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**Secretariat memorandum**

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**Passengers' Charters**

**1 Purpose of report**

- 1.1 To brief the Board on the main aspects of the current different Charter schemes being used by operators in and around London, and issues that have been raised through casework.

**2 The origins of Passenger Charters**

- 3.1 The origins and development of passengers' charters can be traced back to early 1990s when the then Government, as part of the Citizen's Charter initiative, announced that utilities and public services should publish standards of service that their customers could reasonably expect.
- 3.2 The terms of the original British Rail charter provided for compensation to be payable in the event of trains being late or cancelled for reasons within British Rail's control. Under this:
- Holders of ordinary (i.e. non-season) tickets could claim 20% of the value of the fare paid for the affected leg of the journey, in the form of a voucher redeemable for future tickets, if they were delayed by more than an hour.
  - Holders of monthly (or longer) season ticket holders were compensated in the form of a rebate of 5% off the price of their next season ticket (if any), if the weekday with-flow peak performance of trains in the relevant "route group" (measured by means of a "moving annual average") had fallen below a predetermined threshold value during the currency of the previous ticket. There were separate performance measures for punctuality and for reliability (i.e. cancellations), so a 10% rebate was payable if both fell below the threshold or "trigger".
- 3.3 At the same time, London Underground introduced its own Charter, under which all passengers (irrespective of ticket type) could reclaim the full single fare for their journey, in the form of a voucher, if they were delayed by more than 20 minutes for reasons within the operator's control. The delay threshold was subsequently reduced to 15 minutes, and remains at that level.

- 3.4 Under British Rail's Charter, and subsequently adopted by National Rail operators, passengers who had purchased tickets from a different operator to whom they were travelling with often found that they lost their entitlement to compensation. This was a particular problem for those with Travelcards and Oyster cards who often purchased their ticket from Transport for London ticket outlets and could find it difficult to prove that they were using a National Rail operator for all or most of their journey.
- 3.5 Most of the passenger dissatisfaction however with the "traditional" National Rail (i.e. ex-BR) compensation arrangements has been expressed by season ticket holders. Among the criticisms made of it are:
- (a) As compensation is only paid on renewal, passengers may have to wait up to a year to receive any compensation for delays;
  - (b) Compensation is only paid to those passengers who renew their tickets on a like-for-like basis;
  - (c) Entitlement to rebates is based on moving **annual** average (MAA) train performance;
  - (d) The scheme is based on the MAA for the whole of the train company's system (or a large part thereof), but only for a particular time of day/week and direction of travel, and therefore can often bear no relationship to the performance experienced by the user;
  - (e) The MAA value can be manipulated by declaring "void days" which are excluded from the calculation. These are days on which no effective service is deemed to have been operated, and season ticket holders can claim a pro-rata refund;
  - (f) The compensation thresholds were based on historic performance levels. Therefore for Southeastern metro services, a 5% refund is due on punctuality if MAA performance falls below 86.5% whereas on First Great Western's metro services it is 89%;
  - (g) Passengers feel that, as they are not compensated for individual delays, the railways' most loyal customers receive the least compensation;
  - (h) Where performance is close to the trigger level, some passengers will receive compensation while others renewing tickets a few weeks later may not.

### **3 The move towards "Delay Repay"**

- 3.1 The simplicity of London Underground's compensation scheme, coupled with the perceived shortcomings of the traditional National Rail scheme for many season ticket holders, led London TravelWatch and Passenger Focus to favour a move towards a simple "delay, repay" arrangement.

- 3.2 This approach was backed up by research into passengers' preferences which was carried out by the Strategic Rail Authority in 2002. This research found that awareness of the traditional compensation scheme was low and passengers did not understand how it worked. The majority felt that they should be compensated for delays of 30 minutes or more, and that there should be few exceptions. It also found that passengers preferred compensation for serious delays when they occur and, while they were inconvenienced by routine short delays, they did not expect compensation for them. Passengers preferred automatic reimbursement to having to make specific applications, and preferred cash or bank transfers to vouchers.
- 3.3 The concept of Delay Repay, where compensation was provided for all delays in excess of 30 minutes irrespective of the ticket type held or the cause of the delay, was first adopted by Chiltern Railways when it won its franchise extension in 2002. Where the delays or cancellations are attributable to causes within Network Rail's control, train companies can recoup all or part of the cost of compensation payments from the infrastructure operator. It has gradually become the National Rail standard as other franchises have expired and been re-awarded, and London TravelWatch is consulted on the terms of any new charters as they are introduced.
- 3.4 As Annex A shows this gradual approach to changing the compensation arrangements when franchises are renewed or extended means that even nine years after the first National Rail operator moved to Delay Repay there is still no consistent compensation arrangement for rail passengers. However, with many operators now close to the end of their franchise or wanting extensions, within a few years there should be a more consistent compensation framework. Nevertheless, even then, it should be noted that non-franchised operators such as Heathrow Express or Grand Central are not required to move towards Delay Repay arrangements.
- 3.5 While the introduction of Delay Repay brings National Rail operators closer to the compensation arrangements provided by Transport for London, there are still some key differences:
- Whereas London Underground and Docklands Light Railway provide compensation for delays of more than 15 minutes, the standard under Delay Repay is to provide compensation for delays of more than 30 minutes. This means that many passengers making short rail journeys within London may never receive any compensation. However, we have accepted that, due to the lower frequency of service and the potential for longer distance journeys, it probably is reasonable that the 15-minute delay trigger used by London Underground is not matched by National Rail operators.
  - The level of compensation on London Underground and Docklands Light Railway services is more generous. While they compensate passengers for the full cost of their ticket for delays of 15 minutes or more, National Rail operators provide 50% of the ticket cost for delays exceeding 30 minutes, and only provide a full refund when the delay exceeds an hour.

- Transport for London has maintained the practice of only providing a refund for reasons within their control. However, National Rail operators with Delay Repay provide refunds irrespective of what caused the delay.
- Whereas London Underground and Docklands Light Railway ask that passengers apply for any compensation due within 14 days, National Rail operators (including London Overground) allow you 28 days to submit a claim.

## **4 European Developments**

- 4.1 The European Union considers that, since rail passengers are the weaker party to the transport contract, passengers' rights should be safeguarded. Therefore as part of its "Third Railway Package", the European Union recently extended passenger rights to compensation through Regulation (EC) 1371/12007 on Rail Passengers' Rights and Obligations.
- 4.2 This Regulation (which was discussed at length at previous Consumer Affairs Meetings in September and November 2009) was initially intended for international rail passengers only, but the European Parliament argued that there should be one set of rights for all passengers. However, to reflect the fact that consumer rights regimes currently vary significantly across Europe, Member States were allowed to defer its introduction for domestic journeys for a period of up to 15 years (three periods of five years) and to exempt urban, suburban and regional routes indefinitely.
- 4.3 While many of the provisions relating to information provision, availability of tickets, refunds and compensation are bettered by the National Conditions of Carriage and Passenger Charter regime, there are some aspects of the Regulation that would improve passenger rights. In particular, it provides all passengers with a legal right to a minimum level of compensation for delays and the option of being paid in cash rather than vouchers. In addition, it requires an operator to provide assistance for those delayed including, where practicable, refreshments for those delayed in excess of an hour which currently many Charters do not. In relation to Eurostar, for example, its provisions mean it is now required to organise alternative transport when the service cannot be continued, and must compensate passengers for delays even if they are caused by Eurotunnel.
- 4.4 The Regulation came into force across Europe for all international journeys in December 2009. This was followed up in June 2010, with a Statutory Instrument making the Office of Rail Regulation the main enforcement body and Passenger Focus and London TravelWatch the two complaints bodies. Due to the late change to the Regulation to potentially extend its scope to all domestic journeys, the Department for Transport (DfT) decided to provide an exemption for domestic journeys for a period of five years until 2014 and to consult on the impact of introducing it fully.

4.5 This consultation provided conflicting evidence as to the cost of providing assistance to delayed passengers, the introduction of transferrable tickets and moving towards cash-based compensation for domestic passengers. In addition, there was a concern that imposing changes to compensation schemes during existing franchises could potentially lead to operators requesting reductions in franchise payments. Finally, at the beginning of this year, the DfT announced that Ministers had decided that the burdens on industry outweighed the benefits, and therefore agreed to maintain the derogation until 2014.

## **5 Other Issues**

5.1 There are a number of other issues that have arisen in casework and discussions with operators in relation to the Passenger Charter regime.

5.2 It is estimated that only about 30% of eligible passengers currently claim compensation. This is probably because few passengers know what compensation they are entitled to; there is no incentive for operators to help passengers claim for the compensation for which they are eligible; and there is no requirement to provide prominent information about compensation schemes, unlike at airports for instance.

5.3 The requirement to make a separate claim for each time a passenger is delayed, means that the time and effort required to submit a claim can often exceed the value of the refund to the ticket holder. For instance, a delay of 30 minutes for a journey for a season ticket holder between Luton and London would typically lead to a compensation payment of £3.00 in National Rail vouchers.

5.4 While some operators provide passengers with the ability to claim compensation online, others do not. While claims for London Underground, London Overground and Docklands Light Railway can all be made through the Transport for London website, there is no similar centralised claim facility on the National Rail website. Therefore passengers who use a number of different operators have to navigate through different websites to claim for delays.

5.5 The claim process can be problematic to passengers and potentially open to fraud. Some operators have found that some passengers will make duplicate claims or will reject valid claims due to errors being made in claim forms. It is important therefore that claim forms are easy to understand and that operators have processes to ensure that valid claims are paid.

5.6 Compensation is usually paid in vouchers rather than cash. Many passengers consider that if they pay for a good in cash, they should get any compensation in cash. Also, with the increased usage of Oyster, ticket machines and the Internet to buy tickets, vouchers are not convenient and train operators estimate that 35% of vouchers issued are not redeemed.

5.7 The Delay Repay regime is not effective at dealing with sustained poor punctuality or service reductions. For example, when First Capital Connect's Thameslink services were disrupted by driver shortages and poor weather

between October 2009 and January 2010, the operator supplemented its Delay Repay scheme with an offer of free tickets or renewal discounts on season tickets.

## **6 Legal powers**

- 6.1 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 the Committee to be desirable, to make recommendations with respect to - any matter affecting the functions of the Greater London Authority or Transport for London which relate to transport (other than of freight). Section 252A of the same Act (as amended by Schedule 6 of the Railways Act 2005) places a similar duty upon the Committee to keep under review matters affecting the interests of the public in relation to railway passenger and station services provided wholly or partly within the London railway area, and to make representations about them to such persons as it thinks appropriate.

## **7 Equalities and inclusion implications**

- 7.1 Codification of passengers' rights can be a valuable means of protecting the interests of vulnerable users such as those with impaired mobility.

## **8 Financial implications**

- 8.1 Not applicable – report is for information only.

## **9 Recommendation**

- 9.1 That the report is received for information.

## Annex A Compensation Arrangements by Operator

Operator	Charter Type	Delay Trigger		Refund basis
c2c	Traditional	Single, return and weekly ticket holders	100% refund after 60 minutes	Voucher
		Season Ticket holders	5% or 7% discount for punctuality less than 87.5% MAA or reliability less than 98% MAA	Renewal discount
Chiltern	Delay Repay	50% refund after 30 minutes; 100% refund after 60 minutes Season Ticket holders can also claim 5% discount for punctuality less than 90% MAA or reliability less than 99% MAA.		Voucher and Renewal discount
Cross Country	Delay Repay	50% refund after 30 minutes; 100% refund after 60 minutes		Voucher
Docklands Light Railway	TfL	100% refund after 15 minutes		
East Coast	Delay Repay	50% refund after 30 minutes; 100% refund after 60 minutes		Voucher
East Midlands	Delay Repay	50% refund after 30 minutes; 100% refund after 60 minutes		Voucher
Eurostar	PRO-compliant <sup>1</sup>	Complimentary journey, 50% discount off a future return journey or 25% cash refund after 60 minutes		Voucher or Cash
First Capital Connect	Delay Repay	50% refund after 30 minutes; 100% refund after 60 minutes		Voucher
First Great Western (London & Thames Valley)	Traditional	Single, return and weekly ticket holders	50% after 60 minutes or 30 minutes if journey is under an hour	Voucher
		Season Ticket holders	5% discount for punctuality less than 89% MAA or reliability less than 98% MAA	Renewal discount
Gatwick Express	Delay Repay	50% refund after 30 minutes; 100% refund after 60 minutes		Voucher
Grand Central	Traditional	25% refund after 60 minutes; 50% refund after 120 minutes		Voucher
Heathrow Express	Traditional	100% refund after 15 minutes		Cash
Hull Trains	Delay Repay	50% refund after 30 minutes; 100% refund after 60 minutes		Voucher

<b>Operator</b>	<b>Charter Type</b>	<b>Delay Trigger</b>		<b>Refund basis</b>
London Midland	Delay Repay	50% refund after 30 minutes; 100% refund after 60 minutes		Voucher
London Overground	TfL	100% refund after 30 minutes		Voucher
London Underground	TfL	100% refund after 15 minutes		Voucher
National Express East Anglia	Delay Repay	50% refund after 30 minutes; 100% after 60 minutes		Voucher
South West Trains (Suburban routes)	Traditional	Single, return and weekly ticket holders	100% after 60 minutes	Voucher
		Season Ticket holders	5% discount for punctuality less than 89.5% MAA or reliability less than 98% MAA	Renewal discount
Southeastern <sup>2</sup> (Metro routes)	Traditional	Single, return and weekly ticket holders	50% after 30 minutes 100% after 60 minutes	Voucher
		Season Ticket holders	5% discount for punctuality less than 86.5% MAA or reliability less than 98% MAA	Renewal discount
Southern	Delay Repay	50% after 30 minutes; 100% after 60 minutes		Voucher
Stansted Express	Delay Repay	50% after 30 minutes; 100% after 60 minutes		Voucher
Virgin	Traditional	Single, return and Season Ticket holders	50% after 45 or 60 minutes; 100% after 120 minutes	Voucher
		Season Ticket holders	5% discount for punctuality less than 87% MAA or reliability less than 98%	Renewal discount

<sup>1</sup> PRO-compliant means that the Customer Charter is compliant with the EU Rail Passengers' Rights and Obligations regulations.

<sup>2</sup> Southeastern have announced their intention to move to Delay Repay from July 2011.