

Gordon Herbert  
Office of Rail Regulation  
One Kemble Street  
London  
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**Our Ref:**  
**Your Ref:**

1st March 2012

Dear Mr Herbert,

**A greater role for ORR regulating passenger franchises in England and Wales,  
December 2011**

Thank you for consulting with London TravelWatch on this review and inviting our views. London TravelWatch is the statutory watchdog representing transport users in London.

A brief summary of our position is as follows:

- We believe there is a case for an enlarged ORR as some high level decisions are being taken at a political level, but where the interests of passengers would better be looked after by a regulator.
- There have been instances of the regulation of train companies failing under the current system, leading to a poorer service for passengers.
- We believe that the National Passenger Survey (NPS) only provides a snapshot of opinion and because of its make-up is limited in its use. It is a useful guide but should not be used to monitor detailed quality and compliance. Around one quarter of London Railway Area stations have never even been surveyed for the NPS, limiting its statistical significance.
- We believe that the NPS sample coverage leads to an under reporting of station usage of smaller London stations due to the way Travelcard / Freedom Pass / Oyster Pay as you go usage is recorded and reported.
- We support the regulation of the Train Operating Companies (TOCs) by a single body like the ORR, as it would allow the DfT to focus on the bigger picture and on managing franchises.
- We believe that the ORR should be holding Network Rail to account over its land and building management in terms of environmental quality, in respect of the effect of this on train performance and passenger experience.
- We believe that enforcement and penalty policies should be used more routinely by the ORR and implemented earlier on in the process, compared to how it is done currently.
- Any penalties should be used to deliver genuine benefits for passengers.

- We believe that there is a case for the ORR taking on a larger role in protecting consumers, possibly funded by a levy from the TOCs.
- Our experience as an appeals body in complaints handling could assist the ORR in developing proposals for regulating such procedures.
- We believe that given the dissolution of the Disabled Person Transport Advisory Committee, there should be a way whereby the views of passengers with mobility issues are captured. This could be through the ORR regulating Disabled People's Protection Policies and is something we would support.
- We support the proposal to allow the ORR to regulate punctuality and reliability performance. We would want the performance targets to be more transparent and any enforcement action to take place much earlier than is in the current process.
- We advocate the use of the Service Quality Inspection Reporting Regime (SQUIRE) instead of the current SQMS systems when monitoring standards of quality management on the railway. SQUIRE is a more comprehensive and prescriptive tool compares to SQMS.
- We hope that any change to allow the ORR to monitor quality by licence rather than contract, would allow them to be more flexible and responsive to poorly performing TOCs. It would also provide an opportunity to apply common standards to all TOCs, and make all regular train services come under a standard set of rules for ticketing, fares etc.
- We would want assurance that any new monitoring and penalty / incentive system has 'teeth' and that the ORR is able to respond to poor service quality. We would like to see a compliance obligation.
- We believe that there should be an expectation of high quality service standards across all aspects of the passenger experience on the entire railway.
- We are concerned this review does not include the regulations of fares and ticketing arrangements. This is an examples of where there is untapped potential for a major rethink of how regulation ultimately benefits passengers.

I will now elaborate on the above points, answering the individual questions posed.

## **Publication**

### **1. May we publish your response?**

Yes

## General principles

### **2. Please comment on the general principles against which changes in responsibility for regulation of passenger franchises should be assessed.**

There must be accountability to Parliament for the operation of what, is essentially, a public service and accountability to ourselves and to and Passenger Focus, the two statutory passenger watchdogs.

However, there is a role for an enlarged ORR because in some cases decisions are being made at a political level when the passenger interest is likely to be better served if they were made by a regulatory body. Examples of this might include decisions on stopping patterns of individual train services or staffing levels at stations.

We have in our experience a number of examples where regulation of train operators failed under the current system, and which led to materially poorer service than passengers have a right to expect. These were:-

- i) In 2007 the performance of the First Great Western Franchise deteriorated far below what had been promised and passengers expected. Despite our efforts and improvement plans produced by the company and overseen by the DfT improvement was far too slow resulting in us calling for the franchise to be withdrawn from First group. Eventually performance did improve, but the process took too long and passengers had to tolerate poor performance over an excessive period.
- ii) Over many years we have engaged with the franchisees that ran the inner London Greater Anglia stations, particularly Cambridge Heath, regarding the presentation (cleaning) of their stations. Passengers had to tolerate excrement and other body fluids on the station for protracted periods of time. There was little or no management activity to monitor the cleanliness of the station, let alone implement a proper cleaning and management plan for the station.

Despite the efforts of the local user group; our engagement with the National Express East Anglia (NXEA) Managing Director; many months of discussions with those at the DfT charged with managing the franchise and a Service Quality Management System (SQMS) being in place as part of the NXEA franchise, the station remained in a dreadful condition. Enforcement was too slow and appeared to have no teeth. There seemed to be no penalty that could be applied short of franchise removal to get NXEA to clean and manage its station.

The SQMS produced results demonstrating that NXEA station got a GOOD score. The problem was that the SQMS combined averages of averages. Cambridge Heath, as a minor station, hardly had a visit and so the general score was overwhelmingly dominated by the scores of the larger stations.

In a similar way the National Passenger Survey (NPS) produces an average score for stations on general issues such as station environment. However, this survey only provides a snapshot of opinion, with many smaller stations not featuring regularly (or even at all) because of the makeup of the survey. Around 25% of all stations in our London Railway Area have never been surveyed for the NPS and many more that have, had very small sample sizes which make the results not statistically significant. Therefore the NPS,

although a useful pointer, should not be used to monitor detailed quality or compliance as it is not designed for this purpose. Any system of regulation therefore needs to have an element of checking and enforcement of standards on a consistent basis, at all places on the network where passengers have access, e.g. by means of a mystery traveller exercise of the kind previously used by PTEs in connection with the SQUIRE regime.

The coverage of the NPS sample is also dependant on the accuracy of the usage statistics that ORR produces on an annual basis. From evidence of surveys we have seen carried out by the West Anglia Routes Group (WARG), we believe that there is likely to have been consistent under reporting of the usage of smaller stations in the London area. We suspect there are a number of reasons for this which we would like to discuss with you in greater depth. However, the implications of this are far reaching, not least because of their impact on investment and service planning decisions, and on the sampling for the NPS, with consequent impact on the monitoring of franchises. In some cases, we believe that under reported numbers have or could be used by Train Operating Companies (TOCs) to justify decisions where they would have an interest in presenting numbers that are very low. The example we have is the outer Greater London stations operated by Chiltern, where frequencies are quite low and facilities lacking, and because passengers are forced to purchase tickets elsewhere this reinforces their justification for not investing in improved services or facilities at these stations. In a similar vein we believe that similar issues occur for example on the Greenford branch, and on the Catford loop in South London. We therefore believe that there is an urgency in tackling this issue.

### **3. Do you see any potential benefits or drawbacks in moving towards giving ORR an enhanced role in respect of franchise change?**

We would support the regulation of the TOCs by a single body, and would support this being done by the ORR, so that the DfT could be more effectively focused on wider policy issues and the specifying and managing of franchises.

We support a more flexible and regulatory approach that responds in a proportionate way to TOCs that fall short of their franchise commitments. As a passenger body London TravelWatch would welcome a formal role in the monitoring of the franchises that serve the passengers we represent. As you are aware we compile a consolidated performance report for the National Rail network covering the London area, and would wish to continue to do so and to enhance its usefulness.

### **4. Are there any representations you would like to make concerning ORR's role in holding Network Rail to account?**

Our response to the PR 2013 incentives consultation sets out our views on these issues.

Our main concern that is not yet being acknowledged as an issue by ORR is that we believe that it should be dealing with the way Network Rail manage its land and buildings in terms of local environmental quality, and the impact of this on train performance and the quality of the passenger experience. Passengers are fed up with the litter, graffiti, abandoned scrap metal etc, and with weeds such as buddleia growing out of railway structures. ORR thinks this is not an issue passengers care about. We believe ORR should take a much more robust stance in ensuring Network Rail tackles the management of its assets, This would also lead to better performance, for example by not having trains withdrawn from service because of graffiti or signalling problems because of metal theft.

The industry is awash with evidence of passenger concern about delays and disruption, but there seems to be a collective blindness to the impact of graffiti and litter/rubbish on train and trackside infrastructure and a lack of will to tackle the issue or the accumulated backlog of such items.

There is lots of evidence of public concern about local environmental quality. Politicians and local authorities have responded to this both in legislation (for example the Environmental Protection Act 1990) and in cleaning up their neighbourhoods, but the railway's operators and regulators seem to think when the public use the railways they close their eyes and these issues cease to be a concern. This therefore also creates the image of the railway as a 'poor and uncaring neighbour'.

**5. Should ORR consider any revisions to its enforcement and penalties policies if it takes on a wider role? In particular, should ORR consider how and whether it could accept commitments to make improvements for passengers as an alternative to levying a penalty?**

Enforcement and penalties should not normally be necessary. It is often only after a prolonged period of failure and informal engagement has failed that enforcement becomes necessary. In the preamble to answering these questions we have noted two examples where enforcement was far too slow and was seen as the last resort. Enforcement should be more routine and implemented earlier on in the process.

We see no point in funds (in the form of penalties) being taken out of the rail industry. Penalties should be utilised to deliver genuine, additional passenger benefits.

**6. Are there any specific points on which DfT and ORR should set out their proposed approach during the transition period?**

No view

**7. Should ORR review its funding arrangements in the light of the changes proposed in this consultation?**

Yes. We feel that there is a much wider case for the ORR taking on a greater role in consumer protection. This might mean it would be appropriate for a proportion of its costs to be derived from a levy on train operating companies and not just from Network Rail. Similarly it may make some sense to consider that the rail elements of our role and those of Passenger Focus should be funded by the ORR rather than the current arrangements with either the London Assembly for London TravelWatch or the DfT for Passenger Focus

**Specific proposals**

**8. Do you have any comments on the proposals for regulating complaints handling procedures?**

We support the regulation of the TOCs by a single body, and believe that this would be more appropriate function for a body such as the ORR.

Our experience as an appeals body and of commissioning audits of operator complaints handling would give us the ability to assist the ORR in developing the regulation of such procedures, as well as in monitoring their implementation. We suggest that in the event of this proposal being implemented arrangements are made whereby the audit processes that have been established by London TravelWatch (latterly in conjunction with Passenger Focus) should be continued and expanded upon. If London TravelWatch and Passenger Focus (as appropriate) continue to represent the passenger interest, the ORR's contribution would be to represent the wider public interest and regulatory function.

#### **9. Do you have any comments on any of the proposals for regulating DPPPs?**

We support the regulation of the TOCs by a single body, and believe that this would be more appropriate function for a body such as the ORR. It is important, following the dissolution of the Disabled Persons' Transport Advisory Committee, that there should continue to be formal means of ensuring that such passengers' views are fully captured in the DPPP-development process.

#### **10. Do you agree that the regulation of punctuality and reliability performance should be brought together in one place? Could this proposal work and what refinements could be made? Are there any alternative ways of doing this?**

We support the regulation of the TOCs by a single body, and believe that this would be more appropriate function for a body such as the ORR.

The proposal to create a general requirement for good performance is welcome. We would, however expect that the performance targets to be achieved are as high if not higher than presently applies. We would also want the performance targets to be more transparent and for enforcement to apply earlier rather than later in the process.

There are examples of train companies performing poorly but avoiding penalties because the franchisee's operation had been legally isolated from the owning group. It appeared to passengers that a failing company could choose to give up the franchise without any real financial penalty. In the most recent case, one franchise failed and passengers suffered protracted poor service, but this had limited financial consequences for the parent company. This should not be allowed to be the case in future franchises, where the same parent company is seeking a new operating license.

#### **Changes to licences**

#### **11. What are the key areas that should be covered by service quality measures and commitments? How should Government decide what to include in each franchise? Is there merit in having a core set of requirements that apply to all?**

London TravelWatch has long promoted the Service Quality Inspection Reporting Regime (SQUIRE) operated by the northern Passenger Transport Executives and in Scotland: <http://www.scotland.gov.uk/publications/2006/11/13112921/0>

This is more comprehensive and prescriptive than the SQMS systems and we recommend this as a starting point for quality management on the railway.

We note that the format of the inspection regime that TfL operates to manage London Overground concession [but it appears to be far more effective than the SQMS systems we are aware of. This could also be adopted as part of the quality management regime.

**12. Please comment on the specific benefits and disbenefits of the requirements on service quality measurement and commitments being enforced by licence rather than by contract.**

The examples that we give in the pre-ambles to these questions demonstrate some of the difficulties of enforcement by contract as conducted by the DfT. We hope that a licensing requirement would enable the ORR to be more flexible and responsive to poor performance as the TOCs would have less ability to prevaricate and 'game' the systems put in place to manage their performance.

The change that is proposed would also provide an opportunity to apply common standards to all TOCs, not simply those having the benefit of franchises or concessions. It would be sensible for those generic elements of franchise specifications which are common to all operators (including complaint handling procedures and disabled persons' protection policies, but also some minor requirements such as that for the double-arrow totem to be displayed outside stations) to be incorporated in licence requirements and "policed" by ORR, thus freeing DfT to focus on the operator-specific outputs/outcomes which are purchased with public funds.

But the principle that all passenger train companies operate under a common licensing regime should be preserved, since ORR is "blind" to whether or not a particular company has a contractual relationship with the government or other franchising authority. At present, open access operators have few (if any) formal obligations relating to (e.g.) performance monitoring and reporting, or to consultation on their timetabling plans other than through the track access bidding process. Two companies (Eurostar and Heathrow Express) are not even subject to the standard ORR licence terms. It is also possible for companies under direct operation on behalf of the DfT to escape franchising obligations, but not licence duties. The opportunity should be taken to bring all regular train services within a standard set of rules relating to ticketing, fares, consultation, performance reporting, etc.

**13. Do you believe that the proposed licence condition would provide effective and proportionate accountability for delivery of service quality standards? Would a transparency obligation, relying on reputational incentives, be adequate? Or should it be supplemented by a compliance obligation? Should the compliance obligation be subject to doing what is reasonably practicable to deliver it, for instance through a purposive approach similar to that being considered for performance?**

In principle a transparency license condition could be effective. However, we would want to be assured that the monitoring and penalty / incentive regime has teeth and that ORR is able to respond to poor service quality.

We would want to see a compliance obligation. We describe one instance in our pre-ambles to the questions of very poor service quality at Cambridge Heath that persisted for a long time. As it was a small station there was no reputational incentive on NXEA to resolve it. We note that TfL is paying for deep cleans at former NXEA stations in London as part of the

new Greater Anglia franchise. This again demonstrates the poor quality of some station environments that NXEA felt no need to respond to through its franchise.

**14. What would need to be set out in guidelines to ensure credibility and consistency of reporting against service quality measures and transparency for passengers? How do we ensure that we give sufficient clarity and flexibility for franchisees in guidelines?**

We refer ORR again to the SQUIRE regime. This involves independent inspection. The lesser self regulation of SQMS could work with the right degree of transparency and the independence of the audit, but we would want to be assured that the franchisee could not achieve compliance by focussing on some aspects at some stations to the exclusion of others. If Cambridge Heath, for example, had the same cleanliness requirements as Ipswich, and these were achieved, passengers would be well served.

We would want to see a review of the monitoring and compliance system after, say, one year to ensure that franchisees were doing what was intended and had not found a way of hitting the target scores without achieving uniformly good service quality as was the case with the NXEA quality management system.

**15. Do you agree with the approach set out on monitoring of compliance with the service quality commitments? In particular do you think that an adapted safety management maturity model could be applied in this context?**

No. It is suggested that ORR would focus on the 'serious and systemic' failings without describing what it would regard as serious or systemic.

No one in either the NXEA management or at the DfT thought that having a filthy station was serious enough to deal with and so for years these stations have been left in a dreadful state. TOCs presently operate on the basis that closing a toilet on the station or the train is just an inconvenience for passengers. For some it is just this, while for others it is extremely serious, but it is not addressed by franchisees or regulators. There needs to be a high expectation of continuous high quality service standards across all aspects of the passenger experience across the entire railway.

We recommend the adoption of either the SQUIRE system [or that which TfL uses to monitor its London Overground concession.

**16. Do you agree with ORR's proposed approach for service quality commitments of requiring improvement plans as a prelude to formal enforcement action?**

We accept this is a reasonable approach, but would want swift intervention and enforcement. where necessary.

**Areas not addressed in the consultation document but where there is a clear passenger need that should be taken into consideration.**

In addition, it concerns us that the area of regulation of fares and ticketing arrangements is not included in this review. This area and the association with the perceived 'value for money' of fares is of major concern to passengers. Passengers also believe that rail companies are not regulated enough when it comes to their ability to increase fares by



more than the rate of inflation. In the case of ticket office hours, and applications to change them, these are of concern to passengers, especially where this is the only way of 'regulating' whether there are staff or not at a station at any one time. These are examples of where there is a potential for a major rethink of how regulation works for the benefit of passengers.

For example, in the case of fares, it would be appropriate for the ORR to oversee the proposed 'concatenation' of fares to reduce instances in which purchasing separate point to point through fares is cheaper than buying a through fare. These are particularly problematic where a journey involves two or more TOCs. TOCs would then be free to concentrate their competitive and commercial energies on those fares which are wholly within their own operations. This could potentially lead to lower fares, greater transparency on costs for passengers, simplification of fares and of accounting processes within the rail industry, and allow for the introduction of new technologies such as smartcards etc.

At stations, regulation of staffing levels would enable consistent standards across the industry to be established, covering all aspects of station work, safety and staff presence, and not just of ticket offices. This could potentially allow a reorganisation of station roles to reflect changes in working practices and to take advantage of new technology, whilst at the same time giving the public the reassurance that it wants about staffing of stations. Stations with more multi-functional staff would, we suspect, be much more cost effective than the present arrangements which have probably outlasted their usefulness both to the industry and to passengers.

I hope this is helpful, and I look forward to hearing from you on the offers of collaboration that we can offer you. If you have any questions on this submission please do not hesitate to contact me.

Yours sincerely

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