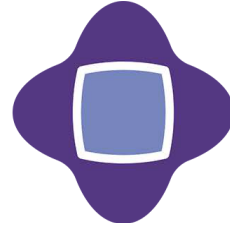


The Rail  
Ombudsman



# Compensation Framework

November 2023

## **ANNEX C - Rail Ombudsman Compensation Framework**

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# 1 INTRODUCTION AND PURPOSE OF THIS COMPENSATION FRAMEWORK

- 1.1 This Compensation Framework is intended to act as guidance to Rail ADR Scheme Members as to the types of Disputes which may be considered by the Ombudsman as well as the compensation awards that the Ombudsman may make. It should be read in conjunction with the Rail ADR Service Rules and Eligibility Criteria.
- 1.2 The Ombudsman will consider the circumstances of the Dispute in light of the evidence which is submitted by the parties to the Dispute i.e. the Consumer and the Rail ADR Scheme Member. The Ombudsman will make decisions based upon principles of fairness and reasonableness, along with the application of the law.
- 1.3 This Compensation Framework is not intended to provide a comprehensive and exhaustive list of all the Disputes which the Ombudsman will consider, but shows the approach, the process and the criteria which the Ombudsman may apply.
- 1.4 A glossary of terms can be found at the end of this document.

## 2 ROLE OF THE OMBUDSMAN

- 2.1 The Ombudsman is a not-for-profit ADR organisation whose primary role is to investigate complaints and resolve Disputes arising from the provision of goods and services by a business to a consumer. This Compensation Framework does not cover business to business (B2B) disputes. The Rail ADR Service helps all parties to a Dispute to get a fair deal and reduces the stress and expense that is associated with drawn out complaints and is intended to avoid Court action.
- 2.2 The Ombudsman's independent status is at the heart of everything that it does, as is its commitment to openness, honesty and integrity. It recognises the importance of these values to everyone that relies on the Rail ADR Service. The Ombudsman is independent and the work that it does is impartial; it is neither a consumer champion nor a trade body.
- 2.3 It works to uphold the key principles of the Ombudsman Association whilst delivering the Rail ADR Service, namely:
  - independence
  - fairness
  - effectiveness
  - openness and transparency
  - accountability

## 3 APPLICABLE DUTIES AND REGULATION

3.1 The Ombudsman must assess each In Scope Dispute on a case by case basis and will make Decisions taking account of the following:

- the Industry Arrangements;
- the rights and obligations contained in Consumer Legislation;
- the individual circumstances and any other factors which from time to time may be relevant in assessing the Consumer's legal entitlement;
- Common Law precedents and principles;
- the relevant national law, for example English or Scottish law, as applicable.

3.2 If a Rail ADR Scheme Member has failed to meet the applicable requirements of the Industry Arrangements, the Consumer may be able to claim compensation in line with the relevant Charter and/or the NRCot.

3.3 If the services have not been provided with reasonable care and skill under the Consumer Legislation, the Consumer may be entitled to damages for losses suffered due to the services not being provided in conformity with the Industry Arrangements. The Ombudsman will ask: Is the Consumer claiming for a loss that they could have reasonably foreseen and taken steps to avoid?

3.4 In assessing whether (and what) compensation is an appropriate remedy, any support, refund and other remedy already given by Rail ADR Scheme Members to Consumers will be considered. For example, information, help with re-planning onwards journeys, alternative transport, overnight accommodation, refreshments provided on a free of charge basis etc.

3.5 All Decisions will be underpinned by the principles of natural justice and moral fairness and the Ombudsman will make a Decision based on what is fair and reasonable in all the circumstances of the Dispute.

3.6 An assessment will be made by the Ombudsman to determine whether the claim is a Frivolous Dispute or a Vexatious Dispute and the parties will be notified at the Simple Resolution stage. The Ombudsman may refuse to deal with a Frivolous Dispute. An assessment of the merit will be made, and a decision will be made as to whether investigating the claim would be out of proportion to the seriousness of the issues complained about. The Ombudsman will refuse to accept a Vexatious Dispute.

## 4 OVERVIEW OF RAIL ADR PROCESS

4.1 If the Ombudsman accepts the Dispute as being 'in scope' as described in Section 5, evidence will be requested from the parties to support their stance.

- 4.2 Decisions will be made on the civil burden of evidence, that is on a 'balance of probabilities', considering the information which has been provided. This means that one party's claim will be considered more probable than the other, based upon the evidence supplied.
- 4.3 The list below contains a non-exhaustive outline of the types of remedies that the Ombudsman can consider:
- an explanation;
  - an acknowledgement that there was/is a problem;
  - an apology;
  - something to be done about a ticket or tickets if possible – depending on the terms of the product in question this could include issuing a new ticket for a journey on an alternative day;
  - a refund;
  - complimentary travel;
  - a token of apology (such as flowers or retail vouchers); and/or
  - compensation.

4.4 The lists below contain a non-exhaustive list of the types of evidence that the parties may put forward:

Evidence which could be put forward by Consumer	Evidence which could be put forward by a Rail ADR Scheme Member
<ul style="list-style-type: none"> <li>• Proof of purchase</li> <li>• Any rail tickets or Railcards held by the Consumer relevant to the Dispute</li> <li>• Receipts when claiming out of pocket expenses</li> <li>• Dates and times of travel/at station</li> <li>• Alternative routes/action taken in mitigation</li> <li>• Photographs</li> <li>• Screenshots</li> <li>• How the Consumer believes the Rail ADR Scheme Member has breached the Industry Arrangements or the legal basis for the claim</li> </ul>	<ul style="list-style-type: none"> <li>• Confirmation of current version of Charter</li> <li>• Action taken under Delay Repay or other Charter promises</li> <li>• Offers made prior to mediation</li> <li>• CCTV footage</li> <li>• Statements from Rail ADR Scheme Member</li> <li>• Data from automated ticket gates or smartcard systems</li> <li>• How the Rail ADR Scheme Member believes it has complied with the Industry Arrangements or relevant Consumer Legislation</li> <li>• Reasons for disruption</li> </ul>
<b>From Both</b>	
<ul style="list-style-type: none"> <li>• Witness statements</li> <li>• Deadlock letter/date of first complaint</li> <li>• Journey Planner</li> <li>• Records of Pre-Booked Assistance</li> <li>• Any other evidence deemed relevant by the parties or the Ombudsman</li> <li>• Correspondence - Including action taken/offers to resolve</li> </ul>	

## 5 IN SCOPE DISPUTES

- 5.1 To be eligible for consideration a Dispute must be 'in scope'. This means there has been a failure of the Rail ADR Scheme Member to provide its service in accordance with the Industry Arrangements and/or with reasonable care and skill in accordance with the obligations under the Consumer Legislation.
- 5.2 The Consumer must have given the Rail ADR Scheme Member an opportunity to resolve the complaint and have either received a Deadlock Letter or failed to reach agreement with the Rail ADR Scheme Member within 40 working days from the date the Rail ADR Scheme Member first received the complaint.
- 5.3 Disputes which relate to Consumer-facing services outsourced by a Rail ADR Scheme Member, for which the Rail ADR Scheme Member will be accountable, will be eligible for consideration.
- 5.4 In scope Disputes are set out in the Rail ADR Service Rules and Eligibility Criteria document which should be read in conjunction with this document.
- 5.5 **Causes within the rail industry control and fully or partly outside of Rail ADR Scheme Member control**

It is acknowledged that:

- certain types of Dispute may relate to factors which are fully or partly outside of the control of the Rail ADR Scheme Members (in cases where the Rail ADR Scheme Member is a company operating a passenger rail service under a franchise awarded by the Director of Passenger Rail Franchising pursuant to Section 23 of the Railways Act 1993) but originate from a root cause attributable to Network Rail or another rail industry body (such as a freight operator or rolling stock company); these Disputes might not therefore be entirely outside of the rail industry's control as referred to in the NRCoT and may therefore be In Scope Disputes;
- if the impact of the Disputes results in a Rail ADR Scheme Member being unable to provide their services in accordance with the Industry Arrangements, then it is possible that the Rail ADR Scheme Member may have the responsibility for settling them.

In such circumstances therefore, the Ombudsman:

- may still view the Dispute as a failure of the rail industry to provide the services to the Consumer with reasonable care and skill and may make an award which could include an element of time and trouble;
- will inform the Consumer that an award is being made against the Rail ADR Scheme Member on behalf of the rail industry; and
- will, when closing the case, insofar as is reasonably possible, record where a Rail ADR Scheme Member has settled on behalf of the rail industry.



The following is a non-exhaustive list of examples of Disputes which may fall within the above category: overrunning engineering works; core infrastructure failures; late publication of timetabling information; unacceptably poor quality of management of incidents wholly outside of the control or influence of the Rail ADR Scheme Member; damage to infrastructure due to rolling stock movements not in Rail ADR Scheme Member control.

## 6 SPECIFIC EXCLUSIONS

6.1 The Rail ADR Service cannot be used to adjudicate Disputes which fall into one or more of the following categories:

- Disputes about residential and/or lineside issues;
- Disputes where some form of action under civil or criminal law is already underway;
- Disputes involving the police and/or where a criminal prosecution (including a prosecution under the Railway Byelaws) is being or has been heard in Court;
- Disputes which relate to the outcome of ongoing staff disciplinary action;
- Disputes centred on public policy (including future rail projects and consultations relating to future rail projects) industry structure, privatisation or similar;
- Disputes about the reasons for industrial action;
- Vexatious Disputes;
- Disputes which fall exclusively under the remit of the Statutory Appeals Bodies or other bodies such as the CAHA Registrar, parking appeals body (as appropriate) or other bodies;
- Disputes which relate to factors entirely outside of the rail industry's control as referred to in the NRCot (such as trespass, fatalities or other events due to force majeure) save as provided by law (ie where liability cannot be limited or excluded);
- Disputes which do not meet the Eligibility Criteria;
- Disputes which prejudice byelaw enforcement, parking appeals and actual issuing of parking notices or penalty fares;
- Disputes where the amount claimed as compensation exceeds the Maximum Award Limit;
- Disputes that are business-to-business (B2B ie between a Rail ADR Scheme Member and a business).

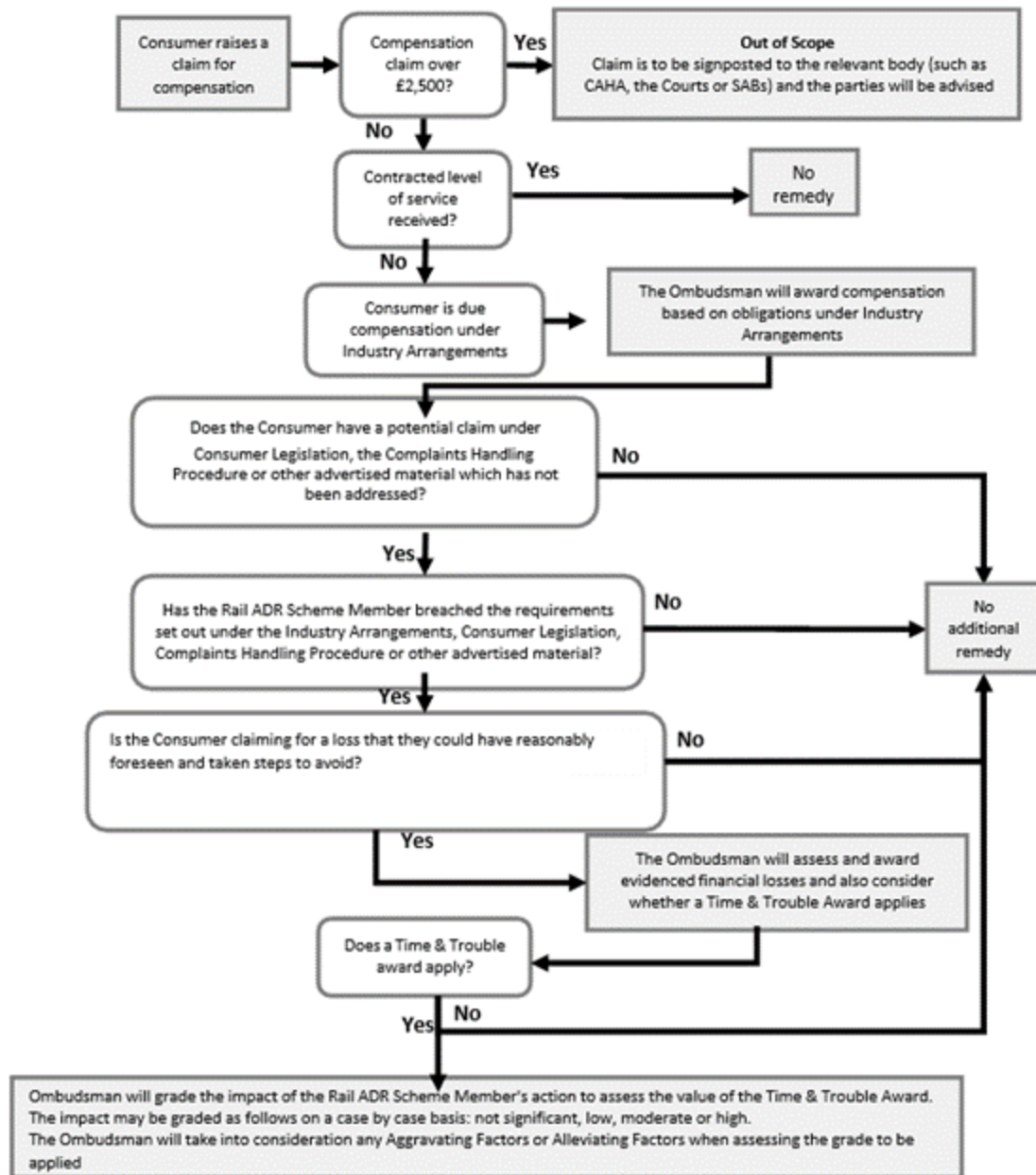
6.2 An award of compensation cannot exceed the Maximum Award Limit. Disputes where the Consumer is clearly seeking compensation for more than £2500 from the outset will be out of scope of the Rail ADR Service and sign-posted to the relevant body (such as CAHA, the Courts or the Statutory

Appeals Bodies); however, should it emerge during an investigation that a Dispute merits compensation of more than £2500, the Ombudsman will communicate this to both the Rail ADR Scheme Member and the Consumer. If a negotiated settlement cannot subsequently be reached, the Ombudsman may issue a Decision supporting the Consumer's claim in the Courts.

- 6.3 Consumers are not entitled to compensation for losses which arise in the course of any business arrangements such as loss of opportunity or loss of earnings, legal expenses and time taken in managing their complaint.
- 6.4 If the Dispute is about something not covered by the Rail ADR Service Rules or raises a complex issue of law, the Ombudsman will determine on a case by case basis the extent of its eligibility.

## 7 THE OMBUDSMAN'S APPROACH TO ASSESSING COMPENSATION

The following diagram sets out the Ombudsman's approach to assessing compensation, which may be awarded alongside other applicable remedies.



- 7.1 Consumers are entitled to claim damages insofar as is provided by law.
- 7.2 The Ombudsman will grade the objective impact of the Rail ADR Scheme Member's breach based on an assessment of what is fair and proportionate with consideration to the nature and extent of the complaint, whether the issues are isolated or repeated as far as that Consumer is concerned, the impact on the Consumer, the speed and quality of the Rail ADR Scheme Member's response (as is reasonable taking into account the Rail ADR Scheme Member's response times stipulated in its franchise agreement / rail passenger contract, or elsewhere (such as relevant regulatory obligations) and the actions taken by the Consumer to minimise the impact suffered.

- 7.3 Awards will be made per Consumer and considering the unique circumstances of their Dispute and the law.
- 7.4 The Ombudsman will apply an objective test based upon an assessment of the impact of the Dispute on the reasonable person or average consumer, save where the Consumer Legislation stipulates a different standard.
- 7.5 In coming to a decision on compensatory entitlement, the Ombudsman will assess whether the Consumer has been provided with the level of service in accordance with the Industry Arrangements. If this has not been the case, the Ombudsman will assess redress which has already been provided under Delay Repay or other compensation regime along with any gestures or apologies which the Rail ADR Scheme Member may have offered.
- 7.6 If the Ombudsman still considers the Consumer's legal entitlement or the Rail ADR Scheme Member's obligations under the Industry Arrangements have not been met, it will make an award which addresses the shortfall. This may include a Time & Trouble Award.
- 7.7 The Ombudsman cannot make punitive awards.
- 7.8 The Ombudsman will provide a Decision in a format appropriate to the Consumer to all parties in the Dispute setting out a summary of the reasons for the decision, the source of any independent expert advice that has informed the Decision, the amount of the award and how it was justified, the timescale in which the Rail ADR Scheme Member must deliver redress once the Decision has been accepted by the Consumer and a requirement for the Consumer to accept the Decision via the Rail ADR Service within 20 Working Days of the date of the Decision being issued (or longer in Exceptional Personal Circumstances at the discretion of the Ombudsman). The Decision will also state that the Consumer is not bound by the Decision and other channels remain open to them to pursue their claim. However, it will also state that if the Decision is accepted by the Consumer, the terms of the Decision will be in full and final settlement of the Dispute.
- 7.9 As a guide, a Time & Trouble award will be made using the following bands, as determined applicable by the Ombudsman on a case-by-case basis:

		<b>Trouble</b> Recognition of non-financial losses incurred by the Consumer			
		<b>Not Significant</b>	<b>Low</b>	<b>Moderate</b>	<b>High</b>
<b>Time</b> Recognition of the additional time incurred by the Consumer because of the act or omission of the Rail ADR Scheme Member	<b>Not Significant</b>	No £ Award	Up to £25	Up to £50	Up to £500
	<b>Low</b>	Up to £25	Up to £50	Up to £100	Up to £750
	<b>Moderate</b>	Up to £50	Up to £100	Up to £250	Up to £1500
	<b>High</b>	Up to £500	Up to £750	Up to £1500	Up to £2500
<p>In deciding cases on their individual merits, the Ombudsman may depart from these bands where it is reasonable to do so. In such circumstances the rationale for the departure will be clearly stated.</p> <p>Aggravating Factors and Alleviating Factors will be applied within the bands and could increase or reduce an award.</p>					

7.10 A claim under the Equality Act 2010 which relates to injury to feelings alone could merit the maximum award in certain circumstances. The Ombudsman will consider:

- Whether the issue was one-off or a sustained campaign of discrimination;
- Was it particularly humiliating and what effect did it have on the individual;
- Was there rude and insensitive language used?
- Was it in front of other people?
- Did it relate to private/intimate aspects of a person's life?

7.11 The Ombudsman will consider the following:

Aggravating Factors	Alleviating Factors	Apology/Gestures	Consumer Action
<ul style="list-style-type: none"> <li>• Lack of planned (booked) assistance</li> <li>• Lack of unplanned (<i>Turn-up-and-go</i>) assistance</li> <li>• Lack of provision of advertised services without notice, particularly if it impacts a vulnerable Consumer</li> <li>• Non-compliance with Industry Arrangements</li> <li>• Conduct of staff</li> <li>• Communication breakdowns</li> <li>• Needless difficulties whilst going through the applicable Complaints Handling Procedure</li> </ul>	<ul style="list-style-type: none"> <li>• Prompt payment of Delay Repay (as is reasonable taking into account the Rail ADR Scheme Member's response times stipulated in its franchise agreement/rail passenger contracts or relevant regulatory obligations)</li> <li>• Issue of apology</li> <li>• Information provided in a timely manner</li> <li>• Compliance with Industry Arrangements</li> <li>• Alternative provision of assistance</li> <li>• Communications with Consumer</li> <li>• Action taken in advance to alleviate the impact of the issue, for example information posters and emergency timetables</li> </ul>	<ul style="list-style-type: none"> <li>• An explanation</li> <li>• Apology – verbal/written</li> <li>• Refund</li> <li>• Free items on train or at station</li> <li>• Vouchers (in addition to Delay Repay)</li> <li>• Complimentary travel</li> <li>• Flowers or other goodwill gesture</li> </ul>	<ul style="list-style-type: none"> <li>• Did the Consumer abide by their obligations under contract?</li> <li>• Has the Consumer received redress via another forum?</li> <li>• Did the Consumer take action to mitigate their losses i.e. travel via an alternative route to minimise inconvenience?</li> <li>• Did the Consumer make a complaint that is a Frivolous Dispute or a Vexatious Dispute?</li> </ul>

The Type of Service:

The nature of the service and the conditions applicable to this will be taken into account by the Ombudsman.

For example: A Consumer who is unable to sleep on a sleeper service due to the Rail ADR Scheme Member double-booking their pre-booked berth will experience a different level of inconvenience, and have a different initial expectation of service standards, when compared to a Consumer who is unable to find a seat on a 20 minute commuter service.

## Glossary

<b>ADR</b>	Alternative Dispute Resolution.
<b>Advertised Timetable</b>	Any timetable including any short-term or interim timetable published by a Rail ADR Scheme Member up to 10pm prior to the day of travel.
<b>Aggravating Factor</b>	An act or omission by the Rail ADR Scheme Member which increases the severity of the circumstance and its effect on the Consumer.
<b>Alleviating Factor</b>	The action taken by the Rail ADR Scheme Member to reduce the severity of the circumstance and its effect on the Consumer.
<b>CAHA Registrar</b>	Claims Allocation and Handling Agreement Registrar.
<b>Charter</b>	The Passenger Charters of each Rail ADR Scheme Member containing the terms under which the Consumer travels.
<b>Common Law</b>	Decisions taken by a Court or similar tribunal which create precedent to which the Ombudsman will look for guidance.
<b>Complaints Handling Procedure</b>	The published complaints handling procedure of the individual Rail ADR Scheme Member.
<b>Consumer</b>	An individual who has undertaken, or has attempted to undertake, a journey on a Scheduled Rail Service, and has purchased (or has had purchased on their behalf), or has attempted to purchase, a ticket for that journey.
<b>Consumer Legislation</b>	Consumer Rights Act 2015, Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013; Equality Act 2010; Consumer Protection from Unfair Trading Regulations 2008, Electronic Commerce (EC Directive) Regulations 2002 and any other legislation, regulation or statutory instrument which may from time to time be enacted which would confer rights upon the Consumer and obligations on the Rail ADR Scheme Member that applies to the Rail ADR Scheme Member's provision of service at the time when the original Dispute was triggered.
<b>Consumer with Reduced Mobility</b>	A Consumer who has a permanent or temporary physical, mental, intellectual or sensory impairment which, in interaction with various barriers, may hinder their full and effective use of transport on an equal basis with other passengers or whose mobility when using transport is reduced due to age.
<b>Deadlock Letter</b>	The letter sent by the Rail ADR Scheme Member to a Consumer when the Rail ADR Scheme Member believes that it has exhausted all possibilities of resolving a dispute and there is no further progress possible. The letter will state this, that the Rail ADR Scheme Member can do no more and that it is the final position. It will also sign-post the Consumer to a means of ADR.
<b>Decision</b>	A decision by the Ombudsman on the fair outcome of an In Scope Dispute that is binding on a Rail ADR Scheme Member.
<b>Dispute</b>	Any complaint to which a Consumer has (in their opinion) had an unsatisfactory response from the Rail ADR Scheme Member in relation to which they wish to apply, or an application has been made, to the Ombudsman in accordance with the Rail ADR Process
<b>Accessible Travel Policy</b>	The Accessible Travel Policy published by each Rail ADR Scheme Member setting out the way in which it will assist Consumers with disabilities accessing their services.

<b>Eligibility Criteria</b>	The conditions which a Consumer must meet to bring a claim to the Ombudsman which are set out in the Rail ADR Service Rules.
<b>Exceptional Personal Circumstances</b>	Evidenced significant life events for the Consumer (including bereavement, severe illness and hospitalisation) or prior arrangements (including where the Adjudication is issued at a time when the Consumer is away from their place of residence or where there is an accessibility-related circumstance) that prevent the Consumer from being able to comply with the mandated Rail ADR Service response times in the Eligibility Criteria.
<b>Frivolous Dispute</b>	A complaint considered to have no serious purpose or value.
<b>Industry Arrangements</b>	<p>a) where the Rail ADR Scheme Member is an Operator, the express terms of the contract between the Rail ADR Scheme Member and the Consumer as set out in the NRCoT, and, where applicable, the Charters. In addition, and insofar as they form the basis of the contract, the following provisions may be relevant in determining contractual liability: TSA (Ticketing and Settlement Agreement made between the Operators named in the Schedule to that Agreement dated 23 July 1995 as subsequently amended from time to time), the Rail ADR Scheme Member's Accessible Travel Policy (ATP), the Rail ADR Scheme Member's Complaints Handling Procedure, the ORR's Complaints Code of Practice and Delay Compensation Code of Practice, and any other applicable terms and conditions which form part of the contract between the Rail ADR Scheme Member and the Consumer. The versions of the above policies that are in use at the time of travel or ticket purchase will apply;</p> <p>b) where the Rail ADR Scheme Member is not an Operator (for example, a third party retailer of rail tickets), then the documents establishing their duties will be identified on their entry to the Rail ADR Service and used by the Ombudsman when adjudicating In Scope Disputes;</p>
<b>In Scope Dispute</b>	A Dispute accepted as being 'in scope' of the Rail ADR Service in accordance with Section 5.
<b>Maximum Award Limit</b>	The maximum limit of £2,500 per Consumer party to an In Scope Dispute as a compensation award.
<b>Negotiated settlement</b>	Where the parties in a Dispute have reached a mutually acceptable resolution to the case independent of the Ombudsman.
<b>NRCoT</b>	The National Rail Conditions of Travel which outline the rights and responsibilities when travelling along with the minimum requirements to which a Rail ADR Scheme Member should adhere.
<b>Ombudsman</b>	The provider of the Rail ADR Service appointed by ORR from time to time.
<b>Operator</b>	Any passenger train operating company who is a signatory to the Ticketing and Settlement Agreement made between the Operators named in the Schedule to that Agreement dated 23 July 1995 as subsequently amended from time to time.
<b>Rail ADR Process</b>	The process for dealing with Disputes under the Rail ADR Service Rules



<b>Rail ADR Scheme Member</b>	Each Operator, Network Rail Infrastructure Limited (in relation to services provided directly to Consumers at its managed stations), Train Information Services Limited (the entity responsible for National Rail Enquiries) and any other organisation in the rail industry who participates in the Rail ADR Service.
<b>Rail ADR Service</b>	The not for profit ADR service for the rail industry offering Consumers and Rail ADR Scheme Members a free out of court alternative to Dispute resolution as provided by the Ombudsman.
<b>Rail ADR Service Rules</b>	The rules and eligibility criteria for the Rail ADR Service, a copy of which will be made available to each Rail ADR Scheme Member.
<b>Simple Resolution</b>	A stage in the Rail ADR Process giving the Ombudsman the opportunity to quickly resolve an issue when it is clear that: (a) there has been an administrative error (such as correspondence being sent to a wrong address or a compensation voucher accidentally not being included in a letter); or (b) the grounds for the In Scope Dispute match previously settled In Scope Disputes for the Rail ADR Scheme Member subject to the In Scope Dispute so the outcome is already understood by the Rail ADR Scheme Member and the Ombudsman; or (c) the Ombudsman agrees a negotiated settlement within the 10 working day period the Rail ADR Scheme Member has to return the case file to the Ombudsman; or (d) the In Scope Dispute can be resolved without mediation or adjudication because the grounds for finding in favour of the Rail ADR Scheme Member or the Consumer are clear from the application of the Rail ADR Service Rules.
<b>Statutory Appeals Bodies</b>	Transport Focus and London TravelWatch.
<b>Time &amp; Trouble Award</b>	Redress for the time and trouble that the Consumer has reasonably incurred as a result of the Dispute.
<b>Vexatious Dispute</b>	A Dispute where it is apparent that the Consumer is pursuing a complaint, or persistently pursuing a Dispute, without merit and purely intends to cause inconvenience, harassment or expense to the Rail ADR Scheme Member and/or the Ombudsman.