



Report from the Independent Assessor - Referrals 2023



Independent Assessor Report 2023

All consumers and rail service providers (RSPs) who have otherwise exhausted the Rail Ombudsman's complaints process are signposted to direct their concerns to the Independent Assessor, who is available to receive comments and concerns on the standard of service and quality of decision-making provided by the Rail Ombudsman, but not the basis of decisions.

The Rail Ombudsman received 4,422 cases during 2023, of which 44 cases were escalated via the Rail Ombudsman's complaint process. Of these, nine consumers referred their service complaints to the Independent Assessor for review. Five of these referrals were rejected, on the basis that they clearly concerned the outcome of the process, which falls outside the remit of the Independent Assessor. I present the findings of the four referrals accepted for review below.

Referral One Service complaint (March 2023)

Complaint background and outcome

In this case, the Consumer agreed to accept a mediated settlement of £225.00 for a failed assistance complaint. The case was referred to me as the Consumer had difficulty obtaining the settlement agreed. The Consumer also complained that the Rail Ombudsman had failed to adhere to a reasonable adjustment request for them to be contacted by letter only.

In relation to the complaint about the handling of the reasonable adjustment request, the Rail Ombudsman had apologised for sending an email instead of a letter during the dispute case process and confirmed that the notes on the case file did indicate contact by letter only.



The Rail Ombudsman explained that the email sent was in response to an email received from the Consumer during the dispute process, which was considered urgent in nature. The decision was therefore taken to respond via email, contrary to the Consumer's previously stated needs for communication by letter only, in order to ensure that the response was received in good time. I explained to the Consumer that I considered this to have been an error in judgement but one that should not have occurred, regardless.

In respect of the agreed settlement, I found that the Rail Ombudsman's Aftercare team should have escalated their concerns regarding the delays in the receipt of the settlement more quickly to avoid further inconvenience to the Consumer.

The recommendations I made to the Rail Ombudsman:

- To reconsider whether the use of acronyms is appropriate when communicating with consumers, particularly where there is already misunderstanding which could be exacerbated.
- To review the Rail Ombudsman's approach to reasonable adjustments and take greater care when contacting people.
- To send a written apology to confirm the learning outcomes from the above and for sending the email.
- To request/recommend that RSPs send compensation via bank transfer where possible - and if wanted.
- To review the Rail Ombudsman's complaints process so the first response is not from the person complained of.

Action taken by the Rail Ombudsman as a result of the referral:

- An apology letter was sent from the Chief Ombudsman.
- The outcomes from this case were shared with the Rail Ombudsman team.
- The Rail Ombudsman amended their complaints process, adopting a single stage which requires a manager's response to the complaint, in place of the previous two-stage process. This means that the individual complained about will no longer issue the response to the complaint.
- The Rail Ombudsman reviewed their 'reasonable adjustments' process and the team was re-briefed on how to note and act on reasonable adjustment requests.
- The Rail Ombudsman operates an 'Aftercare' service, which is available to consumers who experience delays in the fulfilment of remedies by RSPs. The Ombudsman reviewed and improved the Aftercare process, to ensure the prompt, consistent escalation of Aftercare issues. Internal training was carried out to ensure the implications of delays in receipt of remedies by consumers were better understood.



Referral Two Decision and service complaint (March 2023)

Case/complaint background

In this case, the Consumer's complaint was about an incident caused by lack of access to toilet facilities. It was clearly a sensitive case. The case was concluded by the Ombudsman via an Adjudication report which did not uphold the Consumer's complaint. The Consumer complained to the Rail Ombudsman and received an explanation of the decision and the handling of the case. However, the Consumer remained dissatisfied and escalated their complaint to me.

I found that the Rail Ombudsman could have considered the service complaint differently because of the sensitive nature of it. It is my view that in trying to promote the impartiality of the investigation the Rail Ombudsman lost sight of the need to acknowledge the humiliation and loss of dignity incurred by the Consumer as a result of the original experience, and the frustrations of trying to resolve this matter.

The recommendations I made to the Rail Ombudsman:

- Notwithstanding the need to maintain impartiality, the Rail Ombudsman should consider the tone of responses and the use of empathy when dealing with highly emotive complaints.
- Whilst complaints about health and safety issues are outside of the scope of the Rail Ombudsman, this an opportunity for the Rail Ombudsman to highlight the inconsistencies of RSPs having multiple policies about access, inclusion of disabled people and so on, yet not providing basic facilities on the train.
- The Rail Ombudsman should be clearer when communicating with consumers.
- Complaints about RSPs which are by, or on behalf of, disabled people or people with additional needs should be managed outside of the ordinary processes to ensure that all reasonable adjustments are met, and greater emphasis can be placed on impact on the individuals concerned.
- The Rail Ombudsman should offer an apology for not responding within the usual timescales to the service complaint.

Action taken by the Rail Ombudsman as a result of the referral:

- An apology was sent from the Deputy Chief Ombudsman.
- The Rail Ombudsman implemented a new triage process whereby cases which are raised by, or on behalf of, disabled people or people with additional needs are dealt with by a single point of contact via telephone (unless an alternative method of contact has been requested.)



- The Rail Ombudsman actioned a team briefing and additional training regarding communication styles.
- This case was highlighted and discussed during the Rail Sector Liaison Panel to enable industry learning. The minutes are available to view on the [Rail Ombudsman website](#).

Referral Three Service complaint (May 2023)

Case/complaint background

In this case, the Consumer was affected by disruption in May 2022 caused by the closure of a train station after a major football match and was seeking their alternative costs of getting home. The case was closed by the Rail Ombudsman on the basis that the RSP's service did run, and the station closure was beyond their control.

The Consumer complained that they had expected to be able to comment on the response from the RSP before the case was closed. Also, that the complaint was not fully understood by the Rail Ombudsman and therefore the provision of information was not fully addressed. The Consumer also complained that as it had already been decided that they were not entitled to a refund of their taxi costs (as the RSP's service did run and the station closure was beyond their control) referring to the lack of evidence produced to illustrate these costs was "an aspersion that is entirely unwarranted and should have no part in your explanation of your handling of this case." The Consumer also suggested that this was intended to "cast doubt on [their] good faith in daring to continue pursuing the complaint."

I agreed with the Consumer that the Rail Ombudsman was right to apologise for the delays in handling the case and the complaint. I also reiterated that a complaint should not be investigated in the first instance by the person subject to the complaint (similar to the issues encountered in Referral 1 above.)

The recommendations I made to the Rail Ombudsman:

- I repeated a recommendation made previously that any team member at the Rail Ombudsman who is complained about should not investigate that complaint. I note that process revisions were underway when this complaint was referred to me and the original complaint was assessed under the old process.
- The Rail Ombudsman must be clear about the basis for their decision-making and ensure that decisions are consistent with the evidence and information supplied. When an ombudsman makes a decision on the balance of probability, they must set out what factors are used to weigh the decision-making.
- The Rail Ombudsman should consider enabling a consumer to respond to evidence supplied by an RSP. Especially in situations where that evidence conflicts with the consumer's account.



- The Rail Ombudsman should review its approach to communicating decisions about certain aspects of complaints, especially those relating to financial compensation, understanding that these are sensitive issues for consumers which can impact on perceptions of integrity.
- The Rail Ombudsman should send a further written apology addressing learning outcomes arising from this complaint.

Action taken by the Rail Ombudsman as a result of the referral:

- An apology was sent from the Deputy Chief Ombudsman.
- The service complaints process was amended as a result of learnings taken from this case and also from Referral 1. (Please see Referral 1 for a description of the actions taken relating to the adoption of a single-stage complaint process.)
- The Rail Ombudsman implemented an internal target for responding to complaints of 10 working days. This is lower than the externally published timescale of 15 working days, in order to provide contingency and promote timely responses. In the event that any exceptions to this should arise, this will be immediately communicated to the consumer with an expected response time, and this will be logged.
- The Rail Ombudsman carried out a review of the quality check process, re-emphasising that all quality checks should be shared with individual case handlers during their 1:1s to ensure continuous learning and development.
- Refresher training was shared with the Rail Ombudsman team in relation to both Alternative Dispute Resolution processes in general and communicating effectively.

Referral Four Service and Decision complaint (May/July 2023)

Case/complaint background

In this case, the Consumer complained about missing a special family occasion because they decided not to travel due to the cancellation of their planned service. The Consumer's complaint was not upheld at Adjudication and the decision focused on the lack of adequate contingency factored into the Consumer's travel plans. The Consumer's service complaint concerned a lack of clarity in the decision and the escalation additionally related to delays in the Rail Ombudsman's response to the service complaint

The Rail Ombudsman responded to the service complaint under its revised complaints process. The Rail Ombudsman accepted that the decision could have been explained better and offered a call to discuss the matter further. However, that call did not happen until two months later. The Consumer then escalated their complaint to me. I agreed that the adjudication could have been more clearly expressed, using less jargon. I also agreed that the follow-up call should have been actioned more quickly.



The recommendations I made to the Rail Ombudsman:

I recommended that the Rail Ombudsman apologise for the delays in dealing with the complaint and ensure more effective diary management in future. I also recommended that the Rail Ombudsman review the ways in which it communicates with consumers and is less legalistic in its approach.

Action taken by the Rail Ombudsman as a result of the referral:

- The Rail Ombudsman sent a written apology to the Consumer for the delays in calling them back.
- The comments regarding communication, specifically the need to use less jargon and to be less legalistic in our approach, were discussed with the Rail Ombudsman team to ensure ongoing improvements.

SUMMARY OF RECOMMENDATIONS AND PROCESS CHANGES IMPLEMENTED BY THE RAIL OMBUDSMAN

The main themes of recommendations this year related to complaint handling and communication styles. As below, the Rail Ombudsman has made several process improvements during 2023 which relate to these themes.

Communication recommendations:

I have recommended that the Rail Ombudsman:

1. Review how the team communicates with consumers and aim to be less legalistic in its approach, reiterating the Plain English principles and training.
2. Ensure staff are transparent about the basis for decision-making and that decisions are consistent with the evidence and information supplied. When an ombudsman makes a decision on the balance of probabilities, they must set out what factors are used to weigh the decision-making.
3. Review how decisions are communicated to consumers, especially those relating to issues such as financial compensation, understanding that these are sensitive matters for consumers, potentially impacting on perceptions of integrity.
4. Review how impartiality is communicated, recognising that there is still a need to acknowledge the consumer's original experience.
5. Improve communication relating to out-of-scope issues that may be raised through other means.



Action taken by the Rail Ombudsman:

- Implementation of an improved Triage process, with any cases involving complicating factors or identified additional passenger support needs being assigned to a more experienced Ombudsman as a single point of contact.
- Review of the quality check process and continued sharing of quality checks with staff during their 1:1s to ensure continuous learning and development.
- Ensure more information is available for consumers on the website, including the eligibility criteria for cases and the compensation framework.
- Internal training has taken place regarding ADR processes in general and effective communication.
- Enhanced mediation skills training has been delivered by a specialist external provider.
- Review of the reasonable adjustments process with a reminder to the team on how to note and action reasonable adjustment requests.
- Enhanced accessibility features are being considered in an effort to improve communication with consumers, such as the ability to offer video conferencing, facilitating more interactive discussions.
- Review of aftercare processes including the implementation of a revised process to escalate aftercare complaints.
- New consumer and member panels are being set up in a continued effort to discuss industry recommendations and current case themes. The Rail Ombudsman will be transparent about the service it operates, providing assurance to stakeholders across the industry and consumer landscapes and the opportunity to review and develop the service it provides.

Complaint handling recommendations:

I have recommended that:

1. Any team member at the Rail Ombudsman who is complained about should not investigate that complaint.
2. Actions must be completed in a timely manner and the Rail Ombudsman should communicate clearly with Consumers if it needs to depart from stated timescales for any reason

Action taken by the Rail Ombudsman:

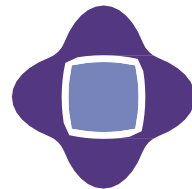
- An improved complaints process has been implemented, featuring a single stage process, incorporating a review by a manager.



- Implementation of an internal complaint handling timescale of 10 working days, which is lower than the externally published timescale of 15 working days, to provide contingency and promote timely responses.

Kathryn Stone OBE
Independent Assessor
February 2024

The Rail
Ombudsman



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