



## BRIEFING PAPER

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# Rail passenger rights, compensation & complaints

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### Inside:

1. Passenger rights and duties
2. Compensation
3. Making a complaint
4. European regulations



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## Summary

When passengers purchase a fare and travel by rail they are in effect entering into an agreement with the train operating company (TOC). The terms of this agreement, which define the rights and duties of both passenger and TOC, are set out in the [National Rail Conditions of Travel](#) and the [individual Passenger's Charter](#) of the TOC.

A passenger's entitlement to compensation depends on the train company they are travelling with. This is because train companies subscribe to different compensation schemes, namely the Passenger's Charter, Delay Repay or Delay Repay 15 schemes.

Almost all TOCs now operate a version of Delay Repay. Under the original Delay Repay, a passenger is entitled to compensation if a train is delayed by more than 30 minutes, which is offered irrespective of the cause of the delay. Under Delay Repay 15, eligible passengers can claim 25% of the cost of a single fare for delays between 15 and 29 minutes. Under the Passenger's Charter, compensation for individual journeys is only offered after one hour's delay and may not be offered if the reason for the delay is outside the industry's control.

It is generally agreed that Delay Repay 15 is relatively generous for single/return fare passengers, but it has taken time to introduce. The Government has stated its intention to explore the roll out of Delay Repay 15 in this Parliament, but historically it has taken many years to introduce new compensation schemes.

It could be argued that Delay Repay favours long-distance passengers. This largely relates to: commuters not being compensated for repeated poor performance below the Delay Repay thresholds; and the claims process being prohibitively time-consuming. Of the £80 million paid out in compensation in 2017/18, around 40% was paid by the two long distance operators on the East and West Coast main lines. This is despite the two franchises only accounting for 21% of total passenger revenues.

Previously, under the Passenger's Charter scheme, season ticket holders were compensated by way of an annual discount upon renewal. This was typically a 5% or 10% discount on the season ticket if one or both punctuality and cancellation targets of the train operator were not met. This is no longer the case under Delay Repay as they are refunded on the same basis as single/return fare passengers.

Both the standard and enhanced Delay Repay compensation schemes have regularly been touted as being more generous to passengers. This is true for many, but there is evidence in this paper to suggest that the shift to Delay Repay from the Passenger's Charter has left many season ticket holders worse off. Govia Thameslink Railway season ticket holders, for example, would have received considerably more compensation since the start of the current franchise under the older compensation regime than under Delay Repay.

There is also evidence in this paper to suggest that the shift from the Passenger's Charter to Delay Repay has had a positive impact on some train operator's revenues. This is because the compensation paid out under the Charter following a single year of poor performance can be enough to eclipse several years of compensation paid out under Delay Repay. Further investigation would be required to make a more authoritative assessment of the revenue impact for the wider franchising system.

# 1. Passenger rights and duties

When passengers purchase a fare and travel by rail they are in effect entering into an agreement with the train operating company (TOC). The terms of this agreement, which define the rights and duties of both passenger and TOC, are set out in the [National Rail Conditions of Travel](#) (NRCT) and the individual Passengers' Charters<sup>1</sup> of the TOC.<sup>2</sup>

On the part of the passenger, this includes duties like:

- having a valid ticket or tickets for the whole of the journey;
- travelling in the right train(s) and the right part of the train(s);
- keeping the ticket safe;
- showing and, if asked by a member of TOC staff, handing over the ticket and any associated Railcard/photocard for inspection; and
- keeping to the applicable Byelaws.<sup>3</sup>

It also sets out passenger rights on the railway, to:

- travel between the stations, or within the zones, on or within the dates shown on the ticket;
- start, break or resume a journey using trains on which a ticket is valid;
- get a refund on unused Anytime or Off-Peak tickets that are not used for any reason (an administration charge of not more than £10 would apply except in the event of delay or cancellation);
- bring luggage, animals and cycles with you (restrictions, reservations and/or fees may apply); and
- claim compensation for delay (see Section 2).<sup>4</sup>

The NRCT also sets out the TOC's broad duties to the passenger, these include things like:

- giving the passenger clear information before, during and where necessary after a journey;
- making clear to passengers when they purchase a ticket any important restrictions on how that ticket may be used;
- giving the passenger, if asked, information about timetables and fares, accessibility of rail services and facilities in trains, whether buses are likely to replace trains for all or part of the journey, and restrictions on carrying luggage, animals or cycles;
- offering reservations (where available), tickets, and any necessary assistance at no additional cost to disabled passengers of those with reduced mobility;
- giving the passenger, if asked, a full refund, if they find out after buying a ticket that their journey is going to be delayed, the train has been cancelled or a seat reservation will not be honoured;

<sup>1</sup> Most Train Companies operate a Passenger's Charter that offers additional passenger rights on their services. A list of Train Companies with Passenger's Charters can be found at [www.nationalrail.co.uk/tickets](http://www.nationalrail.co.uk/tickets)

<sup>2</sup> TOCs are required to publish and abide by the terms of their Passengers' Charters by virtue of Schedule 1.4, Paragraph 4 of the [National Rail Franchise Terms](#)

<sup>3</sup> A copy of these can be found at [www.gov.uk/government/publications/railway-byelaws](http://www.gov.uk/government/publications/railway-byelaws) or you can ask at a station ticket office for details.

<sup>4</sup> Rail Settlement Plan Ltd, [National Rail Conditions of Travel](#), 11 March 2018

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- making tickets and reservations available at stations, over the Internet or by telephone as appropriate, and where there are no facilities at the station, making tickets available for sale during or at the end of a journey;
- keeping the passenger informed before and during their journey about on-board services, station calling points and any delays that might affect the journey; and
- providing or reimbursing the passenger for the 'reasonable cost' of overnight accommodation, if delays within the rail industry's control mean that they cannot complete their rail journey that day.<sup>5</sup>

In addition to the industry arrangements set out under the NRCT, a passenger may also be able to rely on statutory rights. For example, the Consumer Rights Act 2015 provides consumers with various rights (see Section x for more discussion).

These conditions apply to travel within Great Britain only. For international rail journeys to or from continental Europe or Ireland, a different set of conditions apply. These are called the 'Uniform Rules concerning the Contract for International Carriage of Passengers and Luggage by Rail'.<sup>6</sup>

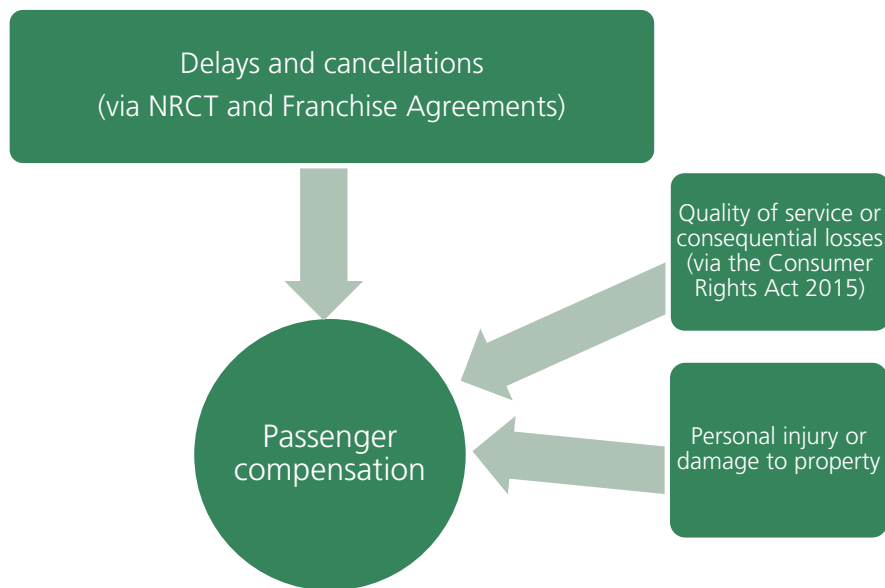
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<sup>5</sup> Rail Settlement Plan Ltd, [National Rail Conditions of Travel](#), 11 March 2018

<sup>6</sup> Further information on these arrangements can be found at [www.otif.org](http://www.otif.org)

## 2. Compensation

A passenger's entitlement to compensation is mostly based on the punctuality of a train service and much of the discussion below relates to this (Sections 2.1 to 2.4). Under the terms of the *Consumer Rights Act 2015*, passengers may be able to claim compensation where a service has not been provided with reasonable skill and care. The terms and processes around which compensation are payable under the 2015 Act are less clear than when it comes to claiming compensation for delays (Section 2.5). Passengers also may be entitled to compensation for personal injury and damages (Section 2.6).



### 2.1 What are passengers entitled to when a train is delayed?

#### Single/return fares

A passenger's entitlement to compensation depends on the train company they are travelling with. This is because train companies subscribe to different compensation schemes, namely the Passengers' Charter, Delay Repay or Delay Repay 15.

The **Passengers' Charter** scheme was the original compensation scheme and was based on the arrangements set out under Conditions 32 and 33 of the NRCT.<sup>7</sup> Chiltern Railways<sup>8</sup> is the last remaining TOC operating the Passenger's Charter scheme<sup>9</sup> after Arriva Trains Wales and Great Western Railway transferred over to Delay Repay 15 from January and April 2019 respectively.<sup>10</sup>

<sup>7</sup> op cit., [National Rail Conditions of Travel](#), 11 March 2018, p23-24

<sup>8</sup> Chiltern Railway also operates under a traditional Passenger's Charter plus a limited form of Delay Repay with exclusions; [Railways: Compensation: Written question - HL12257](#)

<sup>9</sup> Although they have a more generous arrangement than is stipulated under the NRCT. For more detail, see the Chiltern Railways [Passenger's Charter](#).

<sup>10</sup> [Railways: Compensation: Written question - 245899](#)

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Most TOCs now operate the '**Delay Repay**' scheme.<sup>11</sup> Under Delay Repay, a passenger is entitled to compensation if a train is delayed by more than 30 minutes, which is offered irrespective of the cause of the delay. A comparison of NRCT and Delay Repay schemes is set out in the table below.

Length of delay	Delay Repay	Standard passengers' charter compensation
<b>0-29m</b>	No compensation due	No compensation due
<b>30-59m</b>	50% of the cost of a single ticket, or 50% of the cost of the relevant portion of a return ticket	No compensation due
<b>60-119m</b>	100% of the cost of a single ticket, or 100% of the cost of the relevant portion of a return ticket	50% of the cost of a single ticket, or 50% of the cost of the relevant portion of a return ticket
<b>120m+</b>	100% of the cost of a single ticket, or 100% of the cost of a return ticket (i.e. both ways, not just one way)	50% of the cost of a single ticket, or 50% of the cost of the relevant portion of a return ticket

On 13 October 2016 the Secretary of State for Transport [announced](#) an improved compensation scheme '**Delay Repay 15**'. Under this scheme, eligible passengers can claim 25% of the cost of a single fare for delays between 15 and 29 minutes. The scheme was first rolled out on the Govia Thameslink Railway (GTR) franchise on 11 December 2016<sup>12</sup> in response to the chronic problems on the Southern part of the franchise.<sup>13</sup>

Compensation entitlement, by length of delay, from a £20 single fare under each scheme			
	Passenger charter	Delay Repay	Delay Repay 15
<b>0-15 mins</b>	-	-	
<b>15-29 mins</b>	-	-	£5
<b>30-59 mins</b>	-	£10	£10
<b>60-119m</b>	£10	£20	£20
<b>120m+</b>	£10	£20 (plus cost of return leg, if applicable)	£20 (plus cost of return leg, if applicable)

Delay Repay 15 has also been introduced on the West Midlands Trains, c2c, South Western Railway, Northern, Arriva Train Wales and Great

<sup>11</sup> The following train companies operate Delay Repay: CrossCountry; East Midlands Trains; Greater Anglia; Northern; Southeastern; Govia Thameslink Railway; TransPennine Express; LNER; and Virgin Trains West Coast.

<sup>12</sup> [HC Deb 5 December 2016, c26](#)

<sup>13</sup> The revised compensation arrangements have been formalised in [Schedule 6.1, Part 1, para 18.6](#) of GTR's franchise agreement with the Secretary of State.

Western franchises.<sup>14</sup> The table below provides a summary of the compensation schemes available for individual franchises.

Train operating company	Compensation scheme
<b>Govia Thameslink Railway</b>	Delay repay 15
<b>CrossCountry</b>	Delay repay
<b>East Midlands Trains</b>	Delay repay
<b>West Midlands Trains</b>	Delay repay 15
<b>Virgin Trains East Coast/LNER</b>	Delay repay
<b>Southeastern</b>	Delay repay
<b>Greater Anglia</b>	Delay repay
<b>Virgin Trains West Coast</b>	Delay repay
<b>c2c</b>	Delay repay 15
<b>Arriva Trains Wales</b>	Delay repay 15
<b>Chiltern Railways</b>	Passenger charter
<b>Great Western Railway</b>	Delay repay 15
<b>Northern</b>	Delay repay 15
<b>South Western Railway</b>	Delay repay 15
<b>TransPennine Express</b>	Delay repay

It should be noted that for losses caused by the delay or cancellation of a train service, a passenger can only recover up to the price of their ticket. In exceptional circumstances, a TOC may consider claims for other losses. This will be for the TOC to decide at their own discretion.<sup>15</sup>

### Season ticket holders

Now that almost all train operators have subscribed to the Delay Repay scheme, season ticket holder entitlement to compensation is the same as above for single/return fares; except the value of a single leg of a season ticket journey is calculated using the table below.

Season ticket type journey	Value of single
Annual	1/464 x total ticket price
Quarterly	1/120 x total ticket price
Monthly	1/40 x total ticket price
Weekly	1/10 x total ticket price

<sup>14</sup> DfT, [Compensation paid by Train Operating Companies \(TOCs\): Passenger's Charter and Delay/Repay 2009/10-2017/18](#), 1 October 2018

<sup>15</sup> National Rail, [National Rail Conditions of Travel](#), 11 March 2018, p23



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If there is a period of sustained poor performance, season ticket holders may be entitled to claim enhanced compensation over and above that outlined above. A period of sustained poor performance means a reporting period<sup>16</sup> in which a customer had delays of 30 minutes or more for 12 or more days. The specific enhanced compensation offering varies between operators but will typically be either:

- Two free return journeys anywhere on the operator's network to be used within 12 months; or
- National Rail Travel Vouchers for the value of a single journey between the stations for which your season ticket is valid.

Customers can choose which one they want to receive.<sup>17</sup>

### Compensation in response to severe and prolonged disruption

Passengers, in exceptional circumstances, may be offered compensation over and above that offered through the usual Delay Repay channels. There have been two notable examples in recent years:

- **Compensation for Southern Rail passengers** – season ticket holders were offered the equivalent of four weeks' worth of fares after several months of disruption related to the industrial dispute at the time around the role of the guard on the train.<sup>18</sup> In the end, £13.6 million was paid to 58,000 passengers from this compensation scheme.<sup>19</sup>
- **Compensation for franchises severely impacted by the May 2018 timetable failures<sup>20</sup>** – passengers on Northern, Great Northern and Thameslink services were offered either one month of travel or one week of travel. The compensation was based on the type of season ticket held at the time. An annual season-ticket holder claiming for delays from April to June, for example, could get compensation for a 12th of the total cost of their ticket, while a monthly season-ticket holder receives back the value of their monthly ticket.<sup>21</sup>

It should be noted that this sort of compensation is rare and only offered in highly exceptional circumstances that lead to prolonged periods of disruption.

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<sup>16</sup> Reporting periods are used throughout the rail industry and are agreed periods of between 28 and 33 days.

<sup>17</sup> Govia Thameslink Railway, [Passenger's Charter](#), November 2018

<sup>18</sup> 'DfT reveals Southern passengers to be paid a month's compensation', *Rail Technology Magazine*, 2 December 2016

<sup>19</sup> [Railways: Compensation: Written question - 124799](#)

<sup>20</sup> For a more detailed explanation of the compensation arrangements, see: Transport Select Committee, [Rail timetable changes: May 2018](#), Seventh Report of Session 2017–19, 4 December 2018, pp30-36

<sup>21</sup> '[May timetable compensation: don't miss your chance to claim money back for train chaos](#)', *Which?*, 1 November 2018

## 2.2 Issues with the current compensation offering

### It is relatively generous for single/return fares, but it takes time to introduce

The Delay Repay 15 compensation package appears to be relatively generous for single/return fare passengers, particularly when compared with other European railway compensation schemes. If a train is delayed in Europe, the compensation entitlement is typically:

- 25% of the ticket fare, if the train is between 1 and 2 hours late; or
- 50% of the fare, if the train is more than 2 hours late.<sup>22</sup>

One of the criticisms is that Delay Repay 15 is not provided across the whole of the network. This criticism was more acute when the less generous Passenger's Charter was available on a greater proportion of the network. Now that Delay Repay has been rolled out across almost the entire network, the gap in the compensation offering is much smaller. Nevertheless, there are still calls for Delay Repay 15 to be rolled out with more immediate effect on the rest of the franchises.<sup>23</sup>

It is the stated policy of the Government to move all franchised operators to Delay Repay 15 as new franchises are let.<sup>24</sup> The Government has stated its intention to explore the roll out Delay Repay 15 in this Parliament, but history shows that it can take many years to introduce new compensation schemes (see box).<sup>25</sup>

#### **Why does it take so long to introduce new compensation arrangements across the network?**

The original Delay Repay was first introduced in 2007 and it took around 12 years for all franchises (except for Chiltern) to graduate from the original Passenger's Charter compensation.

While it is theoretically possible to introduce Delay Repay 15 across all franchises with quick effect, the budgetary and contractual complexities accompanying such changes mean that it is likely to take several years to introduce across the whole network.

To explain further, as part of the franchising agreement, the government agrees with the train operator how much income it will receive as part of granting them the right to operate that part of the network. This agreement makes certain assumptions around compensation arrangements.

Introducing a different compensation scheme in-franchise would be contrary to the assumptions made in the original franchise agreement and would alter future revenues of the franchisee. Given it is the government that would be seeking to alter the terms of the franchise agreement, it would potentially be liable for compensating the franchisee. Liability, most likely in the form of reduced franchise premiums, is potentially a disincentive for the government to introduce new compensation schemes with immediate effect, at least when switching from the standard to

<sup>22</sup> European Union, [Rail passenger rights](#) [accessed 3 May 2019]

<sup>23</sup> Transport Committee, [Oral evidence: Rail Compensation, HC 1099](#), 20 March 2017

<sup>24</sup> [Railways: Compensation: Written question - 162546](#)

<sup>25</sup> [Railways: Compensation: Written question - 114576](#)

enhanced Delay Repay compensation. The picture is less clear when switching from the Passenger's Charter scheme to Delay Repay (see next box below).

### The system is weighted to long-distance travellers

Under Delay Repay, commuters and long-distance passengers are offered the same rates of compensation, at the same delay thresholds. There are three possible issues for commuters with this:

- 1 **Commuters and long-distance passengers value their time differently** – a delay is usually more inconvenient for a commuter than for a leisure passenger on a long-distance line. This means the opportunity cost of the time foregone by the delay is higher for a commuter<sup>26</sup> but is not reflected in the compensation offering.
- 2 **Commuters are not compensated for repeated poor performance** – commuters that are regularly inconvenienced by delays that are less than the 15 or 30-minute threshold on the respective Delay Repay schemes are not eligible for compensation. In an extreme case, a commuter on the standard Delay Repay scheme can be delayed by 29 minutes for every single journey in a given year but will still be ineligible for compensation.
- 3 **The claims process can be prohibitive** - where compensation is available, the process involved can often mean that it is not worth a commuter's while to seek the small amount of compensation available for their journey.<sup>27</sup>

In short, it could be argued that Delay Repay favours long-distance passengers that may not travel regularly and when they do so, the higher value fare provides a greater incentive to go through the claims process. This is perhaps reflected in the higher share of compensation paid out by long-distance operators as a share of their total revenues (see figure below).

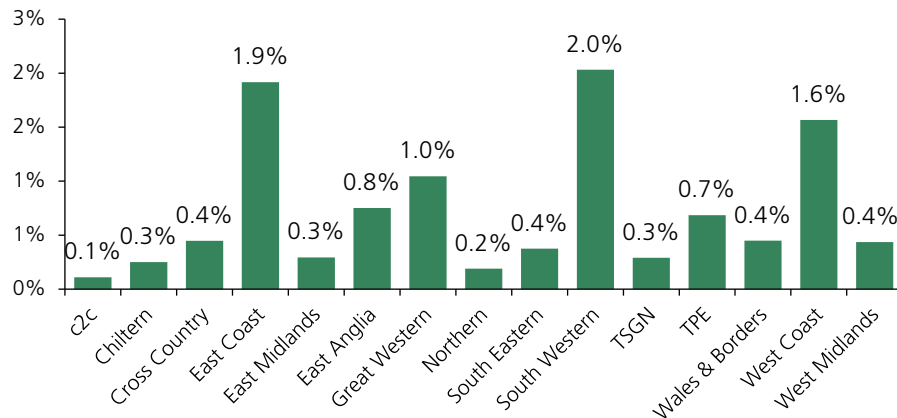
Of the £80 million paid out in compensation in 2017/18, around 40% was paid by the two long distance operators on the East and West Coast main lines. This is despite the two franchises only accounting for 21% of total passenger revenues.

The only two other operators close to the East and West Coast operators, in terms of the compensation share of revenue in 2017/18, were the South Western and Great Western franchises. These franchises were not on Delay Repay in 2017/18. The higher compensation pay-outs that year were likely due to season ticket holders being entitled to lump-sum compensation at year's end from their respective Passenger's Charter schemes (see section below).

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<sup>26</sup> This is reflected in the different values attached with travel time savings for workers in the UK's appraisal guidance: DfT, [Values of Time and Vehicle Operating Costs - TAG Unit 3.5.6](#), January 2014

<sup>27</sup> op. cit., [Rail Delays and Compensation 2018](#), p17

**Compensation as a % of passenger revenues, 2017/18<sup>28</sup>****Season ticket holders may be worse off under Delay Repay**

Previously, season ticket holders were compensated by way of an annual discount upon renewal when performance targets for the year were not met. This was typically a 5% or 10% discount on the season ticket if one or both punctuality<sup>29</sup> and cancellation<sup>30</sup> targets of the train operator were not met. Only Chiltern Railway and Great Western Railway (GWR)<sup>31</sup> offer this now that the Delay Repay scheme has been introduced on the rest of the network. Specifically:

- On Chiltern, a passenger is offered a 5% discount if: peak period punctuality<sup>32</sup> is lower than 92%, on average, over the previous 12 months; or where reliability is less than 99%. The discount is 10% if both targets are not met.
- On GWR, a London passenger is offered a 5% discount if: peak period punctuality<sup>33</sup> is lower than 89%, on average, over the previous 12 months; or where reliability is less than 98%. The discount is 10% if both targets are not met.

From a season ticket holders' perspective, there are benefits from this sort of compensation scheme. As there is a lower threshold of 5 minutes to measure punctuality, passengers may be compensated for repeated poor performance that might fall below the Delay Repay threshold. The process for receiving their compensation is simpler and they do not have to claim for each journey.

The major benefit of the charter scheme is that for many season ticket holders, compensation may be more generous than Delay Repay. To

<sup>28</sup> Calculations using data from: DfT, [Compensation paid by Train Operating Companies \(TOCs\): Passenger's Charter and Delay/Repay 2009/10-2017/18](#), 1 October 2018; ORR, [UK rail industry financial information 2017-18](#), 30 January 2019

<sup>29</sup> The target would have been the proportion of trains arriving within 5 minutes over the course of a year.

<sup>30</sup> The target would have been the proportion of trains cancelled over the course of a year.

<sup>31</sup> GWR introduced Delay Repay in April 2019 but has retained the existing discount regime for season ticket holders.

<sup>32</sup> Peak punctuality is measured against advertised trains arriving in London, Mondays to Fridays from 0700 to 0959 inclusive and departing from London, Mondays to Fridays from 1600 to 1859.

<sup>33</sup> Peak services are the trains that arrive at London Paddington from 7am–10am and trains that leave London Paddington from 4pm–7pm.

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illustrate, were a train company not have met both the punctuality and reliability targets under the charter scheme, a £3000 season ticket holder would be entitled to £300 in compensation.

To be eligible for an equivalent amount of compensation under the standard Delay Repay scheme, a train would have to be late by more than 30 minutes 93 times during the year. Or on Delay Repay 15, your train would need to be between 15 and 30 minutes late 186 times during the year.

This is almost certainly never going to happen. In fact, on average, only 0.3% of trains on the national network are delayed by more than 30 minutes in a given year and 1% by between 15 and 30 minutes.<sup>34</sup> In this situation, a £3000 season ticket holder, would be entitled to £4.5 or £12 in compensation under the ordinary and enhanced Delay Repay schemes respectively.

The results would, of course, vary between train operators; but there is evidence to suggest that either or both targets would have been missed on several franchises if were they applied based on punctuality and cancellation thresholds of 90% and 2% respectively.<sup>35</sup> In fact, an average season ticket holder would be entitled to more generous compensation<sup>36</sup> on at least 13 franchised operators on the network if they were renewing their ticket in period 13 of 2017/18.<sup>37</sup>

### What is the net impact of changing compensation regimes on passenger revenues for TOCs?

**Switching from Delay Repay to Delay Repay 15** will have a negative impact on passenger revenues for train operators. This perhaps explains why there might be a reluctance on part of Government to switch franchises over with immediate effect from the standard to enhanced Delay Repay scheme.

The impact is less certain when **switching from the Passenger's Charter compensation to Delay Repay**. On the one hand, there would be a negative impact on revenues as passengers would be newly entitled to compensation if the train is delayed by either 15 or 30 minutes, rather than 60 minutes. But there is uncertainty as to the amount of compensation issued for season ticket holders and what that means for overall passenger revenues.

To explain further, in a year of positive punctuality performance, the impact on passenger revenues from shifting to Delay Repay would be negative. This is because passengers would be entitled to compensation for periodic delays but would not be entitled to an end of year refund.

In a year of poor performance, the impact on operator revenues from shifting from Delay Repay is likely to be positive. This is because the compensation paid out is considerably higher for season ticket holders under the charter than it would be under the Delay Repay scheme.

<sup>34</sup> ORR, [New Performance Measures – Train Punctuality at recorded station stops by TOC - Table 3.65](#) [accessed 15 May 2019]

<sup>35</sup> This is based on the average of the targets on the existing franchises operating the charter scheme.

<sup>36</sup> This was determined for individual franchises using average annual punctuality and cancellation for period 13 in 2017-18.

<sup>37</sup> The franchises/open access operators are Northern, South Western Railway, East Midlands Trains, Govia Thameslink Railway, Great Western Railway, CrossCountry, TransPennine Express, Virgin Trains West Coast, London North Eastern Railway, Arriva Trains Wales, c2c, Chiltern Railways and Greater Anglia.

The specific impact on revenue varies year to year and by TOC. But the potentially positive revenue impact of switching to Delay Repay, is illustrated by:

1. the compensation paid out by South West Trains (SWT) in 2017/18; and
2. the compensation paid out by SWT (under the Passenger's Charter) compared to Southeastern (under Delay Repay) over several years.

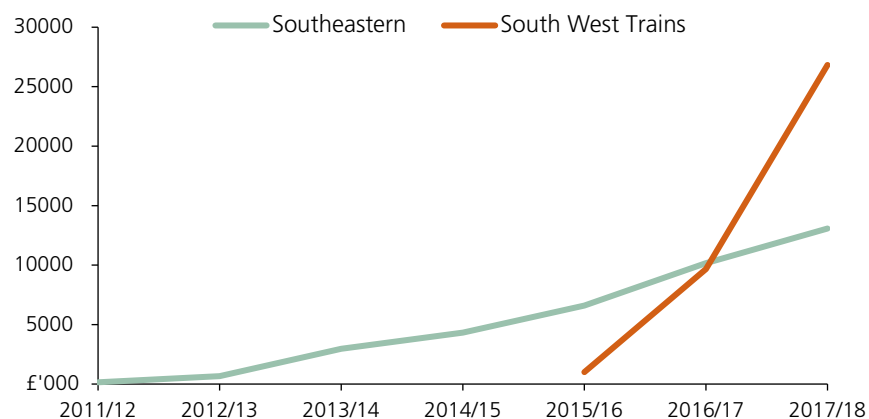
In 2017/18, **SWT paid out a total of £18.6 million in compensation, the highest of all franchised operators in 2017/18**. Part of this is explained by the 10 days compensation offered to season ticket holders that year for works at Waterloo station over the summer.<sup>38</sup> It is also explained by the compensation offered that year for season ticket holders under the Passenger's Charter. The annual average peak period punctuality for SWT in 2017/18 was between 77.1% and 81.7%.<sup>39</sup> This suggests that punctuality targets [under the Charter](#) were missed that year and SWT were liable to pay out at least 5% in compensation to season ticket holders. Also, between 2.2% and 2.8% of trains were cancelled or significantly late in 2017/18,<sup>40</sup> suggesting that SWT may have also been liable to pay out up to 10% in compensation to season ticket holders.

The potentially positive revenue impact for operators from Delay Repay is reflected in the disparity in compensation paid out between the first and second half of 2017/18 by SWT. Delay Repay was offered to passengers for more than half that year from August 2017. Even though performance deteriorated from that point, compensation paid out under Delay Repay by SWT only accounted for 7% of total compensation in 2017/18.

By **comparing the South West and Southeastern compensation profiles**, there is evidence to suggest that the compensation paid out under the Passenger's Charter following a single year of poor performance is enough to eclipse several years of compensation paid out under Delay Repay.

To illustrate, the figure below compares the cumulative amount of compensation paid out up to 2017/18 for SWT and Southeastern, based on the latest data published by the DfT. Only three years' data has been published for SWT, but it shows that in those three years the compensation paid out is more than double that of Southeastern in the preceding seven years.

#### **Cumulative compensation paid out by Southeastern (Delay Repay) and South West Trains (Passenger's Charter)**

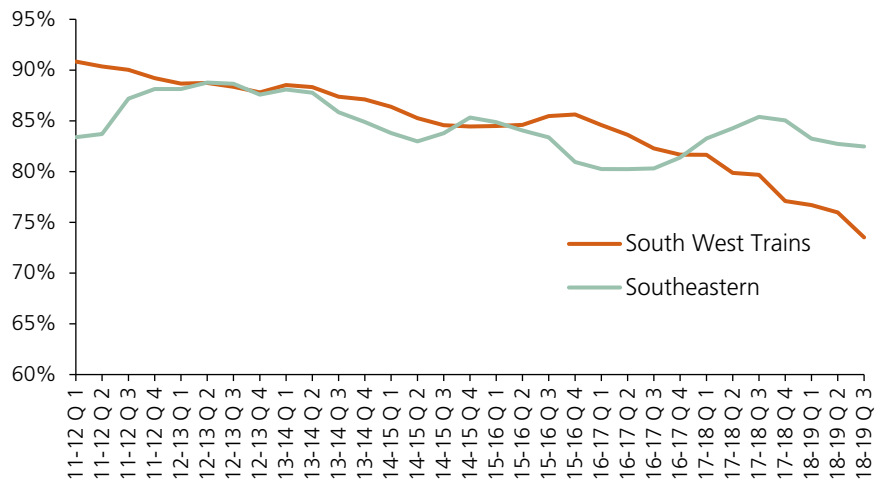


<sup>38</sup> ['South West Trains season ticket holders CAN claim refunds for Waterloo disruption'](#), The Telegraph, 23 August 2017

<sup>39</sup> ORR, [Public Performance Measure by TOC - Table 3.44](#) [accessed 15 May 2019]

<sup>40</sup> ORR, [Cancelled and significantly late \(CaSL\) by train operating company - Table 3.7](#) [accessed 15 May 2019]

Given the two franchises had relatively similar punctuality over that period, this cannot be solely down to a disparity in performance (see figure below).  
**Peak period PPM Southeastern and South West Trains, Q1 2011-12 to Q3 2018-19**



**To summarise, there is evidence to suggest that the shift to Delay Repay from the Passenger’s Charter may have had a positive impact on some operators’ revenues. Both the standard and enhanced Delay Repay compensation scheme have regularly been touted as more generous for passengers. This is true for many passengers, but perhaps not for those with season tickets. This requires further investigation to make a more authoritative assessment on the overall revenue implications for the wider franchising system.**

While the Passenger’s Charter scheme may have benefits for those with season tickets, is not without its downsides; the major one being that it offers an ‘all or nothing’ form of compensation. That is, if your service falls within the punctuality or reliability threshold, even if it is by a small margin, you will be entitled to nothing. Other criticisms of the Passenger’s Charter compensation are that:

- compensation is only paid on renewal, passengers may have to wait up to a year to receive any compensation for delays
- compensation is only paid to those passengers who renew their tickets on a like-for-like basis;
- the scheme is based on the MAA for the whole of the train company’s system and therefore can often bear no relationship to the performance experienced by the user; and
- the compensation thresholds were based on historic performance levels, meaning it is not based on an objective network wide standard of performance.<sup>41</sup>

Clearly, from a season ticket holder’s perspective, there are flaws with both the Delay Repay and older regime, but the potential upside in terms of the final pay-out is much greater for the latter than it is the former.

<sup>41</sup> London TravelWatch, [Consumer Affairs Committee - Secretariat memorandum](#), 15 June 2011

## How generous has one-off compensation been?

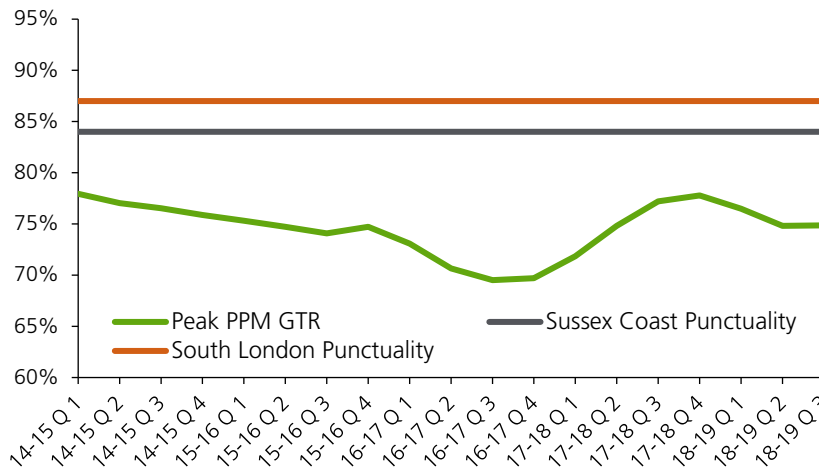
As discussed, season ticket holders were offered one-off compensation following the GTR industrial disputes and May 2018 timetable problems. While they did benefit compared to what was on offer at the time under Delay Repay, in the case of the GTR franchise, passengers would have been considerably better off under the Passenger's Charter regime (see box).

### GTR season ticket holders would have been better off under the previous compensation regime

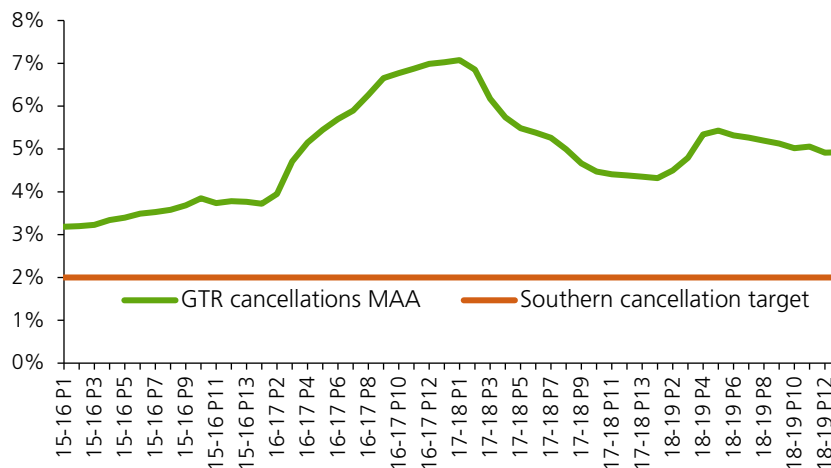
GTR passengers were offered a four-week refund on their season tickets following the industrial disputes in 2016. That is the equivalent of 20 days or 7.5% the value of the season ticket. Reliability and punctuality performance at the time was so bad that GTR would have easily missed both the compensation thresholds set out in the former Passenger's Charter. In which case, season ticket holders would have benefited from a 10% refund on their season ticket had the previous scheme been in place.

Since the TSGN franchise started in September 2014, the franchise has missed both the punctuality and cancellation targets every year that existed under the old Passenger's Charter (figures below). In effect, season ticket holders would have benefited several times more since the start of the franchise under the older compensation regime than under Delay Repay, even after the enhanced version came into effect in December 2016.

#### Train punctuality vs Passenger's Charter targets, GTR, 14-15 to 18-19



#### Train cancellations vs Passenger's Charter targets, GTR, 15-16 to 18-19





It should also be noted that some of the compensation liabilities of train companies are offset during these periods of exceptional disruption. This results from the implementation of emergency timetables, in which hundreds of trains are cancelled against the original timetable.

On Southern, 341 daily services were cancelled between 11 July and 5 September 2016 to improve reliability.<sup>42</sup> Following the May 2018 timetable changes, Northern had to remove 165 services from the timetable on 4 June 2018 and 75% of these were only reinstated by 29 July. GTR also continued to run “a very haphazard emergency timetable” until 15 July 2018.<sup>43</sup>

Passengers are not able to claim compensation against those cancellations. Rather, compensation is offered against the emergency timetable. For example, if the train you regularly caught was cancelled every day during that period, you would not be entitled to any compensation.

### 2.3 How to claim a refund?

For most TOCs, compensation is not paid out automatically and passengers need to submit a claim form. Compensation must be claimed within 28 days of completing the journey. Once submitted, the NRCT states that “claims will be considered without undue delay and any compensation due will be paid within 14 days of your claim being agreed by the Train Company”.<sup>44</sup>

There is no standard way to claim a refund. Over half (53%) of all passengers now claim compensation online. This is through a combination of using the train company’s website (51% of passengers) or through the TOCs’ App (2% of passengers). 20% of passengers posted their claim form to the train company, while 15% wrote an email or letter to the train company. A further 10% of passengers claimed by handing a form in at a rail station.<sup>45</sup>

The Government announced the introduction of ‘one-click’ compensation in October 2018 through future franchise agreements. The concept is that it would be an automated claims system available via smartphones and smartcard registration.<sup>46</sup>

The claims process has generally been improving and in March 2018, research conducted by Transport Focus on behalf of the Department for Transport highlighted that passenger satisfaction with the claim process has increased<sup>47</sup> and that claims are also being dealt with more quickly, with 67% now resolved within two weeks compared to 48% in 2016.<sup>48</sup>

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<sup>42</sup> Transport Select Committee, [The future of rail: Improving the rail passenger experience](#), Sixth Report of Session 2016–17, October 2016

<sup>43</sup> Transport Select Committee, [Rail timetable changes: May 2018](#), Seventh Report of Session 2017–19, 4 December 2018, p7

<sup>44</sup> op cit., [National Rail Conditions of Travel](#), 11 March 2018, p24

<sup>45</sup> DfT, [Rail Delays and Compensation 2018](#), October 2018, p23

<sup>46</sup> DfT press notice, [Rail passengers to benefit from ‘one-click’ compensation](#), 1 October 2018

<sup>47</sup> DfT, [Rail Delays and Compensation 2018](#), October 2018, p19

<sup>48</sup> [Railways: Compensation: Written question - 185134](#)

Although Which? recently published research suggesting that “train companies are making it very difficult for passengers to get compensation by demanding up to 24 pieces of information during the claim process.”<sup>49</sup>

## How will compensation be paid?

It had been the case that compensation was paid in rail vouchers. Rail vouchers must be redeemed at stations, so may prevent passengers from obtaining the best fares. According to Which?, “using vouchers for compensation is not the most effective way to compensate passengers and is likely to be a disincentive to accessing compensation.”<sup>50</sup>

The Rail Delivery Group (RDG) instigated a shift away from rail vouchers as standard in July 2015 when it announced that compensation would be available in cash instead, but only on request. The extension of the Consumer Rights Act 2015 to rail (see below) now means that compensation will be issued by the same method the passenger paid with.

As at November 2016, 40% of passengers are paid out by way of voucher, which has declined from 75% in 2013.<sup>51</sup> As recently revealed by the DfT, most passengers prefer a monetary payment rather than vouchers.<sup>52</sup>

## Automatic compensation

A number of operators now have ‘smart cards’ upon which compensation and refunds can be automatically loaded. For example, c2c’s Automatic Delay Repay scheme automatically calculates the length of any delay when a Smartcard is used to travel and automatically pays compensation for delays of more than 2 minutes.<sup>53</sup> It is paid to the Smartcard account as an eVoucher.<sup>54</sup>

Virgin West Coast also refunds passengers straight back into their bank accounts for advance tickets booked through virgintrains.com. It must be a Virgin Trains journey with no connections to other train operators on the way. The compensation is usually paid within three working days.<sup>55</sup>

Northern has also implemented an Automatic Delay Repay scheme similar to that on Virgin. It covers customers who have booked an Advance ticket through northernrailway.co.uk or the Northern app.

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<sup>49</sup> For more information, please see: Which?, [Revealed: how train companies are adding unnecessary hassle to claiming compensation](#) [accessed 15 May 2019]

<sup>50</sup> Which?, [Super-complaint to the Office of Rail and Road: Compensation arrangements in the market for passenger rail services](#), 21 December 2015

<sup>51</sup> Transport Focus, [Rail delays and compensation – what passengers want](#), November 2016

<sup>52</sup> DfT, [Rail Delays and Compensation 2018](#), October 2018, p23

<sup>53</sup> For delays of between 2 and 14 minutes, a passenger will get 3p back for every minute you are delayed. So for a delay of 2 minutes one will receive 3p, 3 minutes 6p, 4 minutes 9p, and so on. From 15 minutes on, the delay repay 15 compensation applies.

<sup>54</sup> c2c, [Passenger’s charter](#), 21 December 2018

<sup>55</sup> Virgin Trains, [Dealing with delays](#) [accessed 8 May 2019]

Northern automatically calculate and pay the appropriate compensation directly back onto the card the ticket was paid with.<sup>56</sup>

### **Why is automatic compensation not currently feasible across the entire network?**

Most passengers on the network do not have access to automatic compensation, as it is only available for advance ticket or smartcard holders on a limited number of franchises.

This is despite the DfT issuing guidance on passenger compensation in 2014 recommending that “bidders introduce a system to provide automated compensation for all delays eligible for Delay Repay for passengers who wish to ‘opt-in’ to this.” As explained by the ORR, examples of this include:

- season ticket holders nominating their usual train to and from work and receiving compensation direct to their bank / season ticket accounts based on the performance of those trains; or
- the use of new technology to enable passengers with single and return tickets to be compensated direct based on the performance of the actual train they are using.<sup>57</sup>

The ORR noted that “such arrangements have not been part of the minimum requirements in recent ITTs”, but “bids may receive credit in the franchise evaluation process for exceeding the minimum compensation requirements set out in the ITT.”<sup>58</sup>

Full automation is more feasible where passengers are travelling on tickets that are specific to particular trains or where they ‘touch in and touch out’ on their journey, and where passengers’ payment details are available.

As ticketing is modernised across the network, this may well help to unlock more opportunities for full automation.

In the meantime, the DfT have said that it “would like to see digital technology and communications playing a role in making passengers aware of their right to claim and making the claiming process swift and simple for passengers and efficient for operators to administer.”<sup>59</sup>

South Western Railway have recently introduced Automated Delay Repay as a new way of claiming compensation. It is slightly different to the aforementioned schemes, in that payment is not automatically made to the passenger. For Touch smartcard season ticket holders, the journey will be tracked and if there has been a delay of 15 minutes or more a claim will be generated and appear in your Delay Repay account. A passenger then has the option to accept, decline or amend the claim based on the actual journey experience.<sup>60</sup> A similar process has been introduced on the GTR franchises for season ticket holders.<sup>61</sup>

<sup>56</sup> Northern by arriva, [Compensation – Automatic Delay Repay](#) [accessed 8 May 2019]

<sup>57</sup> ORR, [Response following the ORR’s investigation of the Which? super-complaint](#), March 2016, p32

<sup>58</sup> Ibid

<sup>59</sup> Department for Transport, [Response following the ORR’s investigation of the Which? super-complaint](#), November 2016

<sup>60</sup> South Western Railway, [Automated Delay Repay](#) [accessed 8 May 2019]

<sup>61</sup> ‘[GTR rolls out automatic delay compensation system for smartcard customers](#)’, *Rail Technology Magazine*, 6 July 2017

### Huw Merriman Private Member's Bill

Huw Merriman introduced the [Automatic Travel Compensation Bill 2017-19](#) on Tuesday 21 November 2017 under the [Ten-Minute Rule](#). This Bill makes:

...provision for passengers to receive automatic compensation from travel operators in certain circumstances; to require train operators to ring-fence certain funds received from Network Rail for service disruption and planned possessions for the development of ticketing technology to facilitate the payment of automatic compensation for passengers; and for connected purposes.<sup>62</sup>

This Bill was expected to have its second reading debate on Friday 26 April 2019.

## 2.4 Passenger take-up of compensation

Many passengers do not take-up compensation that might be available to them. In fact, joint research from Transport Focus, the DfT and ORR revealed that in 2016 only 35% of eligible passengers claimed compensation; although it should be noted that the rate of claimants has increased from 12% in 2013.<sup>63</sup> Updated figures show that this has risen to 39% in 2018.<sup>64</sup>

There are various reasons why passengers do not take up compensation. Most are simply unaware of their right to claim.<sup>65</sup> The most common source of information about the right to claim is direct from the train operator. The level of satisfaction with awareness and information provision is low. Only 44% of claimants were satisfied with this aspect of the claims process.<sup>66</sup> The ORR has undertaken mystery shopper exercises into information provided to passengers about delay compensation. The result of the latest work shows only a small increase in performance over the previous year's exercise.<sup>67</sup>

In other cases, passengers may be put off from claiming because of the time and effort taken against the amount they would receive. It was found recently that 31% of passengers failed to claim for their most recent journey on this basis. In addition, 46% of passengers failed to claim when travelling on a ticket that cost less than £5 because it was not worth the effort they would get back. Further, passengers who experience fewer delays are less likely to claim for compensation.<sup>68</sup>

The result of the low take-up of compensation is a 'compensation gap', that is, what the passengers are owed less what they are paid. The

<sup>62</sup> UK Parliament, [Automatic Travel Compensation Bill 2017-19](#) [accessed 8 May 2019]

<sup>63</sup> op. cit., [Rail delays and compensation – what passengers want](#)

<sup>64</sup> DfT, [Rail Delays and Compensation 2018](#), October 2018, p4

<sup>65</sup> Passenger Focus, [Understanding rail passengers – delays and compensation](#), July 2013; 57% of eligible passengers either weren't aware they could claim compensation or didn't consider it

<sup>66</sup> op. cit., [Rail Delays and Compensation 2018](#), p19

<sup>67</sup> ORR, [Annual Consumer Report 2018](#), 9 July 2018 p40

<sup>68</sup> op. cit., [Rail Delays and Compensation 2018](#), p4

Social Market Foundation (SMF) estimated that some £1bn of compensation from operators would have gone unpaid over the course of a full 2015 parliament.<sup>69</sup> This compensation gap was calculated on the basis that only one in ten passengers that were eligible claimed compensation. The number of passengers claiming compensation has improved, so it is likely that any compensation gap is smaller than that estimated by the SMF. It is not clear what the precise compensation gap is now, although the ORR have previously provided some analysis around it in previous consumer reports.<sup>70</sup>

### Which? super complaint 2015

In December 2015 Which? submitted a [super-complaint](#)<sup>71</sup> to the ORR raising concerns that “most delayed rail passengers are not aware of, nor apply for, the compensation to which they are entitled.”<sup>72</sup> The evidence from their super-complaint showed that:

- TOCs do not take sufficient steps to make passengers aware of their compensation rights when they have been delayed; and
- the process for claiming and receiving compensation act as barriers to consumers accessing it.

As part of the super-complaint, Which? recommended that:

- the ORR introduce conditions on its licence about raising passenger awareness for compensation;
- the ORR take steps to make sure operators comply with the licence conditions;
- the ORR consider further licence requirements around the process for claiming compensation; and
- DfT ensure compliance with compensation obligations in franchise agreements.

Which? believed that in the longer term, TOC licences should become the principal means for implementing and enforcing consumer-related requirements on TOCs, replacing the roles of franchises and the NRCT. This would, according to Which?, “resolve uncertainty over responsibility for upholding consumer rights by giving the ORR unambiguous responsibility.”<sup>73</sup>

Which? believed that many of the longer-term issues with compensation will be resolved through automatic compensation. Until that point, they affirmed that the above reforms were needed to avoid a “decade of detriment to passengers.”<sup>74</sup>

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<sup>69</sup> Social Market Foundation, [Back on Track – Reforming rail franchising](#), January 2016

<sup>70</sup> See [Section 7. ORR response to Which? Super-complaint](#) and [Appendix B of the 2017 Annual Consumer report](#).

<sup>71</sup> A super-complaint is a fast-track system which enables a designated consumer body to bring issues to the attention of regulators that they believe to be significantly harming the interests of consumers.

<sup>72</sup> Which?, [Super-complaint to the Office of Rail and Road: Compensation arrangements in the market for passenger rail services](#), 21 December 2015

<sup>73</sup> Ibid

<sup>74</sup> Ibid

### **ORR and industry response to the super-complaint**

The ORR [published its response](#) in March 2016 and recommended a package of measures to deliver results for consumers, including a national promotional campaign by the train companies to increase passenger awareness of compensation available; ‘plain English’ forms and information; better training for staff; better consistency across Franchise Agreements; and a clearer licence condition for train companies so that explaining compensation was considered and enforced as a key element of good passenger information. The ORR has since:

- updated the passenger information part of the train operator licence [in June 2016](#) relating to the provision of information for passengers. This confirmed that information regarding passenger compensation falls within the scope of the existing ‘Passenger Information During Disruption’ regime;
- met with individual TOCs to discuss improvements to information provided on paper forms and on websites;
- met with individual TOCs to discuss improvements to staff training; and
- conducted work to estimate the overall compensation gap (i.e. the difference between compensation that is due and compensation that is paid).

In response to the Which? super-complaint, the RDG launched the “money back” publicity drive. Advertisements appeared in newspapers across the country from 17 October 2016 and on social media, followed by displays on electronic screens, posters and leaflets at stations.<sup>75</sup>

It was reported that the RDG was also working on introducing a minimum set of standards for TOCs in terms of the actions that they take to raise passenger awareness. This would build on the ‘Compensation Toolkit’ introduced in 2013, which established a range of practical measures that train companies could take to increase passenger awareness of compensation schemes.<sup>76</sup>

### **DfT response to the super-complaint**

The Department for Transport [published its response](#) to the ORR’s investigation into Which? super-complaint on 17 November 2016. It supported all the ORR’s recommendations and stated that it would support the ORR and the RDG in implementing many of the proposed industry changes.

In terms of its own actions, the Department stated that they will look to exercise their “powers through the franchise agreement to bring about improvements.” For example, it stated that it would “continue to award points where appropriate to bidders for franchises who present credible plans to make the process of claiming compensation swift and simple.”<sup>77</sup>

<sup>75</sup> RDG press notice, [Train companies launch money back publicity drive](#), 17 October 2016

<sup>76</sup> op cit., [Response following the ORR’s investigation of the Which? super-complaint](#), p8

<sup>77</sup> op cit., [Response following the ORR’s investigation of the Which? super-complaint](#), p10

The Department made a commitment to engage with individual franchisees to require them to produce a report on passenger awareness of compensation schemes and the steps they will be taking to ensure passengers are aware of their right to compensation.<sup>78</sup>

Despite these commitments, the Department believed that the “solutions to the issues identified lie predominantly in the hands of the train companies” and should be “part-and-parcel of how train companies respond in times of disruption”.<sup>79</sup>

### 2.5 Consumer Rights Act 2015

On 6 September 2016, after campaigns by Which?, the Campaign for Better Transport and others,<sup>80</sup> the Conservative Government announced that the provisions of the [Consumer Rights Act 2015](#) (CRA 15) would apply to rail from 1 October 2016.<sup>81</sup> This effectively gives rail passengers the same legal protection they receive when paying for any other service or goods. In particular, it improves their ability to obtain redress beyond the current delay thresholds.

The relevant provision is section 57 of CRA 15. It means that traders:

- must perform services with reasonable care and skill, in line with information they have provided to the consumer about the service and, if the contract does not set the price or time for performance, within a reasonable time and for a reasonable price (the “Statutory Rights” as set out in sections 49-52 of the CRA); and
- are prevented from limiting their liability for breaching the Statutory Rights to below the full price paid by the consumer for a service.

This specifically means that:

- passengers who are unhappy with their compensation can pursue their claim through the courts if they fail to resolve the issue with the train company;
- passengers are entitled to have their compensation paid within 14 days;
- compensation is issued by the same method the passenger paid with, rather than with vouchers that some train companies currently use;
- consumers now have a right to redress when a service is not provided with reasonable care and skill or as agreed; and

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<sup>78</sup> Ibid., p17

<sup>79</sup> Ibid., p8

<sup>80</sup> see, e.g. CBT press notice, [“The Consumer Rights Act and what it means for rail passengers”](#), 1 October 2016; and Which? blog post, [Win! Exemption from Consumer Rights Act for rail withdrawn](#), 6 September 2016

<sup>81</sup> DfT, [Consumer Rights Act application to transport services](#), 6 September 2016; this was a reversal of the position it had taken when consulting on the application; see: DfT, [Rail, aviation and maritime: applying the Consumer Rights Act](#), 29 October 2015

- passengers are entitled to payment for additional consequential losses, such as missed connections, and will be able to claim for any length of delay.<sup>82</sup>

As a designated enforcer of the Act, the ORR can take enforcement action in certain circumstances, such as against infringements that harm the collective interests of consumers.

### Which? concerns over the application of the CRA

In February 2017, Which? wrote to all train companies in the UK about what it perceived to be “breaches of consumer protection law.” It specifically referred to the NRCT which purports to limit a TOCs liability in damages to a passenger caused by delay or the cancellation of a train in all but exceptional circumstances.<sup>83</sup>

Which? claimed that this was likely to mislead the average consumer into thinking that they are not entitled to claim for consequential losses and expenses resulting from the delay or cancellation of a train (such as reasonable costs for missed flights, taxi fares, or child-minding fees) and that it is a misleading omission under the Consumer Protection from Unfair Trading Regulations 2008 and an unfair term under the Consumer Rights Act.

Which? found issues with the information provided by 17 train companies on their websites in relation to compensation rights under the Consumer Rights Act. It found “a wide range of practice from train companies and no consistency in how train companies presented consumers with information on their rights.”<sup>84</sup>

The ORR subsequently worked with the Rail Delivery Group and the Competition and Markets Authority to make changes to the NRCT to make it clearer that passengers may have rights under the Consumer Rights Act 2015. These changes were introduced on 11 March 2018 with the publication of a revised version of the NRCOT.<sup>85</sup>

## 2.6 Personal injury or damage to property

Accidents on the railway can happen in several different ways. ORR statistics reveal that there were 318 major injuries on the mainline in 2017-18, an increase from 264 in 2016-17.<sup>86</sup>

Rail companies have a duty of care towards passengers who use their services. This means it is the rail company’s duty to make sure that you are always safe from any harm whilst you are on their premises and using their services. This duty of care begins from the time you enter the station, right through the train journey and until the time that you exit the station at your destination. This liability derives from the *Occupiers Liability Act of 1957*.

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<sup>82</sup> Which?, [New consumer rights for British passengers](#), 1 October 2016; Campaign for Better Transport, [The Consumer Rights Act and what it means for rail passengers](#), 1 October 2016

<sup>83</sup> Which? press notice, [Train companies breaking consumer law](#), 25 February 2017

<sup>84</sup> Ibid

<sup>85</sup> ORR, [‘Measuring up’ - Annual rail consumer report 2018](#), July 2018

<sup>86</sup> ORR, [Rail Safety Statistics - 2017-18 Annual Statistical Release](#), 25 September 2018



If you think you have a claim for personal injury or damage to property, and it was felt that a TOC had been negligent, it is stated in the NRCT that "...you should write to the relevant Train Company or Rail Service Provider in the first instance."<sup>87</sup>

### 2.7 Schedule 8 payments to train companies

Passenger compensation for rail delay and cancellation is sometimes confused with compensation paid by Network Rail to TOCs when it is responsible for a delay. Schedule 4 and 8 payments in track access agreements are designed to compensate train operators for planned and unplanned closures on and disruptions to the network. This compensation is for the impact of poor performance on their long-term revenue.<sup>88</sup> **The train companies are not required to pass on the compensation they receive from NR to the passengers who have also been delayed.** As the ORR explains:

While they both reflect performance on the network, Schedule 8 and passenger compensation arrangements perform very different roles. There is no direct linkage between the two, with Schedule 8 relating to the compensation and incentive arrangements between train companies and Network Rail, and the passenger facing arrangements being a means of compensating passengers for delays to their journeys.<sup>89</sup>

Transport commentator Christian Wolmar has stated that "train operators may well make a profit out of delays caused by Network Rail because the payment will be higher than the combination of loss of revenue and payments made to passengers".<sup>90</sup>

Passenger groups, MPs and others often wonder why the two systems of compensation are not linked – so that train companies cannot 'make a profit' out of delays. Research by the Labour Party, published in March 2016, found that train operators 'profited' by £81 million. Labour Party said that train companies had made £372 million this way over three preceding years.<sup>91</sup> In April 2016 the Labour MP Joan Ryan MP introduced a Ten-Minute Rule Bill on this subject. Her intention was to "require Schedule 8 disruption payments between Network Rail and train operating companies to be allocated to specified projects aimed at increasing the quality, value for money or reliability of passengers' experience of railway travel and associated services".<sup>92</sup> Opposition leader Andy McDonald tabled a PQ in May 2018 asking the Government whether they would review the rail passenger compensation arrangements to ensure train operating companies pass on the money they receive in compensation from Network Rail to passengers.<sup>93</sup>

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<sup>87</sup> op cit., [National Rail Conditions of Travel](#), p25

<sup>88</sup> Transport Select Committee, Rail franchising, Ninth Report of Session 2016–17, 5 February 2017, p

<sup>89</sup> op cit., [Passenger compensation and refund rights for delays and cancellations](#), Annex 2

<sup>90</sup> Christian Wolmar, "[Rail 725: the bewildering world of compensation](#)", 23 July 2013

<sup>91</sup> "Rail operators fail to pass on compensation", *The Times*, 5 March 2016

<sup>92</sup> [HC Deb 13 April 2016, cc357-9](#)

<sup>93</sup> [Train Operating Companies: Compensation: Written question - 140129](#)

In 2017/18, Network Rail paid TOCs a total of £180.5m under Schedule 8, which covers unplanned disruption, and nearly £357m in Schedule 4 payments, which cover planned works. During the same year, TOCs paid out only £80m in compensation to passengers.<sup>94</sup> In response to this, opposition leader Andy McDonald said:

I was shocked to learn that a new compensation scheme for rail passengers will be partially funded by taxpayers. It is totally unacceptable for the Government to be subsidising improvements to compensation while train operating companies gleaned half a billion pounds in 2017/2018 in compensation payments from Network Rail.<sup>95</sup>

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<sup>94</sup> Network Rail, [Regulatory Financial Statements](#), Year ended 31 March 2018

<sup>95</sup> [Labour 'shocked' as taxpayers fund Delay Repay 15 for rail firms](#), *Transport Network*, 13 March 2019

## 3. Making a complaint

There are two stages to making a complaint about your rail service:

- 1 to complain direct to the train operator TOC; and
- 2 if their response is unsatisfactory, only then to contact the Rail Ombudsman.

### 3.1 Complaint direct to the train operator TOC

Dealing with a complaint directly with a train operator can be the quickest and easiest option to resolve a complaint. Further, contact with the operator must be made prior to submitting a formal complaint with the Ombudsman.

Many companies will accept complaints by telephone but for the complainant's own reference, it is usually better to put it in writing. The complainant should make sure to keep a copy of any complaint submitted via a website.

Depending on the nature of the complaint, things to bear in mind might include:

- Explain clearly the reason for the complaint (e.g. the train was cancelled or delayed);
- Describe the inconvenience this caused;
- State the train/station used and the time/date of the incident;
- Explain what action you would like the company to take to rectify the problem;
- Include any other details which are relevant to the complaint;
- If the complaint concerns information by telephone you will need to give the date and time when you rang and the area code of the phone used; and
- Attach your tickets as evidence where possible. Say how many others were travelling with you. Keep a copy of your letters and tickets or other relevant documents.

The Rail Ombudsman provides [useful guidance on their website](#) around the steps that should be taken prior to submitting a formal complaint with them.

### 3.2 Complaint to the rail ombudsman

If a passenger is not satisfied with the response received from the operator, the passenger can contact the Rail Ombudsman, which was set up in November 2018 (see box below), "to investigate and rule on unresolved customer complaints, with the power to issue decisions, including on compensation, that are binding on the industry."<sup>96</sup>

For a complaint to be dealt with by the Ombudsman, it must meet the Eligibility Checklist, such that:

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<sup>96</sup> [Railways: Compensation: Written question - 179230](#)

- The complaint must be with a participating service provider;
- You must be over 16 years old or have a representative who is;
- 40 working days have passed since you first complained to the service provider or you must have received a 'deadlock' letter; and
- Your complaint to the service provider must have been raised within the last 12 months.<sup>97</sup>

The Ombudsman will review the complaint and decide if it's something they can investigate, or if it's something which needs to be dealt with by another organisation, such as Transport Focus or London TravelWatch, which are consumer watchdogs for the rail industry (see box).

### Consumer watchdogs

[Transport Focus](#) is the official, independent voice of all rail passengers. It is a single GB-wide organisation which replaced the previous Rail Passengers Council and regional Rail Passengers Committees in July 2005. Its function is to get the best deal for Britain's rail passengers. It conducts research such as the annual National Passenger Survey and campaigns. It also takes up second tier complaints for passengers who have had an unsatisfactory response from train operators.

[London TravelWatch](#) (formerly London Transport Users Committee) is the representative of London's transport users and was set up under the *Great London Authority Act 1999*. Complaints can be made to London TravelWatch about rail services, on the National Rail Network in or around London, in writing or online.

If the complaint is progressed by the Ombudsman, they will contact the service provider to request a formal response to the complaint. This should be provided within two weeks. They will then assess the application and the service provider's response, weighing up the evidence provided and taking into consideration the rights and obligations set out in law and what is fair, reasonable and practical. Several other steps that eventually lead to closure of the complaint are outlined on the [Rail Ombudsman's website](#).

## 3.3 Licensed activities

The [Railways Act 1993](#), as amended, requires operators of railway assets to be licensed. Different licenses are required for different types of operations - networks, trains, stations and light maintenance depots. These licences, including the Network Rail licence, are issued and enforced by the rail regulator, the [Office of Rail and Road \(ORR\)](#).

Complaints can be made against a company's licensed activities. Train and station operators are required by their operating licences to establish and comply with a procedure for handling complaints relating to licensed activities from customers and potential customers.<sup>98</sup> In September 2015 we published [guidance on complaints handling procedures for licence holders](#). As explained by the ORR, a good complaint handling procedure should:

<sup>97</sup> The Rail Ombudsman, [Can we help with your complaint?](#) [accessed 8 May 2019]

<sup>98</sup> ORR, [Complaints handling procedures](#) [accessed 8 May 2019]

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- resolve individual complaints promptly and fairly, taking account of the reasonable interests of the complainant, including providing compensation as appropriate; and
- lead to continuous improvement, so that in the medium term the root causes of complaints are addressed and systemic solutions are put in place.<sup>99</sup>

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<sup>99</sup> Ibid

## 4. European regulations

[Regulation 1371/2007/EC](#) on rail passenger rights and obligations came into force in December 2009. It is:

...is aimed at enhancing and strengthening the rights of rail passengers particularly in the areas of information and ticketing provision, compensation and assistance, and provides rights for disabled persons and persons with reduced mobility. It also contains provision for the enforcement of those rights.<sup>100</sup>

The full regulation does not have to be in force in Member States until December 2024. Certain 'core' provisions came into force in December 2009, and include:

- **Article 9: availability of tickets, through tickets and reservations** – this sets out the requirement to offer, where available, tickets, through tickets, and reservations.
- **Article 11: liability for passengers and luggage** – this sets out rules on train companies' liabilities in the event of a passenger's death or personal injury and damage to luggage and animals
- **Article 12: insurance** - makes provision for insisting on adequate insurance but does not set an amount.
- **Articles 19 and 20(1): rights of disabled passengers and passengers with reduced mobility** – these mandates the establishment of non-discriminatory access rules for the transport of disabled persons and persons with reduced mobility for both railway undertakings and stations managers.
- **Article 26: personal security of passengers** – this mandates that railway authorities, infrastructure managers and stations managers shall take adequate measures to ensure passengers' personal security in railway stations and on trains.
- **Article 30: enforcement and information to passengers regarding their rights under this Regulation** - the ORR has been designated as the national enforcement body by virtue of SI 2010/1504.<sup>101</sup>

The 'core' provisions do not apply to metros such as the London Underground and the Glasgow subway, trams and tramways including the Greater Manchester Metrolink and heritage and tourist infrastructure and vehicles. Discussion of the 'core' provisions is provided in Part Two of the DfT's [2011 guidance on regulation 1371/2007](#).

There are several other non-core elements of the Regulation that only apply to international services because of domestic exemptions applied by the UK Government (see section below). Discussion of the 'core' provisions is provided in Part Three of the DfT's [2011 guidance on regulation 1371/2007](#).

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<sup>100</sup> DfT, [Regulation No. 1371/2007 of the European Parliament and of the Council – Guidance note](#), November 2011

<sup>101</sup> Ibid.

A [March 2015 study](#) found that only four EU Member States have implemented the 2007 EU rules in full: Denmark, Italy, the Netherlands and Slovenia.

In September 2017, the European Commission adopted a [new proposal](#), which aims to strike a better balance between strengthening passengers' rights and reducing the burden on rail companies. For more information about this proposal and its legislative progress, see the European Parliamentary Research Service briefing [Rail passengers' rights and obligations in the EU](#).

### 4.1 How do the EU regulations apply in the UK?

The *Rail Passengers' Rights and Obligations Regulations 2010* ([SI 2010/1504](#)) provides for the relationships between the Regulation and domestic law and deals with the regulatory enforcement of its provisions in the UK; it came into force on 25 June 2010.

Member States have the power under the Regulation to exempt domestic rail passenger services from the 'non-core' articles for up to five years. This power can be renewed twice for a maximum period of five years on each occasion, culminating in a total period of 15 years.

UK domestic services are exempt from significant parts of the legislation until December 2019. This resulted from the Labour Government legislating to take advantage of all the available derogations from the Regulation in 2009.<sup>102</sup> The Coalition Government did the same in 2014, providing for derogations from December 2014 to December 2019.<sup>103</sup>

The Coalition Government has reconsidered whether it should disapply some of those derogations earlier than December 2019. It published its consultation on the matter in October 2014.<sup>104</sup> Specifically, the Government stated that it was considering whether to: maintain the exemptions in full; remove them where they were already being met (i.e. with no additional compliance cost to the rail industry); or remove them where there would be costs but these would be outweighed by benefits to passengers. The Conservative Government has yet to publish a response to the consultation, which closed in December 2014. It did, however, publish a [summary of the consultation responses](#) in November 2015.

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<sup>102</sup> DfT, [Consultation document on the rail passengers' rights and obligations regulations 2009](#), 11 August 2009, resulting in the *Rail passengers' rights and obligations (exemptions) regulations 2009* ([SI 2009/2970](#))

<sup>103</sup> DfT, [Rail Passengers' Rights and Obligations consultation](#), 14 October 2014, and the *Rail Passengers' Rights and Obligations (Exemptions) Regulations 2014* ([SI 2014/2793](#))

<sup>104</sup> separate regulations would be required in Northern Ireland and this is a devolved responsibility of the Northern Ireland Department for Regional Development

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