

Board or name of committee	ORR Board
Date of meeting	23 June 2020
Agenda item	9
Subject	Rail Ombudsman Review
Executive summary	<p>This paper provides to the Board a summary of the results of the recent review of the Rail Ombudsman following the first year of its operation. We also provide additional relevant information about the scheme's performance.</p> <p>The review found that the Ombudsman's process is working well and decisions are being made promptly. However, it needs to do more to fulfil its role to drive improvements in individual companies and across the industry. The review also identifies that governance arrangements need to be improved and recommends ORR takes on the secretariat function for the scheme council to strengthen the council's role to ensure better accountability of the Ombudsman and RDG and scheme independence.</p>
For	Discussion
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Presenter(s)	Redacted s.40 (2) (b)
Sponsor	Dan Brown
Status	Official
Last reviewed	N/A

A: Background

1. The Rail Ombudsman was established in November 2018 via a contractual agreement between RDG on behalf of its members and Dispute Resolution Ombudsman (which operates the Rail Ombudsman amongst other schemes). The scheme was approved by the relevant competent authority, in this case Chartered Trading Standards Institute (CTSI), as meeting the requirements of the Alternative Dispute Resolution regulations¹. ORR modified the relevant licences to require train, and station operators, to be members of the scheme.
2. The term ‘Ombudsman’ can only be applied to a scheme if the Ombudsman Association (OA) is satisfied that it meets its criteria. In this instance it was reluctant to do so due to concerns about the scheme’s independence. This was because the scheme had been established via a contract between the trade body, RDG, rather than approval by a sectoral regulator by virtue of legislation. Therefore, in order to demonstrate the independence of the scheme, an independent scheme council was established comprising members from Transport Focus, LondonTravelWatch, Disabled Persons Transport Advisory Committee (which currently chairs the council), Dft, and ORR. ORR has no locus in this area beyond the licence requirements set out above. Nonetheless, to provide further assurance to OA we undertook to conduct a review after year one of its operation. On this basis, the OA gave its approval to call the scheme the Rail Ombudsman.

B. Rail Ombudsman Review

Rail Ombudsman Review

3. We engaged Red Quadrant to look at the operation of the scheme against the terms on which it was appointed, current best practice, and the reporting relationships between the Rail Ombudsman and the relevant parties. We asked that the review identify any areas where the scheme should be changed or amended, including those to ensure best use of resources and deliver value for money, and make recommendations to ensure that the Rail Ombudsman scheme operates in the best interests of consumers. Finally, we asked that the recommendations be transportable and could be applied to this or any successor scheme.
4. A copy of the draft Executive summary of the review is attached at Annex A.

Key findings

5. The review found that:
 - the Rail Ombudsman is working well in that it is meeting its key performance indicators (largely focussed on speed);
 - the service it provides is valued by the train companies;

¹ A Competent Authority approves a scheme against the criteria set out in Regulations: <http://www.legislation.gov.uk/uksi/2015/542/contents/made>. CTSI approves schemes in sectors where there is not a named competent authority

- passenger survey² scores are lower in comparison to other ombudsman services;
- the duality of the RDG's role – as contract manager and scheme council secretariat — raised doubts about the ability of the scheme council to provide assurance of full independence;
- important strategic issues are not proactively being discussed by the council;
- the council had yet to identify the information it needs to hold the Ombudsman and RDG to account; and
- the ombudsman has struggled to grasp the aspect of its role which requires it to be a driver for change both at an individual company level and across the industry by proactively utilising the information it has gained from handling complaints.

Key recommendations

6. The review has made a number of recommendations to improve the current ombudsman arrangements. These have been divided according to urgency, into: immediate actions (within six months); near-term actions (within 12 months); and future actions (within the next two-three years). Highlighted below is a summary of the key recommendations.

7. A copy of the full list of the draft recommendations is attached at Annex B.

Immediate priorities

- *Governance*
8. The review recommends that ORR should become responsible for providing the secretariat function for the scheme council. It suggests that the respective council members roles are clarified, meetings restructured, and the information required to fulfil its role.
- *Operating model*
9. The review recommends that the Ombudsman provides greater transparency to consumers both in terms of its own structure but also in its decision-making via case studies. It also suggests that it reviews its staffing model to ensure the most appropriate use of resources.
- *Impact and influence*
10. The review recommends that the ombudsman proactively analyse information from cases to identify common themes and key issues and share this with train companies and scheme council in order to drive change.

² One survey of 180 users has been carried out to date. 50% of respondents rated their experience as good or fairly good. Three more experienced schemes used in the review to benchmark rank higher for consumer experience - a range of 60%-77%.

C. Related Rail Ombudsman issues

Rail Ombudsman performance

11. The Ombudsman provides a single front door for unresolved complainants, and will 'warm transfer' the passenger to Transport Focus where the matter is out of scope. In the year to 31 December 2019, the Rail Ombudsman received circa 3.2k cases, around half of which were in-scope of the scheme. The remainder were out-of-scope largely due to either the passenger contacting the ombudsman before the appropriate time (eight weeks) or it was a policy issue rather than an individual complaint which falls to Transport Focus (for example why a particular train is no longer in the timetable).
12. Over the course of the year, we have encouraged the ombudsman to develop a constructive working relationship with Transport Focus and LondonTravelWatch, both of whom were critical of the Ombudsman in the early days of its operation. This appeared to be due in part, to the consumer bodies' perception that the creation of the Ombudsman was a reflection of their own capability to handle complaints effectively.
13. The ombudsman also published its first annual report³ on 26 March 2020. The report is similar in style to other sectoral ombudsman reports published elsewhere, but there is room for improvement particularly complaints trends information and the results of the survey of passenger satisfaction with its own service.

Financial stability of the Rail Ombudsman

14. Exempted s.44 (1) (a)

15. Nonetheless, the scheme has accrued a deficit of £112k in its first year for which it has been unable to provide an explanation RDG considers satisfactory. The Ombudsman has stated that most of its costs are fixed and as a result costs are influenced less by the fluctuations in caseload. Whilst this deficit may reduce as a result of COVID-19 (the ombudsman is operating with a skeleton staff having furloughed the majority of them), any decision to make good this amount will now fall to DfT as a result of the EMA.
16. RDG has raised concerns about the financial discipline of the Ombudsman and is considering whether it should seek to terminate the contract with the ombudsman. It believes an alternative scheme can provide the service at what it considers to be a more reasonable cost.
17. We have discussed with RDG and DfT the reputational risks involved to all parties if the contract is terminated. RDG recognise that it will have to ensure continuity of service; we included a requirement on train companies in the licence that they would have to ensure this continuity should the scheme be terminated.

D. Delivery

³ https://static.railombudsman.org/roweb/wp-content/uploads/2020/03/25211504/Rail_Ombudsman_Annual_Review-FINAL3.pdf

Recommended role for ORR

18. The review notes that RDG's dual role as contract holder and secretariat creates a potential conflict of interest, raising doubts about the ability of the scheme council to be "at arm's-length" and to provide full assurance of the Scheme's independence. As noted previously, ORR has no locus in the ombudsman arrangements, beyond requiring licensees to be a member of the RDG scheme. There is no requirement in statute for a redress scheme in the rail sector and as such no role for ORR in approving, refusing, or withdrawing approval. Therefore, the recommendation that ORR takes on the secretariat function gives ORR the opportunity to provide oversight and assurance and is consistent with our consumer role. It would provide greater confidence externally of the independence of the scheme. It would also provide ORR with the opportunity to ensure that the role of the independent council is clearly defined and properly understood, and that RDG and the Ombudsman are held to account.
19. There is also a longer-term recommendation to DfT that legislation be amended to give ORR a statutory role. This would require a change to the ADR Regulations by BEIS to make ORR a Competent Authority which would put ORR on a comparable footing to other sectoral regulators.
20. An enhanced role for ORR here, whether it be in providing the secretariat function to the scheme council or via a legislative change, would appear to be consistent with a possible enhanced role for ORR in this area as envisaged in proposals from the Williams Review Team.

Stakeholder engagement

21. The high-level draft results of the review were presented to the scheme council and RDG at its recent meeting at the end of April. The council as well as RDG was supportive of the recommended role for ORR. It also expressed support for the other recommendations and was keen that these be implemented as soon as possible. We will progress the recommendations directly with the scheme council members.
22. We, together with DfT, have discussed the results of the review with the OA. It is similarly supportive of the recommendations, and has written to DfT to seek its reassurance that it remains committed to ensuring the independence of the Rail Ombudsman.
23. The high-level findings and recommendations have also been shared with the Rail Ombudsman. It has provided written comments to Red Quadrant by way of explanation in response to some of the findings relating to its performance but the veracity of the report remains. This slightly defensive response may perhaps be reflective of the fact that this is a new scheme and the Ombudsman has yet to feel fully confident in its role. The Ombudsman's Chief Executive has been absent with a serious illness since last autumn. The absence of this experience may have had a negative effect on the relationship between RDG and the ombudsman. We will be mindful of the sensitivities in this area and will proactively engage with the Rail Ombudsman on the recommendations relating to its role.

24. We will develop a project plan with delivery dates and milestones setting out how we will deliver the recommendations which we will agree with the scheme council and Rail Ombudsman.

Resources

25. We have recently recruited a new staff member to lead our work on complaints handling and the ombudsman. Therefore, this work can be carried out within our current resource.
26. We also have unspent funds available from the review. Therefore, we have asked Red Quadrant to lead a workshop with the scheme council to include priorities for: revising what is presented at scheme council meetings; restructuring the agendas and reports; and updating governance processes. It will also provide support to ORR on revising the governance handbook.

Comms

27. This provides an opportunity to further raise the profile of our consumer work and remind stakeholders of our role in establishing the ombudsman, reiterating ORR's position as the driving force in acting on behalf of passengers.
28. On welcoming the introduction of the Rail Ombudsman last year we stated that we would closely monitor its progress to ensure its long-term success in delivering for consumers.
29. A blog is recommended, highlighting the progress of the ombudsman from its formation, with key messages amplified on social media as well as communicated to our stakeholders via the newsletter.

E. Next steps

30. We publish the **redacted s.40 (2) (b)** report following the Board meeting together with our next steps and a blog on the ORR website. We will also meet with the scheme council and Rail Ombudsman as we start to implement the recommendations.

Executive Summary

The Rail Ombudsman scheme, an Alternative Dispute Resolution (ADR) scheme for railways, was launched in November 2018. RedQuadrant was asked by the Office for Rail and Road (ORR) to review the progress of the Scheme after its first year in operation. This review benefited from the contributions of a wide range of industry stakeholders as well as the Rail Ombudsman, and we thank all those who engaged with us for their cooperation. We assessed what was working well for both customers and the scheme partners from the rail industry, and identified key challenges or risks that are potentially impeding progress. The improvements recommended are intended to address these challenges, strengthen the Scheme, and enable its success.

Our research was framed by recognised principles for ombudsman schemes and best practice for good governance, as we sought to understand:

- The effectiveness of governance, contractual and other relationships between the Rail Ombudsman and its various stakeholders
- The degree to which the Rail Ombudsman is providing timely and effective redress for consumers with an efficient operating model
- The feedback loops to operators, and the degree of influence on the wider industry

The evidence underpinning our findings and recommendations was collated from in-depth desk review covering both the Rail ADR Scheme and similar ombudsman providers, alongside best practice, benchmarking, and stakeholder interviews.

Key findings and summary of key recommendations

It is important to emphasise that the Rail Ombudsman was only established in November 2018. Since this review was carried out less than eighteen months into the contract, we assessed its early progress as well as opportunities for improvement.

Notwithstanding this we have concluded that the Rail Ombudsman is performing well in several areas:

- The KPIs identified in the contract are being met
- The Train Operating Companies are satisfied with the regular support, training, and knowledge transfer which they receive from the Rail Ombudsman
- The contribution of the Rail Ombudsman to the Rail Delivery Group Complaints Working Group is both valued and encouraged

- We are reassured that the Rail Ombudsman is alive to the day to day operational issues of running an ombudsman organisation

The review focuses on three areas: governance and accountability, operations, and impact and influence. Our key findings and key recommendations in each of these areas are given below. (Detailed recommendations are outlined in the recommendations section in the main document.)

1) Governance and accountability

We note that when the Rail Ombudsman was being established, there were several complex discussions between stakeholders (including the Ombudsman Association) about the Scheme's governance arrangements, especially how lines of accountability would work in practice and how the independence of the Rail Ombudsman could be demonstrated.

The Rail ADR Scheme Council (SC) is the main body responsible for governance and assurance of the Scheme. The Scheme Council is composed of all Scheme members (the Train Operating Companies) and a "sub-committee" of independent members who represent the interests of consumers and the public. The independent members hold a majority of voting rights on most SC responsibilities, except for approving the annual budget and setting subscription fees and their apportionment.

The Scheme's governance evolved slowly during the first operational year. Meeting attendance at the SC by some scheme members and independent members, as well as the SC leadership, was inconsistent. The agendas primarily focused on the Scheme rules and the Ombudsman's start-up operations. SC meetings did not include proactive discussions of important strategic issues or assurance of the Rail Delivery Group's contract management and its relationship with the Ombudsman. Our view is that the Scheme Council has not yet identified the right level of management and performance information to make good strategic decisions and to hold both the Ombudsman and the Rail Delivery Group accountable for successful running of the scheme. Whilst we understand that formal voting by resolution is used to create a suitable level of independence for the Scheme, we believe this over-reliance on voting has delayed decision-making and compromised assurance.

We recommend that:

- The governance of the Scheme, via the Scheme Council, needs to be improved, with a particular focus on ensuring that the Scheme contractor and the Scheme provider can be held to account for their respective roles. A first step is to

transfer the secretariat role from the Rail Delivery Group to the Office for Rail and Road. The next steps are to revise the SC's meeting agendas and improve the information the SC receives.

- The SC's assurance capability can be strengthened by changing its ways of working. The governance handbook should be revised to allow the delegation to Task and Finish Groups of matters requiring deeper analysis, such as strategic issues, critical risks or options appraisal. This will strengthen assurance by creating further opportunities for independent members to contribute their expertise and perspectives. This revision will also reduce dependence on formal voting and enable the Scheme Council to take greater responsibility for the strategic viability and long-term sustainability of the Scheme.
- Clarifying the leadership roles and responsibilities of the Scheme Council will also strengthen assurance, especially in regards the Scheme's independence. In the longer term the Scheme's governance would benefit from considering the addition of independent Non-Executive Directors, to take both a strategic and an assurance role.

2) Operational delivery

We believe that the Rail Ombudsman is functioning well as an ombudsman provider. Decisions are being made promptly, TOCs are broadly satisfied with the service they receive, and very few complaints have gone to the independent assessor. To further improve, we recommend that:

- The Rail Ombudsman would benefit from gaining more detailed and regular feedback from consumers, especially around the perception of and confidence in their processes being balanced, fair and transparent.
- The Rail Ombudsman investigates areas that may improve efficiency, in particular, analysing cases for early resolution and reviewing the staffing model.

3) Impact and influence

Recognising that the Rail Ombudsman is still relatively new, we do not yet see clear evidence that they are taking on the influencing role that we expect to see from an ombudsman. The purpose of an ombudsman organisation is to act as a catalyst for improvements within the industry that they serve. While some steps have been taken in this direction, we believe more needs to be done. We recommend that:

- More emphasis is made on the Rail Ombudsman's role to provide strategic insight.

- The Rail Ombudsman uses the information they hold to feed back to the industry and promote good practice.
- The Rail Ombudsman adopts some more transparent ways of working and aims to adopt the same level of openness and transparency as a public sector ombudsman.

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Annex B

Summary of recommendations by urgency:

We have compiled all of our recommendations into this summary table using the following definitions:

- Immediate priorities - within the next six months
- Near-term actions - within the next 12 months
- Future actions - within the next 2-3 years

No.	Category	Recommendation	Responsible
Immediate priorities			
1a	Governance	Transfer the secretariat function for the scheme Council to an impartial member, ideally the Office of Rail and Road (the regulator).	ORR/Scheme Council
4a	Governance	Strengthen the independence of the scheme Council by providing role descriptions for the independent Chair and other independent members.	Scheme Council secretariat
5	Governance	Improve the capability of the SC to fulfil its governance role and remit by restructuring the SC meeting agendas. The revised agendas will clarify the distinct customer and provider accountabilities of the RDG, the Ombudsman and the SC. This will enable the SC to function proactively and more productively.	Scheme Council and secretariat
8	Governance	Clarify what information and intelligence the SC need to fulfil its remit. The results should guide the content of reports provided at its quarterly meetings and support accountability.	Scheme Council
10	Operating model	Review and update signposting to Rail Ombudsman on the website, Passenger Charter, and complaint correspondence.	Rail Ombudsman, Advocacy groups and TOCs

15	Operating model	Publish case studies more regularly on the website	Rail Ombudsman
16	Operating model	Publish Rail Ombudsman board membership and financial information on their website	Rail Ombudsman
18	Operating model	Consider whether cost savings could be identified in the staffing model by changing the requirement for all staff to be legally trained and the proportion of the process that contact advisors can complete	Rail Ombudsman
19	Operating model	Ensure the change control mechanism allows for timely discussion, decision, and resolution of change control requests	Rail Ombudsman and RDG
22	Impact and influence	Review individual case recommendations to pull out common or thematic recommendations for the industry as a whole	Rail Ombudsman
23	Impact and influence	Share these thematic/strategic findings with Scheme Council and relevant stakeholders regularly	Rail Ombudsman
24	Impact and influence	Raise understanding and expectations within the industry that this 'influence and impact' aspect is part of Rail Ombudsman's role.	Rail Ombudsman, RDG, ORR, DfT
Near-term actions			
2	Governance	Revise the governance handbook to reduce the scheme Council's over-reliance on voting for decision-making. This will strengthen assurance by creating further opportunities for independent members to contribute their expertise and perspectives.	Scheme Council secretariat

3	Governance	Create a separate subcommittee for added assurance of the scheme, such as an independently chaired Audit and Assurance Committee.	Scheme Council
6	Governance	The governance handbook should be revised to allow for delegation of matters, such as critical issues analysis or options appraisal, to Task and Finish Groups. This will reduce dependence on formal voting for decision-making and will enable the SC to take greater responsibility for the strategic viability and long-term sustainability of the scheme.	Scheme Council and secretariat
7	Governance	Consider whether the TOCs could be represented at a group level at the SC's meetings.	Scheme Council/RDG and TOCs
9	Governance	The SC should seek assurance that the Ombudsman is working in the best interests of consumers. This would mean taking an active role in setting and monitoring standards for customer experience as part of the scheme.	Scheme Council
11	Operating model	Consider what else can be done to prevent consumers from contacting the Rail Ombudsman before they are eligible, in particular before they have a deadlock letter.	Rail Ombudsman, advocacy groups and TOCs
13	Operating model	Consider developing consumer experience monitoring to measure experience more regularly through surveying and experience measures.	Rail Ombudsman
14	Operating model	Use more consumer experience monitoring to identify areas for improvement in relation to fairness and impartiality.	Rail Ombudsman
17	Operating model	Carry out an in-depth analysis of cases to identify future opportunities for quick resolution both to identify 'echo'	Rail Ombudsman

		cases and more importantly, the type of cases that tend to be able to be resolved via simple resolution.	
20	Operating model	It would be good practice to move to allow consumers to be able to bring their claim to the Rail Ombudsman 20 working days after the date of their first complaint.	ORR
21	Impact and influence	Improve data reporting and information sharing by focusing on the purpose of the data shared. This should include a narrative around findings. Consider the proposed dashboard in Appendix E.	Rail Ombudsman agreed with SC/RDG
Future actions			
1b	Governance	Establish ORR as the formal sponsor of the Rail Ombudsman through legislation.	DfT
4b	Governance	Following a further governance effectiveness review in two years, consider appointing additional independent members (non-executive directors) to the Scheme Council.	Scheme Council secretariat