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By email to: CHP@orr.gsi.gov.uk

Dear Sir / Madam,

Modification to Passenger Licence Condition 6 (Complaints Handling)

I am writing in response to the consultation on the proposed modification to the passenger licence conditions, in relation to complaint handling.

Summary

1. The Ombudsman Association welcomes the ORR's proposal to mandate access to independent redress.
2. It is in the interests of rail users that redress is in the form of a single, mandatory, ombudsman that meets the Association's best practice criteria.
3. To be effective an ombudsman needs to work in a well-regulated environment, with clear common standards to measure against, and should work closely with the regulator.

Background

4. The Ombudsman Association was established in 1993 and includes as members all public and private sector Ombudsman schemes and major complaint handling bodies in the United Kingdom, Ireland, the British Crown Dependencies and the British Overseas Territories.
5. The Vision of the Association is that throughout the public and private sectors:
 - It is straightforward and simple for people to complain.
 - People making a complaint are listened to and treated fairly.
 - A complaint is dealt with quickly, fairly and effectively at the earliest stage by suitably trained staff.
 - People have access to an ombudsman in all areas of consumer and public services.
 - The learning from a complaint is used to improve services.
6. An Ombudsman helps to underpin public confidence in the institutions that they cover; by providing accessible and effective redress, and by feeding back the lessons from their work in order to help improve service delivery and complaints-management for the future.

Q: Do you agree that mandating membership to an approved binding ADR scheme would protect dissatisfied consumers?

7. Whilst we welcome the announcement by RDG that all franchise operators and Network Rail have agreed to sign up to a single, binding, ADR provider, the Ombudsman Association agrees with the ORR's analysis that making membership of a single, mandatory, redress provider is in the interests of rail users, and is supported by the evidence from other sectors.
8. The position that there should only be one redress provider within a sector, and preferably an ombudsman, has been reinforced by a number of recent reports including the 2017 Citizens Advice report *Confusion, gaps and overlaps*¹ and the report by MoneySavingExpert². Both reports are clear that it is in the interests of consumers for access to redress to be simple and straightforward and that confusion is caused by having multiple providers, without any clear evidence of the benefits.
9. This has been echoed by the Gambling Commission, who have reiterated their intention to move towards a single ombudsman for the sector following their report in 2017.³ The responses to Ofgem's call for evidence in 2018, on whether to allow an additional redress provider to operate in the energy sector alongside the Energy Ombudsman, further underlined this; with both consumer representatives and the energy companies themselves highlighting that having multiple redress providers did not benefit either consumers or businesses.⁴
10. Furthermore, research published alongside the UK Government's recent Consumer Green Paper has shown that relying on businesses and service providers to sign up to ADR voluntarily has not been successful. The research undertaken by ICF and published alongside the Consumer Green Paper highlighted that 70% of consumers who went to Court did so because the trader refused to participate in ADR.⁵
11. The figures from redress providers are worse: the Consumer Ombudsman, which was set-up in line with the then Government's policy to create a voluntary 'residual body', reported that whilst they received 5,600 complaints in 2017, in only 6% of cases did the business agree to participate in ADR.⁶ The ORR has already referenced the experience in the aviation sector where three large carriers have failed to sign up to an ADR provider.
12. The ICF research also showed that, despite it being mandatory for traders in all sectors to signpost consumers to ADR⁷, only 37% of consumers who did use ADR had in fact received information on ADR providers from the trader.

Q: Do you agree that rail companies should be required to join the ADR scheme procured by RDG?

13. Many of the criticisms of having multiple redress providers within a sector is that the company chooses which one to work with. This means that no single Ombudsman scheme / redress provider has a holistic overview of the issues in the sector and the regulator / competent authority does not have a single partner to work with to drive improvements. The lack of clarity often puts consumers off complaining. There is also a perception amongst the public that as the business chooses which one of several redress scheme to work with, the redress provider is not truly independent and may side with the organisation complained

¹www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Gaps%20overlaps%20consumer%20confusion%20201704.pdf

²https://images6.moneysavingexpert.com/images/documents/MSE-Sharper_teeth_interactive.pdf

³www.gamblingcommission.gov.uk/PDF/Complaints-processes-in-the-gambling-industry.pdf

⁴www.ofgem.gov.uk/publications-and-updates/application-utilities-adr-be-certified-adr-provider-energy-sector-ofgem-decision-following-responses-our-open-letter

⁵www.gov.uk/government/publications/resolving-consumer-disputes-alternative-dispute-resolution-and-the-court-system

⁶www.gov.uk/government/consultations/consumer-green-paper-modernising-consumer-markets

⁷www.gov.uk/government/publications/resolving-consumer-disputes-alternative-dispute-resolution-and-the-court-system

about to retain their business. Regardless of whether there is any evidence to support that view, the perception puts consumers off taking their complaint further.

14. The Association's membership criteria are recognised both internationally and by the UK Government as representing best practice. This is reflected in the Cabinet Office's *Guidance for government departments on setting up Ombudsman schemes*⁸, which addresses the point of when it is appropriate for a public body to use the title 'ombudsman', and in the criteria used by Companies House as to when a company can use the protected term 'ombudsman'⁹.
15. Our membership includes all ombudsman schemes operating in both the public and private sectors, and in various countries and territories. Our common membership criteria of Independence; Fairness; Effectiveness; Openness & Transparency; and Accountability¹⁰ apply to them all.
16. The ORR highlighted the low levels of trust and customer satisfaction amongst rail users. Rail users should be entitled to access to a redress scheme that meets best practice criteria, just as they are if they complain about a financial provider, an energy company, or the NHS.
17. The Association's Validation Committee scrutinises both applications for membership and the 5-yearly re-validation of existing members against our membership criteria. The Validation Committee has a majority of independent members who are appointed via an open recruitment process for their knowledge and expertise of the ombudsman sector.
18. The ORR should not only require that rail companies join a single redress scheme, but also that the scheme in question is an ombudsman-level scheme that meets the best practice standards set out in the Ombudsman Association's criteria.

Q: Do you agree with the principles we propose to include in CHPs? Are there any others we should consider for inclusion?

19. The Ombudsman Association was established in 1993. During our 25-year history we have built up an expertise on what makes an effective, independent redress scheme, as evidenced in our guides to principles of good complaint handling¹¹ and good governance¹², our membership criteria, and more recently our Service Standards Framework¹³ - which sets out the public commitments and service standards that can be expected when using the services of an ombudsman.
20. The principles proposed by the ORR can all be found within the Association's criteria and Service Standards Framework. Our membership criteria of Independence; Fairness; Effectiveness; Openness & Transparency; and Accountability set a higher bar for an ombudsman than the ADR Directive does for other redress bodies, or the ORR's proposed principles do, especially around independence and access.
21. Ombudsman schemes represent a form of inquisitorial adjudication. Whilst there are other redress providers who also offer adjudication, accredited by the various Competent Authorities under the ADR Directive, there are some significant differences between an ombudsman and those organisations providing what you could term 'straight-forward' adjudication:
 - Ombudsman schemes are always free for the public to access;
 - Ombudsman schemes provide advice and sign posting to the public;
 - Ombudsman schemes take an inquisitorial approach when investigating;

⁸ www.gov.uk/government/publications/new-ombudsman-schemes-guidance

⁹ www.gov.uk/government/publications/incorporation-and-names/annex-a-sensitive-words-and-expressions-or-words-that-could-imply-a-connection-with-government

¹⁰ www.ombudsmanassociation.org/docs/OA-Rules-Schedule-1.pdf

¹¹ <http://www.ombudsmanassociation.org/docs/BIOAGoodComplaintHandling.pdf>

¹² <http://www.ombudsmanassociation.org/docs/BIOAGovernanceGuideOct09.pdf>

¹³ www.ombudsmanassociation.org/docs/OA17%20Service%20Standards%202017_Final.pdf

- Ombudsman schemes make recommendations for improvement in service provision, beyond simply settling the individual dispute;
- Ombudsman schemes have the ability to address systemic issues; and
- Ombudsman schemes share data and information for use by regulatory and enforcement bodies.

22. One of the benefits that an ombudsman brings as opposed to straight-forward adjudication is its role in proactively influencing the service provision and complaints handling of the bodies in its jurisdiction. This can be undertaken through training, producing guidance materials, and providing feedback on patterns in type and numbers of complaints. The further benefit of having a single ombudsman covering an entire sector is that service is available to all businesses / organisations. This has been done most effectively by the Scottish Public Services Ombudsman through their Complaints Standards Authority role, which is also being adopted by the public services ombudsman schemes in Northern Ireland and in Wales.
23. It is accepted practice internationally that, in the private / consumer sector, an ombudsman's decision is binding on the organisation complained about (if the complainant accepts the decision) and this is reflected in our membership criteria. Consumers should always retain the right to take their dispute to court if they are unhappy with the ombudsman's decision. It is also important that the routes for enforcement of decisions against the rail companies, through the regulator or the courts if necessary, are clear.
24. It is a key element of an ombudsman scheme that as well as providing individual redress they should also share information wherever possible to help the wider sector learn from complaints handling and to improve the provision of services. Transparency is one of our key membership criteria and the publication of information about decisions and the performance of individual companies and sub-sectors is an important tool to drive improvement in conjunction with regulators and policy makers.
25. Accessibility is another key element of an ombudsman scheme. Free, direct and immediate access to an ombudsman if the rail company does not resolve the complaint promptly is an accepted and essential feature of an ombudsman scheme. Ombudsman schemes proactively raise awareness of their services and ideally there should be a requirement on those in their jurisdiction to signpost to and inform consumers of their right to take their complaint to the ombudsman, as in, for example, the financial sector.
26. By mandating that the redress provider meet the Ombudsman Association's criteria the ORR will be ensuring not only that their proposed principles are met but also that internationally recognised best practice is as well.

Q: Do you agree that there should be a fixed date by when rail companies are required to be members of the scheme? Do you agree with the proposed timing or would you favour a different date?

27. It is a sensible approach to set a fixed date by which rail companies are required to be members of a single ombudsman-level scheme. 1 April 2019 would appear to allow enough time for an ombudsman-level scheme to be established.

Q: Do you agree that the licence requirement should apply to concession operators, station-only, and charter operators (as well as franchise operators and station licence holders including Network Rail)?

28. The Ombudsman Association's long-standing position is that people should have access to an ombudsman in all areas of consumer and public services. On that principle, the Association agrees that the licence requirement should apply to all operators that are providing a service to rail users, including concession operators, station-only, and charter operators, as well as franchise operators and station licence holders including Network Rail.

Q: Do you agree that there should be regulatory oversight of the RDG scheme? What form should ORR's role take?

29. An ombudsman is just one piece of the puzzle to drive improvement in services and provide effective redress to consumers. Ombudsman schemes are most effective in sectors where they work closely with a regulator and any other accountability bodies. This can be seen for example in the energy sector where the ombudsman works closely with Ofgem. In order to both improve services and hold organisations to account there needs to be clear common standards and commitments that an ombudsman can then measure organisations against, and effective relationships with regulators and any other bodies in place to ensure enforcement of decisions.
30. As membership of an ombudsman scheme should be mandatory, any serious issues such as non-compliance with decisions should be passed to ORR to take appropriate action.
31. As set out in both our membership criteria and our Service Standards Framework, all ombudsman schemes should publish how they perform against their stated service standards to enable policy makers, politicians, academics and the general public to hold them to account.
32. However, an ombudsman is not a consumer champion. It is crucial that an ombudsman is truly independent from both complainants and those bodies in jurisdiction, in this case rail companies, and our membership criteria ensures that is the case.
33. The Association's criteria regarding independence is clear that an ombudsman should not be appointed by those subject to investigation, and that those subject to investigation should not have the power to assess their performance, suspend or reduce their remuneration, or terminate the contract of an ombudsman. In order to meet the Association's independence criteria, ombudsman schemes in other sectors are appointed and accountable to either Parliament or the relevant regulator.
34. In order to meet best practice, the ORR should have the same oversight relationship with an ombudsman covering the rail sector.

The Association would be happy to provide any further information or meet to discuss if you would find that helpful.

Yours sincerely



Donal Galligan
Director, Ombudsman Association