



Department  
for Transport

# Improving access to passenger compensation for delays and cancellations

Response following the ORR's  
investigation of the Which? super-  
complaint

**Moving Britain Ahead**

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Department for Transport  
Great Minster House  
33 Horseferry Road  
London SW1P 4DR  
Telephone 0300 330 3000  
Website [www.gov.uk/dft](http://www.gov.uk/dft)  
General enquiries: <https://forms.dft.gov.uk>



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# Contents

Foreword	4
1. Introduction	5
Purpose of this report	5
Structure of this report	5
2. Summary of the problem	7
Passenger awareness	7
Process of claiming	7
3. Bringing about change	8
Improving passenger awareness	8
Improving the claims process	10
Clarifying passengers' entitlement to compensation	11
Making compensation convenient and valuable to passengers	12
4. Regulating passenger compensation	13
The need for regulation	13
Responsibility for regulation	14
Securing passenger compensation schemes through the franchising system	15
5. Monitoring progress	19
Annex A: Progress against the ORR's recommendations	20
Annex B: Franchise requirements relating to making passengers aware of their right to claim compensation	22

# Foreword

A successful railway benefits us all as a driver and enabler of growth, and a shift to rail travel brings economic and environmental benefits. I want people to be confident in the service and value they will get if they choose to travel by rail. Many travellers have little option but to travel by rail, and I want to make sure that their interests are protected too, and that they are treated fairly.

Passenger compensation forms a crucial part of the offer to passengers as consumers. We must constantly strive to improve the punctuality of the railway, but travellers need to know that they will be compensated fairly if the railway does not meet its side of the bargain.

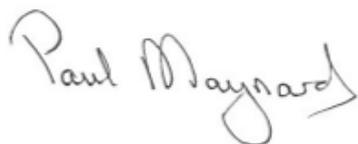
In recognition of this, the Department requires all new franchisees to offer the Delay Repay compensation scheme. Delay Repay is currently operated by the majority of operators and is a simple and straightforward compensation scheme for passengers who have been delayed by 30 minutes or more, regardless of the cause.

Rail passengers will soon be able to claim Delay Repay if their train is more than 15 minutes late. An extended scheme, allowing passengers to claim compensation for shorter delays, will be introduced within months on Govia Thameslink Railway services, including Southern, and then rolled out across the country.

However the benefits of such schemes are seriously undermined if passengers cannot access the compensation they are due. Passengers can only benefit if they are made aware of their entitlement to compensation and can make a claim without undue hassle or difficulty. New research published today<sup>1</sup> by Transport Focus, the independent transport user watchdog, has found that in a survey of passengers only 35% those who were delayed went on to claim compensation.

Which?'s super-complaint to the Office of Rail and Road (ORR) was therefore a timely and welcome intervention and I agree with the recommendations of the ORR's subsequent investigation.

I want and expect to see rapid progress made by the industry to improve the way passengers are made aware of their entitlement to compensation and empowered to make a claim. This response reports on some of the steps that the industry is taking already, and sets out the progress that I want it to continue making, and how government is playing its part to achieve this aim.



**Paul Maynard, MP**

**Parliamentary Under-Secretary of State for Transport**

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<sup>1</sup> <http://www.transportfocus.org.uk/research-publications/publications/rail-delays-and-compensation-what-passengers-want>

# 1. Introduction

## Purpose of this report

1.1 This report is the Government's response following the ORR's investigation<sup>2</sup> of the super-complaint<sup>3</sup> raised by the consumer body 'Which?'. It explains how at this point we intend to respond to the issues raised in the super-complaint, in the context of a broader industry response led by the Rail Delivery Group (RDG), the ORR, and the Department, and developing Government policy. In the report we set out the actions we would like to see taken to:

- improve passenger awareness and understanding of compensation schemes
- improve the claims process
- ensure that compensation is as convenient and valuable to passengers as possible
- monitor progress in addressing these issues

and consider how passenger compensation schemes are regulated.

1.2 We also set out how we propose to respond where the ORR has recommended actions for the Department to take.

1.3 This report covers only the issues raised in the super-complaint. It does not cover the Government's policy on the amount of compensation that franchises offer to passengers when trains are delayed or cancelled. While it sets out some initial thoughts on broader issues around the regulation of consumer protection, the way the Department and ORR will work together in all areas of rail sector regulation is the subject of ongoing work.

## Structure of this report

1.4 The rest of this report is structured into four sections:

- Chapter 2 provides a short summary of the issues that are hampering passengers' access to compensation, reflecting the findings set out in the Which? report, the ORR's investigation and research released today conducted by Transport Focus.
- Chapter 3 describes what needs to change to resolve these issues, and what the industry is doing about it.
- Chapter 4 sets out how we think passenger compensation should be regulated, and the role we intend to play as a franchising authority in this.

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<sup>2</sup> [http://orr.gov.uk/\\_data/assets/pdf\\_file/0009/21141/which-super-complaint-response-report.pdf](http://orr.gov.uk/_data/assets/pdf_file/0009/21141/which-super-complaint-response-report.pdf)

<sup>3</sup> <http://www.staticwhich.co.uk/documents/pdf/super-complaint-to-the-office-of-rail-and-road-pdf-5-34mb-428633.pdf>

- Chapter 5 explains how the industry will keep track of progress in improving access to passenger compensation.
- Annex A provides a summary of progress against the ORR's recommendations.
- Annex B summarises the existing obligations on franchisees to make passengers aware of their right to claim compensation.

## 2. Summary of the problem

2.1 The research published today by Transport Focus confirms many of the issues that have been identified by Which?, the ORR and the Department. At the heart of the problem are two fundamental issues. Firstly, many passengers are simply not aware of their right to claim compensation for delays and cancellations. Secondly, even if they are, the process of claiming discourages making a claim when set against the value of the compensation that they might seek, and there are some barriers to claiming altogether.

### Passenger awareness

- There appears to be a lack of awareness in general concerning the possibility of claiming and of the existence of the rail compensation schemes.
- On top of this there seems to be some confusion and uncertainty among passengers about whether they are eligible for a claim, which could be discouraging some from claiming.
- Differences in the schemes offered by operators and consumers' statutory rights when buying a service could cause confusion.

### Process of claiming

- Passengers will always trade the value of the compensation against the time and effort involved in claiming.
- The value of the compensation to offer will always be a difficult decision for government and private companies alike, but the claims process itself is clearly perceived by many passengers as too time consuming or complicated.
- The way compensation is paid – how convenient it is and the form of payment – also affects the value passengers get from compensation. For example, it is well known that vouchers for future rail travel are unlikely to be viewed positively by passengers making infrequent journeys.
- A particular issue appears to be establishing how to make a claim with little over half of passengers making a claim satisfied with the information provided.
- In some cases passengers might be prevented from claiming altogether, for example if the ticket barriers 'swallow' their tickets.

## 3. Bringing about change

- 3.1 The solutions to the issues identified lie predominantly in the hands of the train companies. Making sure passengers receive the compensation they are entitled to should be part-and-parcel of how train companies respond in times of disruption and there are long-term and industry-wide benefits to promoting passenger compensation schemes in general. Passenger compensation should be a positive 'journey guarantee', while industry concerns over fraudulent claims must not be seen as a reason for inaction.
- 3.2 Since the ORR's report on 18 March 2016, we have been working with the ORR and RDG on a course of action to start to address the issues raised by the super-complaint. RDG, in particular, can play a leading role, bringing about an industry-wide 'offer' to passengers and driving up standards, while the Department and the ORR need to ensure that contractual and regulatory requirements support this.

### Improving passenger awareness

- 3.3 Passengers who have been delayed need to know that they are eligible for compensation. Additionally, if we are to maximise travellers' confidence in choosing rail, then prospective rail travellers need to know what they are entitled to, and when and how to claim.
- 3.4 As the ORR has pointed out, there have been a number of interventions by the ORR and the Department in recent years. In 2013, the Association of Train Operating Companies (ATOC)<sup>4</sup> produced a 'Compensation Toolkit' which established a range of practical measures that train companies could take to increase passenger awareness of compensation schemes.
- 3.5 There are some signs of progress: research by Transport Focus three years ago found that only 12% of eligible passengers made a claim<sup>5</sup>, compared to 35% in the similar research published today.
- 3.6 However, we are persuaded that practice across train companies is still both too variable and in many cases insufficient. Today's research by Transport Focus identifies the performance of train companies in alerting passengers to their right to claim compensation as the single biggest source of dissatisfaction concerning passenger compensation. The results of the ORR's 'mystery shopping' exercise<sup>6</sup> show considerable variation and room for improvement in how information is provided to passengers by staff. As the ORR highlighted, announcements and printed information on trains and at stations need to be more consistent and efforts to improve awareness and understanding amongst passengers also need to be supported by enhanced training for station and train staff.

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<sup>4</sup> ATOC has since [adopted the RDG name](#), which covers the activities previously carried out under separate names by ATOC and RDG.

<sup>5</sup> <http://www.transportfocus.org.uk/research-publications/publications/understanding-rail-passengers-delays-and-compensation>

<sup>6</sup> [http://orr.gov.uk/\\_data/assets/pdf\\_file/0009/21105/rail-delay-compensation-mystery-shopping-findings-report.pdf](http://orr.gov.uk/_data/assets/pdf_file/0009/21105/rail-delay-compensation-mystery-shopping-findings-report.pdf)

## National promotional campaign

- 3.7 The ORR recommended that the industry develop a coordinated national promotional campaign to increase passenger awareness. In response, RDG has developed an ongoing co-ordinated campaign for the industry to improve awareness of the compensation available to passengers. This campaign has now gone live<sup>7</sup>, and activity will be ramped up at key points such as the autumn leaf fall season.
- 3.8 The national promotional campaign includes activity conducted both by RDG and individual train companies, and RDG has identified a number of specific actions that train companies should take. We want all train companies to participate in the campaign and will expect franchised operators to commit to this. If a franchisee does not take part in the campaign, we will expect them to justify this to us (see 'Monitoring and enforcing franchise requirements' in chapter 4). We expect RDG to monitor and evaluate the success of the national promotional campaign.

## Improving consistency

- 3.9 The ORR has recommended that, where the mystery shop has identified poor performance, the train companies should agree with it how they will address this. This process has started and we will support the ORR as it progresses this action and follows it up with a further mystery shop this financial year to assess progress<sup>8</sup>.
- 3.10 RDG is currently working to bring about a consistent set of minimum standards between operators in the actions that they take to raise passenger awareness. It is also developing a best practice suite of documents that will highlight the further steps that could be taken. We are keen that aspects of this are made publicly available, so passengers can hold operators to account. We are taking a keen interest as these develop, and expect to see evidence of improvement, not a set of standards that simply encapsulates the lowest common denominator.
- 3.11 RDG has also recently updated its Code of Practice for Passenger Information During Disruption (PIDD)<sup>9</sup> in response to the ORR's recent clarification that the 'Information for Passengers' rail passenger licence condition includes an obligation to give information about passenger compensation schemes to passengers and prospective passengers<sup>10</sup>.
- 3.12 Where the Department is the franchising authority, we will look to use our powers (including through the franchise agreement) to bring about improvements, and to pursue consistency of requirements. This is described in chapter 4.

## What the Government is doing

- We are supporting and helping RDG as it implements the national promotional campaign and develops a consistent set of standards for promoting passenger compensation schemes.
- Where we are the franchising authority, we expect franchisees to participate in the national promotional campaign and we will look to exercise our powers through the franchise agreement to bring about improvements.
- We will support the ORR as it works with train companies to address the issues identified by its mystery shopping exercise.

<sup>7</sup> <http://www.raildeliverygroup.com/media-centre/press-releases/2016/469771021-2016-10-17.html>

<sup>8</sup> <http://orr.gov.uk/news-and-media/orr-blog/how-orrs-making-it-easier-for-passengers-to-claim-delay-compensation>

<sup>9</sup> [http://www.raildeliverygroup.com/about-us/publications.html?task=file\\_download&id=469771025](http://www.raildeliverygroup.com/about-us/publications.html?task=file_download&id=469771025)

<sup>10</sup> [http://orr.gov.uk/data/assets/pdf\\_file/0015/4353/information-for-passengers-guidance-on-meeting-the-licence-condition.pdf](http://orr.gov.uk/data/assets/pdf_file/0015/4353/information-for-passengers-guidance-on-meeting-the-licence-condition.pdf)

## Improving the claims process

- 3.13 As the ORR says in its report, the information provided to passengers wishing to make a claim needs to be easy to find, easy to understand and empower passengers to claim. The process of claiming must be as quick and straightforward as it can be.

### Improving the information that is available

- 3.14 The ORR has recommended some simple changes to TOC websites and printed material which would help make information about making a claim easier to locate and the process of making a claim more understandable and has called for train companies to make these changes. We support it taking this forward with individual operators.

### Improving the claims process

- 3.15 The ORR has also highlighted a number of areas where train companies can do more to improve the process of claiming compensation including in terms of the requirements passengers have to fulfil to make a valid claim and the physical process of making a claim. It has been working with train companies to agree how they will implement these changes.
- 3.16 The ORR is currently following up with train companies to monitor progress in implementing these changes<sup>11</sup>. If progress has not been made with franchised operators we will discuss with the ORR what further action may be necessary.

### Improving consistency

- 3.17 RDG is leading the industry to achieve consistency across operators in key aspects such as offering online claims processes and making information easy to find.
- 3.18 RDG also has a direct role in making sure passengers have all the information they need. It has already made some welcome improvements, and plans further developments. It has created a single webpage which provides direct links to the relevant areas of TOC websites for making claims<sup>12</sup>, and it plans further enhancements as part of efforts to clarify information about what passengers' tickets entitle them to<sup>13</sup>.

### What the Government is doing

- We will support the ORR in the actions it is taking with individual train companies.
- We are supporting RDG in its efforts to ensure consistency in the process of making claims as experienced by passengers.
- We will continue to award points where appropriate to bidders for franchises who present credible plans to make the process of claiming compensation swift and simple.

<sup>11</sup> <http://orr.gov.uk/news-and-media/orr-blog/how-orr-making-it-easier-for-passengers-to-claim-delay-compensation>

<sup>12</sup> [http://www.nationalrail.co.uk/times\\_fares/ticket\\_types/121354.aspx](http://www.nationalrail.co.uk/times_fares/ticket_types/121354.aspx)

<sup>13</sup> [http://www.nationalrail.co.uk/times\\_fares/ticket\\_types.aspx](http://www.nationalrail.co.uk/times_fares/ticket_types.aspx)

## Clarifying passengers' entitlement to compensation

- 3.19 We understand that the fact there are different compensation schemes in existence at present and in the past may have contributed to confusion amongst passengers about their rights.
- 3.20 Many aspects of operators' compensation schemes are already standardised. Most passenger rail operators are party to the industry's Ticketing and Settlement Agreement (TSA). The TSA sets out various arrangements relating to ticket retailing, including standardised conditions of travel (the NRCOT) which include minimum standards for compensation for delays and cancellations. If train operators wish to enter into alternative arrangements to this to satisfy the terms of their licences (set by the ORR), the Secretary of State must consent to this. The Department requires franchisees to subscribe to the TSA as a condition of their franchise agreement.
- 3.21 As well as this, most DfT franchises now offer a more generous compensation scheme in their Passenger's Charter, standardised across franchises, as a result of the ongoing roll out of Delay Repay. Delay Repay is intentionally simple: the length of delay for which compensation is due is the same regardless of the reason for the delay, passengers' overall journey length, or the ticket type used<sup>14</sup>.

### Passengers' statutory rights as consumers

- 3.22 Passengers now have recourse to clarified and standardised statutory rights across all service sectors. The Consumer Rights Act 2015 applied to mainline passenger rail services from 1 October 2016. The Act clarifies, harmonises and consolidates a number of consumer rights, across sectors, which apply when purchasing a service. As a result, it makes it easier for people to know their rights as consumers. The Act could play a role, for example if passengers are not satisfied with the compensation they are offered under an operator's compensation scheme. It also covers a wider remit than delays and cancellations, including promises made by operators that consumers rely on in making their decisions. As a designated enforcer of the Act, the ORR can take enforcement action in certain circumstances, such as against infringements that harm the collective interests of consumers.
- 3.23 However we expect operators' Passenger's Charter compensation schemes to continue to be the main means of redress for delays and cancellations in most circumstances, as they have some key attributes which are advantageous:
- They set out *in advance* the levels of compensation that a passenger can expect for different levels of delays, giving greater clarity and certainty over passengers' entitlement in specific circumstances than is defined in the Consumer Rights Act.
  - They can and should offer a quick and easy process to claim compensation.
  - The schemes can and often do go beyond the requirements of the Consumer Rights Act, for example including delays and cancellations even where these are not the responsibility of the train company or the result of a lack of 'reasonable skill and care'.
- 3.24 As explained in the next section, we intend to discuss the regulatory framework in this area with our stakeholders, and identify any changes that may be beneficial.

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<sup>14</sup> Prior to Delay Repay, separate schemes existed for season ticket holders and non-season ticket holders. These schemes still apply to operators who do not offer Delay Repay.

### What the Government is doing

- We will continue the roll-out of Delay Repay – including the change to the threshold for compensation announced recently – as a common standard for franchises. We will engage with incumbent franchisees that do not offer Delay Repay as they seek to improve their compensation schemes.
- ORR and DfT will work together to ensure improvements are made by train operators to the information available to passengers concerning their rights to compensation.

## Making compensation convenient and valuable to passengers

- 3.25 Set against the barrier presented by the claims process is the convenience and usefulness to passengers of the compensation itself and the form it is provided in. It is clear from today's research by Transport Focus that rail vouchers are not perceived as valuable by passengers.
- 3.26 The industry has already taken steps to make compensation more convenient and valuable. The new National Rail Conditions of Travel (NRCoT)<sup>15</sup>, which replaced the previous National Rail Conditions of Carriage (NRCoC) on 1 October 2016, mean that passengers will always be presented with at least one 'money' option in which to receive their compensation.
- 3.27 We want to see even more progress made to present more passengers with a wide range of convenient and valuable options in which to receive compensation. Passengers can now exercise their statutory right, under the Consumer Rights Act 2015, to receive compensation in the same form that they paid for the service in circumstances where the Act would apply. We expect this right to be extended where possible to all circumstances where passengers are eligible for compensation under operators' Passenger's Charter compensation schemes and we are pleased that many operators plan to do exactly this.

### What the Government is doing

- Changes to the NRCoT must be approved by the Secretary of State. We welcome changes that will make compensation more valuable and convenient to passengers than at present.

<sup>15</sup> [http://www.nationalrail.co.uk/times\\_fares/46427.aspx](http://www.nationalrail.co.uk/times_fares/46427.aspx)

## 4. Regulating passenger compensation

- 4.1 We expect the industry to drive forward the improvements that the ORR has identified, but where it does not, there is a role for regulation and enforcement.

### The need for regulation

- 4.2 The rail passenger services industry is dominated by franchises let by franchising authorities, the largest of which is the government. While the Government is supportive of the potential benefits of open access competition, limited network capacity means that competition between more than one operator on the same route may not always be practical<sup>16</sup>.
- 4.3 This situation, however, means that the ability of passengers to ‘vote with their feet’ as a means of driving change is often very limited, particularly in situations where taking an alternative mode, or not travelling at all, is not an option. Instead, prospective operators compete fiercely for the opportunity to run a franchise. Which? argued that this industry structure results in consumer detriment which could have contributed to the issues it has identified, and that increased competition would drive up standards.
- 4.4 However the ORR concluded in its investigation that it is “less clear whether competition – on its own – would sufficiently address the issues with passenger compensation”. For example, it pointed out that government franchises in fact offer better terms than current open access operators do, even though it is the latter that are exposed to greater degrees of competition. Moreover, in the aviation sector, where operators compete with one another to a much greater extent, the ORR pointed out that operators adopt quite different standards on customer care, some of which could be leading to consumer detriment.
- 4.5 We agree with the ORR’s assessment. In the aviation sector, travellers appear to make their travel choices either with little regard to, or in spite of, particular airlines’ stated or reputed approach to customer care<sup>17</sup>. As a result, when things go wrong, without regulation passengers may not be treated in ways that they consider *fair*. It is likely therefore that regulatory intervention to protect consumers would continue to be required even if levels of on-rail competition were increased, and could even become more important.

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<sup>16</sup> Following the recent report of the Competition and Markets authority into passenger rail services, the Government is currently actively exploring steps which may potentially facilitate greater open access competition, subject to important reforms being made to industry charges.

<sup>17</sup> It is not clear that greater levels of awareness of passenger compensation schemes amongst prospective passengers would lead them to take operators’ approach to customer care into account more fully when making travel choices.

## Responsibility for regulation

- 4.6 Which? argued that the current institutional and regulatory landscape itself could be leading to consumer detriment. It pointed out that consumer protections and benefits are secured through a mixture of contracts with franchising authorities, industry-controlled standards such as the NRCoT, and operator licences, which are enforced by the ORR. It argues that this creates a dilution of responsibility.
- 4.7 Part of the confusion arises because many important passenger benefits are secured through the agreements between franchising authorities and franchisees. With the vast majority of passenger journeys being made on franchised services, it is easy to forget that – as Which? pointed out – open access operators are not covered by such franchise agreements.
- 4.8 However it is perfectly legitimate – and of significant benefit – for franchising authorities, within the regulatory framework, to secure passenger benefits through the contracts they let. It is also perfectly legitimate for open access operators to determine their own approach to passenger compensation so long as these comply with all the relevant regulations and so long as consumers are treated fairly. The fact that this happens does not diminish in any way the need for good consistent regulation to ensure that consumers are protected across both franchised and open access sectors.
- 4.9 The way the Department and the ORR will work together in all areas of rail sector regulation is the subject of ongoing work to more clearly set out our respective responsibilities, and consumer protection issues will form an important part of this work. We must, at the same time, ensure that there is no duplication of effort between regulator and franchising authorities that results in unhelpful administrative burden on franchised operators or gives conflicting messages.
- 4.10 We will continue to discuss with our stakeholders how well the current and future institutional, legal and regulatory framework is working for passengers and identify any changes which may be beneficial<sup>18</sup>. We will take into account other Government initiatives, such as the consultation on proposals to allow regulators to levy civil monetary penalties for breaches of consumer law<sup>19</sup> and the consultation on the consumer landscape in a number of sectors, including the provision of ‘alternative dispute resolution’ functions<sup>20</sup>.
- 4.11 However we do not believe that the role that the franchising system has played in securing consumer rights and benefits has, in practice, meant that consumer interests have been overlooked. The government naturally takes into account a broad range of considerations in decision making, including societal benefits. It has led the way in responding to passenger perceptions and making improvements to the terms of passenger compensation schemes. Delay Repay already exceeds the levels of compensation set out in the NRCoT and similar regulation that exists in Europe<sup>21</sup>, and this Government is committed to improving this further still.
- 4.12 All forms of regulation need to be proportionate and take costs into account. As the ORR points out, it too would need to take into account the impact on the funds available to the Secretary of State in regulatory decisions. This is not something that

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<sup>18</sup> We have already supported the ORR’s recent clarification that Licence Condition 4 (‘Information for passengers’) includes information relating to passenger compensation for passengers and prospective passengers. This confirms that information regarding passenger compensation falls within the scope of the existing ‘Passenger Information During Disruption’ (PIDD) regime.

<sup>19</sup> <https://www.gov.uk/government/consultations/improving-terms-and-conditions>

<sup>20</sup> <https://www.gov.uk/government/consultations/improving-the-consumer-landscape-and-quicker-switching-call-for-evidence>

<sup>21</sup> EU Rail Passengers’ Rights and Obligations (“PRO”) Regulation (EC 1371/2007)

is unique to the ORR, or because of the involvement of government money. As Which? has separately pointed out to us, regulators in other sectors also take into account the impact on the costs that are passed on to consumers in their decision-making. In the regulated rail industry this principle would need to be extended to consider the impact on taxpayers through franchise subsidies.

- 4.13 We agree with the ORR’s assessment that securing passenger benefits through licence conditions would not necessarily achieve change any faster than securing them through franchise agreements<sup>22</sup>. The ORR must consider any representations or objections to proposed modifications to licence conditions, and if it cannot reach agreement with train operators then it must make a licence reference to the Competition and Markets Authority on public interest grounds. The ORR also points out that it would need to have regard to the funds available to the Secretary of State in its decision-making, and would need to have regard to its duty to allow business planning with “a reasonable degree of assurance”<sup>23</sup>.

### What the Government is doing

- Consumer protection will form part of ongoing work to set out the way the Department and the ORR will work together in rail sector regulation.
- We will discuss with our stakeholders how well the current and future legal and regulatory framework functions and identify any changes which may be beneficial.

## Securing passenger compensation schemes through the franchising system

- 4.14 As discussed above, we see the franchising system sitting within the regulatory framework of the railways, not displacing it. This section explains how we intend to use our power as a franchising authority for many of the train companies.

### Franchise requirements

#### Requirement to have a passenger compensation scheme

- 4.15 We will continue to require bidders to set out in their bids the commitments they propose to include in their Passenger’s Charters, and to commit to the minimum standards we expect to see as part of this, including the amount of compensation offered and the way claims are handled.

#### Obligation to promote compensation schemes

- 4.16 Most franchises let by the Department require franchisees to use “all reasonable endeavours” to make passengers aware of their right to claim the compensation set out in their passengers’ charter. This provides us with the authority to require actions by franchisees to promote passenger compensation schemes, as a condition of their contract with the Secretary of State<sup>24</sup>.

<sup>22</sup> Which? cites, specifically, technological change in the way compensation schemes are publicised and administered.

<sup>23</sup> The ORR summarises all of its railway duties at <http://orr.gov.uk/about-orr/what-we-do/the-law/our-railway-duties>

<sup>24</sup> The ‘all reasonable endeavours’ form of words is used since whether passengers are in fact aware of their rights depends on a large number of factors outside the control of the operator. So we expect operators to take steps that would or should achieve this outcome. It also reflects the fact that what is reasonable will depend on a number of franchise-specific circumstances and will change over time.

- 4.17 Most franchise agreements also include a non-exhaustive list of activities which the requirement is certain to cover. However the core ‘all reasonable endeavours’ requirement is the same and the list of steps merely makes clearer some steps that are definitely included.
- 4.18 Because the franchising schedule<sup>25</sup> is necessarily staggered, and because the franchise agreement requirements have been strengthened over time, the different franchise agreements in existence have slightly different wording (see Annex B). Some do not include the ‘all reasonable endeavours’ requirement at all.
- 4.19 We will continue the roll-out of the ‘all reasonable endeavours’ requirement, introducing this in franchises at the earliest available opportunity. South Western is one of the next new franchises scheduled<sup>26</sup> to be awarded. In the case of Chiltern we would expect this requirement to be introduced at the earliest available opportunity, for example aligned to other changes to passenger compensation schemes, while it is currently intended that the Welsh Government will determine the specification for the next Wales & Borders franchise.
- 4.20 Where opportunities are present, we shall seek to engage with incumbent franchisees to reflect the latest non-exhaustive list of activities that the core requirement is defined to include, in updated franchise agreements.
- 4.21 However we do not consider improvements in passengers’ access to compensation to be dependent on making these changes. We want to be absolutely clear that we expect all franchisees to ensure that passengers are not unduly impeded in accessing the compensation schemes they have committed to provide for the benefit of their customers.

### **Other requirements**

- 4.22 As today’s research shows, when asked about being notified, making a claim, or receiving compensation, many passengers would prefer greater automation. Passengers want electronic notification, smarter online claim forms, and refunds direct to their accounts. Many simply said they want the whole process to be fully automated.
- 4.23 Many operators are automating their processes already. Most offer online claims processes. Govia Thameslink Railway (GTR) is developing a system that can notify passengers using their smartcard that they might be entitled to compensation for a delay or cancellation<sup>27</sup>. Fully automatic compensation schemes (i.e. where money is directly paid into passengers’ bank accounts without a claim being made) are even in place for some passengers holding advance or season tickets on the Virgin West Coast and c2c franchises and will be offered in the future on Arriva Northern and First TransPennine Express.
- 4.24 Clearly automating some or all of the claims process would directly address the twin issues of passenger awareness and improving the claims process. It may be one of the ‘pull factors’ that encourages take up of smart ticketing, although we must be careful not to disadvantage those without access to such technology.
- 4.25 Train operators should consider how to develop and offer automated processes where appropriate and possible, so that more people can access their compensation in ways that are convenient to them. As the ORR says in its report, full automation is more feasible where passengers are travelling on tickets that are specific to particular

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<sup>25</sup> <https://www.gov.uk/government/publications/rail-franchise-schedule>

<sup>26</sup> The franchise schedule is regularly updated and published at: <https://www.gov.uk/government/publications/rail-franchise-schedule>

<sup>27</sup> <http://www.thameslinkrailway.com/about-us/news/gtr-and-compensation-for-delay/>

trains or where they ‘touch in and touch out’ on their journey, and where passengers’ payment details are available. As ticketing is modernised across the network, this may well help to unlock more opportunities for full automation. In the meantime, though, we would like to see digital technology and communications playing a role in making passengers aware of their right to claim and making the claiming process swift and simple for passengers and efficient for operators to administer.

### **What the Government is doing**

- We will continue the roll-out of the requirement that franchisees use all reasonable endeavours to ensure passengers are aware of their right to compensation. Where there is no franchise competition in the near future we will look to engage with incumbent franchisees to introduce this change as part of broader changes to passenger compensation arrangements.
- We will seek to engage with incumbent franchisees to harmonise the non-exhaustive list of activities that franchised operators should be undertaking.

### **Monitoring and enforcing franchise requirements**

- 4.26 The ORR has recommended that the government provides guidance on and monitoring of basic expectations where the ‘all reasonable endeavours’ conditions are used, and proactively monitors franchisees’ performance against the requirement.
- 4.27 It is for the Secretary of State to decide whether franchisees are fulfilling their obligations under the franchise agreement<sup>28</sup>. However it is not possible to define in advance the steps that would be appropriate and reasonable under different franchise circumstances, or to predict changes in technology and passenger needs and expectations. Train companies may well be better placed than the Department or a regulator to analyse and identify the most effective measures for their passengers, while by contrast there is a risk that more prescriptive guidance is overly rigid or too slow or difficult to change.
- 4.28 Instead, over the next 6 months we will be talking to individual franchisees and will require them to produce a report on passenger awareness of compensation schemes. This should include an assessment of current levels of awareness among their passengers, set out the steps they are currently taking to make passengers aware of their right to claim compensation and what further steps they plan to take in the future.
- 4.29 We will assess this against a wide range of information and considerations in order judge whether the steps proposed are sufficient. For instance:
- The ORR found that few train companies made “any systematic attempt to evaluate the success of their various methods for raising awareness”. This is particularly relevant given the gap between the many (though inconsistent) examples of good practice apparent throughout the industry, but the continued finding of low levels of awareness.
  - RDG will be developing a Best Practice document that provides an up-to-date statement of the actions that train companies could take. Where an operator does not propose to follow one of these actions, we will expect it to explain why.

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<sup>28</sup> The Department’s approach to enforcement of franchise agreements is explained in its published enforcement policy, which can be found at <https://www.gov.uk/government/publications/enforcement-policy-rail-franchise-agreements-and-closures>.

- Similarly, RDG has developed a national promotional campaign, which incorporates actions for individual operators to take. If a franchisee is not taking part in this fully, we will expect it to explain why.
- The results of the ORR's mystery shopping exercise and the research conducted by Transport Focus released today will be reviewed and train companies benchmarked against their peers, as well as the ORR's review of TOC websites that took place this summer.

4.30 We will require a further report from each franchisee after 18 months<sup>29</sup> and we will review progress and further information available including data collected by the ORR into passenger complaints and the 'compensation gap'. We are in discussions with the ORR concerning a further iteration of today's Transport Focus research. Depending on progress the exercise may need to be repeated further.

### **What the Government is doing**

- We will require franchisees to deliver a report which sets out measured levels of awareness of compensation and outlines the steps they are, and will be, taking to ensure passengers are aware of their right to compensation. We will evaluate whether these steps are sufficient using all the available evidence.
- We will repeat the exercise after a further 18 months.

### **Selecting bidders**

4.31 When evaluating bids we intend to continue to award points where appropriate for credible initiatives that enhance the passenger compensation offer and make the process of claiming swift and simple, where these can be shown to be good value for money and affordable.

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<sup>29</sup> If there has been a change of franchisee in this timeframe, we may adopt different timescales. We will request an initial report from the new operator after a reasonable period of time, with a further report after a reasonable time for improvements to be made.

## 5. Monitoring progress

- 5.1 The industry must monitor progress in continually improving passengers' access to compensation for delays and cancellations. Information about the performance of the industry and individual train companies should be made available to the public to increase transparency and confidence.
- 5.2 The ORR is, rightly, already leading the way here. It intends to report on progress against its recommendations later this year. Its new annual 'Measuring Up'<sup>30</sup> report is a welcome development. To feed into this, it is also developing a new set of Key Performance Indicators (KPIs) including data on complaints handling and measures of the relationship between compensation paid out and compensation due to passengers (i.e. the 'compensation gap'). We will support the ORR in its ongoing monitoring. We will work with it with a view to providing it with the data, where we can, that it would like to form part of the core dataset where it does not have direct access to this itself.
- 5.3 Today's research by Transport Focus represents a significant contribution to the debate. It represented a collaboration between Transport Focus, the Department and the ORR, and it provides valuable information for franchising authorities and the regulator alike. In its response to the super-complaint, the ORR said that it is working with Transport Focus with a view to repeating research on passengers' awareness and experience of delay compensation schemes at more regular intervals. We are talking to ORR about this and hope to replicate this successful example of collaboration.
- 5.4 The department, as a franchising authority, will proactively monitor compliance with franchise requirements, as set out in chapter 4.

### What the Government is doing

- We will support the ORR in its ongoing monitoring, and will work with it with a view to providing it with the data it needs for this purpose.
- We support the repeating of research into passengers' awareness and experience of delay compensation schemes. We are talking to ORR about this and hope to replicate this successful example of collaboration.

<sup>30</sup> [http://orr.gov.uk/data/assets/pdf\\_file/0012/22116/measuring-up-annual-rail-consumer-report-june-2016.pdf](http://orr.gov.uk/data/assets/pdf_file/0012/22116/measuring-up-annual-rail-consumer-report-june-2016.pdf)

# Annex A: Progress against the ORR's recommendations

A.1 The following table provides a summary of the ORR's recommendations and the actions that are taking place to take them forward, coordinated by a joint working group comprising RDG, the ORR and the Department. The right hand column explains the role that government is playing.

<b>Recommendation</b>	<b>Steps being taken</b>	<b>Our role</b>
A co-ordinated national promotional campaign to increase passenger awareness...	RDG has developed a promotional campaign that will be ramped up at key points	We have been clear about our expectations for the national awareness campaign. We will expect operators where we are the franchising authority to participate in RDG's campaign
... supported by enhanced training for station and train staff	The ORR has worked with individual train companies to agree steps to improve the information that staff give to passengers. It will repeat the mystery shopping exercise this financial year.	We support the ORR's action.
Greater proactive monitoring of more prescriptive franchise conditions	We will complete the roll-out of the requirement, to use all reasonable endeavours, at the earliest available opportunity. Where there are opportunities, we will seek to harmonise the non-exhaustive list of activities that franchisees should be undertaking.	
Guidance on and monitoring of basic expectations where "all reasonable endeavours" conditions used	We will require franchisees to deliver a report outlining the steps they are, and will be, taking to fulfil the requirement and use the available evidence and industry best practice to evaluate compliance. We will repeat the exercise after a further 18 months.	
Clarification that ORR interpretation of PIDD licence condition should include information provision on compensation	Train companies and the ORR have agreed on this interpretation, and the ORR has updated its regulatory statement <sup>31</sup> . RDG has updated the PIDD Code of Practice.	We have supported the ORR's position on this.
Data collected on monitoring franchise requirements to be published in our annual consumer report to ensure transparency and drive improvements	We will discuss the data needed by the ORR and seek to share this, where we are able to.	

<sup>31</sup> [http://orr.gov.uk/data/assets/pdf\\_file/0015/4353/information-for-passengers-guidance-on-meeting-the-licence-condition.pdf](http://orr.gov.uk/data/assets/pdf_file/0015/4353/information-for-passengers-guidance-on-meeting-the-licence-condition.pdf)

<b>Recommendation</b>	<b>Steps being taken</b>	<b>Our role</b>
Implementation of Plain English improvements to claim forms, website information and website navigation	The ORR has worked with individual operators to identify the actions that they will take. It is repeating its review of TOC websites and printed material, and expects to publish the results of this in December.	We support the ORR in taking this action, and use our influence as a franchising authority if necessary.
Where the mystery shop has identified poor performance – action with the companies concerned to agree on the changes required	The ORR has worked with individual operators to identify the actions that they will take.	We support the ORR in taking this action, and use our influence as a franchising authority if necessary.
Further mystery shopping to assess the extent to which better information is available from station and on-train staff	The ORR plans to repeat its mystery shopping exercise this financial year.	We support the ORR in taking this action, and use our influence as a franchising authority if necessary.
RDG to publish best practice for TOC claim processes and encourage the adoption of such practice	RDG has made initial steps to develop best practice for both making passengers aware of their rights and the claims process. As a precursor, RDG has developed basic frameworks for both passenger awareness and the claims process and is using this to encourage a consistent approach among train companies.	We are taking a keen interest in the development of this best practice.
ORR will undertake a further assessment of practices in this area and report on the steps that individual TOCs are taking in the short-term to introduce more passenger-friendly processes for claiming compensation	The ORR is repeating its review of train company websites and printed material, and expects to publish the results of this in December.	We support the ORR in taking this action, and use our influence as a franchising authority if necessary.
Compensation gap – ORR will carry out further analysis to estimate and monitor the take-up of compensation	The ORR is investigating the feasibility of developing a measure of relative trends in compensation claimed and paid, and compensation due.	We will support the ORR in taking this action. We will help by providing information as far as possible. The measure will be of value for us as a franchising authority.
Awareness research – ORR will work with Transport Focus with a view to repeating research on passenger awareness and experience of delay compensation schemes at more regular intervals	The latest research conducted by Transport Focus jointly commissioned by DfT and ORR is published today.	We support the repeating of this research recommendation and want to see this happen. We are discussing with the ORR how this can be taken forward.

**Table 1 Progress against the ORR's recommendations**

## Annex B: Franchise requirements relating to making passengers aware of their right to claim compensation

- B.1 The following table summarises the requirements in different current franchise agreements<sup>32</sup> relating to making passengers aware of their right to claim compensation. The requirement includes a core ‘all reasonable endeavours’ requirement, plus a non-exhaustive list of activities that this would include. Although the core requirement has stayed the same, the list of activities has been expanded over time, and the different constituent parts are broken down in the table.
- B.2 At refranchising, the latest franchise agreement wording is included in the new franchise agreement. Changes can also be achieved through making in-life changes through negotiation with individual franchises.

Franchisee	Franchise Agreement dated	Requirement to “use all reasonable endeavours to make passengers aware of their right to claim compensation pursuant to the Passenger’s Charter	“Including by			Date of next franchise as of Franchise Schedule in May 2016
			“displaying the relevant information on trains and at Stations	“making appropriate announcements to passengers on trains and at Stations when the circumstances giving rise to that right occur	[a] “making compensation claim forms readily available to passengers... [b] “... at Stations and on the Franchisee’s website”	
Chiltern	Mar. 2002	No	No	No	No	Dec. 2021
Arriva Trains Wales	Oct. 2003	No	No	No	No	Oct. 2018
South West Trains	Sep. 2006	No	No	No	No	Jun. 2017

<sup>32</sup> <https://www.gov.uk/government/collections/public-register-of-rail-passenger-franchise-agreements>

Franchisee	Franchise Agreement dated	Requirement to “use all reasonable endeavours to make passengers aware of their right to claim compensation pursuant to the Passenger’s Charter	“Including by			Date of next franchise as of Franchise Schedule in May 2016
			“displaying the relevant information on trains and at Stations	“making appropriate announcements to passengers on trains and at Stations when the circumstances giving rise to that right occur	[a] “making compensation claim forms readily available to passengers... [b] “... at Stations and on the Franchisee’s website”	
Govia Thameslink Railway	May 2014	Yes	No	Yes	Yes (a only)	Sep. 2021
Virgin West Coast	Jun. 2014	Yes	No	Yes	Yes (a+b)	Apr. 2018
c2c	Jul. 2014	Yes	No	Yes	Yes (a only)	Nov. 2029
Southeastern	Sep. 2014	Yes	No	Yes	Yes (a only)	Jun. 2018
Virgin East Coast	Dec. 2014	Yes	No	Yes	Yes (a only)	Mar. 2023
Great Western Railway	Mar. 2015	Yes	Yes	Yes	Yes (a+b)	Apr. 2019
East Midlands Trains	Sep. 2015	Yes	Yes	Yes	Yes (a+b)	Jul. 2018
London Midland	Dec. 2015	Yes	Yes	Yes	Yes (a+b)	Oct. 2017
Arriva Northern	Dec. 2015	Yes	Yes	Yes	Yes (a+b)	Apr. 2025
First Transpennine Express	Dec. 2015	Yes	Yes	Yes	Yes (a+b)	Apr. 2023
Arriva Cross Country	Sep. 2016	Yes	Yes	Yes	Yes (a+b)	Oct. 2019
Abellio East Anglia	Aug. 2016	Yes	Yes	Yes	Yes (a+b)	Oct. 2025

**Table 2 Franchise requirements relating to making passengers aware of their right to claim compensation**