ADR Scheme Members' complaints about the quality of service provided by the Service Provider should be escalated to the RDG Contract Manager who will review the complaint and decide on the most appropriate forum in which to progress it (eg at day-to-day service management level or with the Rail ADR Service Board via the Rail Sector Liaison Panel). The procedure cannot be used to challenge a Decision with a view to having it overturned.

- **DATA**

Subject to compliance with the Data Protection Legislation, if either the Consumer or the Rail ADR Scheme Member requires any hard copies of documents or physical materials that they have submitted as evidence returned to them, they must request this from the Service Provider within the timescales set out in the Service Provider's Data Retention Policy (which the Service Provider will make available to Consumers and the Rail ADR Scheme Members via the Rail ADR Service Website). If no such request is made, the Service Provider will dispose of the documents securely.

- **UPDATE**

These Rail ADR Service Rules may be updated from time to time by the Service Provider. In Scope Disputes will be determined in accordance with the Rail ADR Service Rules that were in force at the time the Consumer applied to the Rail ADR Service.

- **PROMULGATION**

The Rail ADR Service Rules and the Compensation Framework will have effect from the launch date of the Rail ADR Service.

## PART B: ELIGIBILITY CRITERIA

### 1. GENERAL APPROACH

- To be eligible for consideration a Dispute must be ‘in scope’ and it must relate to an incident that occurred on or after the launch date of the Rail ADR Service. This means there has been a failure of the Rail ADR Scheme Member to provide its service in accordance with the Industry Arrangements and/or with reasonable care and skill in accordance with the obligations under the Consumer Legislation.
- Disputes which relate to Consumer-facing services outsourced by a Rail ADR Scheme Member, for which the Rail ADR Scheme Member will be accountable, will be eligible for consideration.

#### ● IN SCOPE DISPUTES

The following is a summary of types of In Scope Dispute with some examples of types of Dispute which will be ‘out of scope’ and indicating to whom they should be referred:

- **Train service performance**
  - Delays or cancellations against the Advertised Timetable.
  - The effect of unplanned service alterations.
  - Failure to pay the delay compensation entitlement in accordance with the Industry Arrangements or there are other material issues arising in the claim that the Rail ADR Scheme Member has failed to address when providing the delay compensation entitlement.
  - The adequacy of information publicising rail improvement works or the suitability of reasonable alternative transport provided during rail improvement works.

Out of scope:

Subject matter of ‘out of scope’ Dispute	Referral to
The scheduling of rail improvement works and/or the Advertised Timetable implemented because of such works.	Transport Focus/London TravelWatch
and line closures.	Transport Focus/London TravelWatch
Advertised Timetabled departure times and duration of journeys.	Transport Focus/London TravelWatch
Planned route diversions and amended Advertised Timetables where these last more than 2 days and are caused by catastrophic events or are part of a major route enhancement project.	Transport Focus/London TravelWatch

Subject matter of 'out of scope' Dispute	Referral to
The potential impact on Consumers from Advertised Timetable changes (including the twice yearly change).	Transport Focus/London TravelWatch
Compensation policy (for example the original targets set for DR15 or the old charter-style mechanism via the franchising process, not whether they have been implemented correctly).	Transport Focus/London TravelWatch

○ **Customer service staff**

- The Quality of Interaction offered by staff.
- The availability of staff at stations or on trains during scheduled staffing hours.

Out of scope:

Subject matter of 'out of scope' Dispute	Referral to
The availability of staff outside of the scheduled staffing hours or the lack of staff on Driver Operated Only services.	Transport Focus/London TravelWatch
sed staffing levels.	Transport Focus/London TravelWatch

○ **Retailing and refunds**

- The clarity, accuracy and impartiality of the retailing of tickets and associated rail products.
- The availability of advance fares as advertised.
- The failure to give a refund due to an error made by a Rail ADR Scheme Member.
- The availability of a ticket type due to the inability to obtain a ticket (eg the station ticket office is closed or the TVM is out of order).
- Issues relating to the application or interpretation of Routeing Guide validities.

Out of scope:

Subject matter of 'out of scope' Dispute	Referral to
The pricing of tickets, government set fares policy and its consequences for fares.	Transport Focus/London TravelWatch

Subject matter of 'out of scope' Dispute	Referral to
ing Guide validities.	Transport Focus/London TravelWatch
e of particular types of products / tickets (for example multimodal, carnet, flexi-season, 16-18 school discounts).	Transport Focus/London TravelWatch

○ **Information**

- The clarity, accuracy and/or availability of information relating to Advertised Timetabled services in advance of or during a journey.

Out of scope:

Subject matter of 'out of scope' Dispute	Referral to
The availability and quality of published train performance data.	ORR

○ **On train issues**

- The availability, quality and maintenance of advertised on train amenities including toilets, information screens, public announcement systems, heating, air-conditioning, Wi-Fi, facilities for Consumers with Reduced Mobility, cycle storage, catering, first class.
- The quality of how a Rail ADR Scheme Member has managed the impact of known limitations of current on train amenities on a specific journey (for example, passenger information systems that cannot be updated with live service alterations, or accessibility-related facilities that are subject to a derogation from established standards).
- The quality of the enforcement of advertised policies on the train where applicable (such as the carriage of cycles, access to priority seating, access to reserved seats).

Out of scope:

Subject matter of 'out of scope' Dispute	Referral to
Campaigns, suggestions or requests for the introduction of new on train amenities or the refurbishment of existing rolling stock.	Transport Focus/London TravelWatch
on the carriage of cycles.	Transport Focus/London TravelWatch

### ○ **Station issues**

- The availability, quality and maintenance of advertised station amenities including lifts, escalators, toilets, waiting rooms, information screens, public announcement systems, rail ticket vending machines, ticket gatelines, cycle storage and lost property.
- Overcrowding at a station on a specific date.

Out of scope:

<b>Subject matter of 'out of scope' Dispute</b>	<b>Referral to</b>
Campaigns, suggestions or requests for the development or refurbishment of existing stations or the building of new stations.	Transport Focus/London TravelWatch
Station amenities (such as non-ticket vending machines, retail outlets and catering establishments) provided independently of the Rail ADR Scheme Member.	Transport Focus/London TravelWatch
Planned station closures.	Transport Focus/London TravelWatch

### ○ **Car parking**

- The provision and maintenance of customer car parking services and facilities on railway land, where the Rail ADR Scheme Member has responsibility for such services and facilities.
- Retailing of car parking tickets by rail staff at station ticket offices or through rail ticket vending machines that also sell car parking tickets.
- Enforcement of car parking policies (such as use of disabled spaces), where the Rail ADR Scheme Member has responsibility for such car parking policies.

Out of scope:

<b>Subject matter of 'out of scope' Dispute</b>	<b>Referral to</b>
Issue of a parking charge notice.	British Parking Ombudsman/ parking appeals body as appropriate
The provision of customer car parking services and facilities on railway land where reasonably advertised as not available.	Transport Focus/London TravelWatch

<b>Subject matter of 'out of scope' Dispute</b>	<b>Referral to</b>
The number of parking spaces provided at a station.	Transport Focus/London TravelWatch
Claims for damage to vehicles in car parks on railway land.	Rail ADR Scheme Member Claims Department/ Small Claims Court
Car parking in car parks with no relationship with the railway other than proximity.	The owner of car park
Retailing and pricing of car parking tickets at a station.	Transport Focus/London TravelWatch

- **Complaints handling**
  - All service failure issues, as regulated by a Rail ADR Scheme Member's Complaint Handling Procedure or Charter.
- **Safety and security**
  - Conditions or failures to enforce safety procedures (such as requiring cyclists to remove bicycles blocking access/egress on carriages) at a station or on a train on a specific date.

Out of scope:

<b>Subject matter of 'out of scope' Dispute</b>	<b>Referral to</b>
Personal injury and any associated claim for compensation.	Rail ADR Scheme Member Claims Department/ CAHA Registrar
Conditions (such as over-crowding) at a station or on a train on an ongoing basis.	Transport Focus/London TravelWatch

Subject matter of 'out of scope' Dispute	Referral to
Issues investigable by other bodies such as the Rail Safety and Standards Board (RSSB), Health and Safety Executive (HSE) and the police.	Applicable body
Correct enforcement of policies which fulfil safety-related obligations from rail industry safety bodies.	Transport Focus/London TravelWatch
Policies relating to the consumption of alcohol and/or smoking and the correct enforcement of such policies.	Transport Focus/London TravelWatch
The basis on which safety related operational decisions (such as the declassification of first class in the event of crowding in standard class) are made.	Transport Focus/London TravelWatch

○ **Consumers with Reduced Mobility**

- Provision of assistance and access to advertised services and/or facilities.
- The quality of how a Rail ADR Scheme Member has managed the impact of known limitations of current station or on train amenities for Consumers with Reduced Mobility on a specific journey. Examples of this might include where accessibility-related facilities are subject to a derogation from established accessibility standards or the service has been specified in a way that leaves the Rail ADR Scheme Member with the responsibility of making reasonable adjustments for Consumers with Reduced Mobility.

Out of scope:

Subject matter of 'out of scope' Dispute	Referral to
Issues relating to physical changes to existing rail infrastructure (trains and station buildings/facilities).	Transport Focus/London TravelWatch

○ **Discrimination under the Equality Act 2010**

- Where the financial final settlement for an In Scope Dispute may be less than or equal to the Maximum Award Limit.

Out of scope:

Subject matter of 'out of scope' Dispute	Referral to
Where the financial final settlement for an In Scope Dispute may exceed the Maximum Award Limit.	CAHA Registrar

- **Penalty Fares and other failure-to-purchase schemes**
- The Quality of Interaction when a penalty fare or other failure-to-purchase notice is being issued.
- Issuing of failure-to-purchase notices (excluding Penalty Fares) notwithstanding due legal process.

Out of scope:

Subject matter of 'out of scope' Dispute	Referral to
Issue of penalty fares and all appeals relating to the basis on which a penalty fare has been issued.	Appeals Service

- **Causes within the rail industry control and fully or partly outside of Rail ADR Scheme Member control**

It is acknowledged that:

- certain types of Disputes may relate to factors outside of the control of the Rail ADR Scheme Members (in cases where the Rail ADR Scheme Member is a company operating a passenger rail service under a franchise awarded by the Director of Passenger Rail Franchising pursuant to Section 23 of the Railways Act 1993) but originate from a root cause attributable to Network Rail or another rail industry body (such as a freight operator or ROSCO); these Disputes might not therefore be entirely outside of the rail industry's control as referred to in the NRCoT and may therefore be In Scope Disputes;
- if the impact of such Disputes results in a Rail ADR Scheme Member being unable to provide their services in accordance with the Industry Arrangements, then it is possible that the Rail ADR Scheme Member may have the responsibility for settling them.

In such circumstances therefore the Service Provider:

- may still view the Dispute as a failure of the rail industry to provide the services to the Consumer with reasonable care and skill and may make an award which could include an element of time and trouble;
- will inform the Consumer that an award is being made against the Rail ADR Scheme Member on behalf of the rail industry; and
- will, when closing the case, insofar as is reasonably possible, record where a Rail ADR Scheme Member has settled on behalf of the rail industry.

The following is a non-exhaustive list of examples of Disputes which may fall within the above category: overrunning engineering works; core infrastructure failures; late publication of timetabling information; unacceptably poor quality of management of incidents wholly outside of the control or influence of the Rail ADR Scheme Member;



damage to infrastructure due to rolling stock movements not in Rail ADR Scheme Member control.

- **SPECIFIC EXCLUSIONS**

- The Rail ADR Service cannot be used to adjudicate Disputes which fall into one or more of the following categories:
  - Disputes about residential and/or lineside issues;
  - Disputes where some form of action under civil or criminal law is already underway;
  - Disputes involving the police and/or where a criminal prosecution (including a prosecution under the Railway Byelaws) is being or has been heard in Court;
  - Disputes which relate to the outcome of ongoing staff disciplinary action;
  - Disputes centred on public policy (including future rail projects and consultations relating to future rail projects) industry structure, privatisation or similar;
  - Disputes about the reasons for industrial action;
  - Vexatious Disputes;
  - Disputes which fall exclusively under the remit of the Statutory Appeals Bodies or other bodies such as the CAHA Registrar, parking appeals body as appropriate or other bodies;
  - Disputes which relate to factors entirely outside of the rail industry's control as referred to in the NRCoT (such as trespass, fatalities or other events due to *force majeure*) save as provided by law (ie where liability cannot be limited or excluded);
  - Disputes which do not meet the Eligibility Criteria;
  - Disputes which prejudice byelaw enforcement, parking appeals and actual issuing of parking notices or penalty fares;
  - Disputes where the amount claimed as compensation exceeds the Maximum Award Limit;
  - Disputes that are business-to-business (B2B ie between a Rail ADR Scheme Member and a business).
- An award of compensation cannot exceed the Maximum Award Limit. Disputes where the Consumer is clearly seeking compensation for more than £2500 from the outset will be out of scope of the Rail ADR Service and sign-posted to the relevant body (such as the CAHA Registrar, the Courts or the Statutory Appeals Bodies). However, should it emerge *during* an investigation that a Dispute merits compensation of more than £2500, the Service Provider will communicate this to both the Rail ADR Scheme Member and the Consumer. If a negotiated settlement cannot subsequently be reached, the Service Provider may issue a decision supporting the Consumer's claim in the Courts; such a decision would be difficult for the Rail ADR Scheme Member to defend.

## Rail Ombudsman operating model for ORR

- Consumers are not entitled to compensation for: losses which arise in the course of any business arrangements such as loss of opportunity or loss of earnings; legal expenses and time taken in managing their complaint.
- If the Dispute is about something that is not covered by the Rail ADR Service Rules or raises a complex issue of law, it will be for the Rail ADR Service Board to determine the extent of its eligibility.

## Annex 2 Current annual fees and variable fees

Table A2.1 Current rail ADR fees

Rail ADR Scheme Member	Rail ADR Subscription Fee	Rail ADR Scheme Membership Fee	Case fees
Rail ADR Scheme Members primarily providing train operating services with a share greater than 1% of Passenger Miles	£10,000 per Rail ADR Scheme Member	The total of all the £10,000 Rail ADR Subscription Fees and the percentage of gross annual turnover will be subtracted from the total Rail ADR Scheme Membership Fee for the rail industry. The balance of the Rail ADR Scheme Membership Fee remaining after the above deduction will then be divided among the Rail ADR Scheme Members who have had cases brought against them on the 'polluter pays' principle.	The Variable Charges are: Number of in scope disputes completed per Contract Year:  Simple Resolution Dispute Fee 1st – 6,499th in scope dispute completed = £24.50  6,500th – 8000th in scope dispute completed = £27.50  8,001st – 10,000th in scope dispute completed = £30.50  Complex Resolution Dispute Fee  1st – 6,499th in scope dispute completed = £49.00  6,500th – 8000th in scope dispute completed = £52.00  8,001st – 10,000th in scope dispute completed = £55.00
Rail ADR Scheme Members primarily providing train operating services with a share less than 1% of Passenger Miles		8.5p per £1,000 of gross annual turnover	
Rail ADR Scheme Members primarily providing station facility operating services with a share greater than 1% of Total Footfall		£10,000 per Rail ADR Scheme Member	
Rail ADR Scheme Members primarily providing station facility operating services with a share less than 1% of Total Footfall		8.5p per £1000 of gross annual turnover	