

ORR Consultation on a draft Complaints Code of Practice Rail Ombudsman Response

Complaints Code of Practice

The establishment of the Rail Ombudsman was a manifesto pledge of both the Conservatives and the Liberal Democrats in 2017 and the importance of an Ombudsman in this sector was, and remains, a priority for Government who restated this objective in the Williams Shapps Plan for Rail in May 2021. The Rail Ombudsman opened its doors to rail passenger complaints against Rail Service Providers (RSPs) on 26 November 2018. In the past (almost) three years, the Rail Ombudsman has provided alternative dispute resolution (ADR) to the sector which it has also supported with insight, learning and training.

We read the consultation with interest and whilst there are several key sections which we will address specifically, more broadly ADR, and in particular an ombudsman, represents a strong means by which a consumer can access redress which is fair and proportionate to the issue at hand. Ombudsman represent the *gold-standard* of ADR provision, are accessible to all consumers and businesses benefit from the wider remit with access to additional services enabling them to enhance their performance and comply with their obligations in the law, with the assistance of training and advice. That said we also recognise (and strongly advocate), that a complaint is best dealt with between business and customer, and only when they are unresolvable and have escalated into a dispute, should the Ombudsman become involved. It should also be noted that an Ombudsman can help businesses informally to resolve complaints through advice and training thus preventing a complaint from turning into a dispute.

The Rail Ombudsman therefore advocates a principles-based approach to complaint handling such that the industry can carry out its own due diligence and be responsible to ensure its own compliance. This is in line with the approach taken by the ORR by placing “greater emphasis on good complaints handling culture and how this can be promoted, particularly by senior managers”. Our engagement with senior stakeholders confirms that there is an appetite for this, which must be cascaded to well-trained and empowered customer-service teams. We refer specifically to FCA principle 6: *A firm must pay due regard to the interests of its customers and treat them fairly* and welcome the similar approach which is envisaged by the ORR.

Provision 6: ADR

• **Q11. Do you have any views on our proposals to increase awareness of ADR on websites and in complaints acknowledgements?**

• **Q12. Are our signposting requirements clear, proportionate and reflective of current ADR practice?**

Signposting to the Ombudsman and clear information about the process and consumer-journey, at the earliest possible time, is crucial in increasing consumer-confidence in the process. Promoting the importance of good complaint handling will also assist, keeping the consumer informed and empowering them to make an informed choice as to when the RSP's internal complaints process is genuinely exhausted, minimising early approaches to the Ombudsman (as to which see below). This approach ensures a level-playing field for service providers and consistent approach for consumers and is at work successfully in other sectors.

We welcome that this approach is being adopted in the Rail Sector where the Regulator has acknowledged that “there is more to do to support good signposting to ADR across the Rail Industry”.

Currently the data shows a very inconsistent approach to issuing deadlock letters by RSPs which causes confusion in consumers and in some instances will be a barrier to them raising a dispute with the Ombudsman.

We therefore welcome an approach that sees basic information about the Rail Ombudsman and its role is included in the written complaint acknowledgement and further particulars included in the “ADR letter” at the appropriate time. Consideration should be given to other channels of communication such as telephone or face to face to ensure that all passengers have equal access to the relevant information. We still hear of anecdotal examples of inconsistent information being provided to consumers at stations by staff during disruption and advocate better awareness and training amongst staff to ensure this consistency is replicated across all aspects of the RSPs' business.

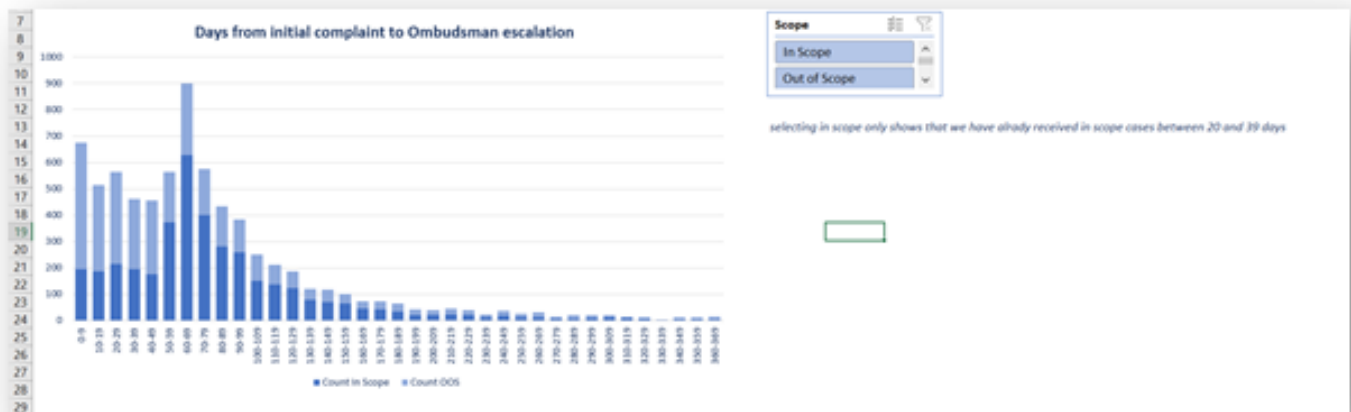
Reducing the 40 working day timescale

- **Q13. Do you agree, in principle, that the time passengers must wait before accessing ADR should be reduced from the current 40 working days or deadlock?**
- **Q14. If yes, do you believe that the time limit should be reduced: (i) to 20 working days or deadlock (whichever is sooner) or (ii) to 30 working days or deadlock (whichever is sooner), or (iii) from 40, to 30, to 20 working days or deadlock (whichever is sooner), via a phased approach? Q15. What would be an appropriate lead time to implement each of the options in Q14? 63**
- **It would be helpful if licence holders will provide evidence to support their answers to Q13-15.**

Our experience is that if RSPs are expedient in the way that they try to resolve complaints, this helps to preserve relationships between them and the consumer. Further, any potential challenge to this question can be overcome with good customer service communication which is identified via case-led intelligence and fed-back to businesses, thus leading to

improvements in future interactions. On average 22% of disputes are raised without an accompanying deadlock letter and are therefore closed as being raised too early. Of these, a significant number return upon the expiration of the current 40 working day timeframe. There is a danger therefore that these consumers are being forced to “watch the clock down” currently.

The table below shows the days from initial complaint to the RSP to the date that the dispute is raised at the Rail Ombudsman. This indicates that whilst more disputes will potentially be in scope at an early point, the spike for referrals is actually circa 60-69 days which indicates that consumers will not necessarily refer to the Ombudsman at the earliest point possible if meaningful discussions are still taking place with the RSP. This would indicate that a stepped-approach (As envisaged in question 14) is not required.



Pertinent to this discussion is the issue of signposting and general consumer awareness of the Ombudsman. We note the success of other information campaigns, such as “See it, say it sorted”, or announcements reminding passengers to wear face coverings.

Providing information at stations, by way of announcements, posters onboard, information and leaflets can only serve to improve consumer confidence as the industry effectively advertises its commitment to do the right thing. Before go-live, the Rail Ombudsman produced leaflets which were delivered to every station to assist in raising awareness, however, use of these were sporadic and inconsistent and these leaflets were subsequently withdrawn. Recent discussions with the Competent Authority regarding the concurrent Reforming Competition and Consumer Policy consultation from the Department for Business, Energy and Industrial Strategy, focus on better promotion of ADR and we believe that the industry should take the lead to increase consumer confidence.

The Rail Ombudsman has made recommendations on the importance of signposting but has also highlighted the importance of good complaint handling in preventing the complaint turning into a dispute which could escalate to the Ombudsman. Examples include the manner of communication (for example avoiding jargon and using Plain English), ensuring all aspects of the complaint are acknowledged and responded to, and promoting a greater understanding of a consumer's individual circumstances and ensuring any goodwill gestures are made on that basis. In all cases, a consumer-centric approach which considers the needs of each individual will be crucial if the consumer is to be considered at the heart of the process.

RSPs need to be aware of the needs of consumers, with reference to those who might be vulnerable, recognising that an Ombudsman and a proper complaints policy is for their benefit as well as for their consumers. Enhanced signposting obligations, for example signposting vulnerable consumers sooner, could offer a solution to meaningfully deal with vulnerable people effectively recognising that the Ombudsman may be better equipped to do so.

In addition, the reduction in the timescale will be beneficial for potential claimants under the Equality Act 2010 which has a shorter limitation timescale for cases which may ultimately go to court and it is therefore in everyone's interests that the Rail Ombudsman process proceeds as expeditiously as possible.

Driving wider learning from complaints & training, resourcing, and quality assurance

The Rail Ombudsman supports that RSPs must have complaints handling training programmes and training plans in place for all staff, not just those in customer-service departments. We have seen incidents of senior management taking calls from consumers and with no processes in place to ensure proper recording or logging of the calls, thereby leading to consumer-confusion and lack of evidence when the case was escalated to the Rail Ombudsman. Recommendations have been made to ensure onboard staff know about the validity of certain rail cards and free-travel passes. We have also made recommendations about the logging of incidents at stations and staff training both on-train and at stations. These indicate that presently there are some significant gaps.

Since the scheme went-live, 1245 cases have been recorded where complaints handling was an ancillary issue to the main categorisation of the dispute. In addition, 20% of recommendations made by the Ombudsman have had a top level ORR category of 'Complaints handling' and 45% had 'Complaints handling' in the 'In Scope categories' field. This indicates the extent of the issue which can relate to customer service and the RSP's own policies and obligations. The Rail Ombudsman has also identified that knowledge about consumer's entitlement under the Consumer Rights Act 2015 and how this differs from the Industry Arrangements (such as Delay Repay) is inconsistent. This was the focus of the recommendations made by the Rail Ombudsman in its Annual Review for 2020: *Look through a broad lens; quite often cases are escalated to the Ombudsman because the initial consideration by the Rail Service Provider has focused on narrow issues, for example Delay Repay.*

If the broader consumer landscape, the Consumer Rights Act 2015, for instance, was considered sooner, we believe that not only would the consumer's entitlement be met, it would also improve customer service interactions.

Other recommendations related to the availability of evidence and we encouraged RSPs to listen to what the consumer is saying and think about the impact of goodwill. We have seen the effect of gestures which are not suitable to a consumer's particular circumstances for example, the provision of complimentary tickets when the consumer had a free-travel pass. Listening, empathising and providing appropriate and timely resolution, will be crucial as passengers return to the rail network, sometimes with a different purpose in mind to their pre-pandemic travel plans.

The Rail Ombudsman 2020 Annual Review can be found **here** or by visiting; static.railombudsman.org/roweb/wp-content/uploads/2021/07/19145307/Rail_Ombudsman_Annual_Review-2020-ISSUE1-r.pdf

The Rail Ombudsman Case Studies can be found **here** or by visiting; railombudsman.org/resource-area/faq-3/case-studies/

The Rail Ombudsman has provided City & Guilds Accredited Consumer Law and Customer Service training to 60 delegates from 23 RSPs, with one RSP running internal programmes to support its customer-service team. This has been well received with 100% of delegates stating that they would recommend the training to colleagues. Whilst this is a good start, the Rail Ombudsman believes there is more to be done to encourage the take-up of training across the RSP's whole business and it should be noted that the training devised by the Rail Ombudsman, not only looks at the specific aspects of relevant law, but also provides training in soft-skills to ensure consumers are dealt with empathetically.

The Rail Ombudsman has also invited RSPs and other stakeholders to webinars and insight sessions to assist RSPs with their obligations to ensure staff are trained and empowered to deal with complaints effectively and with the consumer at the heart of all interactions.

Conclusion

The Rail Ombudsman looks forward to working with all stakeholders to ensure that the customer is at the heart of the implementation of the new Code of Practice.

Thank you for providing us with the opportunity to comment upon the consultation and we await the outcomes with interest.



www.railombudsman.org

Premier House
1-5 Argyle Way
Stevenage
Hertfordshire
SG1 2AD

Registered Office

Dispute Resolution Ombudsman Limited - Registered in England. No 8945616
Registered office: Richmond House, Walkern Road, Stevenage, Hertfordshire, England SG1 3QP

