

promoting quality public transport.....

Gordon Herbert
 Office of Rail Regulation
 1 Kemble Street
 London
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2nd March 2012

Dear Mr Herbert

A Greater Role for ORR regulating passenger franchisees

1. Introduction

1.1 TravelWatch NorthWest (TWNW) is an independent Community Interest Company which aims to champion and represent the views of public transport passengers in NW England.

1.2 We have responded in the last year to various consultations by regulators of different modes of passenger transport, including, in this instance the Office of the Rail Regulator. In some cases the consultation has been initiated by the regulators' parents and in others by appropriate passenger facing organisation (both statutory and otherwise).

1.3 The consultation says "Government is committed to turning ORR into a powerful passenger champion and there may well be a role for ORR to do more to protect passenger interests" and it is on this aspect (especially question 6) that we primarily wish to comment.

1.4 TWNW notes that the ORR on its inception in 1993 was the parent of what has become Passenger Focus (PF) but that in 2000 that role passed to SRA and in 2005 to the DfT. Rail regulation is currently split between the DfT and the ORR, a situation which we agree is sub optimal.

Question 2 : Please comment on the general principles against which changes in responsibility for regulation of passenger franchises should be assessed.

2.1 TWNW has observed that consumer protection models vary widely over different modes of passenger transport and that in some instances this gives rise to role conflicts (for example with regulators being tasked with promoting

competition and protecting consumers) and role ambiguities (such as simultaneously having to act as economic, safety and operating regulators).

2.2 Our preferred model has always been for a single powerful passenger transport industry regulator (utilities and the media have). We note (para 2.7) that the McNulty “Rail Value for Money” (RVFM) report in May 2011 identified a single industry Regulator as best value for money.

Question 5: Should ORR consider any revisions to its enforcement and penalties policies if it takes on a wider role? In particular, should ORR consider how and whether it could accept commitments to make improvements for passengers as an alternative to levying a penalty?

3.1 ORR can levy penalties for breach of licence when making enforcement orders. We agree it should also consider how and whether it can accept commitments to make improvements for passengers – Traffic Commissioners can already use similar powers granted to them (Local Transport Act 2008)

Question 8: Do you have any comments on the proposals for regulating complaints handling procedures?

4.1 We can support ORR’s proposal to revert to being responsible through granting licences for approving, monitoring and enforcing companies’ compliance with complaints handling (and DPPP) procedures. (para 4.3)

4.2 ORR could discharge this responsibility if their role as a licencing authority were to be strengthened. They could approve, monitor and enforce compliance with complaints handling procedures by attaching conditions to the licences they now grant to the operators of passenger stations and trains, as well as being empowered to impose financial penalties. They would no longer, as now, have to rely on inappropriate enforcement procedures such as franchise conditions (including PSRs). The only downside to this scenario is the consequential removal of Ministerial responsibility for rail passenger transport.

4.3 Initially complaints are handled by TOCs or NR but if they are not satisfactorily resolved at that stage PF offer passengers a statutory appeals procedure. ORR monitoring would therefore have to be at both these levels. Particular note should be taken of the referral powers of PF where a complaint cannot be resolved

4.4 ORR propose there should be a licence condition for TOCs to establish complaints (and DPPP) procedures and that they should have to make copies of these available to any person (not just passengers) requesting these. We agree but would go further in suggesting that the national conditions of carriage should be able to do this for all TOCs.

4.5 It is important that complaints handling procedures fully meet passenger expectations. In this respect we agree that the 2005 Complaints Handling Guidance needs to be updated. Particular thought should be given to the

location of notices and other material advertising the procedure. We believe the Guidance should become a mandatory minimum for TOCs to attain and the word “Guidance” replaced by “Requirements” or similar. This document should be specifically referred to in the license terms. The review of the guidance should include consultation with passenger bodies including ourselves.

Chapter 5 : Additional Package of reforms

5.1 We support the (para 2.11) possibilities of ORR regulating fares, and the future possibility of TOCs taking over responsibility for all aspects of station asset management from Network Rail (para 3.6)

5.2 ORR proposes that (para 5.9) licences (at the start of a new franchise) could be granted by them so as to ensure performance and safety and to meet the reasonable requirements of passengers and funders. TOWNW agrees that such a programme could be rolled out at renewal across all franchises. However we also agree that it may create some uncertainty and have the unintended consequence of raising the level of franchise bids (?).

Conclusion

In summary we support the general thrust of this consultation to simplify the regulation of rail passenger services by making ORR the sole regulator and licencing authority. It is sound and in line with what other sectors of the passenger transport industry seem to be attempting. The use of licence conditions is a sensible and flexible move in the right direction.

Thank you for the opportunity. We have no objection to this letter being published.

Yours sincerely,

(signed)

JOHN MOORHOUSE
COMPANY SECRETARY

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References (see www.travelwatch-northwest.org.uk) -

May 2011 CAA consultation on Passenger representation – consumer panels and complaints handling

July 2011 DfT on Role of Traffic Commissioners

June 2011 ORR Amending licences to give passengers more information