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Dear Stephanie

**Network Rail's response to ORR's call for evidence - Which? Super-Complaint on passenger compensation**

This letter sets out Network Rail's response to ORR's call for evidence on the Which? Super-Complaint. The Super-Complaint centres on concerns that most delayed rail passengers are not aware, nor apply for, the compensation to which they are entitled.

Which? has asked ORR to make enquiries into three specific areas, namely:

1. The extent to which TOCs are contributing to a low proportion of passengers securing their rights to compensation for delays;
2. The drivers of TOC behaviour, and the pervasiveness of these drivers within the sector; and
3. Changes that are needed in regulation, and ultimately by TOCs, to ensure that passengers are aware of and are able to secure their rights to compensation.

Network Rail's response focuses on questions 2 and 3, which are directly linked to the current industry performance regime (Schedule 8). Network Rail is a key participant of Schedule 8 (we administer the regime, and all liabilities between operators flow through Network Rail via the 'star model'). We would, therefore, be directly affected by any changes to the regime. We have not made any comments on question 1, as we consider that train operators are best-placed to answer this.

The remainder of this letter is set out as follows:

- Introduction: The importance of dealing with disruption appropriately
- Network Rail comments on Which? question 2: the drivers of TOC behaviour, and the pervasiveness of these drivers within the sector
- Network Rail comments on Which? question 3: changes that are needed in regulation, and ultimately by TOCs, to ensure that passengers are aware of and are able to secure their rights to compensation
- Conclusions

## **Introduction: The importance of dealing with disruption appropriately**

Network Rail and train operators work hard to run a punctual and reliable train service for passengers. Unfortunately, there are times when things do not go to plan and regrettably, passengers experience delays. When there are delays, the way that the industry deals with it can have a significant impact on passenger experience, and consequently on passenger perceptions of the railway. There are two main factors that we consider may impact on passengers' experience in the event of disruption.

### **1. Providing compensation for delays**

If passengers receive an appropriate level of compensation for the delay that they experience, it seems plausible that they would be less likely to be deterred from using rail travel in the future. This should minimise the long-term impact on the industry of that disruption. Therefore, it is important that the industry does all it can to provide passengers with the compensation that they are due.

### **2. Providing information to passengers during disruption**

While this is not directly linked to passenger compensation, it is nonetheless an important aspect of the passenger's journey. If passengers receive excellent information about disruption, they can make informed decisions to mitigate the impact of the disruption on them. Communication is especially important for passengers who have alternative travel options available to them. If informed correctly, these passengers can choose alternative modes of transport to get them to their destination. This could help to minimise the inconvenience that passengers experience as a result of delays, and improve overall travel experience.

If dealt with well, these two factors are likely to improve the long-term 'health' of the industry.
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## **Network Rail comments on Which? question 2:**

### ***The drivers of TOC behaviour, and the pervasiveness of these drivers within the sector***

In considering the issue of passenger compensation, it is important to recognise that train operators have commercial incentives to minimise delays to passengers, over and above the passenger compensation arrangements. Not only do they strive to run an excellent service for their passengers, but they also face financial risks for missed performance targets, both through the industry's performance regime (Schedule 8) and, for franchised passenger operators, through franchise agreements with government. We discuss these in more detail, below.

### *Schedule 8*

Delays experienced by passengers are not always the fault of the train operator running that service – Network Rail and other operators can also cause delays. The Schedule 8 regime provides a mechanism through which operators receive compensation for delays to their services which are not their fault. This compensation covers the operators' lost fare revenues as a result of passengers being put off using rail travel for future journeys, due to the delay they have experienced (i.e. the long-term financial impact of disruption). Consistent with this, under Schedule 8, operators must make payments for delays which they cause, to compensate train operators that they have affected. These payments provide operators with a commercial incentive to minimise delays.

Schedule 8 payments do not include a component to reimburse operators for the passenger compensation that they may provide as a result of the delay. We consider that this approach could cause some reluctance on the part of train operators to pay passenger compensation, especially for delays which they have not caused themselves.

### *Franchise agreements*

All franchised passenger operators have performance targets in their franchise agreements with government. If these targets are missed, this could mean that the operator faces consequences with its franchising authority. Therefore, these targets are very important to operators, and provide a very strong incentive for them to achieve or exceed targeted performance levels.

In addition to performance targets, passenger compensation mechanisms are often specified through franchise agreements. The payments made to/from the government for the rights to run the franchise are 'fixed' (these payments are called franchise premiums). Therefore, operators are likely to have factored in the expected costs of providing passenger compensation into these fixed payments when they bid to operate their franchise. Operators will, therefore, be fully exposed to any additional passenger compensation that they must pay in excess of their original assumptions at the time they were awarded their franchise.

There could be merit in exploring whether the current franchise regime, with fixed premiums payable to/by operators, means that operators are less willing to pay compensation to their passengers.

### **Network Rail comments on Which? question 3:**

#### ***Changes that are needed in regulation, and ultimately by TOCs, to ensure that passengers are aware of and are able to secure their rights to compensation***

As noted above, two of the key drivers of operators' behaviours are likely to be Schedule 8 and franchise agreements. These are both discussed, below.

### *Schedule 8*

As already noted, the current purpose of Schedule 8 is not to cover passenger compensation payments. Instead, it compensates train operators for the long-term financial impact of disruption to their services. This can lead to misunderstandings about the relationship (or lack thereof) between Schedule 8 and passenger compensation, causing frustration to passengers who read about operators receiving compensation for delays which is not passed on to them.

There could be merit in a more joined-up approach between Schedule 8 and passenger compensation (i.e. by incorporating passenger compensation into the Schedule 8 regime). This may remove any potential reluctance on the part of operators to provide appropriate compensation to passengers for the delays they experience.

### *Franchise alignment*

Currently, operators are provided with Schedule 8 compensation for all disruption which is not their fault, compared to a benchmark level of performance. Conversely, passengers are only able to claim compensation for delays over 30 minutes (in most cases). If a more joined-up approach between Schedule 8 and passenger compensation were to be adopted, it will be important to consider how to address this misalignment. We should ensure that the compensation that operators are provided with is consistent with the compensation that passengers are paid.

There could also be merit in funders specifying consistent compensation arrangements for all franchised passenger operators. Currently, there are different arrangements for some of the franchises. Different approaches for different operators could confuse passengers when trying to claim compensation for the disruption that they have experienced.

A consistent approach across franchise operators would seem likely to lead to less confusion about the issue amongst passengers.

### *Purpose of Schedule 8*

Regardless of any potential changes to Schedule 8, it is very important that we are clear on the intended purpose of the performance regime. If, as an industry, we believe that the current purpose is wrong, then we should seek to fundamentally change it rather than continually making tweaks to the existing regime. For example, if the industry decided that Schedule 8 should include an element for passenger compensation, then we should ensure that this is embedded into the regime, rather than 'bolting-on' elements to provide for this. This is consistent with the RDG Review of Charges conclusions, which explained that, as an overarching point, the industry should have a broader and clearer understanding of the purpose and aim of the regime.

## Conclusions

1. As an industry, we always try to minimise delays. When delays do occur, we should do all we can to **mitigate the impact on the passengers** (through better information and passenger compensation, where appropriate).
2. We should recognise that there are many drivers of train operator behaviour other than passenger compensation arrangements. These mechanisms all seek to incentivise operators to do the right thing for passengers. However, the incentive effects of these regimes can sometimes be inconsistent, resulting in mixed messages being sent to train operators. **These incentives should be aligned wherever possible.**
3. It is clear that Schedule 8 is often misunderstood, both within and external to the industry – we should strive to improve this. In addition to this, **we recommend that incorporating passenger compensation into Schedule 8 should be considered as part of the PR18 review of Schedule 8.** We would welcome further discussion about this with ORR and the industry. Without this, there may be some reluctance from train operators to pay passenger compensation.
4. **Any changes to the Schedule 8 regime to incorporate passenger compensation would need to be reflected in the franchise agreements** between franchised passenger operators and government. If not, these operators may accrue additional revenue from having 'won' a franchise on the basis of being responsible for paying passenger compensation, but also getting funding to provide this compensation through Schedule 8.

If you would like to discuss the content of this letter in more detail, please contact myself or my colleague Caitlin Scarlett ([Caitlin.Scarlett@networkrail.co.uk](mailto:Caitlin.Scarlett@networkrail.co.uk)).

Yours sincerely

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