

# London TravelWatch Response to 'Reforming Rail Franchising'

October 2010



**London TravelWatch** is the official body set up by Parliament to provide a voice for London's travelling public.

Our role is to:

- Speak up for transport users in discussions with policy-makers and the media
- Consult with the transport industry, its regulators and funders on matters affecting users
- Investigate complaints users have been unable to resolve with service providers, and
- Monitor trends in service quality.

Our aim is to press in all that we do for a better travel experience all those living, working or visiting London and its surrounding region.

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## Executive Summary

London TravelWatch believes that on the basis of our casework, from a passenger perspective, there are problems with the current model of franchising. The level of specification often makes it difficult for train operators to respond to their passengers' needs after the franchise has been let. We welcome the Department for Transport's (DfT's) focus on the passenger in its proposals and also the recognition of the importance of rail to London.

### We welcome

From the passengers' perspective, London TravelWatch supports the main elements of the proposed reforms of rail franchises. In particular, London TravelWatch welcomes the explicit recognition in the 'Reforming Rail Franchising' document that, "[t]here is unlikely to be a single correct solution, applicable to all franchises".

### We recommend

While we support the broad approach outlined in the consultation we consider that there are key areas where additional safeguards are required for passengers:

**Fares review** – The complexity of the current fares structure causes confusion to passengers and if more control is given to the operator this is likely to create more complexity and variation which does not benefit London's passengers.

**Network benefits** – London TravelWatch does not believe that the consultation document provides sufficient protection of the network benefits of an integrated train service and systems. Outcomes that promote an integrated rail network need to be included in franchise specifications.

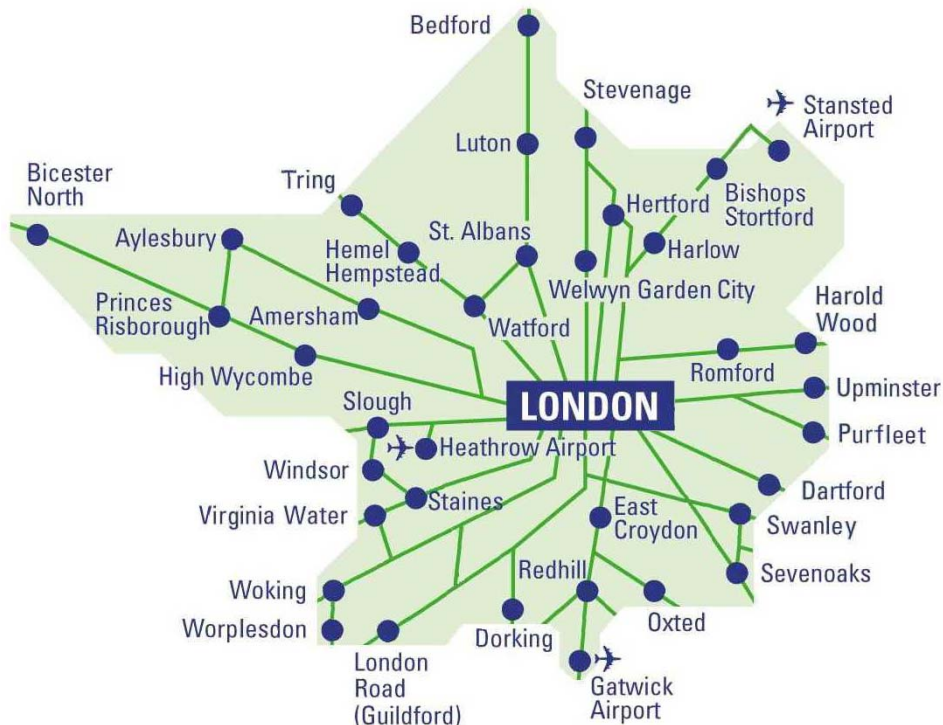
**Consultation with passengers and London TravelWatch's role** – We believe that there is a need for an obligation on the franchisee to consult with passengers. If franchisees are given more control over the train services there needs to be more accountability for meeting the needs of their passengers. We would like to see clear obligation on operators to engage with passenger representatives like ourselves and other stakeholders in developing their services to meet the needs of passengers.

**Franchise length** – While franchise length is important, it is only one factor in determining the success of a franchise. Potentially more important to the passenger is how the franchise specification ensures that the correct minimum level of service is defined.

## 1 Introduction

London TravelWatch provides this written submission to the Department for Transport's 'Reforming Rail Franchising' consultation as the independent statutory watchdog representing transport users of all modes in London and rail users in its surrounding area. The map below shows London TravelWatch's areas of National Rail responsibility.

**Diagram 1 – London TravelWatch Rail Remit**



The franchises which are entirely or partially within London TravelWatch's remit are as follows:

- C2C
- Chiltern Railways
- East Coast
- East Midlands Trains
- First Capital Connect
- First Great Western
- First ScotRail – Caledonian Sleeper services only
- London Midland
- London Overground (TfL London Rail Concession)
- National Express East Anglia
- South West Trains
- Southeastern
- Southern
- Virgin Trains
- Arriva Cross Country (services from Stansted Airport only)

## 2 Franchise specification

### Is the suggested model of specification practical and would it deliver good outcomes for passengers and taxpayers?

London TravelWatch believes the current Service Level Commitments are generally too prescriptive. From the passengers' perspective, it means that changes only occur when they are mandated as part of the franchise requirements and train operating companies can only make very minor modifications to the timetable to reflect their passengers' actual needs on an ongoing basis.

The following examples from our casework illustrate where passengers have complained to operators about service changes which have been as a result of the franchise specifications:

#### Figure 1 – Evidential examples from London TravelWatch Casework

Case 1: There were appeals that we received from Southern passengers about a timetable issue which was resulted from a DfT specification, in particular making a decision to end the Southern services to London Charing Cross.

Case 2: The inability of East Midlands Trains to insert stops at Bedford, despite the capacity problems on the route, this was subsequent resolved by the DfT.

However from the passenger standpoint, if there are too few checks and balances on the operator in specifying train services there are two serious consequences that might result:

- An expansion of un-integrated services that do not help performance or offer an integrated service to passengers.
- Rail services at small stations, late in the evening or early in the morning, or in the off-peak may be reduced to unacceptable levels for the passenger.

When train companies alter services, they must be obliged to consult in a genuine manner with their passengers and stakeholders. Such a check is required on operators because for the most part they are a monopoly supplier. Only on very specific sections of the network does a real competitive market in rail services exist. It is vital if operators are given more control, that they must also have responsibility for incorporating the views of passengers into their

business at a significant level. Without this, there is a risk that the operator would not respond to consumer need, and the market will not be able to make this adjustment on its own.

Any franchise specification should be based on the specification of outcomes so that passengers benefit from an integrated network and service pattern are enhanced.

This should include minimum service specifications to protect socially useful services at times or locations which do not generate a commercial rate of return.

Detailed information on London TravelWatch's aspirations for train services and improvements to be undertaken when franchises are retendered can be found in our documents 'Train Service Specification' and 'Franchise Aspirations'. These documents are enclosed with our submission and can be found on our website.

### **Are there alternative models that work better, and what are these?**

The London Rail Concession model of gross cost contracting is an alternative method which is recommended for consideration.

This model has led to a significant increase in investment in services, rolling stock and infrastructure and opened up new journey options thereby relieving other transport modes and parts of the rail network. We recognise that reducing the revenue risk to the franchisee may not be the most appropriate approach in all cases, but based upon its record in transforming orbital services in London it is worthy of consideration.

### **What factors should be considered in determining franchise length?**

London TravelWatch accepts the argument that there are potential benefits to passengers from longer franchises because the operator has greater certainty and therefore potential to invest to benefit the passenger. However, longer franchises are only one factor in the success of a franchise and they should not be seen as a solution to improve all franchises.

The 'Rail Franchising Policy: Analysis of Historic Data' report produced by KPMG for the DfT in January 2010, does not find a compelling link between the length of franchise and the franchisees' performance. The analysis, based on the historic data compiled in the period since 1996, shows that improved performance has not been directly linked to the length of franchise. It is therefore important not to see longer franchises as a 'panacea' for solving all of the existing problems with the franchising system.

The success or failure of a franchise is often determined by how well the franchise was originally specified. An example of a well specified franchise that

has delivered tangible benefits to the passenger is the 2009 South Central Franchise. Part of the reason for the successful specification was that passengers' views were actively incorporated into the specification from Passenger Focus' 'Priority for Improvements' survey. From this survey, the passenger results were fed directly into the franchise specification.

Chiltern Railways and C2C are often cited as examples of the success of long contracts in delivering performance combined with private sector investment. However, these two successful examples of long franchises must be set against those long franchises which have not performed well such as Connex South Eastern whose original 15-year franchise was terminated after seven years due to poor financial management and "a serious loss of confidence... in the ability of the company to run the business in its widest sense".

Following the KPMG analysis the success factors of C2C and Chiltern Railways would appear to relate to the following factors:

- Successful and stable management teams.
- Self contained franchises with relatively homogenous markets – this facilitates investment and good performance.
- Assumptions at the bid stage which have not been contradicted by events. The success of franchises is affected by economic factors and also the performance of third parties such as Network Rail and ROSCOs (Rolling Stock Companies) who can significantly impact on the outcomes of a franchise.

There are some potential disadvantages for passengers from longer franchises which need to be resolved:

1. Operators are likely to take a greater role in leading investment as part of longer franchises, so they will favour more lucrative longer distance passengers and exclude those who commute from suburban and urban locations. London TravelWatch believes that commercial considerations should not be the only factors in influencing investment and that the wider economic benefits should also influence investment decisions.
2. Performance – if an operator performs poorly but not below termination levels, long franchises may land passengers with poorly performing operators for upwards of two decades. If the operator performs below the specified standard but not at sufficient level to warrant termination of the franchise, then there must be a mechanism within the contract to ensure the required standard is achieved.
3. In reality, long franchises are likely to be broken down into shorter periods where contracts would be renegotiated to take account of changed circumstances. In these negotiations, the passenger and taxpayer may not get best value for money as it is a single supplier negotiation.

We recommend that a case-by-case approach is taken to franchise length. This approach would recognise and reward significant investment for the passenger if



a longer franchise was the precondition for that investment. Equally short franchise periods may be more appropriate for other kinds of franchise where the passenger benefits of longer franchises are less compelling. For example, where the future of the network is not certain when major infrastructure is still in development, such as in the case of:

- Crossrail
- Thameslink
- High Speed2

**Would the proposal to supply an initial “affordability” figure for premium or subsidy help bidders submit realistic proposals?**

London TravelWatch believes there are arguments both for and against the concept of a guide figure. London TravelWatch’s overriding consideration is that the passenger as well as the tax payer must be included in considerations of affordability and value for money.

### 3 Franchise procurement

#### What are the benefits and downsides to the procurement process outlined in the document?

London TravelWatch welcomes a more collaborative open approach to franchise procurement. The current bid process gives both the bidders and stakeholders limited opportunities to have input into the process of developing the invitation to tender. The result is that innovation is not encouraged which does not benefit passengers.

##### 3.1.1.1 Benefits

- Competitive dialogue – local bodies are consulted in the current initial specification but not beyond that point. The competitive dialogue process could continue the input of organisations such as TfL, London TravelWatch and local authorities.
- One of the problems that bidders face currently is that they only have a relatively short period of time to develop their proposals following the issue of the invitation to tender. By being more open about the process a higher quality and cheaper bid might be developed which could provide increased innovation.

##### 3.1.1.2 Downsides

- The process might result in a wide variety of bids making assessment challenging.
- The criterion of the bid assessment needs to also consider value for money to the passenger as well as that of the tax payer.
- We would hope to see greater commitment to involve stakeholders in this process.

#### How can we reduce the complexity of bidding, while still protecting taxpayers and passengers (especially given a greater focus on quality)?

London TravelWatch welcomes the idea of confidentiality-protected partnering. We hope that this means that the DfT can be more transparent in the future, within the limits of commercial confidentiality. For rail franchising the confidentiality of the bidding process has meant that there have been missed opportunities to engage the rail industry's and stakeholders' expertise in specifying the franchise.

## 4 Contract design and management

### What services, outcomes and commitments should be contracted?

Giving operators greater control over the business levers of the franchise could generate the greatest potential for efficiency of operations. However, this would need to have clear outcomes against which ongoing performance is monitored, for example:

- Levels of delay and cancellation, as well as the availability of the railway
- Levels of crowding on trains
- Incentives to ensure integrated train services to protect network benefits
- Levels of ticketless travel (also passengers travelling with an incorrect ticket)
- Levels of passenger complaints and passenger satisfaction
- Standards of quality of information to passengers, and presentation of the stations and trains
- Minimum levels of service at stations
- Obligations to consult and engage with passengers and stakeholders
- Obligations to provide a reasonable level of staffing to avoid reliance on rest day working. London TravelWatch does not normally comment about industrial disputes but this issue has caused considerable disruption to passengers and can only be resolved by cross industry action.
- Accessibility of the transport system for passengers with disabilities or particular needs should be a vital outcome which should be delivered by operators. London TravelWatch supports the Disabled Peoples' Protection Policy (DPPP) process and the commitments it requires operators to set out for assisting the disabled and elderly who wish to use National Rail services. However, the DfT needs to ensure that the network wide implementation of the DPPP process reflects the complex nature of jointly operated stations in London, particularly where London Underground operate stations on behalf of National Rail operators or are part of a National Rail interchange.

The outcomes need to be aligned across the railway industry from Network Rail to the train operators, regulators and the DfT. For the franchisee and Network Rail, the performance regime needs to provide sufficient sanctions at the correct time to ensure that they act in the best interest of passengers and tax payers.

The level of detail of specification needs to be related to the means of management and the nature of the franchise. For example, levels of competition for services may be less in urban settings than long distance due to lack of other viable options. Where the operator does not operate in a competitive market or

where considerable public subsidy per train kilometre is paid, greater level of control may be more appropriate.

In areas where a genuine competitive market operates, such as intercity services, a lower level of specification might be achieved. This ultimately depends on the ability of the private sector to be influenced by demand for services in a functioning market.

### **What is the best way to structure outcome measures based around passenger satisfaction levels?**

London TravelWatch supports the approach proposed in the consultation document of a Passenger Opinion Survey combined with a Service Quality Survey. We support this idea because passenger satisfaction levels are only one side of the outcome as passenger satisfaction is not an absolute measure. Passenger satisfaction needs to be weighed against quantifiable factors from a mystery shopper survey assessing service quality in a directly measurable way.

However, it is not clear to London TravelWatch how the current National Passenger Survey and the new Service Quality Measure will be integrated. We seek further clarification on how these two sets of surveys will be integrated into the new franchise regime. We support the continuation of the National Passenger Survey and in particular its independence from both train operator and the Department for Transport.

### **What sanctions should be used to ensure operators deliver their commitments, including outcome measures?**

London TravelWatch would want to see sanctions that provide genuine and robust protection to the passenger. Performance regimes need to provide the correct incentives to operators and must be aligned across the railway industry to include Network Rail.

An issue which needs to be looked at is when rail service cancellations are not classified as cancellations because emergency timetables are invoked.

### **What level of performance bond and/or parental guarantees is appropriate?**

The performance bond and/or parental guarantee have to be more than just a symbolic protection of the interests of the passenger and the tax payer. However, London TravelWatch is not in a position to provide a quantified answer to this question.

## 5 Revenue risk

### **Should the risk inherent in forecasting revenue over a longer period be shared between operators and government, and if so, how?**

The current revenue support mechanism has been recognised to not fully give operators the incentives to generate efficiencies or additional revenue. An example of the impact of this perverse incentive is First Capital Connect's decision to halt financially positive gating schemes after entering revenue support on the grounds that the investment no longer had a business case as the revenue would be shared with the DfT. We believe that addressing this structure is a key task of both franchise reform and value for money. We therefore welcome the inclusion of suggested reforms to its mechanisms in the consultation document.

### **What are the merits or drawbacks of review points?**

The review points may allow a more reasonable sharing of revenue risk between the public and private sector. However, it is important to note the example of where single supplier negotiations have not resulted in the best value for money for the passenger or taxpayer.

### **What are the merits or drawbacks of economic indexation compared to the existing revenue support/share or leaving revenue risk entirely with the operator?**

In our experience, many operators have the attitude that they cannot influence the growth of passengers in the suburban context. Their belief being that growth is only driven by macroeconomic factors and that as the fare value per passenger is low, investment in marketing is not justified. This is compounded by the problem that in the London Travelcard area revenue is shared between operators. For example investing in the Wimbledon loop services is unlikely to derive significant revenue to First Capital Connect as many will change trains at Wimbledon on to the Underground or South West Trains services. However, with the exception of the London Overground concession, all other franchises retain the revenue risk in their franchise agreements. We believe that there is the potential for operators to take actions to grow passenger revenue in the suburban context both through:

- Marketing and investment in the promotion of suburban services.
- Community rail partnerships in an urban context.
- Reform of the revenue allocation system

## 6 Franchise investment

### How can we add to incentive from longer franchises to remove the barriers to private sector investment?

#### 6.1.1.1 Rolling stock

The operator taking greater control and investment risk in rolling stock may be a more appropriate route for some types of procurement. However this has to be balanced against the economies of scale and flexibility of large scale train orders. If the operators are to have a greater role in rolling stock investment there needs to be a review of the structure of the market. At the moment there are ROSCO owned trains as well as government-procured trains (such as the additional vehicles for the eleven-car Pendolino fleet). This means that currently there is a complex mixture of ownership and investment in rolling stock. There should be a free market in order for operators to purchase additional rolling stock to reduce costs and increase supply of rolling stock.

#### 6.1.1.2 Stations

Stations and the contractual matrix which govern them are one of the most complex areas of the railway. The relationships and responsibilities of the parties involved are far from clear and have not resulted in the levels of maintenance or investment that has occurred in other areas of the industry. A simplified and better-aligned contractual structure could incentivise investment to the benefit of passengers and reduce costs.

#### 6.1.1.3 Network Rail

The role of third parties in delivering investment in Network Rail's infrastructure has been an area where the Office of Rail Regulation (ORR) has asked for improvements. We recommend that Network Rail should put in place a structure so as to facilitate and encourage third party investment in the network.

**How can we encourage investments with long payback periods throughout the franchise term, not just at the start?**

Mechanisms in the franchise to encourage investment need to be put in place to ensure that investment occurs throughout the lifetime of the franchise. Chiltern Railway's franchise agreement is one possible model for this type of incentive structure.

Contract review points could also be used to agree levels of investment which would be carried out by the franchisee. In this way the investment would be spread across the franchise rather than only specified at the beginning of what could be potentially a 20-year franchise. Agreed levels of investment could be a condition of a franchise progressing to the next period of the franchise.

## 7 Cost control and efficiency

### **How can the government incentivise operators to control cost increases over the life of the franchise, and to improve cost efficiency?**

Within clearly defined limits train operators might be more efficient if they had more responsibility for the business levers of a franchise. As the party with the closest connection to the passenger and the day-to-day operation they should have the greatest insight into the potential for efficiency. However, additional powers must be balanced by clear requirements to genuinely involve passengers, stakeholders and passenger representatives in decision making.

Through seeking greater efficiency it is vital that operators do not simply cut front line services which benefit the passenger. In other words more must be genuinely delivered for less.

As part of the outcomes of the franchise it is important that operators are strongly incentivised to have a structured approach to collecting additional revenue which is originally due to them. This ultimately benefits the passenger and the tax payer as it maximises the potential for investment and minimising fares and tax payer support. However, London TravelWatch recommends that the penalty fare system and its associated appeals service (the Independent Penalty Fares Appeal Service and Independent Appeals Service) are reformed to ensure that the passengers' interests are protected by the system.



## 8 Other areas for consideration

### 8.1 Integrated Transport and Network Benefits

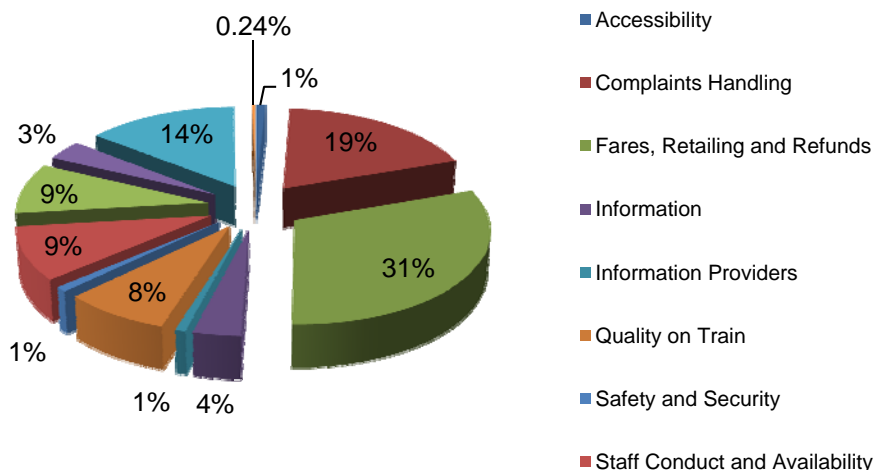
One of the key risks to passenger of devolving responsibility to the operators is that there will be an atomisation of the network and a plethora of differing systems and approaches. An example of this is the problems that passengers face in obtaining real time information during disruption. Individual operators procured different Customer Information Systems (CIS). The consequence is that each system does not talk to each other, and in the case of Virgin, 17 individual systems within the same operator do not talk to each other.

There is a key question, therefore, in devolving responsibility to the operators, how network wide systems and services can be effectively procured to protect the integrated benefits of the railway network to the benefit of the passenger? London TravelWatch does not believe that this question has been answered by the consultation document.

### 8.2 Fares Policy

Fares are the biggest single issue which London TravelWatch receives appeals about from passengers. Appeals fall into the following categories:

**Graph 1 - London TravelWatch & Passenger Focus Appeals by Category Jan to Jun 2010 (ORR National Rail Trends)**



Of these complaints many relate to the complexity of the fares structure which passengers find hard to understand. If operators are given too much flexibility on fares this structure is likely to get more complicated. An example of such an

appeal is the confusion of passengers at Gatwick Airport who are faced with one fare for First Capital Connect to London Bridge and a separate fare if a passenger travels by Southern. See examples from passenger appeals we have received:

### **Figure 2 – Evidential examples from London TravelWatch Casework**

**Case 3:** The current ticketing options between London Gatwick airport and Central London are confusing to passengers because First Capital Connect and Southern offer different ticket types and fares.

**Case 4:** The differential peak restrictions from operators cause confusion to passengers. For example the evening peak travel restrictions to nearby or neighbouring stations such as Elstree & Borehamwood and Radlett, or Ely and Cambridge are different.

London TravelWatch advocates a strategic review of fares pricing policy in London. The network benefits of an integrated strategic approach to ticketing are important to passengers as consumers. London TravelWatch suggests the two key areas needs to be addressed:

1. A strategic review of fares policy across the London and South East area.
2. Revenue collection through a gating strategy for stations in the London area.

### **8.3 Consultation**

London TravelWatch recommends that there needs to be more emphasis on the franchisee to consult with passengers, stakeholders and passenger representative organisations. If franchisees are given more control over the train service they also have to take on more responsibility for meeting the needs of their passengers. London TravelWatch does not believe that sufficient checks and balances have been placed on train operators by the proposals set out in the consultation document. By placing greater obligations for operators to consult and engage with consumer bodies, stakeholders and passengers, this balance can be in part addressed.

### **8.4 London TravelWatch's Role**

The roles of statutory passenger representative bodies such as London TravelWatch are not mentioned by the consultation document. We would want to see explicit obligations on operators to engage with London TravelWatch and other stakeholders in developing their services to meet the needs of passengers.

London TravelWatch's strengths in this regard are as follows:

- **Integration** – London is particular and unique, transport-wise, and needs a multi-modal, integrated watchdog. Most people travelling around the city do not use one form of transport in London, and an integrated body is needed to represent that. An integrated transport voice for transport users makes sense for this reason.
- **Independence** – We believe London TravelWatch's party-political independence is necessary for passengers to be appropriately represented. We can also speak solely for passengers, whereas politicians must represent residents, local businesses and other interest groups.
- **Informed & Knowledgeable** – London TravelWatch is knowledgeable and informed about the issues the travelling public face and the wider transport industry. We represent passengers effectively, and are able to deal with the complicated and harder to resolve appeal complaints because we have specialist knowledge and are informed about the industry.

We believe that more detail is also required to explain how the Office of Rail Regulation's (ORR) increased role in relation to passengers will be integrated with the existing passenger representative organisation such as London TravelWatch. In particular, how the ORR will be able to carry out this function whilst at the same time continuing to represent the interests of train operators and regulating Network Rail, when the interests of passengers may conflict with that of the rail industry and also the Department for Transport.

## 9 Conclusions

In conclusion, the franchise proposals seek to address the commonly held weaknesses of the current system and aims to benefit both the tax-payer and the passenger.

### Franchise specification

We support the potential increased responsibility of franchisees, as they are the bodies closest to the passenger. However, checks and balances are definitely required on train operating companies, for example to oblige them to consult and involve passengers in a wide range of decision making in relation to services. Train operators must be responsible for genuinely incorporating views of passengers into their services.

### Franchise procurement

London TravelWatch welcomes the proposals for a more flexible bidding process and recommends that emphasis is also placed on involving stakeholders such as London TravelWatch in the bidding process.

### Contract design and management

London TravelWatch supports the approach proposed in the consultation document of a Passenger Opinion Survey combined with a Service Quality Survey. Passenger satisfaction needs to be weighed against quantifiable factors from a mystery shopper survey assessing service quality in a directly measurable way. We seek further clarification on how the NPS and Passenger Opinion Survey will be integrated into the new franchise regime.

### Revenue risk

London TravelWatch believes that there is more potential for operators to take actions to grow passenger revenue on the suburban environment by marketing and investment of suburban services and community rail partnerships.

### Franchise investment

Stations and the contractual matrix which govern them are one of the most complex areas of the railway. London TravelWatch suggests a simplified and better aligned contractual structure could incentivise investment to the benefit of passengers and reduce costs.

### **Cost control and efficiency**

London TravelWatch recommends the mechanisms used to make changes part way through franchises are reformed because currently changes that would benefit passengers can only be applied when a franchise is renewed.

### **Other areas for consideration**

London TravelWatch believes there are key areas important to passengers that have not been mentioned in this consultation. In particular we do not believe that the consultation document puts in place sufficient measures to protect the network benefits of integrated train services and systems such as real-time information or ticketing.

A prerequisite of franchise reform is a strategic fares review to set in place a structure which is easily understandable by the passenger to ensure that they are able to obtain best value for money. The consultation document does not address this key question for the passenger: how much they will pay for rail services?