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## **Notice of statutory consultations on changes to modify the Complaints Handling Procedure condition in the Station and Passenger Licences of London Underground Ltd**

ORR hereby gives notice under Section 12(2) of the Railways Act 1993 of its proposals to modify the Complaints Handling Condition (the “**Condition**”) in London Underground Ltd’s licences:

<b>Station Licence</b>	Issue Date: 31/03/2004
	Licence Number: UK 03 2004 0009
<b>Passenger Train Licence</b>	Issue Date: 31/03/2004
	Licence Number: UK 03 2004 0008

### **Structure of this document**

These statutory consultations set out our proposals to modify the Condition in the licences in two distinct ways:

1. Changes regarding licence holders’ complaints handling obligations (**Annex A**); and
2. Changes regarding licence holders’ membership of the relevant Alternative Dispute Resolution (“**ADR**”) scheme (**Annex B**).



We are issuing these consultations in one document for convenience to stakeholders. However, we are asking licence and SNRP holders to provide separate consents to each set of modifications. **Please do so in the proforma response form that we are publishing alongside this notice.** Please note that a separate form must be completed for each licence held.

Annex A sets out proposed modifications and seeks consent to modify the Condition to require the licence holder to establish and comply with a complaints handling procedure (CHP) that complies with ORR's Complaints Code of Practice (CoP).

Annex B sets out proposed modifications and seeks consent to modify the Condition to require the licence holder to become and remain a member of an ADR scheme in the rail sector, procured by ORR. The licence holder will also be required to comply with relevant obligations under the ADR scheme membership terms and contribute to the funding of the ADR scheme.

Both these modifications will bring the drafting of the Condition in the passenger and station licences up to date and consistent with that of other licence holders. Nothing proposed below affects the existing London Underground station exemptions meaning that the scope of the modifications will only apply to those stations within the scope of ORR regulation.

For ease, we have also included for information (but not for consent) the final version of the Condition at Annex C if all proposed changes are accepted.

Details on how to respond and provide your consent, representations or objections to the respective modifications are provided in **Annexes A and B** below. The deadline for responses is **5pm on 21 November 2022**.

For each set of modifications, if we do not receive the consent required, we will consider referring the matter to the Competition and Markets Authority under Section 13(1) of the Railways Act 1993.

This notice is also being published on our website.

Yours sincerely

A handwritten signature in black ink that reads 'Stephanie Tobyn'.

Stephanie Tobyn



We may publish all responses to this consultation on our website. Should you wish for any information that you provide 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.

Under the FOIA, there is a statutory code of practice with which public authorities must comply and 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.

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.

## Annex A: Complaints Handling

### Effect and reasons for proposed modifications

Under their current licences, passenger and station operators must establish and comply with a complaints handling procedure (CHP) that is approved by the Office of Rail and Road (ORR). Our [guidance](#) on CHPs for licence holders sets out what we will look for when carrying out our approvals role and when monitoring for continuing compliance.

On 4 August 2021, we consulted on replacing this guidance with a new Complaints Code of Practice (CoP) and on amending and simplifying sections of the complaints handling licence condition. We published our response to the August 2021 consultation on 28 June 2022. At the same time we published a second consultation on the amended CoP and on the text of the draft Condition and asked for any comments by 5 August 2022. Our final decision document was published on 10 October and can be found [here](#), along with details of all preceding consultations.

The principal effect of these changes is that ORR will no longer approve individual licence holders' CHPs. Instead, licence holders will be required to establish and thereafter comply with a CHP that complies with our CoP. This is intended to incentivise licence holders to take greater ownership of their CHPs. It will also allow ORR to focus more attention on outcomes for passengers with resources refocused on compliance and performance monitoring.

The proposed modifications are contained in **Annex A1** to this Notice.

These proposed modifications are separate to the proposed modifications relating to ADR (for which see **Annex B**). The current ADR clauses will remain in place until the modifications set out in Annex B come into effect. For ease, we have included the final version of the Condition at **Annex C if all proposed changes are accepted**.

The reasons for the changes we are proposing were set out in our August 2021 consultation and continue to apply. In summary, we are proposing to replace the current CHP approval process (and Transport Focus and London TravelWatch's role within it) with a requirement on licence holders to establish and comply with a CHP that complies with our CoP. We are proposing to do this by amending paragraph 1 of the Condition and removing paragraph 2.

We are also proposing to remove paragraphs 4, 5 and 6 under which ORR can require licence holders to carry out a review of their complaints procedure. In future



this may form part of our monitoring and compliance activities as described in the CoP (see clause 1.7 of the CoP).

Having gained views from stakeholders on the proposed modifications to licences pertaining to the procedure for handling complaints, we consider that the changes set out at **Annex A1** should be made for the reasons set out above.

**We now request the consent of London Underground Ltd in order to make the modifications as set out at Annex A1. We would be grateful if London Underground Ltd can send its written consent, representations or objections to ORR by 5pm on 21 November 2022 using the proforma published alongside this document.**

## **A1: Proposed modifications to the Condition in Station and Passenger Licences**

We propose to replace the current Condition with the following text. As set out above, this text does not include the separate modifications proposed in Annex B to the ADR clauses.

### **Complaints Handling**

1. The licence holder shall establish and thereafter comply with a procedure for handling complaints relating to licensed activities from its customers and potential customers. The procedure shall comply with the Complaints Code of Practice.
2. Not used
3. Not used
4. Not used
5. Not used
6. Not used
7. Alternative Dispute Resolution:
  - (a) The licence holder shall become and thereafter remain, a member of the Relevant ADR Scheme;
  - (b) the licence holder shall comply with its obligations under the Relevant ADR Scheme; and
  - (c) if the Relevant ADR Scheme, at any time, ceases to be Compliant, the 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.

8. For the purposes of this Condition:

“Relevant ADR Scheme” means:

- the alternative dispute resolution scheme procured by 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 licence holder under sub-paragraph (c)(iii) above, and is accepted by ORR as providing suitable protection for the interests of passengers.

“Complaints Code of Practice” means

- the Complaints Code of Practice published by ORR, as amended from time to time.

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

- that the scheme is approved by the Designated Competent Authority.



“Designated Competent Authority” means:

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



## Annex B: Alternative Dispute Resolution Scheme

### Effect and reasons for proposed modifications

The proposed modifications to licences pertaining to the relevant ADR scheme are contained in **Annex B1** to this Notice. These proposed modifications are separate to the proposed modifications to the complaints handling procedure set out in Annex A, which if consented to will be implemented first. As a result we have set out a version of the Condition where the proposed modifications in Annex A are consented to (**B1(i)** – this is the same for both Passenger and Station licences), and versions where they are not (**B1(ii)** is the Station Licence and **B1(iii)** is the Passenger Licence). For ease, we have included the final version of the Condition at **Annex C if all proposed changes are accepted**.

We previously consulted on and published a decision on the necessity of having a condition that required membership of a rail ADR scheme [Alternative Dispute Resolution requirements and draft licence modification - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/alternative-dispute-resolution-requirements-and-draft-licence-modification). We consider that the reasons given within the 2018 consultation for the need for mandatory membership to a rail ADR scheme, including the need to protect dissatisfied consumers and benefit both rail users and the industry more widely, remain relevant.

ORR consulted on the modifications to licences and SNRPs proposed in this letter, alongside a new ombudsman operating model in June 2022. The outcome of that consultation is published [Consultation on a draft Rail Ombudsman operating model | Office of Rail and Road \(orr.gov.uk\)](https://www.orr.gov.uk/consultations/consultation-on-a-draft-rail-ombudsman-operating-model)

As set out in the ‘Consultation on a draft Rail Ombudsman operating model’ published on 28 June 2022, the proposed modifications remove the current obligation on licence holders to become and remain members of the Rail Delivery Group-procured rail ADR scheme and replace it with a requirement to join and remain a member of the ORR-procured rail ADR scheme (once it is established).

The obligation on licence holders to provide for a Successor Scheme is removed, becoming obsolete as ORR will step in as sponsor to the ADR scheme and thereby removing the need for the licence holder to provide an alternative to an RDG procured scheme.

In addition, the obligation for licence holders to contribute towards the cost of the rail ADR scheme is set out within the new condition. This maintains the current obligation that scheme members (including licence and SNRP holders) contribute towards the funding of the relevant ADR scheme but embeds this in the Condition (rather in a separate contractual agreement) because ORR will be the sponsoring organisation.



ORR is in the process of procuring a service provider for the relevant ADR scheme. As such, the date on which the licence modifications will take effect is currently unknown. However, modifications to licences will only take effect:

1. once ORR has appointed a service provider of a relevant ADR scheme; and
2. on completion of the service implementation period following which the relevant ADR scheme will be able to start taking on cases.

We currently expect this work to be completed by summer 2023. Licence holders will be notified in due course when modifications will take effect.

Having gained views from stakeholders on the proposed modifications to licences pertaining to the relevant ADR scheme, we consider that the changes set out at Annex B should be made for the reasons set out above.

**We now request the consent of London Underground Ltd in order to make the modifications as set out at Annex B1. We would be grateful if London Underground Ltd can send its written consent, representations or objections to ORR by 5pm on 21 November 2022 using the proforma published alongside this document.**

## **Annex B1(i): Proposed modifications to the Condition in Station and Passenger Licences**

Where the proposed changes in Annex A1 **are** accepted we propose to replace the Condition with the following text **in paragraphs 7 and 8**.

### **Complaints Handling**

1. The licence holder shall establish and thereafter comply with a procedure for handling complaints relating to licensed activities from its customers and potential customers. The procedure shall comply with the Complaints Code of Practice.
2. Not used
3. Not used
4. Not used
5. Not used.
6. Not used.
7. Alternative Dispute Resolution:
  - (a) The licence holder shall become and thereafter remain, a member of the Relevant ADR Scheme;
  - (b) the licence holder shall comply with its obligations under the Relevant ADR Scheme; and
  - (c) the licence holder shall make such payments as required for the Relevant ADR Scheme on the terms notified to the licence holder in writing by ORR.
8. 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.

“Complaints Code of Practice” means:



- the Complaints Code of Practice published by ORR, as amended from time to time.

“Designated Competent Authority” means:

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

## **Annex B1(ii): Proposed modifications to the Condition in the Station Licence**

Where the proposed changes in Annex A1 **are not** accepted for the **Station Licence**, we propose to replace the Condition with the following text (new ADR text in **paragraphs 7 and 8**).

### **Complaints Handling**

1. The licence holder shall, comply with a procedure ("Complaints Procedure") which the Regulator (having taken into consideration the licence holder's procedure for handling complaints relating to stations fall within article 3(a) of the Exemption Order) has approved as at the date on which this licence is granted for handling complaints relating to licensed activities from its customers and potential customers.
2. Subject to paragraph 6, the licence holder shall not make any material alteration to the Complaints Procedure unless and until:
  - (a) the London Transport Users' Committee has been consulted; and
  - (b) the licence holder has submitted the proposed alteration to either:
    - (i) the Regulator in respect of an alteration proposed before 1 February 2001; or
    - (ii) the Authority, and the proposed alteration has been approved by the Regulator before 1 February 2001, and thereafter the proposed alteration has been approved by the Authority.
3. The licence holder shall send a copy of the Complaints Procedure and of any material alteration to it (in each case following approval by the Regulator or the Authority where required under paragraph 1 and sub-paragraph 2(b)) to the Authority and the London Transport Users' Committee.
4. Where the Authority (having taken into consideration the licence holder's procedure for handling complaints relating to stations falling within article 3(a) of the Exemptions Order) requires the licence holder to carry out a review of the Complaints Procedure or any part or aspect thereof and the manner in which the same has been operated, with a view to determining whether any alterations should be made thereto, the licence holder shall promptly carry out such review and shall submit a written report to the Authority setting out the results or conclusions thereof.

5. The licence holder shall make such alterations to the Complaints Procedure, or the manner in which it is operated, as the Authority may reasonably require after the Authority has received a report under paragraph 4 and consulted the licence holder.
6. Paragraph 2 does not apply to any alteration made pursuant to paragraph 5.
7. Alternative Dispute Resolution:
  - (a) The licence holder shall become and thereafter remain, a member of the Relevant ADR Scheme;
  - (b) the licence holder shall comply with its obligations under the Relevant ADR Scheme; and
  - (c) the licence holder shall make such payments as required for the Relevant ADR Scheme on the terms notified to the licence holder in writing by ORR.
8. 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.

“Designated Competent Authority” means:

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

### **Annex B1(iii): Proposed modifications to the Condition in the Passenger Licence**

Where the proposed changes in Annex A1 **are not** accepted for the **Passenger Licence**, we propose to replace the Condition with the following text (new ADR text in **paragraphs 7 and 8**).

#### **Complaints Handling**

1. The licence holder shall comply with a procedure ("Complaints Procedure") which the Regulator (having taken into consideration the licence holder's procedure for handling complaints relating to its activities as an operator of trains on an exempt network) has approved as at the date on which this licence is granted for handling complaints from its customers and potential customers relating to its activities as an operator of trains being used on a non-exempt network.
2. Subject to paragraph 6, the licence holder shall not make any material alteration to the Complaints Procedure unless and until:
  - (a) the London Transport Users' Committee has been consulted; and
  - (b) the licence holder has submitted the proposed alteration to either:
    - (i) the Regulator in respect of an alteration proposed before 1 February 2001; or
    - (ii) the Authority, and the proposed alteration has been approved by the Regulator before 1 February 2001, and thereafter the proposed alteration has been approved by the Authority.
3. The licence holder shall send a copy of the Complaints Procedure and of any material alteration to it (in each case following approval by the Regulator or the Authority where required under paragraph 1 and sub-paragraph 2(b)) to the Authority and London Transport Users' Committee.
4. Where the Authority (having taken into consideration the licence holder's procedure for handling complaints relating to its other activities as an operator of trains on an exempt network) requires the licence holder to carry out a review of the Complaints Procedure or any part or aspect thereof and the manner in which the same has been operated, with a view to determining whether any alterations should be made thereto, the licence holder shall

promptly carry out such review and shall submit a written report to the Authority setting out the results or conclusions thereof.

5. The licence holder shall make such alterations to the Complaints Procedure, or the manner in which it is operated, as the Authority may reasonably require after the Authority has received a report under paragraph 4 and consulted the licence holder.
6. Paragraph 2 does not apply to any alteration made pursuant to paragraph 5
7. Alternative Dispute Resolution:
  - (a) The licence holder shall become and thereafter remain, a member of the Relevant ADR Scheme;
  - (b) the licence holder shall comply with its obligations under the Relevant ADR Scheme; and
  - (c) the licence holder shall make such payments as required for the Relevant ADR Scheme on the terms notified to the licence holder in writing by ORR.

8. 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.

“Designated Competent Authority” means:

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



## **Annex C: Model Condition for Station and Passenger Licences (for reference only)**

### **Complaints Handling**

1. The licence holder shall establish and thereafter comply with a procedure for handling complaints relating to licensed activities from its customers and potential customers. The procedure shall comply with the Complaints Code of Practice.
2. Not used.
3. Not used.
4. Not used.
5. Not used.
6. Not used.
7. Alternative Dispute Resolution:
  - (a) The licence holder shall become and thereafter remain, a member of the Relevant ADR Scheme;
  - (b) the licence holder shall comply with its obligations under the Relevant ADR Scheme; and
  - (c) the licence holder shall make such payments as required for the Relevant ADR Scheme on the terms notified to the licence holder in writing by ORR.

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.



“Complaints Code of Practice” means:

- the Complaints Code of Practice published by ORR, as amended from time to time.

“Designated Competent Authority” means:

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