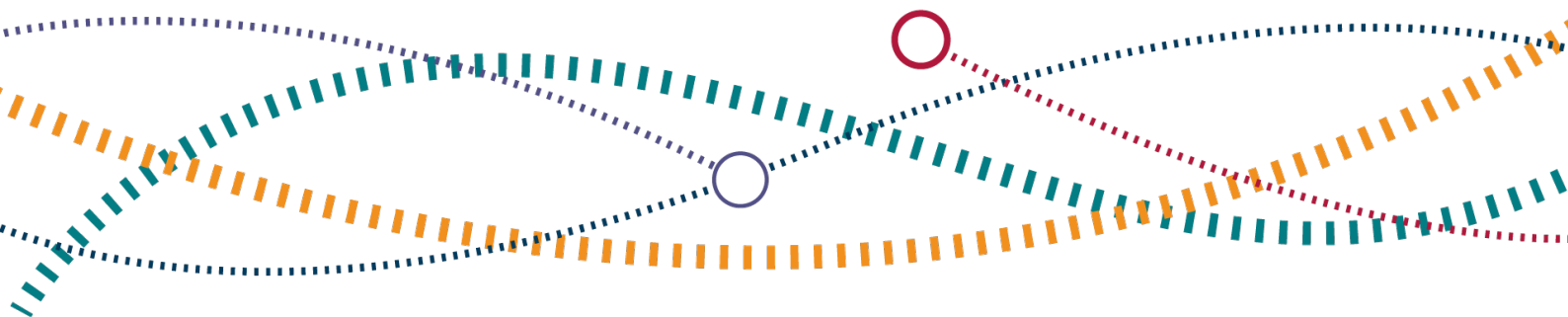




ORR decision on proposals to implement a new Rail Ombudsman operating model and amended licence condition

20 October 2022



Contents

1. Executive summary	2
Our proposals	3
Accessing this document	5
Next steps	5
2. Introduction	7
3. A new Rail Ombudsman operating model	9
Section A: Overall description and key features of the Rail Ombudsman	9
Section B: Jurisdiction and scheme rules	18
Section C: Governance	25
Section D: Demand and Fees	35
Section E: Case management operations	40
Section F: Other required elements	44
4. Proposals for an amended SNRP and licence condition	46
5. Transition arrangements	49
Annex A – ORR policy pathway to sponsorship of the Rail Ombudsman	53
Annex B – Updated Equality Impact Assessment	54

1. Executive summary

- 1.1. The May 2021 Plan for Rail 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 [Consultation on Legislation to Implement Rail Transformation](#), published in June 2022. An Ombudsman Steering Group, consisting of ORR, Department for Transport (**DfT**), RDG and Great British Railways Transition Team, has agreed that ORR 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. **Annex A** sets out the policy pathway ORR is working to as it proceeds with its Rail Ombudsman sponsorship plans. In July and August 2022 ORR [consulted on proposals for an ombudsman operating model \(OOM\) and 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.
- 1.3. We received 24 responses to our consultation. The feedback we received from stakeholders was used to inform and further refine our OOM and licence modification proposals. This document sets out a high-level summary of responses, our comments on those responses, including any resulting changes we propose to make, and our decisions on the final OOM requirement and proposals for licence modification.
- 1.4. We were pleased to receive broad stakeholder support for ORR taking on sponsorship of the Rail Ombudsman. We have considered the range of comments received which focused on how best to configure some specific aspects of the service. Having this broad stakeholder support for our OOM enables us to now proceed with confidence to a competitive tender process in autumn 2022 to procure a provider of the Rail Ombudsman service.
- 1.5. Alongside this decision document we have also published a notice of statutory consultation which requests that licence and Statement of National Regulatory Provisions (**SNRP**) holders accept our proposals to modify their relevant station and passenger licences and SNRPs. This is required to facilitate the transition to an ORR procured ombudsman scheme.
- 1.6. Subject to the completion of these next steps, we anticipate appointing a Rail Ombudsman service provider in early 2023. We will continue our ongoing discussions with RDG, as the sponsor of the current Rail Ombudsman provider, to agree arrangements for the smooth and seamless transition between contracts (and

potentially a change of provider) with a view to ensuring minimal disruption to both passengers and scheme members.

Our proposals

1.7. The final specification of our intended OOM is set out in Chapter 3 of this document. Our proposals specify 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

Summary of policy amendments to the proposed OOM following our consultation

Section A – Overall description and key features of the Rail Ombudsman		
The role of the Rail Ombudsman	Further policy detail developed	Paragraph 3.3 (page 10)
Accessibility requirements	Further policy detail developed	Paragraph 3.5 (page 10)
Rail Ombudsman as a single front door for escalated passenger complaints	No policy change but additional clarification provided	Paragraph 3.15 (page 13)
Controlling the Rail Ombudsman’s costs	Further policy detail developed	Paragraph 3.25 (page 15)
Accreditations	No policy change but additional clarification added	Paragraph 3.30 (page 16)
Contract length and timeframe for scheme setup	Further policy detail developed	Paragraph 3.37 (page 17)
Section B – Jurisdiction and scheme rules		
Ombudsman scheme membership	No policy change but additional clarification added	Paragraph 3.41 (page 19)
Rail Ombudsman scheme service jurisdiction	Further policy detail developed	Paragraph 3.45 (page 19)
Decision making	No policy change but additional clarification added	Paragraph 3.51 (page 21)

The Rail Ombudsman scheme rules	No policy change but additional clarification added	Paragraph 3.60 (page 22)
Maximum award limits	No policy change but additional clarification added	Paragraph 3.63 (page 23)
Rail Ombudsman case handling timescales	No policy change but additional clarification added	Paragraph 3.67 (page 24)
Section C - Governance		
Independent Rail Ombudsman Board	Further policy detail developed	Paragraph 3.71 (page 26)
Independent Assessor	No policy change but additional clarification added	Paragraph 3.78 (page 27)
Data and intelligence sharing with statutory advocacy bodies – Transport Focus and London Travelwatch	No policy change but additional clarification added	Paragraph 3.82 (page 28)
Advisory panels	Further policy detail developed, and one aspect of the proposal removed	Paragraph 3.87 (page 29)
Performance management	No policy change but additional clarification added	Paragraph 3.94 (page 31)
Stakeholder satisfaction and feedback	No policy change but additional clarification added	Paragraph 3.102 (page 32)
Transparency	No policy change but additional clarification added	Paragraph 3.108 (page 34)
Section D – Demand and fees		
Forecasting case volumes and demand for the service	No policy change but additional clarification added	Paragraph 3.114 (page 35)
Funding the Rail Ombudsman	Further policy detail developed	Paragraph 3.115 (page 36)
Section E – Case management operations		
Case management process flows	No policy change but additional information added	Paragraph 3.136 (page 40)
Staff qualifications and rail industry knowledge	No policy change but additional clarification added	Paragraph 3.143 (page 41)
Service standards	No policy change but additional clarification added	Paragraph 3.147 (page 42)

Case management system	No policy change but additional clarification added	Paragraph 3.150 (page 43)
Section F – Other required elements		
Other required elements	No policy change but additional clarification added	Paragraph 3.162 (page 45)

1.8. Alongside this OOM decision we have also issued a [statutory consultation](#) on our proposals to amend the Complaints Handling licence condition to mandate passenger and station licence holders to join the new ORR procured scheme. Chapter 4 of this document sets out the stakeholder feedback we received regarding the draft licence modification text we consulted on and our conclusions.

Accessing this document

1.9. ORR has actively considered the needs of blind and partially sighted people in accessing this document in PDF format. Individuals and organisations can use free Adobe Reader accessibility features or screen readers to read the contents of this document.

1.10. 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 Rail Ombudsman sponsorship, Office of Rail and Road, 25 Cabot Square, London, E14 4QZ.

Next steps

1.11. The process for us to sponsor the Rail Ombudsman will involve the following key activities:

- Assessing the outcome of our statutory licence modification process to mandate licence holders to join an ORR procured Alternative Dispute Resolution (**ADR**) scheme;
- Undertaking a competitive tender process to find a service provider to be the Rail Ombudsman.
- A mobilisation phase for the ORR procured service provider to undertake the preparatory work with ORR, scheme members and key stakeholders to set up the new scheme; and

- A transition phase between contracts which will require stakeholder engagement and planning to ensure minimal disruption to both passengers and scheme members.

1.12. We have taken an open and collaborative approach to this work with the aim of securing broad stakeholder support for our proposals. We wish to thank stakeholders for their engagement and cooperation thus far which has helped to shape and inform our plans at the relevant stages. We will provide updates and further detail on our progress in due to course.

2. Introduction

- 2.1. The May 2021 Plan for Rail states that ORR will take over responsibility from RDG for sponsoring the Rail Ombudsman. This requirement has been reiterated recently in the [Consultation on Legislation to Implement Rail Transformation](#), published in June 2022.
- 2.2. This document sets out our decision on ORR's final specification for an OOM, provides a summary on the feedback we received regarding each aspect of the OOM and states ORR's response and subsequent policy decisions.
- 2.3. Alongside this OOM decision we have also issued a [statutory consultation](#) on our proposals to amend the Complaints Handling licence condition to mandate passenger and station licence holders to join the new ORR procured scheme. Further information on the feedback we received regarding our draft licence modification consultation and our response is set out in **chapter 4**.
- 2.4. 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. National Rail Enquiries has also joined voluntarily, resulting in 39 members of the current scheme in total. ORR expects all current members to transition over to the ORR scheme once it is established.
- 2.5. 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.
- 2.6. ORR taking on this new sponsorship role 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 the consultation exercise has presented an invaluable opportunity to take a fresh look at how the Rail Ombudsman should operate in the future.
- 2.7. We have responded to stakeholder feedback that there are two areas where the ORR sponsored Rail Ombudsman can be especially strengthened:

- ensuring the scheme is, and remains over time, accessible to passengers with a range of needs; and
- providing effective means to ensure the Rail Ombudsman operates transparently and efficiently with robust mechanisms in place to control costs.

2.8. It is therefore important that while ORR progresses its plans to assume sponsorship by finding a provider of the service under an ORR procured contract, this should not affect passenger access to the Rail Ombudsman service. We will therefore work closely with scheme members and all relevant stakeholders to ensure a smooth and seamless transition between contracts to ensure minimal disruption to both passengers and industry. Our proposals for this are set out in **chapter 5**.

3. A new Rail Ombudsman operating model

3.1. In developing our proposals, the current Rail Ombudsman scheme was used as a baseline for analysis, with consideration being given to how this model could and should evolve under ORR sponsorship. The consultation was not intended as commentary on the performance of the current Rail Ombudsman scheme. Where we found evidence that aspects of the current scheme are performing well and remain appropriate for an ORR sponsored scheme, we proposed retaining these. Conversely, where there was evidence of areas of 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, we proposed how these should change.

3.2. We set out below ORR’s final specifications 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

Original proposal

The Rail Ombudsman:

- will be an independent service which 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; and

- 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.

Consultation feedback

3.3. The Disabled Persons Transport Advisory Committee (DPTAC), expressed strong support for the independent and free-to-use nature of the service for passengers to continue. Four respondents (Transport Focus, London TravelWatch, Network Rail and DPTAC) expressed support for the Rail Ombudsman having a firm commitment to evidence gathering and data sharing with stakeholders.

ORR decision

3.4. We intend to proceed with the proposals as set out in our consultation. The scheme will operate both as an effective, independent service that investigates and resolves passenger complaints, whilst using the learning case handling generates to identify any systemic or recurring issues, including around the overall passenger experience of raising a complaint about a rail service. This can then be fed back to its members and wider stakeholders in a continuous improvement loop, with a view to aiding understanding and inform policy thinking, business planning and decision making.

Accessibility requirements

Original 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.
- 3.5. 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. Our consultation set 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.
- 3.6. 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 B**).

Consultation feedback

3.7. Ten respondents provided comments on the draft Equality Impact Assessment (London TravelWatch, Transport Focus, DPTAC, Disability Rights UK, Transport for All, c2c, Southeastern, ScotRail, Ombudsman Services and The Disputes Resolution Ombudsman (DRO)).

3.8. These comments included a number of proposed additions to the OOM, to which we respond below:

- The provision of documents as spoken word files, and the provision of services in Welsh;
- The Rail Ombudsman's disability and vulnerability awareness training achieving accreditation, alongside all TOCs, as part of the DfT's Inclusive Transport Leaders Scheme, or at least satisfying training criteria that matches the level of training that already exists as part of the DfT's REAL disability equality training programme, which was created to improve the sector's confidence and skills in delivering inclusive journeys for disabled passengers;
- The inclusion on the Rail Ombudsman's Board and Consumer Advisory Panel of a person with lived experience of disability;
- That the Rail Ombudsman undertakes research into the experience of disabled passengers making complaints and using the Rail Ombudsman's service, and as explained earlier, any barriers to making complaints; and
- That any relevant complaint by a disabled person relating to a barrier to access would automatically be considered as potential evidence of a need to make an adjustment, with an initial decision made on whether this would be reasonable as part of the complaint handling process. Operators would maintain some form of "register of reasonable adjustments" owned by a senior individual – with the register overseen by ORR.

3.9. It was also suggested that disabled people may face additional barriers to escalating complaints to the Rail Ombudsman, including the cost of telephoning using the current local-rate number and the low awareness of the Rail Ombudsman amongst disabled travellers.

ORR decision

3.10. We will include in the requirements for the Rail Ombudsman service provider that spoken word versions of documents must be provided where requested, as well as the other accessible formats already highlighted in the Equality Impact Assessment (EIA). As set out in the EIA, we will also require the service provider to provide a British Sign Language translation service, rather than signpost one. The Rail Ombudsman already offers its services in Welsh, which was suggested by two respondents; we will ensure this is made clearer on its website.

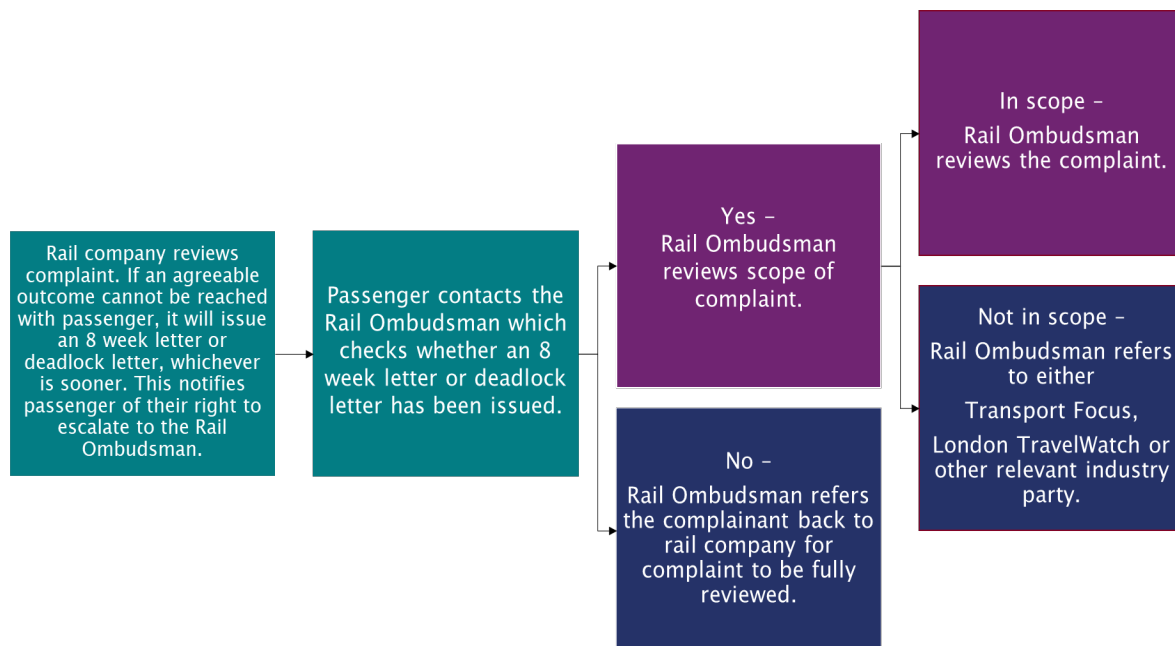
- 3.11. We will ensure the Rail Ombudsman’s disability and vulnerability awareness training includes exposure to the lived experience of disabled people and is extended to all its members of staff. We will assess bidders’ proposed training as part of our bid evaluation.
- 3.12. To embed disability awareness within the governance of the Rail Ombudsman, we will require that best endeavours are made to ensure both its Consumer Advisory Panel and its Board possess expertise in disabled people’s issues and include at least one member with lived experience of disability (see Independent Rail Ombudsman Board - [Governance section C](#)).
- 3.13. ORR’s response to the consultation on the Complaints Code of Practice (CoP) sets out our plans for research into disabled peoples’ experience of the complaints process. In addition, the Rail Ombudsman will be required to undertake user testing, including of disabled users of its service and the impact of the local-rate number on passengers’ ability to escalate a complaint. We will also require the Rail Ombudsman to conduct research into passenger awareness of the service. The results will be published.
- 3.14. The Rail Ombudsman will be under an obligation to anticipate reasonable adjustments that it may need to be made to ensure disabled people can access its services, recognising the special protections provided under the Equality Act. We will explore the opportunities for the Rail Ombudsman to report on any adjustments made by TOCs in response to escalated complaints.

Rail Ombudsman as a single front door for escalated passenger complaints

Original proposal

- The Rail Ombudsman should initially adopt the current triage arrangements (i.e. the Rail Ombudsman acts as a single front door for all escalated complaints);
- The Rail Ombudsman should take responsibility for testing how the current escalated complaint triage function operates in practice – see figure 1. 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; and
- The Rail Ombudsman should facilitate improvements and solutions where needed including, if necessary, recommending that the scope of the triage function should be amended if that would bring an overall benefit to passengers.

Figure 1: Complaint Escalation Process



Consultation feedback

- 3.15. Ten respondents commented on the single front door (First Rail Holdings Ltd, Southeastern, Network Rail, Transport Focus, London TravelWatch, Ombudsman Association, DRO, DPTAC, Transport for All and Centre for Effective Dispute Resolution (CEDR)). Two industry stakeholders (First Rail Holdings Ltd and Southeastern) said they were in favour of retaining the single front door. Network Rail said that as its membership is limited to complaints about certain services (managed stations), the majority of complaints it receives are not about services within the remit of the Rail Ombudsman, and so it would be impractical and irrelevant for it to refer all complaints via a single front door.
- 3.16. Bodies representing consumers and ombudsmen supported the single front door, with one (DRO) pointing out that it would be inappropriate for any organisation but the Rail Ombudsman to be responsible for determining whether a case fell within its jurisdiction. Two of these stakeholders also felt that where it was obvious that a matter would fall to London TravelWatch or Transport Focus, channelling these complaints through a single front door could be frustrating for passengers.
- 3.17. DRO said that the current arrangements had been put in place to address problems and confusion in the rail sector around signposting. Another provider of ADR services (CEDR) thought that the single front door arrangements could create a challenge for an ombudsman provider and some degree of triage by train operating companies (subject to checks and safeguards) should be possible.
- 3.18. There was general support for testing the single front door arrangements to identify possible improvements, with one stakeholder particularly keen that this should

explore any barriers that could be removed, or extra support provided, for disabled passengers.

ORR decision

- 3.19. For the reasons detailed below, we intend to proceed with the proposals as set out in the consultation.
- 3.20. We acknowledge the tension between:
- a single front door for all complaints which has some advantages in terms of simplicity and clarity; and
 - the frustration caused by extra steps for passengers who are referred on to other organisations.
- 3.21. We are also mindful of the tension between:
- the need for the Rail Ombudsman to determine its own jurisdiction; and
 - industry stakeholders feeling that they do not offer a good service in advising passengers to approach the Rail Ombudsman when these people could be referred on to other organisations and thus delay resolution.
- 3.22. We consider that there is a need for more evidence to firmly establish what might be the best long-term approach, hence our proposal that the Rail Ombudsman takes the lead in testing what might work best for passengers.
- 3.23. As a guideline timetable, we would expect the Rail Ombudsman to carry out a review and consultation on this and publish its findings within two years of beginning operations.
- 3.24. We can confirm that the scope of the obligation to send complaints to the Rail Ombudsman is limited by the scope of Network Rail's station licence. Our decision here means that, for now, arrangements for Network Rail and the single front door will remain as they are today. Working with the backdrop of the wider rail reform agenda including the intended structural reform to the industry, we understand there may be implications for the scope of complaint handling and the jurisdiction of the Rail Ombudsman. Whilst this is not yet clear, we will keep matters under review and respond to the need to make further changes as required.

Controlling the Rail Ombudsman's costs

Original proposal

- Potential ombudsman service providers will be required to demonstrate robust financial planning and cost control capabilities as part of the procurement process;

- 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 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 the Rail Ombudsman and ORR; and
- 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.

Consultation feedback

- 3.25. Three stakeholders (First Rail Holdings Ltd, CEDR and DRO) commented on this proposal. First Rail Holdings Ltd queried why our proposal was framed in terms of the Rail Ombudsman budget being only possibly subject to final ORR approval, arguing that ORR's role as contract manager requires it to approve the Rail Ombudsman's budget. One other industry stakeholder also said the final budget should be subject to ORR approval.
- 3.26. CEDR suggested that the ORR should issue invoices to industry participants on behalf of the Rail Ombudsman, while DRO welcomed the proposals and, in particular, the change control process.

ORR decision

- 3.27. It is our intention that the Rail Ombudsman scheme must always operate transparently and efficiently. The cost of delivering the Rail Ombudsman service over the initial contract term (five years) will be established via the competitive tender process. However, we intend to include an annual service improvement and efficiency review consultation process (previously referred to as the 'the annual budget consultation') which will present an opportunity for ORR and stakeholders to scrutinise and, where appropriate, challenge the service provider's efforts to meet its efficiency and cost control obligations.
- 3.28. We agree that the ORR's role as contract manager requires it to approve the Rail Ombudsman's budget, including any changes to it, and we confirm this will be part of the arrangements. Following further engagement with RDG subsequent to our consultation, we have decided to adopt its recommendation to include an 'occupancy clause' in the service provider's contract to ensure it is effectively incentivised to tailor resources and staffing levels to changes in case volumes over time. All other aspects remain as set out in our original proposal.

3.29. Whether or not ORR issues invoices and directly assists with cost recovery is a detail that ORR will further consider and specify as part of its tender process with a view to finding the most practical and efficient arrangements for all concerned.

Accreditations

Original proposal

- The Rail Ombudsman service provider should obtain (and thereafter retain) Ombudsman Association (OA) accreditation as an Ombudsman Member within 6 months of contract award;
- The Rail Ombudsman service provider must obtain (and thereafter retain) ADR approval from the Secretary of State, who exercises its power through the Chartered Trading Standards Institute (CTSI) (in accordance with the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations) within 3 months of contract award; and
- Contractually, ORR will be able to agree an extension to the deadline for achieving initial accreditations and any reaccreditations required in the future. ORR has engaged with CTSI and the OA to mitigate the risk of unnecessary delay, however flexibility is being built into the contract to account for the fact that timeframes for achieving relevant accreditations may vary depending on circumstances.

3.30. ADR and OA accreditation serves two principal purposes:

- it ensures the service provider has operations and practices that comply with best practice in dispute resolution and, by extension;
- 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.

Consultation feedback

3.31. All seven respondents to this question supported the need for OA accreditation (OA, CEDR, DRO, DPTAC, Transport Focus, London TravelWatch, Southeastern).

3.32. CEDR raised a concern about the transparency of the ombudsman accreditation process and indicated that the need to obtain OA accreditation might therefore create a barrier to competition. CEDR indicated that in mitigation ORR should oversee the accreditation process.

3.33. Three respondents queried the next steps if the new service provider were unable to obtain OA accreditation. DRO suggested that it would undermine confidence in the new provider if it did not hold OA accreditation from the outset.

ORR decision

- 3.34. We have continued to engage closely with the OA on their accreditation procedures. Since the publication of the consultation, the OA has clarified that irrespective of which organisation ORR chooses as its preferred provider, for its purposes, this organisation will be treated as a new applicant to operate the Rail Ombudsman service.
- 3.35. We therefore consider that requiring this accreditation within six months of contract award will not represent a barrier to a competitive tender process. But to ensure unforeseen delays in obtaining accreditation do not result in a breach of contract by the service provider, we will include the option for extending this deadline in our contract.
- 3.36. Our accreditation requirement therefore remains as proposed in the consultation.

Contract length and timeframe for scheme setup

Original proposal

- Taking account of ORR's procurement obligations and the commercial realities of tendering for a contract, the contract with ORR will be for an initial term of at least five years with the option for ORR to extend the initial term by up to five years; and
 - 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.
- 3.37. Under ORR sponsorship, the Rail Ombudsman will be a non-statutory ombudsman scheme appointed following a competitive tender process. ORR must comply with relevant legislative and procedural obligations when it procures services fixing some parameters we must work within when tendering for this service. For example, appointing a provider on an open-ended contract is not appropriate and there may be a necessity for 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).

Consultation feedback

- 3.38. Four stakeholders (Transport Focus, London TravelWatch, OA and DPTAC), all bodies representing consumers and ombudsmen, commented on these proposals, and all supported the proposal for an initial contract term of five years.
- 3.39. Three of these stakeholders agreed with the inclusion of a no-fault termination clause, but the other said that it had concerns. This stakeholder explained that to

safeguard an ombudsman's independence, any grounds for dismissal should be explicitly stated, and termination should only be for a good cause.

ORR decision

3.40. We will implement our proposals as originally set out, with one change to respond to the concerns about the inclusion of a no-fault termination clause. As a public body contracting for services, against the backdrop of a wide rail reform agenda and structural reform to the industry, we do have to account for the possibility that ORR may need to terminate the service provider's contract before the initial contract term ends. We view this as a very unlikely scenario, but prudence requires that we account for possibility. To address the concern raised, while balancing our duties as a contracting authority, we will structure the termination clause to specify that ORR can serve notice on the service provider if changes to the industry render the service unviable or unnecessary.

Section B: Jurisdiction and scheme rules

Ombudsman scheme membership

Original proposal

The Rail Ombudsman should be open for all rail industry parties to join, either as compulsory members or voluntary members.

Compulsory members are passenger and station licence holders which are subject to the ADR licence obligation and should include (as now):

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

Voluntary members are industry parties which are not required to hold a licence and are therefore not subject to the ADR licence obligation. National Rail Enquiries is the only voluntary member of the current Rail Ombudsman scheme.

3.41. We confirm that we do not intend to include [Eurostar](#) as a compulsory member of the Rail Ombudsman scheme, as it is an international-only operator over several jurisdictions and is a member of a separate independent ADR system.

Consultation feedback

3.42. Five stakeholders responded on scheme membership (Transport Focus, London TravelWatch, DPTAC, First Rail Holdings Ltd and DRO). Transport Focus and London TravelWatch supported the principle that all passengers, irrespective of

which company they use to access rail services, should have access to Rail ADR. Transport Focus also suggested that consideration be given to including Great British Rail (**GBR**) in the ombudsman scheme, as reforms planned in the Plan for Rail include GBR having a new retail portal.

- 3.43. DPTAC supported the idea of mandating voluntary members to join the scheme, noting this would protect the interests of disabled passengers. However, First Rail Holdings Ltd raised concerns about retaining voluntary membership for certain parties such as ticket retailers, emphasising that these are commercial organisations and should not be exempt from the levels of charges other commercial organisations have to pay to belong to the scheme. DRO noted there should be an opportunity to better integrate operators and ticket retailers to facilitate the transfer of complaints and that consideration should be given to measures that avoid individual negotiations on membership.

ORR decision

- 3.44. As set out in our consultation there will be two types of membership, compulsory (licence holders) and voluntary. Membership of the scheme will be open to new members from the rail industry at any time. ORR can only mandate compulsory membership to the Rail Ombudsman for its licence holders, which does not include, for example, ticket retailers.

Rail Ombudsman scheme service jurisdiction

Original proposal

- The Rail Ombudsman scheme should continue to focus on resolving disputes between passengers and members of the rail industry and any changes to amend the service jurisdiction should be considered over time.
- 3.45. In our consultation, we explained that the rail services that are in-scope of the current Rail Ombudsman scheme are broadly limited to matters arising between a rail passenger (or potential passenger) and a provider of rail services, with broader policy issues defined as out of scope and falling to statutory passenger advocacy bodies (e.g. Delay Repay compensation entitlements).
- 3.46. While we identified a number of questions about which aspects of service should be in or out of scope, we proposed that potentially changing the provider of the Rail Ombudsman scheme whilst at the same time attempting to change the overall service jurisdiction of the scheme would risk adding potential complexity and delay to the process of establishing the ORR sponsored scheme.

Consultation feedback

- 3.47. Five stakeholders responded on the scheme service jurisdiction (Transport Focus, London TravelWatch, OA, DRO and DPTAC). No stakeholders disagreed with our proposal. The comments we received were about the timescale for any review of service jurisdiction.
- 3.48. DPTAC said it supported our proposals, but any review of the service jurisdiction should not take place at the end of 5 years (which is the proposed length of initial contract term the ORR intends to offer). Three stakeholders (London TravelWatch, Transport Focus and OA) also called for ORR to set a timescale for a review to be carried out, with OA arguing that exclusions of some elements of a journey (for example car parking) may cause confusion and dissatisfaction.

ORR decision

- 3.49. Our final position remains as set out in our consultation. We understand and appreciate the desire from some stakeholders for ORR to set a timescale for review of the service jurisdiction. Our priority for now is to ensure a smooth transition, safeguarding the current protections passengers benefit from. Any change to scheme service jurisdiction could have a significant impact on the Rail Ombudsman's costs, operations and processes and so must be fully assessed and evidence led.
- 3.50. The governance arrangements that we have set out [[see section C](#)] require regular reviews of the Rail Ombudsman, and we would expect any evidence that a wide-ranging review of the service jurisdiction is required should be considered at the first independent review or as part of the wider rail reform discussions where applicable. Our final position is that, until reviewed, the Rail Ombudsman will operate with the existing service jurisdiction set out in the current scheme rules and which were appended to the technical report that was published alongside our consultation.

Decision making

Original proposal

- The decision-making jurisdiction of the current scheme was appropriate and should continue under the ORR sponsored scheme;
- The unique circumstances of a case may result in redress being offered to a consumer, despite industry wide policies or contract terms;
- The Rail Ombudsman shall not be permitted to routinely disregard policies set by the regulator or the contract between a company and a consumer;

- Due to the complexities and practical constraints of the rail industry, 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; and
- 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 or contract terms that are to the detriment of consumers.

3.51. We explained in our consultation that 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.

3.52. Consequently, we concluded that the decision-making jurisdiction of the current scheme was 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 (as discussed at [section B](#)) which industry wide policies and contracts the Rail Ombudsman will take into consideration as part of its decision making.

Consultation feedback

3.53. Most stakeholders who commented on this proposal expressed support for it (Transport Focus, London TravelWatch, DPTAC, Network Rail, DRO). An individual expert in ADR services said that it would be helpful to point out that the Rail Ombudsman has the power to depart from the law and from general policy if it considers that it is fair and reasonable to do so in the circumstances of a case.

3.54. Others made similar points, highlighting the importance of an Ombudsman’s ability to recognise and support an individual’s circumstances and avoid perceptions it simply “rubber stamps” as standard practice.

3.55. Network Rail said that it is important for the industry to operate with certainty, and where the Rail Ombudsman sets aside contract terms or settled industry policies, it is important that the industry understands the reasons for such decisions.

3.56. DRO pointed out that transparency around industry policies could be better to avoid the Rail Ombudsman being asked to consider information that is not widely available to consumers.

ORR decision

3.57. Our final position remains as set out in our consultation document.

- 3.58. We agree with the points made by stakeholders. The Rail Ombudsman must be free to make decisions based on the individual circumstances that arise in a case, which may include offering redress that diverts from industry policies and agreements if appropriate (although this should not be as a matter of routine). We also agree that explanations must be clear to ensure industry understands these decisions. Equally, we consider that transparency of industry policies is imperative to ensure that the Rail Ombudsman is not asked to consider information that is not widely available to consumers and this should be reflected in the scheme rules.
- 3.59. Where there is any evidence that policies, standard contracts or terms and conditions act generally to the detriment of passengers (including where a lack of transparency is problematic), it should highlight this evidence and work with the industry, ORR and other stakeholders to seek a solution.

The Rail Ombudsman scheme rules

Original proposal

- The Rail Ombudsman should have responsibility for developing, in conjunction with stakeholders (including those representing consumers with protected characteristics), the scheme rules to be approved by ORR;
- The scheme rules must be written in language that is accessible to passengers and subsequently published;
- Once agreed, 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.

Consultation feedback

- 3.60. Four stakeholders commented on these proposals (DPTAC, London TravelWatch, Transport Focus, Transport for All) and all agreed with our proposals. London TravelWatch and Transport Focus said that they would welcome the chance to comment on the scheme rules before they are approved. DPTAC and Transport for All added that it was important that the scheme rules are available in a variety of accessible formats.

ORR decision

- 3.61. We will implement the proposals as set out in our consultation document. It is desirable that the scheme rules are published in accessible language and alternative formats, suitable for all. We will require the Rail Ombudsman to draft, consult (with stakeholders), and publish scheme rules (after ORR approval) during the setup/mobilisation phase of its operations, thereby ensuring that they are available before it starts taking cases. The requirement to maintain the scheme rules means they can evolve as the need arises, such as where improvements are identified through experience of applying them.
- 3.62. Our broad requirements on accessibility of the Rail Ombudsman [\[see section B\]](#) will ensure that the scheme rules are available in a variety of accessible formats.

Maximum award limits

Original proposal

- The maximum award limit should be £2,500; and
 - 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.
- 3.63. In our consultation we explained that the current maximum award limit for the Rail Ombudsman is £2,500 per passenger excluding any refunds and that the average award is substantially below the maximum award threshold (e.g. Q3 2021 average award was £80). We noted that ticket refunds are not subject to the award limit which means that a passenger could, for example, be awarded a season ticket refund exceeding the threshold and supplementary redress up to the £2,500 limit. We proposed to carry forward these arrangements and if, in the future, the Rail Ombudsman collects evidence that the current award limit is no longer appropriate, then it may consult ORR and stakeholders on making a change through an amendment to the scheme rules and, if necessary, its service contract via the established change control process.

Consultation feedback

- 3.64. We received feedback from five respondents in relation to our proposal to maintain the maximum award limit at £2500 (Network Rail, Transport Focus, London TravelWatch, DPTAC and Transport for All). Network Rail, Transport Focus and London TravelWatch expressed support in maintaining the existing limit. However, DPTAC and Transport for All said although they did not oppose the proposed maximum award limit for general claims, further consideration should be given to accessibility and mobility complaints and additional safeguards might be required in the event a claim is brought under the Equality Act 2010.

ORR decision

- 3.65. We intend to proceed with this proposal as set out in the initial consultation. With respect to cases concerning the replacement of mobility equipment or other specific equipment used by disabled passengers or passengers with reduced mobility, the [National Rail Conditions of Travel](#) imposes unlimited liability on TOCs for such equipment.
- 3.66. The scheme will therefore operate with an award limit of £2,500 per passenger excluding any refunds or damages to mobility equipment. Having considered the average award as well as the current industry practice, we consider that this is a suitable maximum award at this time. If, however, the Rail Ombudsman finds there is evidence that the maximum award limit needs to be raised, for instance in the case of claims brought under the Equality Act, it should consult with stakeholders and ORR on any proposals to increase this.

Rail Ombudsman case handling timescales

Original 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.
- 3.67. We identified the current 40 working day response target for in-scope cases as an area for potential improvement going forward. We cited the example 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, we noted 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.
- 3.68. This uncertainty in the analytical baseline from which to assess what a reasonable target response time below 40 working days meant we considered the best approach was to allow the prospective providers 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.

Consultation feedback

- 3.69. We received feedback from five respondents on our proposed case handling timescales (Transport Focus, London TravelWatch, c2c, DRO and DPTAC). c2c said that 40 working days would give sufficient time for consideration of disputes and

reducing the timescale could create compliance risks particularly during periods of severe disruption on the rail network. The point about major disruption on the network was also raised by DRO which provided some additional points for consideration on reducing the timescales, such as risks of maintaining quality of standards and any adverse impacts on the parties to consider responses to disputes. Three bodies representing consumers (Transport Focus, London TravelWatch and DPTAC), commented that the 40-working day timescale was too long and could discourage passengers from pursuing a complaint, and so suggested a reduction in the maximum timescale for the Ombudsman to respond.

ORR decision

3.70. We intend to proceed with the proposal as set out in our consultation. As part of the bidder evaluation process, we will look at what bidders consider to be reasonable timescales to process claims. Whilst we would be looking to see a reduction in the 40-working day timescale where practicable, nevertheless 40-working days remains the maximum timeframe that we would accept for case handling.

Section C: Governance

Independent Rail Ombudsman Board

Original 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; and
- 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.

Consultation feedback

- 3.71. Seven industry stakeholders who commented on this proposal (Amey Infrastructure Wales Ltd (AIW), Arriva Trains UK, c2c, Glasgow Prestwick Airport Ltd, London North Eastern Railway (LNER), Network Rail, Southeastern) said they agreed with the ORR's proposed governance structure, including the proposal for an independent Board. AIW said that it should be a requirement for there to be a Board member with expert knowledge of the rail industry, particularly from a passenger operator background. Southeastern said that a train operating company, or RDG, should be represented on the Board and Network Rail said ORR should provide more information and guidance on the required skills and experience of Board members.
- 3.72. Three providers of ADR services (CEDR, Ombudsman Services, DRO) expressed support for an independent Board and/or said that they agreed with all of the ORR proposed governance structures.
- 3.73. Five bodies representing consumers and ADR services agreed with the proposal to require an independent Board (DPTAC, London TravelWatch, CEDR, Transport Focus, Transport for All). DPTAC said it would be important for ORR to have the ability to review the Board's appointments, size and composition. Transport Focus and London TravelWatch said it would be important for there to be experienced passenger representation on the Board, and Transport for All said that the service provider should appoint a disabled person as an accessibility representative to sit at Board level. Transport Focus said that non-executive Board members should not have any conflicts of interests which rules out representation coming from existing bodies within the sector.
- 3.74. No stakeholder disagreed with our proposal that Board members should be remunerated.

ORR decision

- 3.75. We have considered the representations that we should require people with particular expertise, or representing particular groups, on the Board. We do not consider that having certain Board members tasked with representing an industry or a particular consumer group – in terms of putting forward that group's interests or lobbying positions at Board level - is appropriate.
- 3.76. As stated in section A ([accessibility requirements](#)) we agree that the Rail Ombudsman provider should make best endeavours to recruit someone with lived experience of disability to the Board. We also agree that the Board should have expertise in disabled people's issues. However, beyond this, we feel that it fits better with the overall model of governance for the service provider, and the chair of the new Board in particular, to decide on the right mix of expertise, selecting the best

available candidates, or mix of candidates in line with the rules to avoid conflicts of interests.

- 3.77. ORR will, as we proposed, have the ability to require the Rail Ombudsman to rectify any skills, experience, or knowledge gaps within a specified time. We expect that the regular reviews of the ORR procured Rail Ombudsman will, from time to time or as required, cover reviewing the effectiveness of the independent Board.

Independent Assessor

Original proposal

- The Rail Ombudsman Board should be required to appoint an Independent Assessor to hear complaints from companies and consumers about the scheme providers service provision;
- the Independent Assessor should prepare and present an annual report to the Board. 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; and
- 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.

Consultation feedback

- 3.78. Seven respondents (AIW, DPTAC, Network Rail, London Travelwatch, Transport Focus, CEDR and the current Independent Assessor) commented on our proposal for the Rail Ombudsman Board to appoint an Independent Assessor and all broadly supported our proposal to retain the role. Two respondents, an industry stakeholder and the current Independent Assessor, commented on possible improvements around timescales for the Independent Assessor reviewing complaints. The current Independent Assessor also commented on possible improvements, including the timescale for review of cases and improving awareness of the role. London TravelWatch said it would be difficult for scheme members to understand the independence and impartiality of the Independent Assessor if this role is appointed by the Rail Ombudsman.

ORR decision

- 3.79. We intend to proceed with the proposal as set out in our consultation with one addition: reporting on the time taken by the Independent Assessor to consider complaints about Rail Ombudsman.

- 3.80. We appreciate the concerns that stakeholders raise about the timescales for reviews by the Independent Assessor but note that the types of cases that are considered by the Independent Assessor are likely to be contentious. We will include a requirement for, in the annual report of the Independent Assessor, a report on the time taken with comments about how the time was used. This will allow stakeholders greater visibility of the process, and for the Independent Assessor to engage with those concerned about the time needed for such reviews.
- 3.81. The role of an Independent Assessor in Ombudsman organisations is well established and well understood, and it is normal for an Ombudsman scheme to decide on the right individual to carry out this role. We do not consider that an Independent Assessor lacks independence and impartiality because it is appointed by the Rail Ombudsman. It will be responsible for clearly explaining the role of the Independent Assessor to service users, including how to access it.

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

Original proposal

The Rail Ombudsman will be required to:

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

Consultation feedback

- 3.82. Three respondents representing consumers (Transport Focus, London TravelWatch and DPTAC) supported the proposals around data and intelligence sharing and one industry stakeholder (Network Rail) commented on this proposal.
- 3.83. Transport Focus and London TravelWatch welcomed the proposed requirements but suggested these could be more prescriptive to provide further clarity on what data the Rail Ombudsman should provide, particularly to these groups. The other (Network Rail) said it would like to see further details about the data sharing MoU plus any implications on reporting requirements.

ORR decision

- 3.84. We will proceed with our proposal to include a contractual requirement on the Rail Ombudsman to develop an MoU to share data and intelligence with the statutory passenger bodies, subject to constraints around practicality and costs.

- 3.85. As a matter of principle, the Rail Ombudsman should expect to freely share data with the statutory passenger bodies, however the costs of this must be reasonable. Provision of this data may necessitate additional data processing, or data protection requirements may mean redactions are required, and so the time spent doing this must be proportionate to the benefits of sharing the data. Moreover, the data sharing arrangements with these parties should be transparent, meaning scheme members and wider stakeholders should be sighted on these arrangements.
- 3.86. It will be incumbent upon the Rail Ombudsman to work closely with the passenger bodies to draw up an MoU to reflect what data will be collected and shared between these parties, in what form, and how frequently.

Advisory Panels

Original 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.

Consultation feedback

- 3.87. Seven respondents (AIW, Network Rail, Transport Focus, CEDR, Ombudsman Services, DPTAC and Transport for All) were broadly supportive. One respondent, an individual expert in ADR services, was not supportive and another (OA) raised some concerns with the proposals.
- 3.88. Respondents who were supportive of the proposals noted that with two dedicated panels there were opportunities to capture feedback and strengthen the voices of the respective groups' interests. Two respondents who represent consumers (DPTAC and Transport for All) wanted ORR to go further in making specific requirements to have representation including those with lived experience of disabilities on the panel.

- 3.89. OA raised a specific concern regarding the Advisory Panels being able to make ‘advisory statements’ to the Rail Ombudsman’s independent Board which would be required to formally respond. Its concern related to a potentially misleading impression that the Advisory panels have a formal governance role. The OA added that any mechanism these Advisory Panels can use to require the independent Board to take any action would infringe upon its independence and would therefore not comply with its membership criteria.
- 3.90. Another respondent considered the proposals for two separate Advisory Panels to be over specification at the pre-tender stage, instead suggesting the service provider determines its own governance proposals.

ORR decision

- 3.91. We intend to proceed with a requirement for the establishment of two appropriately sized Advisory Panels separately representing passenger and member stakeholders. Whilst noting some dissenting views, we consider this option represents best practice and has been given wide support. We also consider there are benefits in terms of clarity of purpose and voice for each panel. However, while Advisory Panel members will not be remunerated, we do recognise the creation of these panels will impose cost on the Rail Ombudsman in terms of providing a secretariat and support. In line with our emphasis on cost control, we expect stakeholders will be able to scrutinise the cost of the Advisory Panels via the annual service improvement and efficiency review process.
- 3.92. The service provider will be required to make best endeavours to ensure the Passenger Advisory Panel includes those with lived experience of disabilities.
- 3.93. Following its consultation response, we have further engaged with the OA to discuss its concerns regarding the Advisory Panels’ ability to require the independent Board to respond to advisory statements, and how this may be perceived as them having a formal role in the governance structure. We understand the OA’s position on this matter and because we are requiring our scheme provider to pursue OA membership, we have decided to remove this requirement.

Performance management

Original 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 provider;
 - 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 as required with the findings and the scheme’s response to those findings being published.

Consultation feedback

- 3.94. We received feedback from seven (AIW, CEDR, DPTAC, London TravelWatch, Ombudsman Services, Transport Focus, Transport for All) stakeholders, with four (CEDR, Ombudsman Services, Transport Focus and DPTAC) supporting our proposals. One industry stakeholder (AIW) said our proposals were fine so long as poor performance can be addressed by the independent Board.
- 3.95. One stakeholder representing consumers (London TravelWatch) said that reference to ‘regular reporting or meetings’ appears throughout our proposals and this is ambiguous and should be clarified. The same stakeholder said that reporting should be timely and no more than three months in arrears and the ORR could commission a report after the first year to capture any issues arising and then every subsequent two years.
- 3.96. Another stakeholder representing consumers (Transport for All) said that disabled people should be involved in setting performance metrics, identifying what good looks like, and shaping methods for monitoring and evaluation. The same stakeholder also suggested some specific measures such as employing disabled people as mystery shoppers.

ORR decision

- 3.97. We intend to proceed with this proposal as set out in our consultation.
- 3.98. The measures that we described in this section of our proposals were about performance reporting to others. These are in addition to independent reviews, monitoring against key performance indicators (**KPIs**) and monitoring of satisfaction.
- 3.99. The independent Board of the Rail Ombudsman will be responsible for holding the scheme to account for performance in the first instance, and the ORR as contract

manager will also have oversight. Given the overall package of governance measures we have set out, we feel confident there are sufficient measures in place such that any poor performance will be identified and tackled.

- 3.100. We have said some items are 'regular' or 'periodic'. We appreciate that we could be more specific and set timetables for these, but we think it unnecessary. These items involve, for example, review meetings with ORR, or industry stakeholders, or other stakeholders. We consider that the Rail Ombudsman should be free to agree with each stakeholder how often reviews are necessary according to the volume of business and other aspects of the relationship.
- 3.101. We appreciate the suggestions made that disabled people should be involved in setting performance metrics and have worked this suggestion into our proposals via the consumer satisfaction monitoring proposals (see section C).

Stakeholder satisfaction and feedback

Original 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.
- 3.102. We said in our consultation that 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. Stakeholder satisfaction monitoring can complement and supplement the wider performance management framework and as such regular stakeholder satisfaction surveys are another important means of holding the Rail Ombudsman to account.
- 3.103. We also said that the scale, frequency and nature of these surveys should be proportionate and tailored to the relevant group. Stakeholder monitoring should include testing the Rail Ombudsman's communications, accessibility, and processes with consumers, with the aim of continuous improvement and the results of the surveys should be published at least annually in or alongside the Rail Ombudsman's annual report. 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.

Consultation feedback

- 3.104. Six stakeholders (CEDR, DPTAC, London TravelWatch, Network Rail, Ombudsman Services, Transport Focus) commented on these proposals, and all supported them. One body representing consumers (DPTAC) added that it thought the surveys should seek feedback from a wider cohort of passengers, including those who have not, for whatever reason, pursued their complaint fully through the process, and also from passengers who share protected characteristics.
- 3.105. Another, also a body representing consumers, (Transport Focus) said that it was pleased to see the requirement to draw up action plans to improve satisfaction where a need is indicated and to report progress against this.

ORR decision

- 3.106. We will implement these proposals as set out in our consultation, with the addition that in the stakeholder monitoring consideration should explicitly be given to surveying passengers who share protected characteristics.
- 3.107. We appreciate the feedback that those who do not pursue complaints should also be surveyed. We recognise there is currently an evidence gap in relation to this aspect of passenger experience. We believe it may be something that the Rail Ombudsman should discuss with other industry stakeholders who conduct research on the passenger experience once it is established e.g. opportunities for collaboration or complementary work.

Transparency

Original 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 service improvement and efficiency review 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 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 (OA 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.

3.108. We proposed that, in the interests of transparency and good corporate governance, the requirements set out above would be the minimum standard that we expect the Rail Ombudsman to deliver. We noted that this approach aligns with the OA’s principles of openness and transparency for member schemes. Our expectation is for the Rail Ombudsman to publish as much of this information from the beginning of its operations as is reasonable and practicable.

Consultation feedback

3.109. Six respondents commented on our proposed transparency requirements, all expressed agreement or welcomed the proposals (CEDR, DPTAC, London TravelWatch, Network Rail, Ombudsman Services, Transport Focus).

3.110. One ombudsman service provider (Ombudsman Services) said that in addition to publishing data and insights, it would be important for the Rail Ombudsman to identify issues proactively and work with stakeholders to mitigate issues and raise standards.

3.111. One body representing consumers (Transport Focus) supported the minimum requirements on performance reporting and use of complaints data and said that this should support better use of trend data if used in conjunction with data collected by the passenger advocacy bodies. The same stakeholder went on to say that it will be important that the frequency of reporting is clearly established as part of the process and definitions of ‘regular reporting’ will differ between stakeholders.

ORR Decision

- 3.112. We intend to proceed with our proposed transparency requirements as set out in our consultation apart from the item on advisory statements from the Advisory Panels to the Rail Ombudsman's Board for the reasons set out in section C ([Advisory panels](#)). Taking account of stakeholder feedback, we consider that our proposals set out an appropriate minimum standard.
- 3.113. We have responded to the feedback about the definition of 'regular reporting' in section C (performance management).

Section D: Demand and Fees

Forecasting case volumes and demand for the service

Original proposal

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.

Consultation feedback

- 3.114. We received very little feedback from stakeholders on our proposals to assess the capabilities of bidders to manage variations in case numbers through ORR's tender process. With regards to varying costs dependent on forecasting future volumes of cases, one provider of ADR services (CEDR), recognised that fixed costs should be covered, otherwise a service provider would be taking on a commercial risk.

ORR Decision

- 3.115. As our proposals in this section elicited very few responses, we intend to proceed with our proposals as set out in the consultation.

Funding the Rail Ombudsman

Original proposal

In our consultation document we explained that ORR did not have a preferred funding model at that time, and we were seeking feedback on the three models considered in the technical report, these were:

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 of cases** – 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 of cases** – 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.

Consultation feedback

- 3.115. Six industry stakeholders said they supported option one, the status quo. The reasons given for this varied (c2c, LNER, Network Rail, Nexus, Scotrail, Transport for London (TfL) and Network rail) said they supported the status quo until more information on costs became available. Three industry stakeholders (c2c, Nexus, Scotrail) said this option allows them the opportunity to save costs by reducing the number of cases that go to the Rail Ombudsman. One (LNER) thought it was the fairest model, and another (TfL) thought that a cost reflective polluter pays methodology remains appropriate.
- 3.116. One industry stakeholder (First Rail Holdings Ltd) argued that the current funding model creates disincentives to allow cases to go to the Rail Ombudsman, as the cost per case, for larger operators, is high when charges are based on the number of cases that go to the Rail Ombudsman. It argued that the obvious operator strategy under this charging model is to actively avoid Ombudsman referrals.
- 3.117. The same stakeholder (First Rail Holdings Ltd) said it was not in favour of the proposal (in Paragraph 3.79 of the consultation document) that bidders' preferred solutions be considered. Pricing incentives on Rail Ombudsman members are an important consideration and the relevant factors feeding into the process of determining individual member charges go well beyond those that bidders might reasonably be expected to consider when developing the commercial terms of their bids. It went on to note that this is not to be confused with the more specific input bidders can sensibly have on proposing elements of a charging structure that might reflect the composition of their variable costs associated with ADR volumes.

3.118. First Rail Holdings Ltd favoured an approach where:

- small operators, station operators (and ticket retailers or voluntary members) retain fixed low (or no) charges overall, to encourage voluntary membership and is a quid pro quo for mandatory membership for commercial operators in these categories where the argument for mandatory membership is weaker than other larger operators;
- variable charges (per ADR referral) set to be, at least approximately, cost-reflective of ADR scheme variable costs; and
- the remaining fixed costs, not covered by the two elements above, shared between the larger/franchised operators in proportion to their size either allocated by passenger journey, passenger mile or by passenger revenue, or some combination, depending on its pros and its cons.

3.119. One industry stakeholder (Glasgow Prestwick Airport Ltd) did not express a view on a preferred funding model but explained that it was very concerned about the costs to it as a very small station operator and considered that, whatever option is taken forward, the fee structure must reflect the size and scope of its operations.

3.120. One industry stakeholder (Arriva Trains UK) supported higher case fees and lower subscription fees. Another (Southeastern) stated that now it had more visibility of how current charges are calculated it was less supportive of the status quo model, and higher case fees and lower subscription fees could be preferable.

3.121. Only one body representing consumers (DPTAC) commented on the funding model and said that the wider role of the Rail Ombudsman (preventing the causes of complaints) must be recognised in the funding model.

3.122. Three ADR providers commented (Ombudsman Services, CEDR, DRO). CEDR said a polluter pays model has some merit but recognised the argument that the whole industry benefits from a Rail Ombudsman. This stakeholder also said it is critical that the service provider is able to cover its costs, meaning bidders to provide the service should be free to propose a pricing mechanism but this need not be the same as the charging structure imposed on the industry (in that recovering cost from the industry could be under a different structure than the one used to pay the service provider).

3.123. Ombudsman Services said that the current structure looks complicated, but it is possible the industry understands it well. It went on to say that in general terms of fairness, larger companies should pay a larger proportion of fixed costs than smaller companies, but it was not always the case that companies who sent more cases to an Ombudsman than others were always the most “polluting” – for example, they could just be better at effectively signposting to the Ombudsman.

3.124. DRO said that funding structures such as higher case fees, could reduce the likelihood of a case progressing to ADR. This is because a company might decide to

offer higher value settlements to complainants to avoid escalation to the Rail Ombudsman, with the effect of inflating the value of settlements and depriving the sector of insight derived by the Rail Ombudsman investigating cases.

- 3.125. After considering all of the feedback, we think that it is possible that the current funding structure may have a greater impact on industry behaviour than was previously understood. We are grateful for the additional information and analysis stakeholders have provided on the current funding model, but it is clear further evidence would be required to truly test the net effect of its behavioural incentives and the long-term outcomes they drive.
- 3.126. Some operators (First Rail Holdings Ltd, c2c, Nexus, Scotrail – with TfL and Network Rail alluding to this) have recognised the incentives that exist under a polluter pays mechanism to lower their costs by controlling the cases that go to the Rail Ombudsman. This is despite, in some cases, these costs being small relative to the overall size of the operator. This is a positive aspect of the model whereby it produces a financial and reputational incentive to improve first stage complaint handling. However, we also recognise there is a tipping point where the financial incentive should not be so strong that it encourages operators to unduly offer more generous settlements at the first stage to avoid escalation to the Rail Ombudsman. Moreover, the strength of these incentives will vary relative to an individual operator's circumstances.
- 3.127. It remains unclear as to whether, overall, the current model remains optimal in this regard without much further industry engagement and greater evidence gathering. This is why we opened up discussion of the alternatives.
- 3.128. We do understand the requests for more information, and the suggestions that we should set out in detail the fixed and variable costs of the ORR procured Rail Ombudsman and then consider the most appropriate way to calibrate funding and set charges. However, we do not consider this to be feasible in advance of running the competitive tender to select a supplier because a key dimension of the competition will be the price, and the way bidders propose to configure and operate the scheme will determine its fixed and variable costs.
- 3.129. In terms of the pricing structure of the ORR procured Rail Ombudsman and the recovery of those costs from the industry, we agree that these do not need to have the same structure.

ORR Decision

- 3.130. All of the above considered, in particular that some stakeholders would like more information before expressing a firm view and our confidence that the current model has proven itself to be stable and viable, we have decided that at least initially, charges to the industry will be on the same structure as today – i.e., the status quo.

- 3.131. It is our intention that the ORR procured Rail Ombudsman will commence operations utilising a funding model for both (i) current members who have joined via RDG and whose charges are determined by their charging model and (ii) those scheme members who have joined the Rail Ombudsman directly and whose charges are determined using a simpler methodology but retains principle of a membership fee supplemented with case fees. The broad intent is that, initially, the same charging methodology as today will apply to all members.
- 3.132. As part of its first independent review of the new scheme which will occur within the first two years of its operations, ORR commits to ensuring this includes a review of the funding and charging model. The involvement of the selected supplier, setting out its fixed and variable costs, will help inform the review. This could include an allocation of these costs to different activities, for example, costs incurred in evidence and intelligence gathering vs costs directly incurred in resolving disputes, and include an analysis of the likely impact on case volumes reaching the Rail Ombudsman depending on how the industry is charged for the Rail Ombudsman.
- 3.133. We will ask that bidders, in their tender submissions, set out their ideas, insights, and capabilities to assist in the future review described above.
- 3.134. There are a number of small train and station-only operators which are compulsory members (via the licence condition) which have joined the Rail Ombudsman scheme directly (rather than through RDG). The revenue raised from these operators is a very small percentage of the Rail Ombudsman's budget with some, for example very small heritage railways, paying just a small annual administrative fee and supplemented with case fees. To date, only National Rail Enquiries has joined the Rail Ombudsman on a voluntary basis.
- 3.135. In the future, if organisations do join on a voluntary basis, we agree with the argument put forward by one industry stakeholder that fixed low (or no) charges would encourage voluntary membership. We will consider at a future point whether this may be appropriate for very small industry parties; meanwhile, we consider that larger organisations joining on a voluntary basis may be willing to pay higher charges to reflect the value of the scheme to the whole rail industry, and we will encourage this.

Section E: Case management operations

Case management process flows

Original proposal

3.136. We proposed that the four broad stages of current case processes used by the current Rail Ombudsman provider are maintained, but how these are delivered should 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.

Consultation feedback

3.137. The four stakeholders who commented on this proposal all expressed support (DPTAC, London TravelWatch, Transport Focus, Ombudsman Services].

3.138. Two respondents, both consumer representative bodies (London TravelWatch, Transport Focus), pointed out that close links between the Rail Ombudsman and themselves as passenger advocacy bodies were crucial to fully understand roles and remits. Both respondents said that case handling process flows should clearly set out how cases will be referred to other bodies, including timescales, formats and access to case files.

3.139. A provider of ADR services (Ombudsman Services] said that it welcomed the fact that early resolution of cases that come to the Rail Ombudsman is one of the stages highlighted, because it is important to encourage early resolution between parties where possible.

ORR Decision

3.140. We intend to proceed with this proposal as set out in our consultation.

3.141. We agree that early resolution is a critical element of any modern Ombudsman scheme, and our specification of four broad stages allows this, while allowing service providers scope to innovate in their case handling methods.

3.142. We agree and confirm that case handling flows that set out how cases will be referred to other bodies, including timescales, formats and access to case files data should be specified at a high level in MoUs (see section C - [interaction with passenger advocacy groups](#)). These should then be implemented and documented in case handling processes.

Staff qualifications and rail industry knowledge

Original proposal

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.

Consultation feedback

3.143. One industry stakeholder (ScotRail) and one provider of ADR services (CEDR) agreed with our proposal. Another provider of ADR services (DRO) said that while subject matter expertise is very important, it is also important that staff understand legal interpretations if the Rail Ombudsman is to represent a genuine alternative to court, and so ORR should seek a culture of excellence in terms of staff learning and development.

3.144. Four bodies representing consumers (DPTAC, London TravelWatch, Transport Focus, Transport for All) agreed with our proposals but also suggested that the staff of the ORR procured Rail Ombudsman should be trained on disability awareness, vulnerability and other characteristics.

ORR decision

3.145. Our final position on dispute resolution and industry expertise is as set out in our consultation document. We remain of the view that the costs and benefits of how a provider proposes to resource its operations is a key dimension on which it should compete, including the way it will make sure that necessary expertise is available to casework and other operations.

3.146. We will ensure the Rail Ombudsman's disability and vulnerability awareness training includes exposure to the lived experience of disabled people and is extended to all members of staff. To ensure the training is of high quality, we will assess bidders' training proposals as part of our bid evaluation.

Service standards

Original proposal

- Section 6.3 (Table 6.1) of our June 2022 technical report set out the primary key performance indicators (KPIs) of the current Rail Ombudsman scheme and the specified service levels it was expected to meet.

- ORR stated its intention to retain these KPIs and service levels as a minimum standard and allow bidders as part of the tender process to compete on exceeding these requirements.

Consultation feedback

3.147. Only two respondents (DPTAC and Ombudsman Services) commented on the proposed service standards, but both were supportive of the proposals. One of these bodies, which represents consumers (DPTAC), suggested that accessibility should be proactively built into the operational measures.

ORR decision

3.148. We intend to proceed with setting these KPIs as a minimum standard for bidders to demonstrate they will meet as part of the tender requirements.

3.149. We have captured the suggestion that monitoring accessibility outcomes should be a key performance measure in section C ([stakeholder satisfaction](#), [performance management](#)).

Case Management System (CMS)

Original 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; and
- 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.

3.150. In our consultation document, we said that the list above was a minimum list of essential functionalities of a CMS, but we intended to allow bidders the freedom to put forward solutions, innovations and explain the costs and benefits of their proposed CMS.

3.151. We also said that we understood 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. Hence, we said that it was our intention to build in time for this as part of our implementation timescale.

3.152. We further proposed that the cost and specification of additional or extra functionality in the future is handled through service improvement and efficiency review consultations and change control processes in the contract.

Consultation feedback

3.153. Five stakeholders (DPTAC, London TravelWatch, Transport Focus, Ombudsman Services, Southeastern) commented on these proposals.

3.154. DPTAC said that it is a requirement under the Equality Act 2010 that the proposed minimum functionality and capabilities of the CMS meet all accessibility standards and expectations, and this part of the bid must be given a key weighting in the evaluation process.

3.155. Two bodies representing consumers, (London TravelWatch, Transport Focus) said they were pleased with the specification, welcomed ORR saying the CMS must facilitate the handling of cases split between more than one company, or between the Rail Ombudsman and other bodies, and agreed that this will require clear data sharing agreements.

3.156. A provider of ADR services (Ombudsman Services) said our proposals were sensible and welcomed the consultation highlighting that potential bidders will have the opportunity to put forward ideas and solutions on how best to operate a CMS system.

3.157. One industry stakeholder (Southeastern) said that we should add into the minimum specification the ability for train operators to see cases that have been passed to Transport Focus or London Travel Watch as well as the ability to see cases that have been set out of scope.

ORR Decision

3.158. We will implement our proposals as set out in the consultation. Our minimum specifications set out above capture the main characteristics of the currently used CMS, which most industry stakeholders are content to see continue. We can confirm that the requirement for excellent accessibility will be reflected through all of the tender evaluation process, including for the CMS requirements.

3.159. The ability for bidders to put forward innovative and cost-effective solutions is a key benefit that we wish to capture by running a competitive tender, and we will be clear in our tender documents that freedom exists for bidders to do this.

3.160. In setting out our requirements for transition planning (see [Chapter 5](#)) we have specified broad stages but left scope for bidders to put forward their specific plans, including for CMS design and development to make sure that the CMS meets the needs of all relevant stakeholders, and evolves to continue to meet their needs over time.

3.161. In advance of seeing plans from bidders, we do not know whether it would be possible for the CMS of the Rail Ombudsman to show more details of cases that have been passed to Transport Focus or London Travel Watch. Such matters should be explored with stakeholders by the Rail Ombudsman before it implements its CMS, and for now we will rely on our clearly stated expectation that meeting the needs of stakeholders should be central to the design of the CMS.

Section F: Other required elements

Original proposal

Our consultation proposed the following additional elements which we consider should be addressed as part of the tender process and were set out in detail in section 7 of our Technical Report:

- Confidentiality and data protection,
- Signposting to the Rail Ombudsman,
- Clarity of communications,
- Passenger initiating disputes and communicating with the Rail Ombudsman,
- Companies and stakeholders communicating with the Rail Ombudsman,

- Telephone systems,
- Rail ADR Service Website,
- Social media,
- Accessibility,
- Language,
- Compensation Framework,
- Exit management, and
- Business continuity and disaster recover.

Consultation feedback

3.162. We received limited feedback on this question. A provider of ADR services (Ombudsman Services) responded that the list of requirements was sensible. Another provider of ADR services (DRO) commented that ORR should set the standard of 'signposting' and ensuring consistency in compliance was crucial to a consistent consumer experience and therefore consumer confidence.

ORR decision

3.163. We intend to proceed with the proposal as set out in the consultation. We did not receive any feedback contesting our proposal. The ORR's Complaints Code of Practice sets out clear requirements concerning the quality, timing and consistency of signposting to the Rail Ombudsman. We consider that the list of other requirements is exhaustive and sensible.

4. Proposals for an amended SNRP and licence condition

4. 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.

4.1. In addition to seeking views on our draft OOM, and ahead of a statutory consultation, we sought views on proposals to amend the complaints handling condition in respect of the current ADR provisions (sections 5 and 6).

Our proposals

4.2. The majority of passenger and station SNRPs and licences include within them a Complaints Handling condition that requires holders to become and remain a member of '*the Relevant ADR Scheme*'. Our proposal was to modify the current definition to remove reference to the RDG and a Successor Scheme and replace this with ORR.

4.3. We also proposed including an obligation for SNRP and licence holders to contribute towards the cost of the rail ADR scheme. This proposal maintained 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

4.4. In parallel to the publication of this document ORR will publish the statutory consultation on amending the SNRP and Licence condition. In Autumn 2022 we intend to go out to tender to procure a service provider to run the Rail Ombudsman. Following the statutory consultation, changes to the condition, if agreed, will likely take effect in summer 2023 following completion of the procurement process.

Consultation feedback

4.5. Eight respondents expressed broad support for the proposed changes to the complaints handling SNRP and licence condition (Southeastern, ScotRail, Transport

Focus, London TravelWatch, CEDR, Ombudsman Services, DPTAC, Transport for All). Two industry stakeholders (c2c and Network Rail) referred to its responses to ORR's CoP consultation whilst another [LNER] supported RDG's response to the CoP consultation, which broadly supported the proposals.

- 4.6. Network Rail considered that additional wording should be included in the licence condition to ensure SNRP and licence holders have the opportunity to accept the scheme terms and any changes to these terms due to potential cost implications. We provide our view on this in our decision.
- 4.7. Respondents cited benefits which the proposals should deliver; one body representing consumers (DPTAC) said that mandatory membership for SNRP and licence holders should generate whole industry data and insight about complaints.
- 4.8. One provider of ADR services (DRO) noted that Designated Competent Authority approval is required for a Rail ADR scheme to be complaint under the proposed condition but not OA approval. It commented that the wider remit of an Ombudsman helps to build the trust and confidence expected of schemes operating in high-profile sectors.

ORR decision

- 4.9. We will issue a [statutory consultation](#) on the changes to the complaints handling licence condition as set out in the consultation. With broad stakeholder support, we consider that our proposed drafting provides a simple solution to update the SNRP and licence condition to accommodate a new ORR sponsored scheme.
- 4.10. We consider that the ongoing mandatory membership for SNRP and licence holders ensures that consumers will continue to have access to a Rail Ombudsman service and the consumer protection safeguards that it offers, whilst also bringing benefits to industry.
- 4.11. Consistent with current obligations, SNRP and licence holders will have to comply with the scheme rules which will be developed by the Rail Ombudsman service provider in consultation with industry stakeholders during the implementation period (see [section B](#) above).
- 4.12. The obligation for SNRP and licence holders to contribute towards the cost of the Rail Ombudsman scheme will be set out within the revised condition. Scheme members already pay for the Rail Ombudsman, and we only received one request to amend the drafting in the condition. We do not consider that the additional wording to the SNRP and licence condition proposed by Network Rail should be included in the SNRP and licence condition. The 5-year budget for the Rail Ombudsman will be set via the competitive tender process. The scope of the Rail Ombudsman's services are set by reference to the OOM which has been consulted on. An annual service improvement and efficiency review clause will be included within the contract to ensure that the service provider is operating transparently and efficiently. As part

of this review, the service provider will have to consult with scheme members. Any agreed changes will only be instigated via a change control procedure (also set out within the contract). This annual review will not offer the service provider an opportunity to recover costs that should have formed part of its original tender.

- 4.13. Designated Competent Authority approval offers the minimum requirement for an ADR scheme, and as such we have included this in the SNRP and licence condition. This provides flexibility to accommodate a circumstance where a Rail Ombudsman cannot be established, whilst ensuring that a mandatory ADR scheme for the rail sector is retained. The enhanced requirement for a Rail Ombudsman scheme will be accommodated within our tender process with a requirement for bidders to set out how they will gain both Secretary of State (via CTSI) and OA approval.

5. Transition arrangements

5.1. In our consultation document we explained that, 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. We said 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.

5.2. We noted the advantages and disadvantages of both these options and asked for views from stakeholders.

5.3. A period of dual running (option a) would allow existing cases to be closed by the current scheme and avoid a need to transfer open cases to the new scheme. 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. The principal disadvantage of this approach is that it will mean having two schemes running in parallel that need to be paid for during this short period.

5.4. Closing one scheme before opening the next (option b) has the advantage that funding would only be required for one scheme at a time, but case handling for ongoing cases would be more complex and could involve the need to transfer complainants' personal data. It is also possible these additional activities around data transfer, which are relatively high risk given the sensitivity of the data, may generate additional costs and degrade the cost benefits of running one scheme at a time.

Consultation feedback

5.5. Eight industry stakeholders commented on these options (Arriva Trains UK, c2c, LNER, Network Rail, Scotrail, Southeastern, TfL, FirstRail Holding Ltd). Seven of them said that they supported option **a**), allowing a period where both schemes run simultaneously, because it avoids transferring cases between the RDG procured scheme and the ORR procured scheme. Some (Arriva Trains UK, Network Rail, TfL, First Rail Holdings Ltd) said the period of overlap of the two schemes should be kept as short as possible.

5.6. The other industry stakeholder who commented (LNER) said that it preferred option b), but we understand from its comments that this is because it thought that under option a) it would be possible for complaints to be referred to both schemes at the same time. This would not be the case, and we explain why in more detail later.

- 5.7. Three providers of ADR schemes (Ombudsman Services, CEDR, DRO) commented, with two (Ombudsman Services, CEDR) saying they support option a, with both saying a clear cut-off date for new case referrals to the RDG procured scheme would be critical. The third (DRO) said that a potential risk of two schemes running simultaneously is that it could cause confusion and creates the opportunity for comparisons to be drawn between outcomes on “similar” cases.
- 5.8. Five (Disability Rights UK, DPTAC, Transport Focus, Transport for All) stakeholders representing consumers commented. Three (DPTAC, Transport Focus, Transport for All) said they supported option a, because cases opened under the RDG procured scheme would close under that scheme and this would be the best option for passengers with complaints open at the Rail Ombudsman. One stakeholder (Disability Rights UK) was concerned that having two schemes would increase confusion about who is doing what. Another (OA) said that while there may be two schemes operating back-office functions simultaneously during part of the handover, there should only be one public facing rail ombudsman scheme operational at any one time.

ORR decision

- 5.9. We have decided that option a), allowing a short period where both schemes run simultaneously, is the best option. We agree with stakeholders who think this option represents the best possibility of a seamless experience for most passengers with complaints already with the Rail Ombudsman during the transition period. We can confirm that, under this option, there would only be one Rail Ombudsman accepting new cases from passengers at any one time.
- 5.10. We also agree with stakeholders that keeping this overlap period as short as possible, to minimise costs and risk, while allowing enough time to ensure that passengers with existing complaints experience a seamless transition is highly desirable. There will be a period of time where the new service provider prepares to start taking cases, but the existing RDG appointed service provider continues to accept new cases and maintains its public facing role as the Rail Ombudsman. In parallel the ORR appointed service provider will continue with its preparatory work ahead of becoming fully operational.
- 5.11. When the ORR appointed service provider is ready to take on cases - at a date to be determined through detailed planning and which keeps the overlap period with the existing service provider as short as possible and minimises costs and risk of disruption - all new complaints and enquiries will be directed to it¹. The RDG

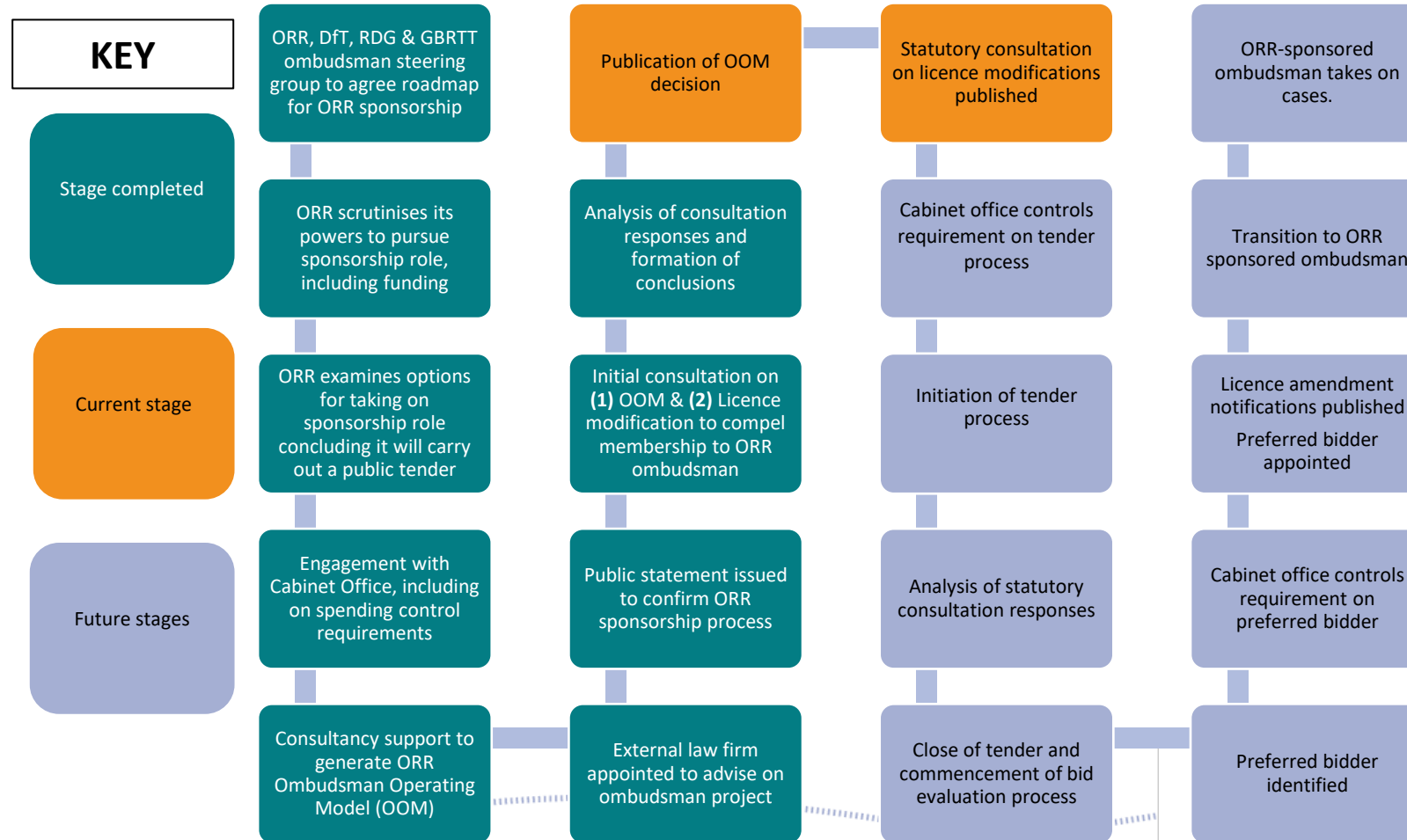
¹ To note that the existing service provider of the RDG procured scheme (DRO) could be ORR's preferred bidder if they choose to bid and emerge successful from the competitive tender. In which case, the transition planning requirements may be simplified but we have, for reasons of good and robust planning, considered what might be needed in the event that the provider of the RDG procured scheme and the provider of the ORR procured scheme are not the same.

appointed service provider will continue to work on the cases it already has open, aiming to close all of these before its contract ends. Any left open at the end of the RDG appointed service provider's contract will be transferred to the ORR appointed service provider. ORR, and all parties involved, should work to ensure that this happens in the smallest number of cases, and ideally no cases should be transferred.

- 5.12. Exact dates cannot be set out before ORR's procurement process has completed, and deadlines will also depend on more detailed planning as resources are mobilised for the transition phase. Throughout all aspects of their transition plans we view it as critical that bidders set out how they will adequately resource the transition, ensure that passengers with complaints experience a seamless transition, minimise impact on scheme members, and take steps to ensure risks and costs are tightly controlled.
- 5.13. We therefore expect bidders to set out their transition plans to account for the following activities, including how they will sequence them and manage any risks:
- structure and resourcing of a transition team, including senior oversight, accountability and project governance;
 - setting up required interfaces with others, for example, RDG appointed service provider, ORR, RDG, Transport Focus, London Travel Watch and industry stakeholders;
 - plans, and contingency plans, to secure any suppliers required for transition activities, for example, technical set up (putting in place or configuring a case management system, building the website, setting up telephone systems);
 - risk management and cost control;
 - physical set up of service, for example, recruiting and training staff and obtaining suitable offices;
 - information, for example, reaching data sharing agreements and MoUs with relevant organisations;
 - producing and finalising all scheme documents, for example, agreeing scheme rules and preparing other supporting documents such as scheme directory;
 - recruiting and training scheme members' staff on the changeover and how to interact with the new service;
 - providing documentation and training to industry stakeholders on case management flows and the case management system;

- setting out, and agreeing with industry stakeholders, how signposting for passengers should be managed as the ORR appointed service provider takes on cases;
- completing appropriate system testing;
- obtaining certification as an ADR provider and as an Ombudsman;
- putting in place permanent independent Board and other governance structures, for example, the Advisory Panels;
- preparing to manage the service to ORR specified performance standards, and setting up required testing and monitoring of consumer needs and consumer, scheme members and advocacy bodies' satisfaction;
- preparing, and possibly consulting stakeholders, on the Rail Ombudsman's wider role of evidence and intelligence gathering;
- taking over any cases from the RDG service provider that are not closed before the end of its contract period (a small number, which may be zero).

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 – Updated Equality Impact Assessment

Introduction

This document records the analysis undertaken by the Office of Rail and Road (**ORR**) to enable the organisation to fulfil the requirements placed on it by the Public Sector Equality Duty (**PSED**) as set out in section 149 of the Equality Act 2010 (**the "Act"**). The PSED requires that the public authority must, in the exercise of its functions, have due regard to the need to:

- eliminate discrimination, harassment and victimisation and any other conduct that is prohibited by or under the Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

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 May 2021 Plan for Rail, ORR has begun the process of taking on responsibility for the sponsorship of a rail ombudsman.

A statutory consultation on a licence modification to require licence holders which are members of the current RDG procured scheme to transition, at an agreed point, to an ORR procured scheme has been published alongside ORR’s decision on the Ombudsman Operating Model (**OOM**). This followed a public consultation on the future OOM.

The next step is for ORR to publish an Invitation to Tender (**ITT**) for the next operator of a Rail Ombudsman scheme. This will be designed to ensure the future Rail Ombudsman is constituted, governed and operated in a way that best serves its members and users.

This assessment considers the impact of ORR’s decisions on proposals to implement a new Rail Ombudsman OOM and amended licence condition.

Analysis

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

ORR also consulted with these same organisations as part of a public consultation on the OOM and its associated draft Equality Impact Assessment, as well as several other disabled people's organisations. As well as those organisations set out above, ORR received responses from Transport for All and Disability Rights UK.

The OOM requires that many of the current characteristics of the current Rail Ombudsman scheme are retained. It also requires areas for improvement, including making more explicit the role of the Rail Ombudsman in delivering a wider benefit over and above its dispute resolution role.

Of the protected characteristics set out in the Act, 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 the Act, disabled people have additional protections in the form of a duty on service providers to anticipate any reasonable adjustments that may be required to access a service.

Under its contract with RDG, the current Rail Ombudsman service provider is already 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.

Following the consultation on the draft OOM and its Equality Impact Assessment, we have confirmed our decisions to advance equality of opportunity or further eliminate discrimination by strengthening or adding to these requirements as follows:

- ensuring all documents are available in accessible formats on request, including in spoken word formats;

- ensuring the Rail Ombudsman’s disability and vulnerability awareness training includes exposure to the lived experience of disabled people and is extended to all members of staff. We will assess bidders proposed training as part of our bid evaluation;
- providing a translation service rather than signposting to one;
- placing the Rail Ombudsman under an obligation to anticipate reasonable adjustments that it may need to make to ensure disabled people can access its services, recognising the special protections provided under the Equality Act; and ensuring there are explicit commitments on the website to providing reasonable adjustments. We will also explore the opportunities for the Rail Ombudsman to report on any reasonable adjustments made by train companies in response to escalated complaints;
- requiring the Rail Ombudsman to undertake and publish the results of testing of disabled users of its service, and research into passenger awareness of the service at the right time;
- embedding disability awareness within the governance of the Rail Ombudsman, by requiring that it uses its best endeavours to ensure, both its Consumer Advisory Panel and its Board possess expertise in disabled people’s issues and include at least one member with lived experience of disability; and
- ensuring the maximum award limit of £2500 does not apply in relation to claims for damaged mobility equipment under the National Rail Conditions of Travel.

We received one proposal to advance equality of opportunity by ORR developing and holding a register of reasonable adjustments made by train companies. We consider it would not be appropriate for ORR to undertake this work as it has no role in the determination of reasonable adjustments under the Equality Act 2010. However, as set out above, we will explore the opportunities for the Rail Ombudsman to report in this area.

The Future Rail Ombudsman

In addition to the opportunities identified here as part of the development of the OOM, and as part of the bidding, evaluation and contracting process, once in place the future Rail Ombudsman may identify further opportunities to advance equality of opportunity or further eliminate discrimination, as well as ensure discrimination is not increased. This is because the future Rail 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 relevant protected characteristics. This may include the overall passenger experience of raising a complaint about a rail service.



© Crown copyright 2022

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at orr.gov.uk

Any enquiries regarding this publication should be sent to us at orr.gov.uk

