



OFFICE OF RAIL REGULATION

# The ORR and rail consumers

John Larkinson, Director – Rail Markets and Economics  
John D Holmes – Strategy unit

15 October 2013

Ref: 7662648

# Structure of presentation

- We've been invited to address:
  - ORR's consumer programme specifically
    - our consumer role
    - legislative powers we have in respect of consumer protection
  - Our consumer expert panel and upcoming work
- To do this we:
  - Explain our role and strategic objectives
  - Our high-level ambitions for rail consumers
  - The legal and enforcement framework
  - The evidence base we use and our upcoming work
  - Opportunities for LTW and ORR



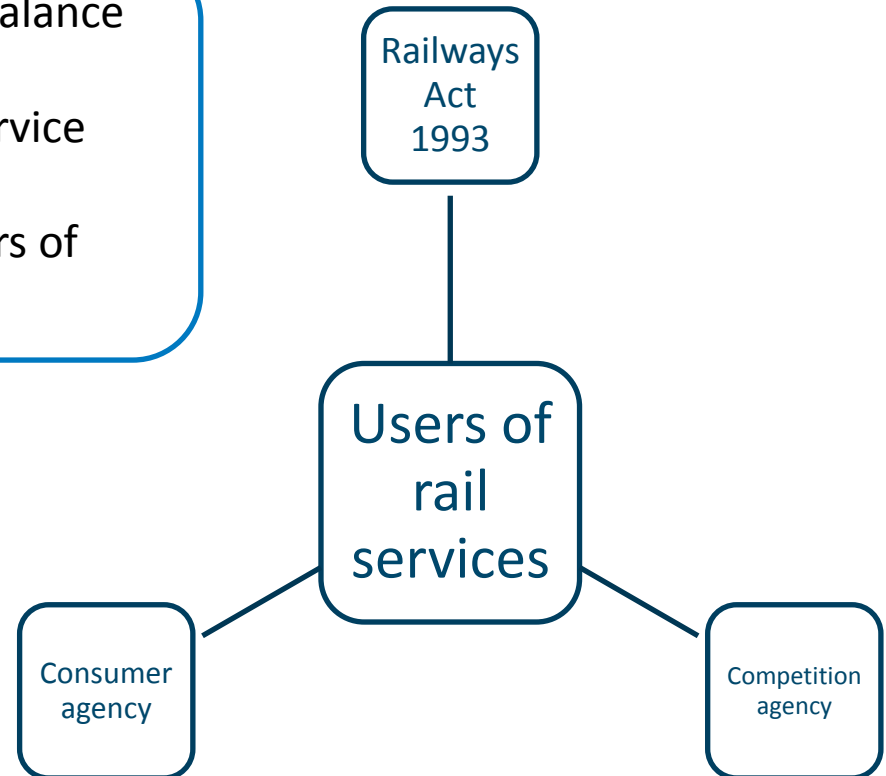
# The functions of the ORR

Integrated safety and economic regulator of the rail industry

Section 4 RA93: sets out duties for ORR to balance when exercising its functions.

- “to promote improvements in railway service performance;
- otherwise to protect the interests of users of railway services” amongst others

- ORR is also a concurrent regulator of competition and consumer law
- The rail industry is subject to the same law as every other business



# Strategic Objectives

How does ORR manage these roles?

Five strategic objectives underpin ORR and inform:

- our approach to regulation
- our prioritisation

But, rail is complex, so we must be aware of:

- the duties and obligations that arise in franchises
- the views of a range of stakeholders

*Strategic objectives:*

1. Drive for a safer railway
2. Support a better service for customers
3. Secure value for money from the railway, for users and funders
4. Promote an increasingly dynamic and commercially sustainable sector
5. Be a high-performing regulator

# Our consumer role and ambitions in brief

Everything ORR does ultimately has an impact on rail users, not least consumers.

Overall, if consumers have a stronger, more effective, voice this means less, and less prescriptive, regulation.

A rail industry that responds to consumers' needs will be more successful and sustainable than one that does not, offering a better deal for users and funders of rail services in the long term.

Our approach:

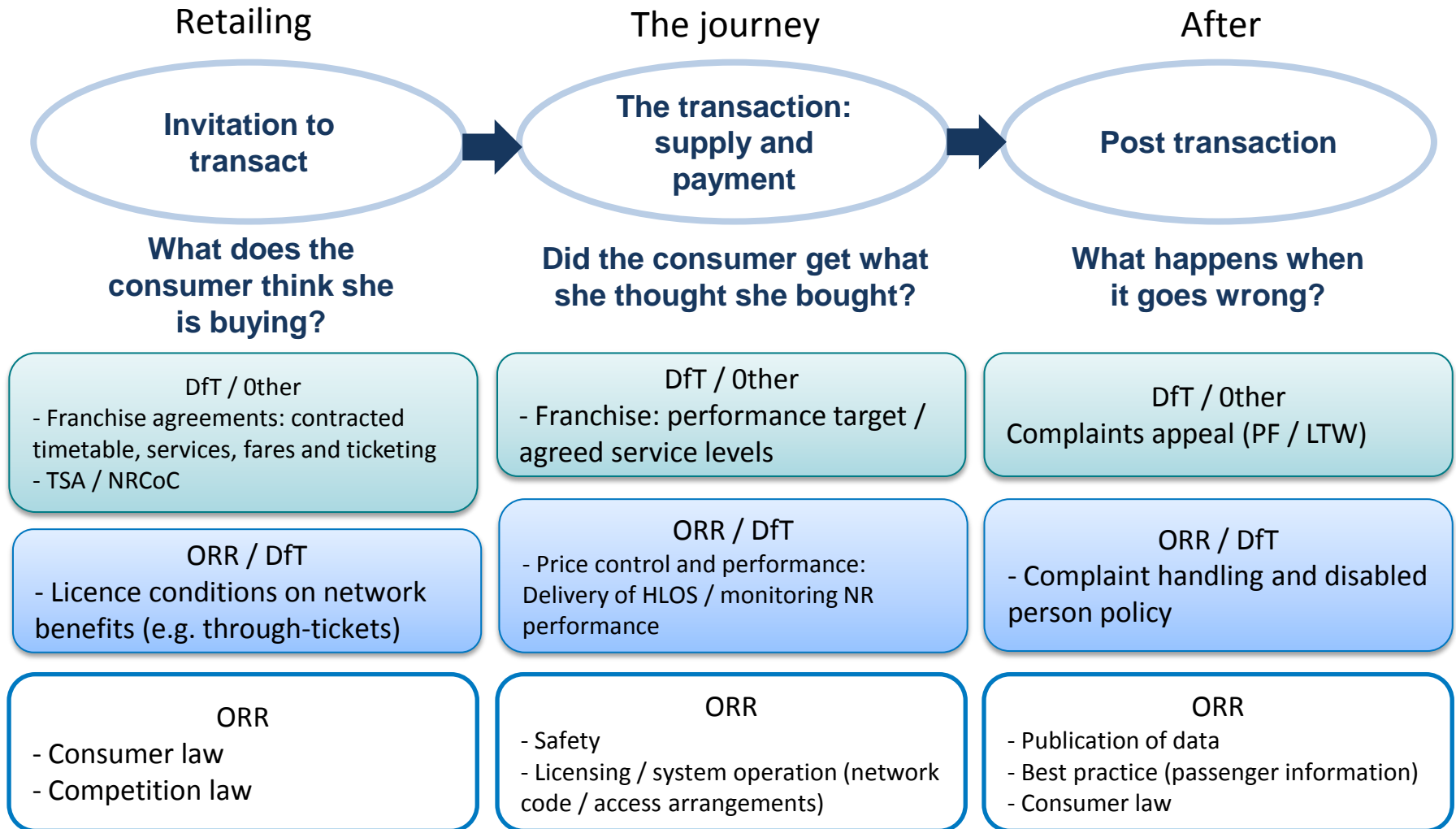
- The ORR must support industry best practice, remove 'red-tape' and address the barriers that prevent it taking the lead.
- ORR must also act promptly where consumers' interests are seriously or systematically disadvantaged.

# Consumer law: background

- ORR is a designated enforcer of certain pieces of consumer law under Enterprise Act 2002
- Other similar enforcers include:
  - Office of Fair Trading
  - Trading Standards Departments
  - Other regulators, e.g. Ofcom, Ofgem, CAA
- Work closely with other enforcers – including through the Consumer Concurrences Group
- Consumer law role underpins our wider interest in consumer issues more generally



# Many stakeholders and ways to protect or promote the interests of those using and funding railways



# Consumer law: enforcement

Our approach focuses upon two questions:

- Is there evidence of harm to the collective interests of consumers?
- Can the issue be addressed through railway sector specific mechanisms?

This is rooted in Part 8 of the Enterprise Act 2002:

- Provides a mechanism for enforcing certain pieces of consumer law - such as the Consumer Protection Regulations 2008 (CPRs) or Unfair Terms of Consumer Contracts Regulations 1999 (UTCCR)
- Not about individual passenger complaints: Must be harm to the “collective interests of consumers”; seeks to end harmful practices - NOT a mechanism for individual redress
- Involves engagement with offending party:
  - Involves process of consultation – can we quickly resolve the issue
  - Ultimately seek Court Order to enforce if can't reach agreement
- See our guidelines at: <http://www.rail-reg.gov.uk/server/show/nav.2136>



# Consumer law: CPRs

- ▶ CPRs prohibit misleading practices and behaviour – contain three prohibitions:
  - ▶ General prohibition on misleading practices
  - ▶ Prohibition on misleading actions and omissions
  - ▶ List of practices that are in all circumstances prohibited
- ▶ Examples – see ORR’s guidance on our consumer law role:
  - ▶ Misleading omission means failing to tell someone something which is material to their purchasing decision – e.g. that a bus replacement service is in operation



# Consumer law: interaction with industry

- ▶ Established means for dealing with individual passenger complaints:
  - ▶ TOC then PF or LTW if not satisfied
- ▶ Although we don't deal with individual complaints, they might flag up an issue or practice of wider concern
- ▶ We have put in place arrangements to help ensure that individual complaints are dealt with appropriately and we can address issues

# Reforms to consumer law

- Government (BIS) is taking forward a number of changes to consumer law designed to engage/empower individual consumers and to beef-up enforcement powers
- Key changes are:
  - Putting the implied term that services must be provided with “reasonable care and skill” on a statutory footing
  - Introducing statutory remedies (repair, replacement, compensation) for services
  - Empowering individuals to rely on prohibitions on misleading commercial practices to seek individual redress
  - Amending the enforcement process so that where consumer enforcement bodies (such as ORR) take action they can seek “enhanced consumer measures” (such a redress) from the courts, as well as bringing an end to the prohibited practice



# Our evidence base: how we identify issues

- Liaison with industry consumer representatives: passenger focus, LTW. Also special interest groups representing disabled passengers
  - Significant research that we can directly draw on
  - Sharing of data or joint work
  - Complaints data or raising of specific issues
- Consumer expert panel:
  - An independent panel, established on a formal basis, to support and challenge ORR to account for the consumer interest across all of its work
- Best practice / discussion with TOCs / industry on their own engagement with customers
- Research – Occasional and regular research, e.g. monitoring of rail industry performance (via data portal), the passenger experience report



# The consumer expert panel

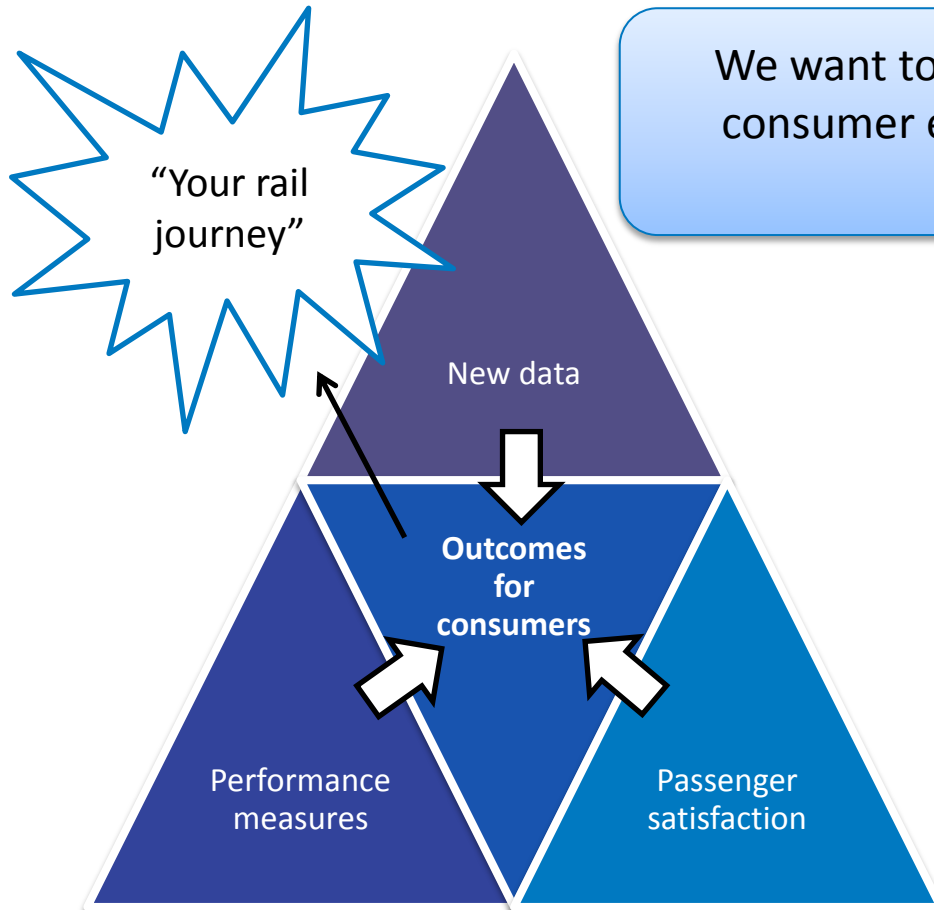
ORR has had a consumer panel since 2010

We are now re-launching the panel on a formal basis with new members

- The panel is advisory, helping us by examining or assessing policy or regulation and advising us on consumer interests or issues.
- It should challenge and support ORR to deliver better outcomes for rail consumers
- Its purpose is to ensure our policies and decisions benefit from a sound understanding of consumer issues

- The panel will include 5 individual members and three institutional members: Passenger Focus, London TravelWatch and the Disabled Persons Transport Advisory Committee
- It will meet quarterly, with scope for ORR to call on individual expertise
- The first meeting and induction of the panel is in November

# The passenger experience report: “Your rail journey”



We want to combine existing and new data on the consumer experience to give us a fuller picture of consumer outcomes.

- Understanding the transaction: before you travel, the journey and resolution
- Informs ORR of issues and concerns, as we lead into business planning
- Provides a snap shot of outcomes to help us monitor
- Provides others with data on the consumer experience



# Current and upcoming activity

## Retailing

**Invitation to transact**

Helping passengers buy tickets with confidence:

- Retail code of practice
- Retail review
- Joint Working Group: fares and tickets

Review of NRCoC with ATOC

## The journey

**The transaction: supply and payment**

- Performance targets: PPM and CaSL; licence enforcement
- Access: DPPP
- Improvements: keeping passengers informed and moving while undertaking key work
- Passenger information: PIDD, transparency initiatives

## After

**Post transaction**

Know your rights:

- Compensation / Refunds: education and awareness for TOCs and passengers
- Complaint Handling Procedures

# Opportunities for LTW and ORR

- ▶ **LTW** – is a key stakeholder, from which we would like:
  - ▶ **Challenge:** are we doing the right things, are being open and as clear as possible?
  - ▶ **Evidence:** LTW are a key contact for rail consumers – what's the harm, who is affected, is it widespread? Contributing to our direct research (passenger experience report)
  - ▶ **Support:** as we develop our role with CHPs and DPPP, as we tackle issues of ticket complexity, with our expert panel





**Questions?**