

ORR consultation: Rail Ombudsman sponsorship  
Office of Rail and Road,  
25 Cabot Square,  
London, E14 4QZ

5 August 2022

By email to: [railombudsmanconsultation@orr.gov.uk](mailto:railombudsmanconsultation@orr.gov.uk)

Dear Sir / Madam,

**Consultation on a draft Rail Ombudsman operating model**

We are grateful for the opportunity to respond to the ORR's draft Rail Ombudsman operating model. We have restricted our comments to the elements related to our criteria for ombudsman schemes.

**Summary**

1. The Ombudsman Association welcomes the ORR's work to implement a new Rail Ombudsman operating model, including changing the existing governance structure.
2. It is essential that the ombudsman is independent from both the industry it covers and advocacy bodies representing passengers.
3. An effective ombudsman engages closely with key stakeholders both in the industry it covers and those organisations representing users' interests. This should be done as part of the ombudsman's engagement activities, separate from the governance of the ombudsman scheme.

**Background**

4. The Ombudsman Association (OA) 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 OA 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 organisations 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.

7. The OA's membership criteria are recognised as representing best practice. This is reflected in the Cabinet Office's *Guidance for government departments on setting up Ombudsman schemes*<sup>1</sup>, which addresses the point of when it is appropriate to use the title 'ombudsman', and in the criteria used by Companies House on when a company can use the protected term 'ombudsman'<sup>2</sup>.

## **Response to consultation questions**

### **Chapter 3: Q2. Do you agree with our proposed governance structure? Please give reasons for your answer.**

#### *Key features of the Rail Ombudsman*

8. We welcome the ORR's explicit recognition that an ombudsman scheme is not limited just to resolving individual disputes but also provides additional value by sharing learning, identifying trends and systemic issues, to help drive improvement in service delivery and complaint handling practices.

#### *Single front door*

9. One of the drivers in establishing a rail ombudsman was the need for a single organisation to have a holistic overview of the issues across the sector. We welcome the ORR's position that the Rail Ombudsman should remain the *single front door* for all escalated complaints, and that consideration should only be given to reviewing that if evidence shows that the approach is having a serious adverse impact on passengers.

#### *Accreditation*

10. We welcome the ORR's recognition that the OA's criteria represent best practice for ombudsman schemes.

#### *Contract length*

11. As noted in the technical report<sup>3</sup>, the OA's independence criteria stipulates that the term of office of an ombudsman should be a minimum of five years, so we welcome the ORR's proposal regarding contract length.
12. A key element of the independence criteria is that the appointment of an ombudsman is "*not to be subject to premature termination other than for incapacity, misconduct or other good cause*", and that the grounds for dismissal should be stated.<sup>4</sup> Therefore, the inclusion of a 'no fault termination' clause would mean that the Rail Ombudsman did not meet the OA's criteria for membership.

#### *Jurisdiction*

13. We understand the attraction of not expanding the existing jurisdiction of the rail ombudsman, considering the potential complexity and delay that might entail at this stage. However, we also note the confusion and dissatisfaction caused when one element of a passenger's journey can be considered by the Rail Ombudsman, but another aspect of the same journey cannot e.g. car parking or third-party ticket platforms. Whilst allowing for organisations to *voluntarily* join the ombudsman scheme provides an opportunity to close some of those gaps, it is clear that some will remain. Considering the wider commitment from the UK Government to strengthen consumer rights and expand access to dispute resolution, particularly the work being undertaken by the Ministry of Justice<sup>5</sup>, we would urge the ORR to set a timescale for when they will review (and potentially implement) the expansion of the ombudsman's compulsory jurisdiction to cover all elements of a passenger journey.

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<sup>1</sup> [www.gov.uk/government/publications/new-ombudsman-schemes-guidance](http://www.gov.uk/government/publications/new-ombudsman-schemes-guidance)

<sup>2</sup> [www.gov.uk/government/publications/incorporation-and-names/annex-a-sensitive-words-and-expressions-or-words-that-could-imply-a-connection-with-government](http://www.gov.uk/government/publications/incorporation-and-names/annex-a-sensitive-words-and-expressions-or-words-that-could-imply-a-connection-with-government)

<sup>3</sup> [Rail Ombudsman operating model technical report – Annex B \(orr.gov.uk\)](http://Rail Ombudsman operating model technical report – Annex B (orr.gov.uk))

<sup>4</sup> [OMBUDSMAN ASSOCIATION TERMS & RULES](http://OMBUDSMAN ASSOCIATION TERMS & RULES)

<sup>5</sup> [Dispute Resolution in England and Wales: Call for Evidence - GOV.UK \(www.gov.uk\)](http://Dispute Resolution in England and Wales: Call for Evidence - GOV.UK (www.gov.uk))

### *Governance / Advisory Panels*

14. We welcome the ORR taking on the sponsorship role for the Rail Ombudsman and the move to a traditional ombudsman governance structure in place of the current Scheme Council.
15. It is recognised best practice for an ombudsman scheme to engage closely with stakeholders, both those within their jurisdiction and those representing the interests of service users, to share feedback and gather insight as relevant. Because an ombudsman scheme needs to be independent of both the industry and passenger advocacy bodies it is important for it to be clear, both in terms of perception and reality, that those interactions are part of stakeholder engagement activities, not part of the governance / oversight of the ombudsman scheme itself. This can of course be clarified further in the panels' formal terms of reference (which should be published).
16. As paragraph 3.56 makes clear, *"The purpose of an Advisory Panel is to provide an ombudsman with ongoing access to essential expertise to help it continually deepen and widen its knowledge and understanding of the sector it serves."*
17. However, the suggestion in paragraphs 3.61 and 3.62 that the Advisory Panels might engage 'independent expert advice' and also make 'advisory statements' to the Rail Ombudsman Board, alongside the references elsewhere that describes the Advisory Panels as *"part of the performance monitoring regime"* risks creating the impression, both amongst the public and amongst the members of the Advisory Panels themselves, that the panels have some formal role in the governance and oversight of the Rail Ombudsman rather than being a forum for stakeholder engagement. To ensure that the ombudsman meets the OA's criteria, and also that there is a positive relationship with both groups of stakeholders, that potential misconception needs to be avoided by amending the language describing the Advisory Panels' roles.

### **Chapter 4: Q7. What do you consider are the advantages and disadvantage of having two rail ADR schemes running simultaneously for a short transitional period?**

18. It is important that there is an effective handover between the RDG-procured scheme and the ORR-procured scheme to ensure that cases do not 'fall between the gap', including having clear agreement on what happens to 'legacy' cases that might not be completed before the transition date and when the RDG-procured scheme will stop investigating newly received complaints and 'hand them over' to the ORR-procured scheme.
19. All of that activity should take place as part of back-office functions as the service is transitioned from one provider to the next. There should also be clarity that someone whose complaint has been dealt with by the current RDG-procured scheme cannot bring the same complaint to the 'new' ORR-procured scheme. Whilst 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.

We are very happy to provide any further information or meet to discuss if you would find that helpful.

Yours sincerely



**Donal Galligan**  
**Chief Executive**