



## ORR issues new Guidance for Complaints Handling Procedures

### Summary of ORR's new CHP Guidance

Our **May 2015 Rail Briefing** provided an update on ORR's call for consultation responses in relation to new Guidance for Complaints Handling Procedures ("CHPs"). ORR have now **written to stakeholders** informing them of the outcome of that consultation and published **new Guidance for CHPs** effective from 30 September 2015. It is clear that the new Guidance will require revisions to existing CHPs and should be carefully considered by licence holders.

The new CHP Guidance represents an important statement of the move towards outcomes focussed regulation. ORR has moved away from compliance in letter and form. In fact, the new Guidance provides considerable flexibility as to the content of individual CHPs. Instead, ORR will require licence holders to actively demonstrate compliance in practice through use of empirical data ("Core Data Indicators") as evidence that CHPs are effective in practice.

As part of this step change, the new Guidance removes the requirement for operators to submit their CHP to ORR for review annually. ORR instead reserves the right to monitor licence holders' CHP data, and audit licence holders if needed. This new approach, alongside other measures in relation to information sharing, relies on the effective capturing and sharing of personal data and therefore has important Data Protection Act implications.

Looked at in its wider context, the focus of the new Guidance on outcomes focussed regulation and promoting frequent, clear and easily accessible customer communication is consistent with ORR's practice in other areas, in particular its approach to Disabled People's Protection Policies (DPPP) and Passenger Information During Disruption (PIDD). It also adds to a growing and fast evolving body of consumer rights of which licence holders must be aware. ORR and DfT may well look at the impact and success of these policy revisions when considering the extent to which the Consumer Rights Act 2015 will apply to passenger rail services prior to the Act coming into force in respect of such services in April 2016.

### Key features of the proposed CHP Guidance

ORR expects an effective CHP to enable individual complaints to be resolved promptly, consistently and fairly and to allow continuous improvement within the licence holder's organisation, through identifying and addressing the root

causes of complaints and putting systemic solutions in place.

ORR expects these essential CHP requirements to be met through consideration of three "core standards" which represent different aspects of the CHP process: (i) feedback mechanisms and response; (ii) people, process and structure; and (iii) organisational culture.

### Making information more visible

Ensuring customer access to complaints information is clearly a high priority for ORR. The Guidance suggests complaints information should appear in all 'major publications' of the licence holder and be prominently displayed at stations (including not just those managed by it but also those to which it provides services).

In addition to making complaints information itself more visible, the Guidance also seeks to promote greater visibility of the complaints handling process. Information provided to passengers should include who to complain to, what information customers should include, projected timescales for response and escalation paths. Passengers should be given the right to be kept informed at all times of how their complaint is being handled.

The Guidance also promotes greater visibility of passengers' rights to compensation for disruption and delay. Licence holders should therefore consider revising the CHP in line with recent changes to the delay/repay obligations in the National Conditions of Carriage and recent developments to PIDD.

### Update for Social Media

License holders will also need to think carefully about how they handle complaints through their websites and social media. ORR expects CHP information to be made available "within two clicks" from the licence holders' homepage and for each licence holder to have a Social Media Policy documenting the extent to which it is willing to engage within social media in handling complaints.

The ORR has clearly given special consideration to how Twitter is currently being used as a customer interface. Both ORR's letter to stakeholders and the impact assessment for this Guidance refer to operators finding ways of effectively recording and responding to complaints received in Tweets and earlier this year ORR issued non-binding guidance, catchy titled "**How to tweet your customers' right**", providing further advice on this issue.

## Sharing complaints information

Of fundamental importance, ORR wants the right to be able to access customer complaints information and to speak to customers directly regarding their experience of complaint handling. This also features in the Guidance requirement for information sharing between licence holders (in multi-operator complaints) and with Transport Focus or London TravelWatch (in respect of all unresolved complaints).

Data protection legislation requires the customer to give informed consent to such processes and information sharing and the new guidance is clear that “data protection concerns must be properly addressed” to allow for these information sharing measures.

Licence holders will need to review their DPA processes.

ORR suggests the consent issue could be dealt with through online complaints forms allowing tick box consent. However, licence holders will need to consider what works for them. In any event, licence holders using alternative (non-web based) complaints processes will also have to think carefully about having systems in place to ensure customer consent to these ORR requirements can be evidenced.

## Involvement of Third Parties

The Guidance mandates that customers are given certain specified information about how a complaint can be escalated to Transport Focus and/or London TravelWatch. This must be provided with the second substantive communication to the customer (if not earlier). ORR expects licence holders to put an “Appeals Handling Protocol” in place with Transport Focus and/or London TravelWatch to facilitate such appeals. ORR has suggested it may be most beneficial for all licence holders to agree a single Appeals Handling Protocol. It therefore plans to enter into discussions with ATOC and the passenger bodies on the development of a single protocol in the near future.

ORR has also updated the Guidance to reflect the fact that the consumer may not know the identity of a third party giving raise to the complaint and in such circumstances should be able to complain to the train operators. The Guidance therefore covers complaints raised concerning third party suppliers such as car parking providers and suppliers of rail replacement services. Licence holders may wish to take special note of the suggestion that KPIs and other suitable contractual provisions should be put in place to ensure complaints made the such third parties are dealt with effectively. The guidance also deals with instances in which it will be necessary to coordinate a

response with Network Rail, for example where the complaint results from delays caused by infrastructure issues.

## Information capture and analysis

Information capture and analysis is a fundamental requirement of the Guidance. Key objectives of the guidance – ensuring consistency and fairness in treatment of complaints, identifying root causes and opportunities to improve, and being able to demonstrate compliance in practice – all rely heavily on having effective systems which not only allow for the effective resolution of individual complaints but also allow for wider analysis at different levels within the organisation.

The level of detail to be captured by a licence holder in relation to individual complaints is left open to interpretation, as is the process for analysis. However, ORR has some key expectations which may impact on governance structures. In particular, the Guidance suggests that some decisions should lie only with Senior Management or above, and that management information on complaint volumes, trends and underlying causes “*should be regularly reviewed at Board Level*”.

## Next Steps

The new Guidance took effect on 30 September 2015. The ORR will be writing to licence holders individually over the next few months asking them to review their CHP against the new Guidance and submit it for approval. ORR also plans to hold a workshop before Christmas to discuss key issues including the use of Core Data Indicators as an ongoing measurement of compliance.

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