



Consultation on a draft Rail Ombudsman operating model

Proposals to implement a new Rail Ombudsman operating model and amended licence condition

28 June 2022



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1. Executive summary

- 1.1 The May 2021 Williams-Shapps Plan for Rail (**WSPR**) states that ORR will take over responsibility from the [Rail Delivery Group \(RDG\)](#) for sponsoring the Rail Ombudsman. This has been reiterated recently in the [William-Shapps Plan for Rail, A Consultation on Legislation to Implement Rail Transformation](#), published in June 2022. An Ombudsman Steering Group, consisting of ORR, Department for Transport, Rail Delivery Group and Great British Railways Transition Team, has agreed that sponsorship of the Rail Ombudsman (a consumer redress and dispute resolution scheme) shall comprise the procurement for a provider of the service, and thereafter management of the contract.
- 1.2 This document is a consultation on ORR's proposals for an ombudsman operating model (**OOM**) and proposed licence modifications required as part of the ORR sponsorship process. An operating model specifies the way an organisation is constituted, governed, held to account, the functions it performs and to what standard. **Annex A** sets out the policy pathway ORR is working to as it proceeds with its Rail Ombudsman sponsorship plans.
- 1.3 The current Rail Ombudsman was established in November 2018 via a contractual agreement between the RDG on behalf of its members and the [Dispute Resolution Ombudsman Ltd \(DRO\)](#). ORR modified the Complaints Handling licence condition in July 2019 to make membership of the RDG sponsored Rail Ombudsman mandatory, resulting in 38 ORR licence holders joining the scheme.
- 1.4 ORR published an [independent report](#) by RedQuadrant eighteen months after the Rail Ombudsman was established to assess its effectiveness. It concluded that the scheme was broadly working well, but improvements could be made, which included establishing ORR as the formal sponsor of the Rail Ombudsman to support the independence of the scheme.
- 1.5 Driven by the rail reform programme, the government now considers that the long-term future of the Rail Ombudsman is best served under ORR sponsorship. Mandatory membership for licence holders to an ORR sponsored Rail Ombudsman will be achieved by amending the current Complaints Handling licence condition, proposals for which are set out in Chapter 4. With ORR performing this new sponsorship role, it should provide the Rail Ombudsman with long-term stability, assure its independence, and give it the platform to further evolve and adapt over time to continuously meet passenger and stakeholder needs and expectations.

- 1.6 With this opportunity to take a fresh look at the Rail Ombudsman’s role, ORR commissioned Lucerna Partners to develop proposals for a new OOM with inputs from key stakeholders. Its full report is at **Annex B**. The development of an updated and tailored OOM will ensure that when ORR assumes sponsorship of the Rail Ombudsman, it is implementing a scheme that has a sound constitution, governance arrangements and performance management framework to enable it to perform optimally and meet its objectives.
- 1.7 ORR’s [Consumer Expert Panel](#) has also helped with the development of the OOM and this consultation.

Our proposals

- 1.8 We are seeking stakeholder feedback on our proposals for the OOM with a view to ORR proceeding with a competitive tender process later this year to find a provider to operationalise and deliver an ORR sponsored ombudsman scheme. Detailed proposals are set out in Chapter 3 and should be read alongside the technical report (**Annex B**). Our proposals consider the following aspects of the Rail Ombudsman’s operations:

Section A: Overall description and key features of the Rail Ombudsman

Section B: Jurisdiction and scheme rules

Section C: Governance

Section D: Demand and Fees

Section E: Case management operations

Section F: Other required elements

- 1.9 We are also seeking views on proposals to amend the Complaints Handling licence condition to mandate passenger and station licence holders to join the new ORR procured scheme. Detailed proposals are set out in Chapter 4.

Responding to this consultation

- 1.10 Responses to this consultation are invited by **5pm on Friday 5 August 2022**, and should be sent by email to: railombudsmanconsultation@orr.gov.uk or by post to: **ORR consultation: Rail Ombudsman sponsorship**, Office of Rail and Road, 25 Cabot Square, London, E14 4QZ. In addition to the consultation questions we

have set out in this document, we also invite any general feedback on our proposals and draft impact assessments.

1.11 We ask that, wherever possible, you submit your response to us via email.

1.12 ORR has actively considered the needs of blind and partially sighted people in accessing this document in PDF format. The text is available in full on the ORR website and may be freely downloaded. Individuals and organisations can use free Adobe Reader accessibility features or screen readers to read the contents of this document.

1.13 If you need this document in a different format such as large print, easy read, audio recording or braille, please contact our Public Correspondence Team via:

- email: webteam@orr.gov.uk
- telephone: 020 7282 2000
- postal address: **ORR consultation: Rail Ombudsman sponsorship**, Office of Rail and Road, 25 Cabot Square, London, E14 4QZ.

We will consider your request and will endeavour to get back to you with the accessible format within 20 working days.

1.14 We plan to publish all responses to this consultation on our website. Should you wish for any information in your response to be treated as confidential, please be aware that this may be subject to publication, or release to other parties or to disclosure, in accordance with the access to information regimes. These regimes are primarily the Freedom of Information Act 2000 (FOIA), the General Data Protection Regulation (GDPR,) the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004.

1.15 Under the FOIA, there is a statutory code of practice which deals, amongst other things, with obligations of confidence. In view of this, if you are seeking confidentiality for information you are providing, please explain why. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on ORR.

1.16 If you are seeking to make a response in confidence, we would also be grateful if you would annex any confidential information, or provide a non-confidential summary, so that we can publish the non-confidential aspects of your response.

Next steps

- 1.17 The process for us to sponsor the Rail Ombudsman will involve a number of key phases following the outcomes of this consultation process. These include:
- Following consideration of the responses we will publish our decision and, if appropriate, proceed with the statutory licence modification process to mandate licence holders to join an ORR procured ADR scheme. This process is subject to further consultation.
 - A competitive tender process to find a service provider to act as the Rail Ombudsman. Our aim is to conclude the tender process and appoint a provider in early 2023 (subject to concluding prior stages in the process in a timely way).
 - A transition phase between contracts which will require stakeholder engagement and planning to ensure minimal disruption to both passengers and scheme members.
- 1.18 We are taking an open and collaborative approach to this work with the aim of securing broad stakeholder support for our proposals. We intend to engage with stakeholders throughout this process to ensure views are captured to help shape and inform our plans. We will provide updates and further detail on our proposals in due to course.

2. Introduction

- 2.1 The May 2021 Williams-Shapps Plan for Rail (WSPR) states that the Office of Rail and Road (ORR) will take over responsibility from the Rail Delivery Group (RDG) for sponsoring the Rail Ombudsman. This has been reiterated recently in the William-Shapps Plan for Rail, A Consultation on Legislation to Implement Rail Transformation, published in June 2022.
- 2.2 This document is a consultation on ORR's proposals for an Ombudsman Operating Model (OOM) and licence modification required as part of the ORR sponsorship process. **Annex A** sets out the policy pathway ORR is working to as it proceeds with its ombudsman sponsorship plans.
- 2.3 The current Rail Ombudsman was established in November 2018 via a contractual agreement between RDG on behalf of its members and the Dispute Resolution Ombudsman Ltd (DRO) following a competitive tender process. ORR introduced a licence condition in July 2019 to make membership of the RDG sponsored Rail Ombudsman mandatory, resulting in 38 ORR licence holders joining the scheme.
- 2.4 The Rail Ombudsman is a relatively small ombudsman scheme compared to those in other sectors, in terms of the number of cases it receives and investigates annually. However, its importance and the value it adds to the rail sector is nonetheless significant owing to passengers having, in many cases, lower levels of choice about which services to use, and at what price, compared to consumers in other markets. The presence of a Rail Ombudsman can give passengers greater trust and confidence as rail users that if things go wrong, they will have access to a free, reliable and robust process for seeking redress.
- 2.5 ORR published an independent report by RedQuadrant eighteen months after the Rail Ombudsman was established which assessed its operations and effectiveness. The report concluded that the scheme was broadly working well and was meeting its contractual obligations. But it recommended improvements in three specific areas:
- *governance and accountability;*
 - *operational delivery;* and
 - *impact and influence.*

Since that time, RDG, ORR, DRO and scheme members have taken a series of steps to implement incremental improvements to the scheme. For example, ORR

took on the role of secretariat for the Scheme Council in December 2020 to help strengthen some aspects of governance. However, some specific recommendations were more fundamental in nature and could not be progressed within the reasonable parameters of the current scheme's contractual agreements or governance framework. This related to a concern '*that current governance arrangements and practices can be improved as they are not fully assuring or demonstrating independence*'. To resolve this, the review proposed (recommendation 1b in the report) that ORR should be established as '*the formal sponsor of the Rail Ombudsman (through legislation if necessary)*'. As part of the rail reform programme, the government has decided that this transition of the Rail Ombudsman to ORR sponsorship should be taken forward at this time as part of the wider package of reform.

- 2.6 An Ombudsman Steering Group, consisting of ORR, Department for Transport, Rail Delivery Group and Great British Railways Transition Team, has agreed that ORR sponsorship of the Rail Ombudsman shall comprise the procurement for a provider of the service, and thereafter management of the contract.
- 2.7 With ORR performing this new sponsorship role, it should provide the Rail Ombudsman with long-term stability, assure its independence, and give it the platform to further evolve and adapt over time to continuously meet stakeholder needs and expectations. It is with this in mind that we see this as an opportunity to take a fresh look at how the Rail Ombudsman, now in its fourth year, should operate in the future.
- 2.8 It should be noted that our proposals do not seek to amend the role of the Rail Ombudsman in respect of how it engages with and complements the current functions of [Transport Focus](#) and [London TravelWatch](#).
- 2.9 We are seeking stakeholder feedback on ORR's proposals for an OOM. This will enable us to finalise an operating model that will support ORR's procurement of a Rail Ombudsman service provider.

3. A new Rail Ombudsman operating model

- 3.1 The current Rail Ombudsman scheme has been used as a baseline for analysis with consideration now being given to how this model could and should evolve under ORR sponsorship.
- 3.2 Initial stakeholder feedback received during the development of the proposed OOM indicates that, for the most part, the Rail Ombudsman is recognised for adding value to the sector. ORR’s decision to assess how it can further grow and develop under its sponsorship has therefore been warmly received, with a consensus forming that this represents an opportune moment to reassess the Rail Ombudsman’s operations and effectiveness to ensure it is appropriately configured to deliver its objectives and meet passenger and stakeholder needs and expectations in the long-term.
- 3.3 It is important to state that this consultation is not intended to comment on the performance of the current Rail Ombudsman scheme. Nevertheless, it is sensible and pragmatic to use the current scheme as the starting point for our review. Where there is evidence that current aspects of the scheme are performing well and remain relevant and appropriate under an ORR sponsorship model, we are proposing that these are retained. Conversely, where there is evidence of areas for improvement, or a lack of evidence as to the value or effectiveness of some current arrangements, or where some existing arrangements may not be relevant or appropriate under an ORR sponsorship model, proposals have been made as to how these should change.
- 3.4 We set out below ORR’s core proposals for the OOM in the following sections:
 - Section A: Overall description and key features of the Rail Ombudsman
 - Section B: Jurisdiction and scheme rules
 - Section C: Governance
 - Section D: Demand and Fees
 - Section E: Case management operations
 - Section F: Other required elements

Section A: Overall description and key features of the Rail Ombudsman

The role of the Rail Ombudsman

Proposal

The Rail Ombudsman:

- will investigate and resolve passenger complaints.
- will be free to use for passengers and its decisions must be binding on scheme members.
- will be a source of evidence and intelligence, which will be drawn from its role resolving disputes, on issues that may cause consumer detriment in the rail industry, including the overall passenger experience of raising a complaint about a rail service provider.
- will occupy a space between ORR, Transport Focus and London TravelWatch, working openly and collaboratively with them whilst avoiding unnecessary overlaps and duplication of functions.

3.5 The Rail Ombudsman should be an independent service that investigates and resolves passenger complaints. It should be free to use for passengers and its decisions must be binding on scheme members. In performing its investigatory role, it must be a neutral arbiter and make decisions based on evidence and what is considered fair and reasonable.

3.6 As well as providing redress for an individual, the Rail Ombudsman must also identify any systemic or recurring issues it learns of through case handling and provide feedback to its members and wider stakeholders to help improve services and complaint handling in the sector more broadly. In this sense, it can simultaneously help deliver the right outcome for passengers, thereby bolstering their confidence and trust as rail users, and fostering a culture of continual learning and improvement across the industry.

3.7 As set out in section 2 of technical report, there was broad support for the complaint resolution function, effectively as its core offering as a rail dispute resolution service. There was also strong support for more explicitly clarifying the Rail Ombudsman's dual purpose: of complaints resolution and a broader contribution to sector learning and continuous improvement.

- 3.8 We are of the view that where the role of an ombudsman scheme is limited to only resolving complaints, it is not adding the additional value and wider benefits that an ombudsman scheme is intended to bring to any sector it serves. This includes:
- the generation of insight to inform individual member firms' business planning, commercial decision-making and continuous improvement in complaint handling practices; and
 - identifying trends and drawing out evidence and intelligence from the complaints it receives about systemic issues across an industry that should be investigated further.
- 3.9 In this way, the Rail Ombudsman can both benefit the passengers who refer a complaint to it, but also benefit all member organisations, every passenger that complains to an organisation, and every passenger across the network as a rail user. This is the broader value it can add to the sector.
- 3.10 Discussions have been taking place with the Department for Transport (DfT) and the statutory passenger advocacy bodies, Transport Focus and London TravelWatch, as part of the wider rail reform programme as to how best to clarify their roles and interactions with government and industry. We accept the specific recommendation on how this might be enabled through better sharing of data (see section 4.3 of the technical report). We would also note that ORR, DfT, Transport Focus and London TravelWatch have provisionally agreed plans for the creation of Memoranda of Understanding between the Rail Ombudsman and the passenger advocacy bodies as part of their new passenger champion role as set out in the WSPR.

Accessibility requirements

Proposal

- The Rail Ombudsman must ensure the scheme is accessible and working for all users, including those with protected characteristics.
- It will be required to meet and continuously improve upon the current standards for accessible communications and measure the accessibility of its services.

- 3.11 The Rail Ombudsman scheme must be accessible to all rail users and should conduct monitoring and testing to ensure that its practices and processes are non-exclusionary. **Annex C** sets out our initial analysis of the opportunities offered by our proposals for the OOM to advance equality of opportunity and reduce

discrimination for rail passengers with characteristics protected under the Equality Act 2010, with particular emphasis on disabled passengers.

- 3.12 The current Rail Ombudsman is already required to meet strict accessibility criteria for its communications with passengers, similar to the requirements placed on train and station operators by their [Accessible Travel Policy](#) licence condition. We have identified some opportunities to strengthen these requirements (as detailed in our Equality Impact Assessment in **Annex C**) and consider that there may be an opportunity to embed accessibility and inclusion more fully within the OOM. We seek views on how best to do this, and whether the accessibility of the service could be improved in other ways.

Q1. Please provide any additional information which you consider we should take into account in our equality impact assessment (Annex C), whether in relation to impacts on those with the protected characteristic of disability or any other protected characteristic.

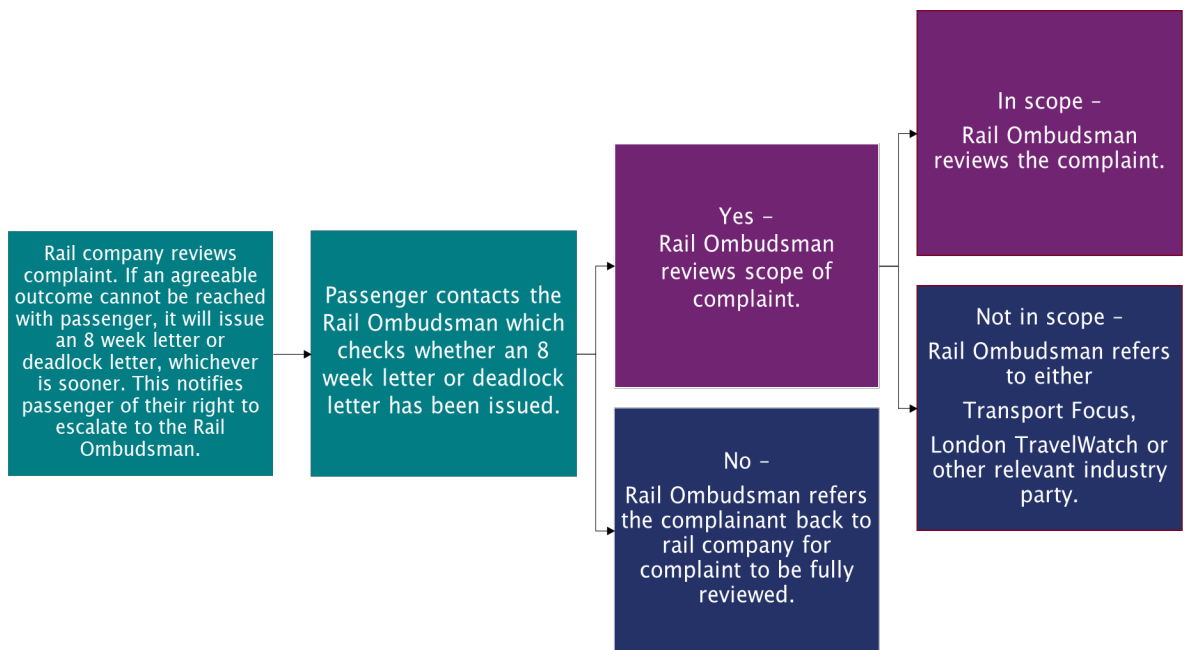
Rail Ombudsman as a single front door for escalated passenger complaints

Proposal

- The Rail Ombudsman takes responsibility for testing how the current escalated complaint triage function operates in practice (see 3.13 below). This should include testing signposting and messaging with passengers whilst considering the views and needs of members and other stakeholders, including Transport Focus and London TravelWatch.
- The Rail Ombudsman should facilitate improvements and solutions where needed including, if necessary, recommending that the scope of the triage function should be reduced if that would bring an overall benefit to passengers.

- 3.13 Currently where a scheme member is unable to resolve a complaint to the passenger's satisfaction, or within mandatory timescales, the complaint is directed to the Rail Ombudsman to triage (i.e. the Rail Ombudsman acts as a *single front door* for all escalated complaints).

Figure 1: Complaint Escalation Process



3.14 Where the complaint is in-scope of the Rail Ombudsman’s jurisdiction it reviews the case in accordance with its procedures. If the complaint is out of scope, it will refer it on to the relevant statutory passenger advocacy body, either Transport Focus or London TravelWatch. If the complaint is ineligible, it is sent back to the relevant scheme member, for example if the passenger has not completed the complaints process with the train operator.

3.15 We are aware of the discussions within industry about the advantages and disadvantages of the Rail Ombudsman acting as a *single front door* for all escalated complaints. We understand the current arrangements were agreed on the basis that it best served the needs of the passenger in terms of its procedural simplicity. However, there is some debate as to whether this triage function is delivering the intended outcomes for passengers and that more detailed analysis and evidence gathering may be required to assess costs and benefits of alternative approaches. For example, where a complaint is obviously out of scope for the Rail Ombudsman then it could be more appropriate for a train operator to transfer the complaint directly to Transport Focus which could reduce the time it takes for the case to be reviewed.

3.16 Our view is that the ORR procured Rail Ombudsman should initially adopt the current triage arrangements with a commitment to conduct consumer testing at a

later stage to consider if this remains the optimal approach. Where evidence is uncovered that an alternative approach may be more suitable, this can be progressed through consultation and established change control processes.

Controlling the Rail Ombudsman's costs

Proposal

- The Rail Ombudsman will consult with stakeholders on its estimated required budget each year, accounting for any projected increase in costs and specifying savings. The Rail Ombudsman budget may be subject to final ORR approval;
- ORR's may play a role in cost recovery and the transfer of revenue to the Rail Ombudsman on behalf of licence holders, ensuring joint ownership of expenditure by both Ombudsman and ORR;
- A clear change control process will be specified in the contract with the ombudsman service provider, and this will be managed robustly to control changes in budget, timescales for delivery of services, or other terms and conditions.

- 3.17 Feedback received from the current Rail Ombudsman on its experiences of cost control while providing the service has helped inform and shape some of our thinking in this space.
- 3.18 As part of our procurement process, we will include a requirement for potential ombudsman service providers to demonstrate robust financial planning and cost control capabilities, and show how this will be allied with industry engagement to estimate future complaint volumes and required revenue. Bidders will be required to explain how they will consult stakeholders on their estimated budget each year, accounting for any increases and specifying where costs can be saved.
- 3.19 ORR's role as contract manager and involvement in cost recovery and transfer of funds will provide assurance to the process, supporting a principle of joint ownership (between ORR and the Rail Ombudsman) of scheme expenditure.

Accreditations

Proposal

- The Rail Ombudsman service provider should obtain (and thereafter retain) Ombudsman Association accreditation as an Ombudsman Member within 6 months of contract award; and
- The Rail Ombudsman service provider must obtain (and thereafter retain) ADR approval from the Secretary of State within 3 months of contract award.

- Contractually, ORR will be able to agree an extension to the deadline for achieving initial accreditations and any reaccreditations required in the future.

3.20 The Rail Ombudsman must obtain approval from the ‘competent authority’ under the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations (the **ADR Regulations**). The competent authority for rail is the Secretary of State, who exercises its power through the Chartered Trading Standard Institute (**CTSI**). The scheme should also achieve full Ombudsman Association (**OA**) membership. It is important for passenger trust and confidence as rail users to have easy access to complaint channels when things go wrong. Where those complaints cannot be resolved by the rail service provider in the first instance, passengers must then have free and easy access to a recognised dispute resolution service as the next stage.

3.21 ADR and OA accreditation therefore serves two principal purposes:

- (i) it ensures the rail ADR scheme provider has operations and practices that comply with best practice in dispute resolution and, by extension;
- (ii) membership of these bodies signals legitimacy, quality and robustness of these complaint escalation processes to passengers, which can encourage them to fully pursue their rights and entitlements.

3.22 With respect to the option for ORR to extend the deadline for achieving accreditations and reaccreditations, we understand that the timeframe for applicants to achieve accreditation by CTSI and the OA can vary depending on circumstances. We have however been engaging closely with both CTSI and the OA to understand their respective accreditation procedures and likely timescales for the end-to-end processes to mitigate the risk of slippage where possible.

Contract length and timeframe for scheme setup

Proposal

- The Rail Ombudsman service provider should operate under a contract with ORR with an initial term of at least five years with the option for ORR to extend the initial term by up to five years;
- A no fault termination clause may be included in the contract (alongside other termination clauses) allowing ORR to terminate it on not less than 6 months’ notice, with contractual arrangements that guarantee continuity of service for passengers while new arrangements are put in place.

- 3.23 Under ORR sponsorship, the Rail Ombudsman will be a non-statutory ombudsman scheme. The provider of the scheme will be appointed following a competitive tender process to provide this service under contract. ORR must comply with relevant legislative and procedural obligations when it procures services and so this naturally fixes some parameters we must work within when tendering for this service. For example, our duty to protect tax-payer money would prohibit us from appointing a provider on an open-ended contract and may necessitate the inclusion of a no-fault early termination clause, alongside other termination clauses (for example in the event of insolvency or a material breach of the contract by the service provider).
- 3.24 Optimal contract length will therefore be shaped by a range of factors. The time and resources required to set up the new scheme will be significant, even with learning and potential efficiencies carried over from the current scheme. A successful ombudsman scheme is also likely to evolve and mature over time, and its performance is likely to be enhanced by the supplier building long-term relationships with its members and other stakeholders. This therefore necessitates a contract of sufficient length and commercial value to incentivise reputable firms to bid, which in turn creates the competitive pressures for the agreement of a commercially viable contract on efficient terms and conditions.
- 3.25 Taking ORR wider procurement obligations and the commercial realities of tendering for a contract of this nature into account, we therefore propose that the initial term of the contract should be for a minimum of five years with the option for ORR to extend this by up to five years.
- 3.26 Moreover, to protect passengers from any potential interruption to access to the Rail Ombudsman service, a termination notice period of at least six months will also be specified in the contract to allow time for an alternative provider to be found, should ORR decide to terminate early. We also intend to leave open for competition the scheme setup timescales, to allow suppliers in different circumstances the ability to set out plans for establishing the scheme depending on their individual circumstances and be scored accordingly.

Section B: Jurisdiction and scheme rules

Ombudsman scheme membership

Proposal

The Rail Ombudsman should be open for all rail industry parties to join, either as compulsory members or voluntary members. Compulsory members should include (as now):

- all passenger-carrying train operators;
- Network Rail (or future equivalent); and
- other station operators.

- 3.27 The current Rail Ombudsman scheme has two distinct categories of scheme participant, *compulsory* members and *voluntary* members. We see merit in the continuation of this. Compulsory members will be ORR licence holders which will be subject to the new licence obligation to join the ORR procured ADR scheme (outlined in chapter 4). Currently 38 ORR passenger and or station licence holders are compulsory members of the scheme. To note: not all licence holders, for example Eurostar, have the condition in their licence that requires them to join the RDG-procured scheme. These include train operators, some tram and heritage operators, and station only operators. Voluntary members are those industry parties which are not required to hold an ORR licence, or are not subject to the ADR licence obligation, but can choose to join the scheme of their own accord. National Rail Enquiries is the only voluntary member of the current Rail Ombudsman.
- 3.28 We consider that all licence holders which are currently subject to the ADR licence obligation should accept our proposed licence amendment and become compulsory members of the new ORR procured ADR scheme. This will ensure their passengers continue to enjoy access to the Rail Ombudsman service and avoids what may be regarded as a ‘rolling back’ of consumer protection at a critical phase in the evolution of the rail industry where reforms have a stated intent to put passenger interests at the heart of decision-making.
- 3.29 We note the technical report references the merits of mandating smaller operators to participate in the Rail Ombudsman scheme and whether the cost to them is proportionate to the value it brings in passenger benefit.
- 3.30 In the interests of equity and fairness it is our view that all passengers, irrespective of which company they use to access rail services, should have access to rail ADR. This plays an important part in building passenger trust and confidence in

the industry. Moreover, recognition must also be given to the wider benefits Rail Ombudsman scheme membership can provide for these small operators e.g. access to data on key drivers of passenger satisfaction/dissatisfaction, trend analysis, insights into best practice and innovation, etc. The issue of membership cost to these smaller operators is considered in more detail in section 5.2 of the technical report.

- 3.31 We are also aware that there has been industry discussion about rail ticket retailers, given their prominence in providing passenger-facing services, joining the Rail Ombudsman scheme as voluntary members. We consider any rail ticket retailer should be able to join the scheme as a voluntary member and negotiate which aspects of their service should come under the scheme's jurisdiction.

Rail Ombudsman scheme service jurisdiction

Proposal

- The Rail Ombudsman scheme should continue to focus on resolving disputes between passengers and companies in rail and any changes to widen the service jurisdiction should be considered over time.

- 3.32 Annex 1 (Part B) of the technical report sets out the rail services that are in-scope of the current Rail Ombudsman scheme. 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 statutory passenger advocacy bodies (e.g. the pricing of tickets). 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.
- 3.33 We note from the technical report there were questions about which aspects of service should be in or out of scope of the Rail Ombudsman (e.g. car parking charge notices) but there was no clear view on what changes, if any, would be appropriate. Furthermore, potentially changing provider of the Rail Ombudsman scheme whilst at the same time attempting to change the overall service jurisdiction of the scheme, when there is no immediate or significant support for doing so, would risk adding potential complexity and delay to the process of establishing the ORR sponsored scheme.
- 3.34 In our view the current service jurisdiction of the Rail Ombudsman remains appropriate and should be carried forward, although we may need to align some of

the language with ORR terminology, with any necessary changes to it considered over time when the evidence for change may become stronger and clearer.

Decision making

Proposal

- The Rail Ombudsman’s decision-making should be constrained, to the relevant degree, by the need to consider policies that govern the rail industry and the law.
- It should nonetheless be under an obligation, in line with its evidence and intelligence gathering role, to collect, and report on, evidence that suggests any failings in industry wide policies that are to the detriment of consumers.

3.35 An ombudsman scheme should make fair, impartial decisions after considering the arguments of both sides. Nonetheless, it is common for an ombudsman’s decisions to be influenced or constrained by relevant legal, policy or procedural factors within its setting.

3.36 This also applies to the current Rail Ombudsman which has some constraints around its decision-making by obliging it to consider things such as (see section 3.3 of Annex B for full list):

- industry arrangements (e.g. the National Rail Conditions of Travel);
- regulatory or legal obligations (e.g. ORR regulatory requirements, relevant UK legislation);
- franchise requirements (e.g. contractual obligations set by a franchising authority, such as DfT or Transport Scotland);

3.37 We are aware that some stakeholders have expressed concerns that the current Rail Ombudsman occasionally departed from rail industry policies in its decision-making. The concern was that strictures of the rail industry’s funding arrangements, highly specified service contracts and various sector-wide agreements were such that it would be unworkable to allow the Rail Ombudsman to depart from policies set by franchising authorities, ORR, or the National Rail Conditions of Travel (NRCoT).

3.38 As our technical report explains (section 3.3), it is not unusual for the unique circumstances of any individual case to be taken into account by an ombudsman 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.

- 3.39 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.
- 3.40 For these reasons, we propose that the decision-making jurisdiction of the current scheme remains appropriate and should continue under the ORR sponsored scheme. However, in the interests of transparency and understanding, it should be made clear in the scheme rules which industry arrangements the Rail Ombudsman will take into consideration as part of its decision making.
- 3.41 Related to that, the Rail Ombudsman should be under an obligation – in line with its evidence and intelligence gathering role – to collect, and report on, evidence that suggests any failings in industry wide policies that are to the detriment of consumers. For example, while the Rail Ombudsman would not routinely override provisions specified in the NRCoT, it could comment on recurring passenger detriment which it identified through its case work.

The Rail Ombudsman scheme rules

Proposal

- The Rail Ombudsman should have responsibility for developing, in conjunction with stakeholders, the scheme rules to be approved by ORR;
- The scheme rules must be written in language that is accessible to passengers and subsequently published;
- Changes to the scheme rules will be made in accordance with a change control process set out in the contract which will include that the Rail Ombudsman:
 - must consult stakeholders on any proposed changes to the scheme rules, and
 - receive approval from ORR for proposed changes;
- The Rail Ombudsman must keep the scheme rules and associated documents up to date.

- 3.42 We consider that the Rail Ombudsman scheme should be committed to operating transparently to give stakeholders trust and confidence in its processes and procedures. Accordingly, we propose that the provider of the Rail Ombudsman

service will take the lead in developing the scheme rules in collaboration with its members and stakeholders, including those representing consumers with protected characteristics, and keep these rules under review as the scheme evolves over time. Scheme rules should be published and written in language that is accessible to both industry and rail users. ORR approval of the scheme rules will be required prior to finalisation and publication. The Rail Ombudsman's ownership of its scheme rules should incentivise it to ensure that the scheme's processes and procedures are working efficiently and effectively, and where issues are identified it can be motivated to quickly resolve them.

- 3.43 We consider that it would be inappropriate for the Rail Ombudsman 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, without consultation and approval. As such it is our intention to include a change control process in the contract.

Maximum award limits

Proposal

- The maximum award limit should be £2,500.
- If, in the future, the Rail Ombudsman collects evidence that the limit is too low, then it should consult ORR and stakeholders on making a change.

- 3.44 The current maximum award limit is £2,500 per passenger excluding any refunds. We note that the current average award for the current scheme is substantially below the maximum award threshold (see table 3.2 of technical report e.g. Q3 2021 average award was £80). Provisional stakeholder feedback suggests that the current award limit remains appropriate, and this is largely because ticket refunds are not subject to the award limit which means that a passenger could be awarded a season ticket refund exceeding the threshold and supplementary redress up to the £2,500 limit. We therefore propose to carry forward these arrangements and if, in the future, the Rail Ombudsman collects evidence that the limit is no longer appropriate, then it may consult ORR and stakeholders on making a change through an amendment to the scheme rules or its service contract via the established change control process.

Rail Ombudsman case handling timescales

Proposal

The Rail Ombudsman should have a maximum timeframe of 40 working days to close in-scope cases, but ORR will seek (via its tender) to reduce this timeframe where feasible.

- 3.45 We consider the current 40 working day response target for in-scope cases as an area for potential improvement going forward. We note that the current Rail Ombudsman scheme has most recently reported an average time of 26.2 days to close cases (see page 2 of the [Rail Ombudsman's most recent CTSI Annual Activity Report](#)). However, there is some uncertainty around the stability of the time series data on this, owing mostly to the impact of COVID-19 on case volumes and temporary changes it drove in the types of cases the Rail Ombudsman received.
- 3.46 It means the analytical baseline from which to assess what a reasonable target response time below 40 working days might be at this time is unclear, and so we consider the best approach is to allow the market to consider the available data, assess their own capabilities, and effectively compete on this requirement as part of the bidding process for the contract. Their proposal would be considered in the context of the overall bid, including case handling strategies, quality standards, and the overall cost of the service. For the avoidance of doubt, a 40 working day response time is the maximum timeframe ORR would accept from any bidder.

Section C: Governance

Independent Rail Ombudsman Board

Proposal

- The Rail Ombudsman should be governed by an appropriately sized independent Board and the scheme should be required to comply (or explain non-compliance where relevant) with the UK Corporate Governance Code.
- The Board should be comprised of a mix of executives from the Rail Ombudsman provider and independent non-executive directors; with the non-executive directors holding a voting majority and should not have any conflicts of interest that impair their independence.
- Non-executive Board members should be remunerated.

- The Board should have the requisite skills, experience and knowledge to carry out its functions effectively and 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, such as a Chief Ombudsman.

- 3.47 Section 4 of the technical report describes the governance structure of the current Rail Ombudsman scheme and explains that it was originally constituted in this way owing to the specific circumstances under which it operates as, what is effectively, an industry-created scheme. We note stakeholder feedback which highlighted some dissatisfaction with the current governance arrangements and a desire to see this addressed as the scheme transitions to ORR sponsorship.
- 3.48 The technical report (section 4.1) outlines how other sectors with a statutory regulator constitute and govern their relevant ombudsman schemes with oversight from independent boards. We believe there is merit in moving towards a more traditional and proven governance model similar to those cited.
- 3.49 While the Rail Ombudsman service contract will be procured and managed by ORR, we propose that the Rail Ombudsman should be governed by an appropriately sized, independent Board. This independent Board would effectively take the place of the current Scheme Council. The ORR-sponsored scheme should also be required to comply (or explain non-compliance) with the [UK Corporate Governance Code](#) as a commitment to good governance and best practice. The requirements of the Code (see section 4.1 in technical report) explain that some aspects of the Code may not apply. We consider that compliance with the **relevant aspects** of the Code should serve to address some of the specific areas of weakness identified by stakeholders concerning the current scheme's governance arrangements.
- 3.50 To ensure good governance, the independent Board, and any of its sub-committees, should be comprised of individuals with the requisite skills, experience, and knowledge to carry out its functions effectively. ORR intends to have the capacity to review appointments and the overall size and composition of the Board 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, such as a specified person with the title of chief ombudsman or ombudsman, with overall responsibility for decision making on individual cases.

3.51 To ensure the independent Board has the adequate level of resource and calibre of individual, we believe that Board members should be remunerated. A key learning point from the current scheme council is that it is comprised of industry representatives who find it challenging to commit the requisite amount of time to review papers and actively contribute to decision-making in an informed way. A dedicated Board comprised of executive members of the Rail Ombudsman provider and remunerated non-executive directors would address this issue.

Independent Assessor

Proposal

- The Rail Ombudsman Board should be required to appoint an Independent Assessor to hear complaints from companies and consumers about the scheme provider's service provision;
- 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 member organisations;
- as well as hearing complaints from companies and consumers about the scheme's service provision, 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.

3.52 Most ombudsman schemes have in place an Independent Assessor who is appointed by the Board with a remit to hear service complaints from members and users of the scheme. They do not review the outcome of an ombudsman's decisions. It is normal for the Independent Assessor to report on their 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 ombudsmen schemes.

3.53 The current scheme has an Independent Assessor and we note that there was significant positive stakeholder feedback that this aspect of governance was generally working well. Two aspects of the Independent Assessor's role that could be improved were identified:

- (i) how long it takes for cases to be reviewed; and
- (ii) improving awareness that the Independent Assessor can hear service complaints from member firms as well as consumers.

3.54 We propose that the Rail Ombudsman Board should be required to appoint an Independent Assessor to hear complaints from companies and consumers about the service provided. There will be a requirement to engage with stakeholders to ascertain an appropriate target timeframe for case reviews. The Independent Assessor should prepare and present an annual report to the Board. It should be published and shared with ORR for performance monitoring. The Rail Ombudsman will also have a specific requirement to appropriately promote the presence of the Independent Assessor with consumers and companies with a clear explanation of its remit. 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.

Data and intelligence sharing with statutory passenger advocacy bodies - Transport Focus and London TravelWatch

Proposal

The Rail Ombudsman should be required to:

- consult with the statutory advocacy bodies to identify their requirements, including near real time provision of data; and
- put in place an agreement to share data and insight with the statutory consumer advocacy bodies to meet their needs.

3.55 We have already explained in paragraph 3.10 that there are plans for the development of memoranda of understanding between the Rail Ombudsman, Transport Focus and London TravelWatch as these passenger advocacy bodies assume their new Passenger Champion role set out in the WSPR. These agreements are also intended to cover data and intelligence sharing between the organisations to ensure there is a joined up and coordinated approach to knowledge and information sharing. We propose to write in a contractual requirement for the Rail Ombudsman service provider to formally engage with Transport Focus and London TravelWatch to deliver on this commitment.

Advisory Panels

Proposal

The Rail Ombudsman should be required to establish two Advisory Panels:

- a passenger panel that is representative of the consumers of its members (which should include Transport Focus and London TravelWatch and those

with lived experience of the issues facing those consumers with protected characteristics); and

- a member panel.

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

- advising the Rail Ombudsman on emerging trends and issues from the perspective of that stakeholder group; and
- advising on how the Rail Ombudsman can deliver on its objectives and functions especially its role of driving continuous improvement.

3.56 The purpose of an Advisory Panel is to provide an ombudsman with ongoing access to essential expertise to help it continually deepen and widen its knowledge and understanding of the sector it serves.

3.57 The current Rail Ombudsman scheme is required to establish and operate a *Rail Liaison Panel*. It is comprised of representatives drawn from member firms, statutory passenger advocacy groups, ORR, the Department for Transport, Citizens Advice and supplemented with other individuals with specific, relevant expertise, such as ADR experts. In this sense the current panel consists of a broad mix of stakeholder interests and expertise. There is recognition that the current panel adds value and is seen as an important source of expert knowledge and a forum to discuss ideas and provide feedback to the Rail Ombudsman executive. However, some stakeholders perceive the sheer breadth of views within the panel has led to a lack of direction and clarity about the panel's specific purpose and the types of recommendations or advice it should be giving, and to whom.

3.58 We note that other ombudsman schemes such as the Financial Ombudsman Service operate with separate panels, with one representing consumers and the other representing member firms. We also note other established ombudsman schemes which are moving towards this model in recognition of being regarded best practice. Part of the rationale for this is that the representations from these dedicated panels to an ombudsman board can be much clearer and more developed. There is also a perception that in a mixed panel it is often the consumer voice that is drowned out by the often better resourced and more established industry view.

3.59 For these reasons, we believe that separate, appropriately sized Advisory Panels for passenger and member organisations should be established. The panels

should meet with reasonable frequency, have formal terms of reference and clear functions which should include:

- advising the Rail Ombudsman on emerging trends and issues from the perspective of that stakeholder group; and
- advising on how the Rail Ombudsman can best meet its objectives and discharge its functions, especially its role of driving continuous improvement.

- 3.60 The composition of the passenger Advisory Panel should be representative of the consumers of member organisations and should include Transport Focus and London TravelWatch and those with lived experience of the issues facing those consumers with protected characteristics. The members Advisory Panel should be representative of member organisations.
- 3.61 The Rail Ombudsman will be required to ensure the Advisory Panels have the necessary, but proportionate, resources to carry out their functions effectively, including secretariat resources and, where appropriate, the ability to engage independent expert advice.
- 3.62 To offer incentives for improvement, we also propose that these Advisory Panels can make 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. These Panels' statements and the Board responses should also be published.

Performance management

Proposal

- As well as its normal management reporting to its independent Board, the Rail Ombudsman may 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 specified in the contract;
 - regular (at least every three months) performance meetings between ORR and the Rail Ombudsman;
 - periodic meetings with each scheme member for feedback and review of performance (the Rail Ombudsman and members to determine frequency);

- periodic reporting to the Passenger and Industry Advisory Panels – the frequency of which will be set after consulting with the Panels; and

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

- An independent review of the Rail Ombudsman may be carried out every two years with the findings and the scheme’s response to those findings being published.

- 3.63 The Rail Ombudsman Board will have foremost responsibility for holding the scheme executive to account for service provision against agreed KPIs. However, this will simply comprise one strand of a wider, comprehensive performance management framework.
- 3.64 As the contract manager, we see it as essential that regular performance reports are submitted to ORR to provide evidence that contracted service levels and outcomes are being met. These reports would be presented at regular (at least every three months) performance meetings between ORR and the Rail Ombudsman executive. As part of this, we will require the service provider to collect data and report on measures it is taking to ensure the scheme is accessible and working for those users with protected characteristics.
- 3.65 ORR may also commission an independent review of the Rail Ombudsman to be carried out every two years, with the findings and the scheme provider’s response to those findings being published.
- 3.66 Regular bilateral meetings with each scheme member for feedback and review of performance may also be required, with the Rail Ombudsman and individual members to determine frequency. For example, we note that some current scheme members, such as those with higher case volumes, tend to request meetings with the Rail Ombudsman on a more frequent basis. Therefore, we believe there is merit in permitting the Ombudsman and individual members agree between them the frequency with which they meet.
- 3.67 Regular reporting to the Passenger and Industry Advisory Panels will also be required, the frequency of this can be agreed after consulting with the Panels. Likewise, regular bilateral meetings with the consumer advocacy bodies to review performance and the frequency of these meetings could be specified as part of the MoUs noted in paragraph 3.10.
- 3.68 Reviews will also be undertaken by the relevant accreditation bodies. 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.

Stakeholder satisfaction and feedback

Proposal

- The Rail Ombudsman will be required to carry out regular stakeholder surveys to monitor satisfaction with its services, including:
 - passenger satisfaction surveys;
 - member satisfaction surveys; and
 - consumer advocacy body surveys (given there are only two bodies, the nature of these surveys will be different from consumer and member surveys).
- The Rail Ombudsman will be required to draw up action plans to improve satisfaction where a need is indicated and monitor and report progress against those actions.

3.69 It is important that the Rail Ombudsman meets the needs and expectations of its users, members and wider stakeholders which may change and evolve over time. This is where stakeholder satisfaction monitoring can complement and supplement the wider performance management framework. We therefore see regular stakeholder satisfaction surveys as another important means of holding the Rail Ombudsman to account.

3.70 This would consist of regular surveys with scheme users and member firms. The scale, frequency and nature of these surveys should be proportionate and tailored to the relevant group. The Rail 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 Advisory Panels as part of the performance monitoring regime. The results of the surveys should be published at least annually in or alongside the Rail Ombudsman's annual report.

3.71 In line with our proposals in paragraph 3.94, we also consider the Rail Ombudsman's stakeholder monitoring should include testing its communications, accessibility, and processes with consumers, with the aim of continuous improvement.

Transparency

Proposal

The Rail Ombudsman will 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 Rail Ombudsman Board and financial information; and
- an annual budget for consultation with its members (as recommended earlier under *controlling costs*).

Performance:

- performance against the KPIs set in the contract with ORR;
- the findings of any biennial independent reviews and the Rail Ombudsman's response;
- passenger and member satisfaction survey results;
- any advisory statements from the Advisory Panels to the Rail Ombudsman's 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 Rail Ombudsman approach to representative cases at least each year and in some cases full adjudication decisions (anonymised).

Reports:

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

3.72 In the interests of transparency and good corporate governance, the requirements set out above are the minimum standard that we expect the Rail Ombudsman to achieve. Our understanding is that this approach also aligns with the Ombudsman Association's principles of openness and transparency for member schemes.

3.73 Our expectation will be for the Rail Ombudsman to publish as much of this information from the beginning of its operations as is reasonable and practicable. However, we are cognisant the amount of case and decision data an ombudsman scheme can publish will naturally increase over time as datasets, systems, processes and sector knowledge matures and it may be necessary to phase in some transparency requirements over time.

Q2. Do you agree with our proposed governance structure? Please give reasons for your answer.

Section D: Demand and Fees

Forecasting case volumes and demand for the service

3.74 The volume of cases the Rail Ombudsman can expect is likely to be comparable to current levels of demand for the foreseeable future, nonetheless:

- the capabilities of bidders to manage variations in case numbers will be assessed through ORR's tender process; and
- ORR's tender process will require 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.

Funding the Rail Ombudsman

3.75 ORR does not have a preferred funding model at this time and is seeking feedback on the three models considered in the technical report, these are:

1. **Status quo** – Continuation of the current model which is a mix of a cost-reflective *polluter pays* methodology supplemented with case fees, which broadly intends for member firms with higher case volumes to pay more
2. **Less cost reflective** – Lower case fees with a fixed subscription fee that is calculated based on a member organisation's size (e.g. turnover, journey volumes, etc) which potentially better recognises the overall value of the scheme to all members

3. More cost reflective – Higher case fees with a lower subscription fee, which would see those member organisations with higher case volumes pay a higher share of overall costs relative to what they would pay under the *status quo* option.

3.76 The way the current Rail Ombudsman scheme is funded is set out in Annex 2 of the technical report. This is what we refer to as the *status quo* scenario. Our initial feedback from stakeholders has not elicited clear views on the current funding model's suitability and we understand that this is principally due to it being unpublished until now.

3.77 We are therefore seeking stakeholder feedback on the suitability of this current funding model (*status quo* scenario) and information on the types of incentives and behaviours it is producing. Section 5.2 of the technical report provides some analysis of the status quo scenario and two alternative models. These alternatives are effectively two variations of the status quo models whereby:

- one proposes an increase to the basic scheme subscription/participation fee which would be offset wholly or partly by reduced case fees;
- the other proposes increasing case fees which would be partly or wholly offset by reducing the subscription/participation fee.

3.78 Each of these ORR models is underpinned by the same fundamental principles that scheme members should pay some level of subscription/participation fee to cover the scheme's fixed costs, and then contribute additional costs to cover cases they specifically cause to be sent to the Ombudsman. This duality recognises both the scheme's inherent value to all member organisations whilst ensuring that those members who impose more cost on the scheme, because of higher case volumes, ostensibly contribute more. The different funding model options simply apportion costs on a sliding ratio relative to the importance given to each.

3.79 Another option is that ORR leaves this relatively open and allows bidders as part of the procurement process to put forward their own preferred solution, taking into account the overall business plan they propose and the profile of their fixed and variable costs.

Q3. Please set out your opinion on the three funding model options, explaining why you consider that one option may be better than another:

- a. Status quo**
- b. Less cost reflective**

c. More cost reflective

If you are a current member of the Rail Ombudsman scheme, please explain what you think works well and less well with the current model (i.e. the status quo option).

Section E: Case management operations

Case management process flows

3.80 Section 6.1 of the technical report sets out the case management process flows used by the current Rail Ombudsman scheme.

3.81 This aligns with standard case management flows for many comparable ombudsman schemes and would broadly meet the current test of best practice in so far as it is comprised of the four traditionally recognised case review phases. 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.

3.82 We propose the four broad stages of current case processes are maintained, but how these are delivered is up to the successful bidder to determine. Over time, and in line with our earlier proposals, we would also expect the Rail Ombudsman to monitor users' satisfaction with its case management processes, including for out-of-scope cases, and test these with passengers, acting on findings to continuously improve its service.

Requirements on staff qualifications and rail industry knowledge

3.83 We note that knowledge, skills and qualifications of Rail Ombudsman staff was a particular, and unprompted, area of interest for several stakeholders. There was clear recognition that the standard of service the Ombudsman can provide is largely contingent on both the number of staff and the quality of the skills and knowledge they possess to handle cases effectively. Yet with staff costs as the most single significant cost of providing the service, there was also a view that savings could be made by making sure that highly qualified, expensive staff are consistently used in the most efficient way.

- 3.84 ORR was also interested to hear stakeholder feedback regarding the importance of Rail Ombudsman staff understanding the rail industry and a keenness to see arrangements put in place to train staff and keep their trade knowledge up to date. Effective case handling is best served by staff who have an in-depth and current understanding of the issues they are investigating; it allows them to identify relevant evidence and make sense of contextual and causal factors.
- 3.85 We consider these aspects of staff training and qualifications should be specified as part of the tender process for those providers bidding to provide the service, with a requirement that bidders:
- must include plans to make sure their staff have or will acquire relevant and current 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.

Service standards

- 3.86 Section 6.3 (Table 6.1) of our technical report sets out the primary key performance indicators (KPIs) of the current Rail Ombudsman scheme. No concerns were raised by stakeholders regarding either the appropriateness of the metrics or the minimum standards of performance they were set at.
- 3.87 We consider that the operational KPIs of the current Rail Ombudsman would be appropriate for the ORR-procured Rail Ombudsman – when coupled with the overarching measure of success for the Rail Ombudsman which will 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.
- 3.88 We therefore intend to set these KPIs as a minimum standard for bidders to demonstrate they will meet as part of the tender requirements.

Case Management System (CMS)

Proposal

We propose the CMS should have the following minimum functionality and capabilities (which should include meeting the accessibility requirements set out at 7.9 of the technical report):

- 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 Rail 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 Rail 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; tailored to the needs of individual stakeholders.

3.89 We understand from stakeholder feedback how critical an effective CMS is to the broad functioning and effectiveness of the Rail Ombudsman scheme. Ease of access and its general utility are key enablers of stakeholder engagement and interaction with data and case files. Stakeholders did not identify any specific deficiencies with the current CMS and many considered it to be operating effectively. This has helped us to identify essential aspects of the CMS that we consider will be required as a minimum. However, we intend to allow bidders the

freedom to put forward solutions, innovations and explain the costs and benefits of their proposed CMS.

- 3.90 We understand that it may take time for our preferred bidder to agree the specific CMS requirements with the relevant stakeholders and proceed with developing and building the system. It is our intention, therefore, to build in time for this as part of our implementation timescale.
- 3.91 We further propose that the cost and specification of additional or extra functionality in the future is handled through budget consultations and change control processes in the contract.

Section F: Other required elements

- 3.92 The technical report, at section 7, sets out other elements which it considers ORR should include in its tender. These elements cover:
- (a) Confidentiality and data protection,
 - (b) Signposting to the Rail Ombudsman,
 - (c) Clarity of communications,
 - (d) Passenger initiating disputes and communicating with the Rail Ombudsman,
 - (e) Companies and stakeholders communicating with the Rail Ombudsman,
 - (f) Telephone systems,
 - (g) Rail ADR Service Website,
 - (h) Social media,
 - (i) Accessibility,
 - (j) Language,
 - (k) Compensation Framework,
 - (l) Exit management, and
 - (m) Business continuity and disaster recover.

- 3.93 We agree with the recommendations at section 7 of the technical report and will be considering how to incorporate these into our tender.
- 3.94 Earlier, we explained how the Rail 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 consider the Rail Ombudsman should test its own operations and strive to continuously improve the service it offers.
- 3.95 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 Rail Ombudsman must meet, this does not release it from testing its services with passengers, and striving to ensure it achieves excellent standards.

Q4. Do you agree with our proposals for the ombudsman operating model?

When considering this question, please set out any ways in which you consider the OOM could further improve the accessibility of Rail Ombudsman services provided to passengers. If you have specific feedback on one area of ORR's proposals, please clearly indicate which proposal you are commenting on.

4. Proposals for an amended licence condition

- 4.1 In addition to seeking views on our draft OOM, we are also seeking views on proposals for an amended complaints handling condition. In doing so, we propose to modify and simplify the current licence condition to require passenger and station licence holders to join the ORR-procured rail ADR scheme. We set out the changes below.
- 4.2 We will consider the representations provided in this current consultation prior to proceeding with any changes via the statutory consultation process for licence modification.

Our proposals

- 4.3 The majority of passenger and station SNRPs / Licences include within them a Complaints Handling condition that includes a requirement for holders to become and remain a member of '*the Relevant ADR Scheme*'. This scheme is currently defined in the licence as one procured by the Rail Delivery Group, or a '*Successor Scheme*'. A Successor Scheme is an alternative dispute resolution scheme notified to, and accepted by, ORR by the SNRP / Licence holder.
- 4.4 We previously consulted on and published a decision on the necessity of having a licence condition that required membership of a rail ADR scheme. For details of the consultation and decision please refer to [The Rail Ombudsman – ORR decision to modify licence conditions to require membership of an Alternative Dispute Resolution scheme](#) which includes links to all relevant documents. As part of the 2018 consultation, we set out detailed reasons for the need for mandatory membership to an ADR scheme within the rail industry (actioned via a change to licences) and which included a discussion on the need to protect dissatisfied consumers and benefit both rail users and the industry more widely. We consider that the reasons given within the 2018 consultation for the need for mandatory membership to a rail ADR scheme remain relevant today.
- 4.5 As detailed in chapter 2 above, the intention is that ORR should take over the sponsorship of the Rail Ombudsman scheme, and as part of implementing this policy, ORR considers that it is necessary to amend the Complaints Handling condition.

- 4.6 Our proposal is to remove the current obligation on SNRP/Licence holders to become and remain members of the RDG-procured rail ADR scheme and replace it with a requirement to join and remain a member of the ORR-procured rail ADR scheme. Consistent with current requirements, SNRP/Licence holders will be required to comply with obligations under the scheme, which would include the procedural rules developed by the ADR scheme provider.
- 4.7 The mandatory membership requirement will ensure that consumers continue to have access to a Rail Ombudsman service and the consumer protection safeguards it offers, such as binding redress on rail companies and consistency and rigour in how cases are reviewed. The obligation on SNRP/Licence holders to provide for a Successor Scheme will be removed, becoming obsolete as ORR will step in as sponsor to the ADR scheme and thereby removing the need for the SNRP/Licence holder to provide an alternative to an RDG procured scheme.
- 4.8 Finally, the obligation for SNRP/Licence holders to contribute towards the cost of the rail ADR scheme will be set out within the new condition. This maintains the current obligation that scheme members (including SNRP/Licence holders) contribute towards the funding of the Rail Ombudsman but embeds this in the licence condition because ORR will be the sponsoring organisation.

Timeframe for proposed change

- 4.9 ORR is in the early stages of its process to procure a service provider to run the Rail Ombudsman, and this consultation forms part of that process. ORR anticipates completing the procurement process by early 2023 and any changes to the Complaints Handling condition will take effect after this.
- 4.10 To ensure there is continuity of an ombudsman service, ORR's expectation is that the current RDG-procured scheme will continue to operate until the point at which the ORR-procured scheme takes over. ORR considers that the moving from one scheme to the other could be achieved either:
- (a) by allowing a short period where both schemes run simultaneously; or
 - (b) by the outgoing scheme ceasing to operate on a certain date with the ORR-procured scheme stepping in on the next day.
- 4.11 ORR considers that there are advantages and disadvantages to both options. For example, a period of dual running would allow existing cases to be closed by the current scheme and avoid a need for the transference to the new scheme while they remained open. There are benefits to this in terms of the consistency and

continuity of case handling. In addition, it is likely that minimal personal data would need to be transferred between scheme providers. However, it will also mean having two schemes running in parallel that need to be paid for by scheme members during this period, and careful signposting would be required to ensure passengers were directed to the right operator during the transition period.

- 4.12 Closing one scheme before opening the next has the advantage to scheme members of only having to pay for one scheme at a time, but case handling for on-going cases would be more complex and could involve the need to transfer complainants' personal data.
- 4.13 As well as seeking views on the proposals for the condition itself, we would like to understand the potential impacts on stakeholders of having two rail ADR schemes (the RDG-procured scheme and the ORR-procured one) running simultaneously for a short transitional period.

Proposed changes

4.14 There are two legislative regimes for licensing operators of railway assets:

- the Railway (Licensing of Railway Undertakings) Regulations 2005 require most operators who want to operate passenger trains or freight trains in Great Britain to hold an appropriate Railway Undertaking licence (if issued after January 2021, or, alternately, a European licence issued before that time), and comply with the conditions included in a Statement of National Regulatory Provisions (SNRP); and
- the Railways Act 1993 (the Act). Section 6 of the Act makes it an offence to act as the operator of a railway asset without holding a Railways Act licence or licence exemption.¹

4.15 The drafting below uses the model SNRP/ Licence to illustrate how we intend the Complaints Handling Condition to look in respect of SNRPs/Licences going forward. Proposed changes to the text are shown in red. We note that some operators have a bespoke position in respect to parts, or all, of the Complaints Handling condition and we will contact those operators directly to discuss this, in advance of the statutory consultation.

¹ Railways Act licences cover station, network, non-passenger and light maintenance depot licences, and 'small scale' passenger train licences that cover local and regional services.

4.16 Please note that concurrently we are consulting on proposed amendments to the clauses on the complaints handling procedure in this Condition. This will likely affect the wording currently shown in clauses 1-4 and 6 in the model Complaints Handling condition below. Please refer to [Complaints Code of Practice: Consultation response and second consultation](#) for more information on the proposed amendments and how you can respond to them. Whilst we recognise having two separate consultations on the same licence condition in train at the same time may add an additional burden to stakeholders we did not consider it appropriate to amalgamate them as the Code of Practice consultation is at a different stage in the process.

Condition 6: Complaints Handling

1. The [SNRP / Licence] holder shall establish and thereafter comply with a procedure for handling complaints relating to licensed activities from its customers and potential customers and shall comply with article 27 of the PRO Regulation (the “Complaints Procedure”).²

2. The [SNRP / Licence] holder shall not establish, or make any material change (save in respect of paragraph 3(b)), to the Complaints Procedure unless and until:

(a) the PC and, where appropriate, LTUC has been consulted; and

(b) the [SNRP / Licence] holder has submitted the Complaints Procedure, or (as the case may be) the proposed change, to ORR and ORR has approved it.

3. Where ORR requires the [SNRP / Licence] holder to carry out a review of the Complaints Procedure or any part of it or the manner in which it has been implemented, with a view to determining whether any change should be made to it, the [SNRP / Licence] holder shall:

(a) promptly carry out a review and submit a written report to ORR setting out the results or conclusions; and

(b) make such changes to the Complaints Procedure, or the manner in which it is implemented, as ORR may reasonably require after ORR has received a report under paragraph 3(a) and consulted the [SNRP / Licence] holder, the PC and, where appropriate, LTUC.

² For Railways Act station and passenger train licence holders, omit the wording “and shall comply with article 27 of the PRO Regulation”.

4. The [SNRP / Licence] holder shall:

(a) send a copy of the Complaints Procedure and of any change to it to ORR and the PC and, where appropriate, LTUC;

(b) in a place of reasonable prominence at each station at which trains operated by the [SNRP / Licence] holder are scheduled to call, display or procure the display of a notice giving the address from which a current copy of the Complaints Procedure may be obtained; and

(c) make available free of charge a current copy of the Complaints Procedure to any person who requests it.

5. Alternative Dispute Resolution:

(a) The [SNRP / Licence] holder shall become and thereafter remain, a member of the Relevant ADR Scheme;

(b) the [SNRP / Licence] holder shall comply with its obligations under the Relevant ADR Scheme; and

(c) the [SNRP / Licence] holder shall make such payments as required for the Relevant ADR Scheme on the terms notified to the [SNRP / Licence] holder in writing by ORR.

~~if the Relevant ADR Scheme, at any time, ceases to be Compliant, the [SNRP/Licence] holder must:~~

~~(i) within 14 days after becoming aware that the Relevant ADR Scheme is no longer Compliant, notify ORR of that fact;~~

~~(ii) within no more than 28 days after becoming aware that the Relevant ADR Scheme is no longer Compliant, notify ORR of the arrangements it has put in place to ensure that the interests of passengers are not adversely affected and must, if so directed by ORR at any time, revise those arrangements to take account of any concerns ORR reasonably raises about the protection of passenger interests; and~~

~~(iii) if the Relevant ADR Scheme continues to be non-Compliant for more than 6 months:~~

- ~~take all such steps as are reasonably practicable, including working together with other members of the Relevant ADR Scheme, and Rail Delivery Group, as appropriate, to identify another alternative dispute resolution scheme which is Compliant; and~~
- ~~notify such scheme to ORR within not more than 12 months (or such longer period as ORR may agree) after the date on which the Relevant ADR Scheme ceased to be Compliant.~~

6. For the purposes of this Condition:

“Relevant ADR Scheme” means:

- the alternative dispute resolution scheme procured by ORR and approved by the Designated Competent Authority. ~~Rail Delivery Group (the Rail Ombudsman) or, as the case may be, any Successor Scheme.~~

~~“Successor Scheme” means:~~

- ~~such other alternative dispute resolution scheme as is notified to ORR by the [SNRP/Licence] holder under sub-paragraph (c)(iii) above, and is accepted by ORR as providing suitable protection for the interests of passengers.~~

~~“Compliant”, in relation to the Relevant ADR Scheme, means:~~

- ~~that the scheme is approved by the Designated Competent Authority and meets the requirements of ORR’s Guidance in respect of an alternative dispute resolution scheme.~~

“Designated Competent Authority” means:

- the relevant Designated Competent Authority under The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015.

~~“ORR’s Guidance” means:~~

- ~~ORR’s Guidance on the Complaints Handling Procedures as amended from time to time.~~

Q5. Do you have any comments on our proposal to amend the Complaints Handling condition?

Q6. Do you have any comments on the proposed drafting amendments to the Complaints Handling condition?

Q7. What do you consider are the advantages and disadvantages of having two rail ADR-schemes running simultaneously for a short transitional period? What are the potential impacts on your organisations of running two rail ADR-schemes simultaneously?

5. Consultation Questions

Chapter 3

Q1. Please provide any additional information not provided in the draft equality impact assessment (**Annex C**) which you consider we should take into account, whether in relation to impacts on those with the protected characteristic of disability or any other protected characteristic.

Q2. Do you agree with our proposed governance structure? Please give reasons for your answer.

Q3. Please set out your opinion on the three funding model options, explaining why you consider that one option may be better than another:

- a. Status quo
- b. Less cost reflective
- c. More cost reflective

If you are a current member of the Rail Ombudsman scheme, please explain what you think works well and less well with the current model (i.e. the status quo option).

Q4. Do you agree with our proposals for the Rail Ombudsman operating model?

When considering this question, please set out any ways in which you consider the OOM could further improve the accessibility of Rail Ombudsman services provided to passengers. If you have specific feedback on one area of ORR's proposals, please clearly indicate which proposal you are commenting on.

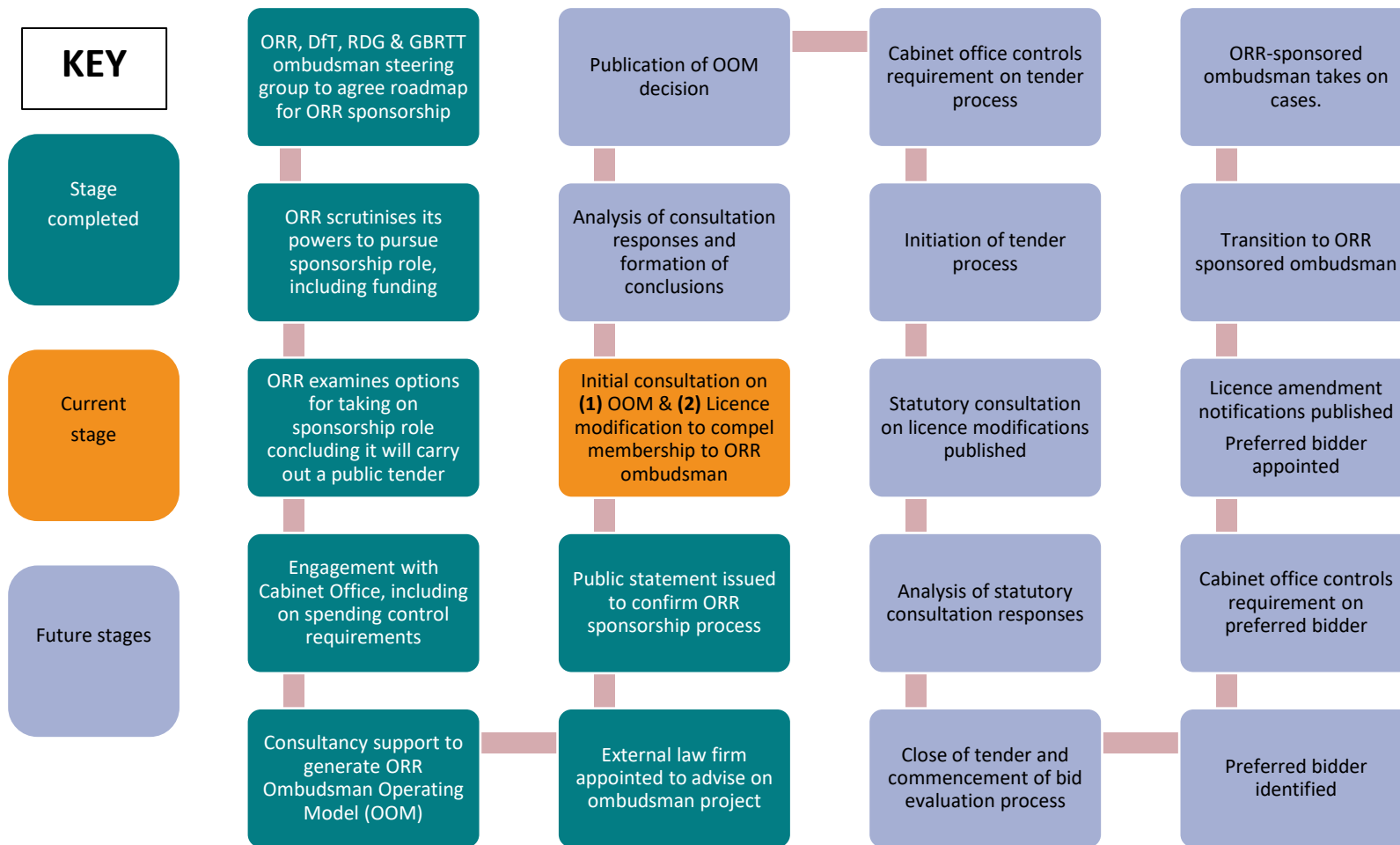
Chapter 4

Q5. Do you have any comments on our proposal to amend the Complaints Handling licence condition?

Q6. Do you have any comments on the proposed drafting amendments to the Complaints Handling licence condition?

Q7. What do you consider are the advantages and disadvantage of having two rail ADR schemes running simultaneously for a short transitional period? What are the potential impacts on your organisation of running two rail ADR schemes simultaneously?

Annex A – ORR policy pathway to sponsorship of the Rail Ombudsman



Internal policy and governance arrangements apply throughout this process including at ORR Executive and Board level.

Statutory timeframes, including procurement and licence amendments, apply.

Annex B – Rail Ombudsman operating model technical report

Our technical report has been published separately on our website and is available here:

[Rail Ombudsman operating model technical report – Annex B](#)

Annex C - Draft Equality Impact Assessment

Introduction

This document records the initial analysis undertaken by the Office of Rail and Road (ORR) to enable the organisation to fulfil the requirements placed on them by the Public Sector Equality Duty (PSED) as set out in section 149 of the Equality Act 2010 (the "Act"). The PSED requires the decision maker to pay due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- advance equality of opportunity between people who share a protected characteristic and those who do not; and
- foster good relations between people who share a protected characteristic and those who do not.

New Rail Ombudsman Operating Model

The majority of train and station operators (hereafter referred to as "licence holders") are required by their operating licences to be members of an Alternative Dispute Resolution (ADR) scheme, known as the Rail Ombudsman, procured by the Rail Delivery Group (RDG). In accordance with the 2021 Williams-Shapps *Plan for Rail*, ORR has begun the process of taking on responsibility for the sponsorship of a rail ombudsman.

ORR is now consulting on a draft Ombudsman Operating Model (OOM) to ensure the future Rail Ombudsman is constituted, governed and operated in a way that best serves its members and users.

This consultation will be followed by:

- A competitive tender process to find an operator of a Rail Ombudsman scheme.
- A licence modification, subject to consultation, to require licence holders which are members of the current RDG procured scheme to transition, at an agreed point, to an ORR procured scheme.

This assessment considers the impact of the draft OOM.

Analysis

The consultants working on behalf of ORR engaged with a number of individuals and organisations as they developed the draft OOM. This included Transport Focus, London TravelWatch and the Chair of the Disabled Persons Transport Advisory Committee. ORR has also consulted with its Consumer Expert Panel.

The draft OOM proposes that many of the current characteristics of the current Rail Ombudsman are retained. It also proposes areas for improvement. The consultation focuses on these, 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* role 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.

Our initial analysis is that none of the changes proposed to the way a Rail Ombudsman is constituted, governed and operated will affect people who share a protected characteristic.

Although all protected characteristics have been considered, the groups of people typically considered to have additional needs when travelling by rail are disabled people, certain age groups who are more likely to have reduced mobility, and those who are pregnant or on parental leave.

Under its contract with RDG, the current Rail Ombudsman service provider is required to offer a fully accessible service. This includes:

- large print, Braille and Easy Read versions of the Rail ADR Service Rules and Eligibility Criteria available upon request;
- a textphone number or other equivalent provision;
- website and Case Management System provision for people with disabilities in accordance with BS 8878 and W3C AA standards;
- accessible alternatives including text, downloadable, printable and requestable alternatives for website content;
- staff that are trained in disability awareness and vulnerability awareness and equipped to be able to meet the needs of any Consumers with impairments that might affect their ability to interact with the Rail ADR Service; and
- signposting to and communication via a translation service (e.g. British Sign Language) when necessary including conducting video-calls using British Sign Language with Consumers.

These requirements are in line with the mandatory commitments made by train and station operators in their Accessible Travel Policies, in accordance with ORR's Accessible Travel Policy Guidance first published in July 2019. The draft OOM restates these requirements for the future Ombudsman and measures how successful they are in providing an

accessible service; it therefore is **not considered likely to increase the likelihood of discrimination**.

In advance of the consultation on the draft OOM, we have **identified potential opportunities to advance equality of opportunity or further eliminate discrimination** by strengthening or adding to these requirements. These include:

- Ensuring all documents are available in accessible formats on request
- Strengthening the disability awareness training provisions
- Providing a translation service rather than signposting to one
- Explicit commitments on the website to providing reasonable adjustments

We also consider there may be an opportunity to embed accessibility and inclusion throughout the OOM. We recognise that stakeholders may be in a better position to advise how to do this, and to identify recent developments that may improve accessibility. The consultation has been shared with disabled people's organisations as well as Transport Focus, London TravelWatch and the Disabled People's Transport Advisory Committee. It invites respondents to propose any improvements.

We will consider each proposal received carefully and discuss them with relevant stakeholders as appropriate before issuing the invitation to tender for the next service provider.

The Future Ombudsman

The consultation discusses to what extent the future ombudsman has a role as a source of evidence and intelligence, drawn from its role resolving disputes, on issues that may cause consumer detriment in the rail industry, including to disabled people and others that share protected characteristics. This would include, in particular, the overall passenger experience of raising a complaint about a rail service. In this way, the future Ombudsman may identify any opportunities to advance equality of opportunity or further eliminate discrimination.



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