Rail Delivery Group

National Rail BRITAIN RUNS ON RAIL

Consumer Policy Team
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22nd November 2017

Dear Consumer Policy Team

Thank you for the opportunity to respond to the consultation *Changes to Complaints Handling Guidance* 26th September 2017.

Role of Rail Delivery Group (RDG)
RDG brings together the companies that run Britain's railway into a single team to deliver a better railway for all users. Our membership is constituted of train operating companies and Network Rail. This response reflects the views on which there is consensus among our members. Train operating companies and Network Rail may also respond directly in relation to areas of specific relevance to their own circumstances.

General Background
Over the last decade rail industry complaint volumes have fallen significantly. For franchised TOCs, complaints as a proportion of passenger journeys, have reduced from 74.4 per 100,000 journeys in 2005-6, to 27.4 in 2015-16 (from a total volume of 473,000).

Last year, this decrease came to a pause in the context of significant issues around industrial relations and infrastructure upgrades. Other developments have also contributed to the rise of consumer contacts including the introduction of the CRA, the publicity around the Which? Super Complaint, and the extension of Delay Repay. It has been a challenging time for rail company customer service teams as ORR complaints data illustrates and the industry is working hard to get back on trend

The rail industry is committed to treating consumers fairly and, along with the improvements that rail companies implement individually, the industry is working to establish a voluntary Alternative Dispute Resolution (ADR) scheme that is intended to:

- Create an accessible, simple, effective and quick one-stop shop for consumers who dispute the way in which a rail sector organisation has handled their complaint
- Introduce binding resolution to deadlocked complaints and end the frustration caused when complaints are unresolved
- Create a credible alternative route to resolution for consumers who currently feel that they have no other option than to go to court
- Increase the incentives for rail sector organisations to tackle the drivers for consumer complaints

- Make the rail industry complaints process demonstrably fair
- Increase consumer trust and satisfaction in the rail industry
- Strengthen the voice of the consumer in the complaints process
- Drive improvements for the rail industry

The outcome of the consultation will, we hope, help us deliver the above goals.

We also believe that there are good reasons to conduct a more fundamental review of the CHP Guidance once the Rail ADR scheme is imminent and the detail of the service is being developed with an appointed supplier. We anticipate that this will be in the Spring next year.

Recognition of voluntary nature of Rail ADR scheme
Whilst it is our intention that all train operating companies will participate in the Rail ADR scheme it needs to be recognised that the scheme is constituted as a voluntary one. We have initiated the procurement of the service, and we are currently working with potential providers. We expect to be able to confirm the membership of the scheme in early 2018. It is important therefore that any changes made recognise the possibility of a rail company delivering its complaints handling requirements in compliance with its license agreement without being a member of the Rail ADR scheme.

Enforcement
The consultation does not explicitly propose an enforcement regime to underpin the proposals. We would like clarity on this. We ask that the ORR gives regard to the fact that it is undesirable to place an increased risk of regulatory penalties on companies that join a voluntary Rail ADR scheme as this would in effect penalise those companies that seek to benefit the consumer.

Chapter 1 – Signposting unresolved complaints
We agree that the current signposting requirements are not satisfactory. The ADR Directive requirement for rail companies to signpost to "an ADR Scheme that they do not use" clearly serves no purpose for either consumers or service providers.

In creating a Rail ADR scheme for the rail industry, we are working towards a point where there will no longer be the need to signpost to an ADR "dead-end" for rail companies that join the voluntary scheme.

As the government does not plan to change to the statutory duties to Transport Focus and London TravelWatch (which both have a duty to investigate any disputes presented to them), potential for confusion around signposting remains. This is because once a Rail ADR scheme is established, there will still be two potential routes available to resolve disputed rail complaints:

i. the proposed Rail ADR Scheme independent of all parties to a dispute with the powers to impose binding redress on rail companies, and

ii. the Statutory Bodies (Transport Focus and London TravelWatch) working as passenger advocates without powers to impose redress.

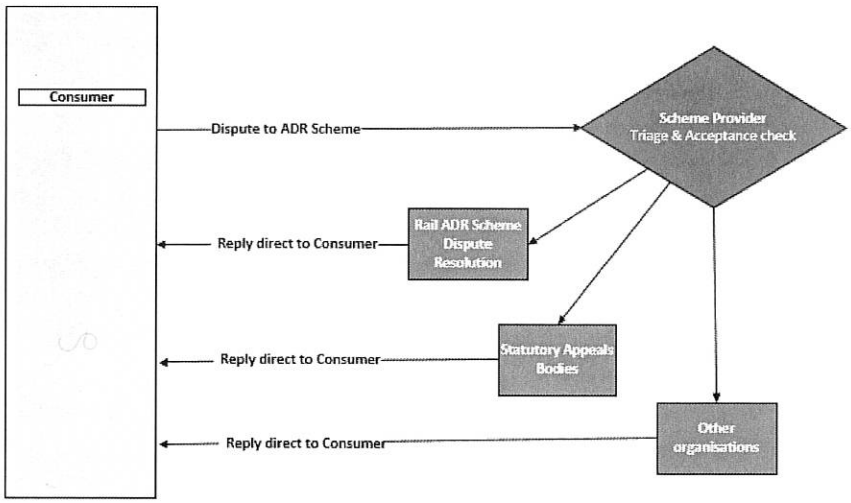
In developing the Rail ADR scheme, we have agreed, in principle, a way of working with the Statutory Appeals Bodies which will route all referred disputes through the Rail ADR scheme, with those relating to the quality of the provision of services remaining within the scope of the Rail ADR provider to resolve; whilst disputes that relate to the specification of services or general rail industry

policy would be referred to the Statutory Appeals Bodies to review and make recommendations to the Secretary of State and the industry as appropriate.

Q. Which of the three options provided for in the consultation is most appropriate for signposting to ADR?

Option 1 is the most appropriate option. It is our ambition to create a "single front door" for the consumer looking to bring a dispute. Whilst there are multiple bodies in the "appeals landscape" for rail consumers, signposting to the ADR scheme provider will be the only way of achieving this. It will ensure that there is independent oversight of all appeals at the point of escalation, and give consumers confidence that their dispute has been assessed independently and placed with the most appropriate body to progress their case. It will also guard against the risk of disputes being referred to the wrong body.

The diagram below illustrates how a triage process will work for disputes relating to scheme members:



Option 2 ("Signposting to the ADR scheme, and to Transport Focus and London TravelWatch") effectively makes the TOCs accountable for the triage process. Whilst rail companies are capable of this, it works against the principle of a dispute being independently reviewed for acceptance by the Rail ADR scheme, and does not deliver the benefit of having a single body with oversight of all disputes.

In our view, Option 3 is not compliant with the CTSI's interpretation of the ADR Directive. Schedule 3: 6 (bi) of *CTSI Requirements and Guidance on seeking approval as a Consumer ADR Body Operating in Non-Regulated Sectors* states:

> The parties must have access to the ADR procedure without being obliged to obtain independent advice or be represented or assisted by a third party, although they may choose to do so.

Placing Transport Focus and London TravelWatch (consumer advocacy bodies) between the rail company and the Rail ADR scheme appears to impose just such an obligation.

Consideration needs to be given to the evolving roles of Transport Focus and London TravelWatch. Whilst both organisations clearly have the expertise to triage disputes, such a role would require them to administer a workstream that is not congruent with their developing strategic remit,

especially as the majority of disputes would be about consumer issues that sit within the scope of the Rail ADR scheme.

As things stand, it is possible that the Statutory Appeals Bodies may have to retain the capacity to accept disputed complaints should some rail companies not join the Rail ADR scheme. It is also feasible that some consumers may, for reasons of their own, prefer to present their dispute to the Statutory Appeals Bodies despite the fact that binding redress is not available through this route. This contingency is likely to remain pending any restructuring of the statutory landscape within which the industry sits.

Q. Are there any other approaches that we have not considered which may be preferable to those set out above?

None that we have identified.

Q. Is it necessary for ORR to set out in detail expectations, and make these formal requirements, in the CHP of communications about the ADR scheme?

We do not believe that detailed formal requirements for the content of letters is necessary. It would be beneficial for the ORR to produce best practice examples, and rail companies are happy to work with the ORR, the Statutory Appeals Bodies and the Rail ADR scheme to produce this. The content of signposting letters must clearly inform consumers of their rights, and it will be part of the Rail ADR scheme provider's duties to hold rail companies to account in this regard.

Chapter 2 - Timescale for sending signposting letters

It is important that any timescales put in place facilitate a quick resolution to any dispute. Protracted correspondence increases frustration for consumers and cost for rail companies. Furthermore, encouraging consumers to escalate their complaint before a rail company has had the opportunity to resolve it leads to an unnecessary duplication of work for the consumer and the rail bodies party involved in the dispute.

Any changes to the CHP guidance should be made with regard to the ORR document *Reference guide for complaints and CHP/DPPP indicators data reporting* which has a bearing on the existing CHP requirements.

Q. What is the most appropriate point at which to signpost to ADR? Eight weeks; six weeks; another period?

Rail companies currently work to achieve a target of 95% of complaints being resolved within 20 working days, and we understand that this requirement will remain. The proposal to signpost after a fixed period will introduce an additional requirement on rail companies; this should give consumers confidence that they will be able to seek binding redress if a company does not resolve their complaint within a reasonable timeframe. This is a significant change for industry complaints handling.

Under RDG's proposal for a Rail ADR scheme, at the point that it becomes clear that a consumer is unhappy with the outcome of a complaint the customer will be sign-posted to ADR by means of a Deadlock Letter (when a rail company can do no more for the consumer) which will inform them of their options. This process will ensure that the vast majority of complaints will either be resolved or referred to ADR before the eight week timescale proposed.

The consultation does not indicate whether or not the ORR has assessed the financial impact of each of the timescales proposed. We believe that the eight week point is a reasonable place to start. It aligns with the established eight week rule employed in other sectors and it is feasible that rail companies could deliver this without significant changes to their existing cost base.

The consultation does not explore the impact of rail companies configuring their systems and processes to implement the new requirements. In particular, monitoring response times and the conditions for signposting need to be clearly set out.

Response times

At present, rail companies calculate response times by "stopping the clock" whilst they wait for a response from a consumer. This practice is in line with the ORR requirements set out in *Reference guide for complaints and CHP/DPPP indicators data reporting*. It ensures that delays attributable to lack of consumer engagement do not negatively impact on performance levels.

In discussions with the ORR we understand that the eight week timescale will be calculated by a method different to that used for the 20 working day turnaround. The eight weeks will be a straight forward eight calendar weeks from the date on which the complaint was received. TOC systems are currently configured to monitor timescales based on working days, so some TOCs will have to reconfigure their processes or systems.

A consequence of this arrangement it is likely that there will be times where a complaint that has not breached the 20 working day turnaround time will have exceeded the eight week timescale. Such cases will usually result from when a consumer has not responded to requests for information; should this occur, the proposed rules for the Rail ADR scheme allow for the scheme provider to refer the consumer back to a rail company so that there is adequate opportunity for resolution. The ORR should recognise this practice in any emerging guidance and captured in reporting.

Conditions for signposting

Rail companies expect trust in their complaints handling process to increase once a Rail ADR scheme is established. They will publicise the Rail ADR scheme and how it can be accessed by consumers. They will also have the duty to tell individual consumers when they are eligible to go to ADR.

In most cases, rail companies will send a response that is expected to resolve the complaint and assume that the matter has been closed unless they receive further contact. There is no reason to signpost to the Rail ADR scheme in such circumstances (that is when both parties understand that the matter is closed).

There are also times when rail companies might require additional information to investigate or close a complaint. Some consumers do not provide details of their journey or location; others might not submit the evidence (such as tickets or receipts) necessary for rail companies to be able to provide refunds so rail companies will contact a consumer and request the additional information, marking the complaint as "suspended" until they hear back or an appropriate time has elapsed for the complaint to be closed. When rail companies request additional information from consumers, the CHP guidance should allow for them to state the time within which the consumer should reply before the case is closed. The amount of time allowed for responses will be reasonable and agreed with the Rail ADR scheme provider and stakeholders. We would not therefore expect to signpost to the Rail ADR scheme when requesting further information from consumers.

We would expect that it is appropriate to signpost customers to the Rail ADR scheme when

a consumer is unhappy with the proposed resolution and the rail company, having reviewed the complaint, feels that it can do no more. It would also be appropriate to signpost if correspondence is ongoing at the time at which the timescale has expired (e.g. eight weeks).

Q. Should we conduct a review of whatever time period is agreed? If so, at what point; after one year, two years, another period?

Yes. Given that the Rail ADR scheme could have significant impact on complaints handling in the industry, a review would be useful. We would prefer a review after two years so that any potential enhancements could be could be validated and understood once it has been operating in a steady state.

Rail companies are open to reducing the timescale for responses in the future, but the cost of doing so needs to be recognised and addressed. At present, there is no indication as to whether any of the proposed changes will bring additional cost to rail companies who have based their resourcing commitments on the current known requirements. From this perspective, shortening the timescales to six weeks or even lower could impact on the cost base of the industry.

Q. If the time period should be subject to review, what metrics should we use to establish whether the time period remains appropriate or should be changed?

We would propose a measure of the percentage of disputes that have been submitted to the Rail ADR scheme because of the time limit being triggered rather than a Deadlock letter being sent.

Understanding the reasons why the time limit has been breached would also be useful - for example, understanding how train service performance impacts on response times, and understanding what impact the time consumers take to respond.

Q. Should individual rail companies be able to set their own signposting time limits as long as they are below the minimum agreed signposting standard?

As stated earlier, the majority of consumers who use the Rail ADR process will do so because of a Deadlock letter rather than having to wait for the prescribed time limit to expire. In principle, if individual rail companies feel that they can offer a reduced time limit to customers then this should be allowed for. However, the way this would work operationally will need to be understood as it has implications for the Eligibility Criteria for the Rail ADR scheme, and how access to the Scheme is promoted.

Rail companies are committed to continuously improving the services they offer, and once the Rail ADR scheme is established there will be an opportunity to identify how timescale limits can best contribute to this.

Q. Should arrangements be introduced to allow signposting before the time period is reached i.e. deadlock?

Yes. This is fundamental to the RDG proposal for a Rail ADR scheme and vital for enabling consumers a speedy resolution to disputes. It is in the interest of no party to insist that consumers wait for a maximum time period to access ADR once deadlock has reached.

Chapter 3 - Requirement to be a member of an ADR Scheme

Q. As substantial progress has been made voluntarily by industry on developing an ADR scheme, is it necessary to make membership of an approved ADR scheme a requirement in the licence (and reflected in CHP guidance and CHPs)?

No. Should the ORR modify the CHP guidance to make membership of an approved ADR scheme a licence condition, it would make the scheme mandatory. This would have impacts on both the DfT and the ORR and could well delay implementation.

Q. Are there any other approaches which could provide certainty in the ADR arrangements for consumers?

It is feasible that the government could introduce significant changes to the statutory role of Transport Focus to enable it to perform ADR for the industry and give binding redress. We recognise that the timescales for such a legislative change would delay the introduction of ADR for the industry.

Q. What alternative safeguards are available to ensure that rail companies do not withdraw their membership from a scheme?

Once rail companies are members of the scheme we consider that it would be exceptionally damaging for them to withdraw from such arrangements.

Q. Are there any reasons why charter operators and station licence holders should not join an ADR scheme?

We are designing the scheme so that it will be open to charter operators and station licence holders.

The main challenge with station licence holders is that they do not have a direct contractual relationship with rail users. Whilst in principle they act as suppliers to TOCs, in practice they operate with a degree of autonomy that means that the traditional supplier/customer relationship does not apply.

As the Rail ADR scheme is based on the contractual relationship between the service provider and consumer we are working with station licence holders to agree a suitable way of addressing this so that disputes relating to station licence holder services can be satisfactorily resolved for consumers.

Second substantive response

We understand that the requirement to respond in the second substantive response will be superseded by the eight week timescale for companies that join the ADR scheme. However, it is possible that some rail companies might not join the scheme. Also, it is likely that the eight week timescale will not come into force until the Rail ADR scheme is launched. With this in mind, it is regrettable that paragraph 1.2 of the consultation document states that rail companies are required to signpost to Transport Focus and London TravelWatch "in" their second substantive response to the customer - this is unnecessarily inflexible and does not allow for the rail company to tailor its approach to addressing the issue at hand. We agree that all complaints should be resolved as soon as possible, but it is not desirable for a rail company to signpost "whilst it continues to engage with a consumer with the objective of resolving a complaint".

Signposting prematurely can create the impression that a company has "washed its hands" of a complaint that it is continuing to endeavour to resolve. Furthermore, it is inefficient to embroil the Statutory Appeals Bodies or an ADR provider in an issue, only for them to find that it has been

resolved by the time they have initiated their investigations. We would ask that the ORR works with rail companies to improve this requirement as soon as possible.

Additional comments on the ORR consultation process

We would like to express concern about the process that the ORR has followed for this consultation. The established practice is for the ORR to formally approach senior contacts at rail companies and other interested parties to notify them that a consultation is open and responses are being sought. This did not happen with the current consultation which caused RDG to request an extension for the deadline for responses for members. We are grateful that this extension was given. RDG would be prepared to work with ORR to make sure that communication process is well-understood by all parties and clear for future consultations.

I trust that this response is useful. We will be happy to provide further support as required.

Yours sincerely,

John Horncastle
Project Manager, on behalf of Rail Delivery Group