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## Secretariat's Memorandum

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Agenda item 10

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## Consumer rights

### 1 Purpose of report

- 1.1 To provide members with information relating to the current legislative environment and proposals to extend consumer rights and how London TravelWatch is trying to influence the agenda.

### 2 Introduction

- 2.1 Our involvement with European matters goes back many years, but increased with the introduction of Eurostar services between London and Paris and Brussels in 1994. However, in recent years, there have been an increasing number of issues arising from the European Commission which require a response reflecting the consumer perspective be that at national or London-wide level.
- 2.2 According to a recent Department for Transport discussion paper, more than 50% of all UK legislation relating to rail matters originates at European Commission level and some 40% of all transport-related legislation is European in origin. While in the past much of this legislative agenda has related to liberalising markets and ensuring interoperability to ensure the free movement of goods and passengers, there have recently been a number of proposals relating to consumer rights.
- 2.3 The European Commission's Consumer Policy Strategy 2002-2006 set the aim of achieving a high level of consumer protection in the field of transport, which has led to the development of legislative proposals for different transport modes. This agenda initially started with enhancing the rights of air passengers, but has since switched to rail, bus, coach and maritime passengers.
- 2.4 The Office of Rail Regulation approached us in September 2008 to outline their new role in relation to consumer law and to indicate their intention to produce guidelines on the application of consumer law.

## 2.5 3 Third Railway Package

3.1 Our recent involvement has been in relation to the Third Railway Package which is currently being transposed into British law. The Third Railway Package builds on the Commission's previous legislation - the 1<sup>st</sup> and 2<sup>nd</sup> Rail Packages as well as the Interoperability Directives. The Third Railway Package consists of three elements:

- Directive to open up the market for international passenger services, including a qualified right to offer cabotage (the provision of a domestic passenger service as part of an international service); the directive also requires the Commission to report by the end of 2012 on the state of preparation for further market opening;
- Directive to introduce a harmonised system of licences for drivers and some other train crew; and
- Regulation to introduce enhanced rights and obligations for passengers on international rail services, with extension in due course to some or all domestic services.
  - Open access for international routes
  - Compensation for death or injury
  - Delays and cancellations
  - Monetary compensation
  - Increase awareness of compensation
  - Transferability of tickets

After protracted negotiations, the text of the Package was officially adopted in December 2007.

3.2 Member States have until December 2009 to implement the directives and transpose the various elements of the legislation into national law. As part of this process it has convened a working group on which Passenger Focus and London TravelWatch are represented.

3.3 The area of this legislation that has caused greatest controversy has been the proposal to extend these rights to domestic passengers. As such, member states have been allowed to grant exemptions for domestic services for up to 15 years in relation to some of the proposed articles, and to apply an indefinite exemption for urban, suburban and regional services.

3.4 Our approach has been to encourage the Department for Transport to implement the passenger rights part of the directive in full for domestic and international passengers. Our view has been that a broadly uniform set of rights and procedures is most likely to be understood by passengers, rather than different rights for different types of passengers. In particular, if urban and suburban passenger journeys were exempt, many of the rights would not be available to passengers in the London area.

3.5 The impact of the proposals would be firstly to provide a set of rights that would be legally enforceable by passengers as opposed to relying on industry guidelines or regulators to take action. They would for the first time enable passengers to claim monetary compensation for delays, and ensure that where available refreshments should be provided. It would also mean that passengers can claim their money back if services are cancelled and ensures that train operators would be responsible for making

arrangements for stranded passengers. It also sets out compensation for lost luggage, death or injury.

- 3.6 The industry and consumer groups have been asked to set out the costs and benefits of the proposals, prior to a decision and formal consultation on how the Department for Transport will transpose the Directive in May. An update on progress is to be provided at a meeting on 21<sup>st</sup> April.

#### **4 Commission proposal for an EU regulation concerning a European rail network for competitive freight (FORN)**

- 4.1 The European Commission is currently preparing a proposal for a European rail freight network. Their view is that the quality of international rail freight services remains low in many Member States and needs to be improved to compete with other freight transport modes, in particular road. According to the Commission, problems persist in the following areas:

- cooperation between infrastructure managers at an international level to eliminate border effects, optimise investments and maximise the use of existing rail freight capacity;
- the coordinated development and management of intermodal terminals;
- the quality and reliability of infrastructure capacities allocated to freight.

The Commission believe that effective transnational management of international rail freight infrastructure cannot be achieved individually by each member state. The proposal covers the creation, selection, governance, funding and management of international rail freight corridors.

- 4.2 We have no remit in relation to railfreight issues per se. However, the indicative freight corridors include cross-London corridors linking the East and West Coast mainline with the high speed line to the Channel Tunnel. To date, Passenger Focus have taken the lead in response to these proposals. However, we are concerned to ensure that priority is not given to freight services on lines such as the North London line at the expense of the provision of passenger services, and therefore we will maintain a watching brief on progress.

#### **5 Commission proposal for an EU regulation of bus and coach passenger rights**

- 5.1 The European Commission is currently preparing a proposal to extend rights to bus and coach passengers. The proposal aims at establishing rights of coach and bus passengers in order to improve the attractiveness of and confidence in bus and coach transport. According to the Commission, problems persist in the following areas:

- Liability for death or injury to passengers or loss or damage to their luggage
- Assistance for disabled persons and persons with reduced mobility
- Obligations in relation to delays or cancellations
- Requirement on information and complaint handling.

The Commission notes that member states offer divergent solutions and levels of protection in terms of liability of operators and assistance provided to disabled people. It also notes that, urban, suburban and short-distance regional bus services are normally

covered by public service contracts and enables member states to exclude these services from the scope of the proposed regulation.

- 5.2 The proposals are at an early stage and detailed discussion of proposals is expected to start in April 2009. We have therefore submitted our initial views to the Department for Transport to help inform the Government's position.
- 5.3 We have welcomed the proposed regulation on the rights of passengers in bus and coach transport, and have expressed the view that the scope of the regulation should cover all bus and coach services and should not exclude urban, suburban and regional services. We consider that the regulation potentially resolves the current problem that passengers involved in accidents on buses caused by third parties are currently entitled to no compensation and would provide assistance to the disabled and those with reduced mobility at designated terminals. The current draft proposes that it would also provide compensation for passengers delayed in excess of 2 hours for journeys in excess of 3 hours.
- 5.4 Our concerns are about how terminals that assistance will be provided will be designated, and that bus services are not excluded from the scope of the regulation. We have co-ordinated our response with Passenger Focus to ensure that they complement each other, and we have concentrated on the impact on services in the London area.

## **6 Consumer Law**

- 6.1 The Office of Fair Trading (OFT) and local authority Trading Standards Services are the primary enforcers of consumer protection legislation. However, the Office of Rail Regulation (ORR) has a role as a designed enforcer of consumer protection law for the rail industry under Part 8 of the Enterprise Act 2002. These powers can only address matters where there is evidence of harm to the collective interests of consumers. Designated enforcers cannot intervene on behalf of individual consumers.
- 6.2 Staff from London TravelWatch have recently been involved in training sessions with the ORR to discuss those areas of consumer protection law which would appear to impact on rail passengers as well as those areas which are expected to be impacted by European legislation for which it would be the relevant enforcement body. In particular, consideration is given to the Supply of Goods and Services Act 1982, The Consumer Protection from Unfair Trading Regulations 2008 and The Unfair Terms in Consumer Contracts Regulations 1999 to consider their relevance.
- 6.3 Consumer protection law enforcement powers under the Enterprise Act 2002 focus on stopping infringements. These powers are forward-looking and cannot be used to impose penalties for past behaviour or to obtain compensation for passengers. The Office of Rail Regulation has invited Passenger Focus and us to raise any concerns which could potentially be subject to consumer law and may require its intervention.
- 6.4 To assist us in this area, we are currently considering what training in consumer law would be required for casework officers at London TravelWatch in conjunction with Passenger Focus. We envisage that part of the role of the Consumer Affairs Committee would be to consider issues arising from casework which may impact on consumers more generally and should be brought to the attention of the ORR.

## **7 Equalities and inclusion implications**

- 7.1 Proposed regulations may impact on the services provided to disabled and those users with reduced mobility. The proposed compensation arrangements would ensure that users with injuries would have uniform rights to compensation.

## **8 Legal powers and financial implications**

- 8.1 Section 248 of the Greater London Authority Act 1999 places upon London TravelWatch (as the London Transport Users Committee) a duty to consider – and, where it appears to it to be desirable, to make representations with respect to – any matter affecting the services and facilities provided by Transport for London which relate to transport (other than freight) and which have been the subject of representations made to it by or on behalf of users of those services and facilities. Section 252A of the same Act (as amended by Schedule 6 of the Railways Act 2005) places a similar duty upon it in respect of representations received from users or potential users of railway passenger services provided wholly or partly within the London railway area.
- 8.2 It is not clear what impact the creation of a European management of international rail freight infrastructure would have on our powers and influence.

## **9 Financial implications**

- 9.1 There are no specific financial implications for London TravelWatch arising from this report.

## **10 Recommendation**

- 10.1 That the report is received for information and to consider what information in relation to this area of work members would wish to receive in future.