

DfT Consultation - A railway fit for Britain's future

Submission from Transport Focus

Introduction

Transport Focus is the independent consumer watchdog representing the interests of rail users throughout Great Britain; bus, coach and tram users across England, outside London; and users of the motorways and major 'A' roads in England. Working with transport providers and Governments across England, Scotland and Wales – and in partnership with our colleagues at London TravelWatch – we ensure that the users' voice is heard.

Executive Summary

The reforms provide an opportunity to fundamentally redesign the railway around the interests of passengers and create a more customer-focussed culture. We believe that many of the proposals will help with this and have suggested small modifications that will strengthen them further.

The success of the proposals will also depend on how they are implemented and our detailed response identifies issues that the Government should consider during implementation. These include making sure that:

- Great British Railways (GBR) has the operational independence to make difficult long-term decisions that are in the best interests of passengers
- It is clear how and to whom GBR will be held to account for its performance and that this is done transparently and predictably
- Engagement from customers, particularly disabled passengers, is hard-wired into the design of GBR and PSA
- The Passenger Standards Authority (PSA) is consulted on key decisions affecting passengers.

To address these and other issues, we believe it is important that the PSA, GBR and other parts of the rail industry are designed together as part of a fully-integrated change programme. This will help make sure that the aims of the reforms are realised and limit the risk of complexity, unclear or over-lapping responsibilities diluting their impact. We stand ready to play our part in this.

We are also interested in what the reforms will deliver. Passengers will judge the success of the reforms by what matters most to them: reduced cancellations, increased punctuality, reliable delivery of Passenger Assist and turn-up-and-go,

simpler fares and better communication during disruption. We would welcome further information about when improvements on these priorities will be delivered.

A summary of our answers to the questions in the consultation is set out below.

Question 1: Do you agree that GBR should be empowered to deliver through reformed incentives and a simplified and streamlined regulatory framework?

Yes, subject to adequate transparency and governance being baked into the system from the beginning, including surrounding the way in which the Secretary of State would use the power to issue Directions and Guidance. It is important that operational independence for GBR is combined with transparent, predictable and clearly articulated public accountability about its performance.

Question 2: Do you agree that the Secretary of State should be responsible for issuing and modifying a simplified GBR licence enforced by the ORR, and that the ORR's duties with respect to GBR should be streamlined to reflect the new sector model?

Yes, subject to this being a transparent and consultative process, and that it is considered alongside the other powers given to the Secretary of State and how GBR will be held to account for performance.

Question 3: Do you agree that the Secretary of State should be responsible for setting a long-term strategy for GBR to align with government priorities?

Yes, subject again to this being a consultative process, and that it is considered alongside the other powers given to the Secretary of State and how GBR will be held to account for performance.

Question 4: What are your views on the proposed functions of the new passenger watchdog? and

Question 5: Which of the approaches would best enable the establishment of the new passenger watchdog?

We agree with the broad functions assigned to the PSA in the consultation and believe that this should include taking on the consumer licence functions currently performed by ORR such as passenger assistance, passenger information, and complaints.

We see an important distinction between the ORR (as regulator) and the PSA (as passenger champion). It would be the job of the PSA to be an advocate, clearly on the side of passengers, rather than acting as an impartial regulator. The PSA could set some consumer standards, monitor delivery, investigate issues and make recommendations, but enforcement powers for breaches of standards would remain with the regulator, with the PSA referring issues for consideration and action.

To properly fulfil this function the independence of the PSA will need to be protected, as well as being given additional powers. These include powers to request information from GBR and other operators, the right to make recommendations and for decision makers to have regard to them/respond to those recommendations.

It will also be important to clarify the role of the PSA in Scotland and Wales. Will the PSA have statutory consultee/advisor status in Scotland and Wales, will bodies in Scotland and Wales be required to have regard to the PSA's recommendations, and will the PSA's powers apply to Scottish and Welsh services?

Question 6: Which of the options to establish the Alternative Dispute Resolution function as part of the passenger watchdog would deliver the best outcome for passengers in your view?

We support the proposal to transfer the sponsorship of the Rail Ombudsman (RO) to the new passenger watchdog.

Question 7: Does the proposed new access framework enable GBR to be an effective directing mind that can ensure best use of network capacity?

Yes, provided that an adequate governance arrangement exists to prevent GBR giving itself preferential treatment.

Question 8: What – if any – key access rules and requirements for GBR should be updated and included in legislation? and

Question 9: Does the proposed role of the ORR, acting as an appeals body to ensure fairness and non-discrimination, provide sufficient reassurances to operators such as freight and open access wishing to access the GBR-managed network?

It will be essential that the rules and process surrounding access are transparent. It will be important for GBR to publish clear requirements, to consult widely on plans and set out clear reasons for accepting or rejecting applications. It will be important that this accountability and transparency is baked into proposals from the outset.

Question 12: Do you agree with the proposed legislative approach regarding a 5-year funding settlement for Great British Railways?

We support the 5-year funding settlement for rail. However, it will be important that the passenger voice is heard when setting business plans. The PSA will be ideally placed to provide this and should have a consultative role in this.

Question 13: Do you agree with the legislative approach set out above to retain the Secretary of State's role in securing the overall affordability of fares and continuing to safeguard certain railcard discount schemes?

Yes. Rail has an important social role in getting people to and from work and education as well as providing links to essential services. It is right that fares setting isn't just a commercial decision and that wider benefits and safeguards are factored

in. There will be a clear passenger benefit from involving the PSA in fares, ticketing and retail development.

Question 14: What, if any, safeguards are needed to ensure a thriving and competitive rail retail market while also ensuring GBR can deliver a high-quality offer to its customers?

Independent retailers need to be given confidence that there will be a level playing field when it comes to access to products and funding mechanisms. We believe that transferring the licencing regime away from GBR/Rail Delivery Group to an independent body will also provide reassurance.

Question 15: The government intends that GBR's statutory duty in relation to devolved leaders should strike a balance between enhancing their role whilst also ensuring that GBR has the appropriate flexibility to direct the national network. Do you agree with this approach?

We agree that there has to be a balance struck between the positive benefits of bringing decision making closer to devolved leaders and communities directly affected by decisions, and GBR's wider ability to plan rail as a network.

Question 16: Do you agree with the proposed approach in Scotland on enabling further collaboration between track and train while preserving the devolved settlements? and

Question 17: Do you agree with the proposed approach in Wales on enabling further collaboration between track and train while preserving the devolved settlements?

We support that existing devolved accountabilities in Scotland and Wales will remain in place. We also welcome the commitment to continue discussions and to put in place strong joint working arrangements between GBR, ScotRail and Transport for Wales.

We agree in principle with the proposed approach in Scotland and Wales. However, much will depend on the ongoing engagement with Scottish and Welsh Government's, so it is hard to comment in detail at this point.

It will be essential that the design of GBR and the PSA take devolution into account.

Question 18: Do you agree with the government's approach of making targeted amendments to existing legislation to clarify the role of devolved leaders in relation to GBR?

We broadly agree with this approach. It will be important that all parties have clarity on roles and responsibilities. We support the requirement for devolved leaders to be consulted on GBR's activity (including the development of railway plans, strategies and services), and the proposal to create a 'right to request', whereby Mayoral Strategic Authorities can request devolution of parts of the network. We also agree

with the proposal for targeted amendments to legislation to allow / encourage partnership working.

Our response to the consultation

Transport Focus welcomes the opportunity to comment on the consultation. Our starting premise has been to assess proposals against five overarching principles – all of which designed to put passengers at the heart of the railway:

1. That GBR is set-up from the start in a way that supports creating a customer focussed culture. This would include
 - a. Putting the passenger first: aligning industry structures and incentives so that they deliver the outcomes and behaviours that passengers want to see.
 - b. Designing metrics and monitoring systems that make sense to passengers and drive behaviours that passengers want to see.
 - c. Engaging passengers: giving them a voice in the decision-making process.
2. That transparency becomes the default position for GBR – with processes and systems including it as standard
3. That there is a strong independent passenger voice that can represent all rail users and challenge GBR (and others) when needed
4. That the passenger voice must be multi-modal, with the PSA having a clear role in improving the end-to-end journey.
5. That there are clearly articulated, well-understood responsibilities and accountabilities between national rail bodies (DfT/Transport Scotland/Transport for Wales, ORR, GBR, and the PSA) with minimal overlap or unnecessary bureaucracy.

Our comments in the main consultation response build on these broad points.

We acknowledge that this consultation focuses on proposals that require legislative change rather than giving a complete overview of rail reform in general. However, the lack of this overview has made it harder to answer some of the questions in detail. For example, it is difficult to look at the functions of the PSA without a better understanding of how GBR will be structured, operate and be held publicly accountable.

The PSA's role, responsibilities and powers are intrinsically linked to GBR so it is hard to develop (or comment on) one without sight of the other. As it stands there are still gaps in that understanding. For example:

- How will passenger satisfaction be monitored in the new railway? Will GBR carry this out as part of building a relationship with its own customers, or should it be the passenger champion (as part of a suite of measures designed

to hold GBR to account), or will it be some combination of both? In our view GBR needs to 'own' the relationship with its customers, but it would not be credible for it monitor the main passenger satisfaction measures it is held to account for – it would be seen to be marking its own home-work.

- Who will monitor and hold GBR accountable for the punctuality of trains in the new structure. Will this be ORR, Secretary of State / DfT, the PSA, a function of GBR's chair and board, or some combination of these? In our view it is important this is made clear from the outset, so that GBR is not held to account for the same thing by several different organisations. The accountability also needs to be predictable, periodic and public (e.g. independent, annual reports on performance), so it is properly held to account but also able to make and explain difficult long-term decisions and trade-offs.

Going forward it will be essential that key questions, such as the organisational design and public accountability of GBR and the PSA, are considered together rather than in isolation.

Leadership of Britain's railways

Question 1: Do you agree that GBR should be empowered to deliver through reformed incentives and a simplified and streamlined regulatory framework?

Passengers want a railway that:

- Consistently delivers the core product: a reliable, affordable, accessible, punctual, frequent service on which you can get a seat. These are the things that drive passenger satisfaction and underpin trust.
- Puts the passenger first: aligning industry structures and incentives so that they deliver the outcomes and behaviours that passengers want to see.
- Delivers accountability and transparency: a sense of someone being in control / a guiding mind who can be held accountable, and who 'owns' the customer relationship.
- Engages passengers: giving them a voice in the decision-making process.

Setting up GBR could help achieve this. It would create a single organisation able to plan and take decisions on a whole-system basis, across both track and train. It would also be able to own the entire customer relationship, taking responsibility for all aspects of delivery from journey planning to complaints.

We agree that creating this 'directing mind' function will require a significant change to the current incentive and regulatory regime. Too often in the past conflicting and competing incentives have prevented a whole-system view and have focussed on what is best for individual industry partners rather than what is best for the end-user. From a passenger perspective this has made it much harder to make improvements

and resulted in a lack of accountability when things go wrong. The ability to align industry incentives to ensure that all parts of the railway pull in the same direction, could help deliver a more efficient and reliable railway – something clearly of benefit to passengers.

The essential point is to create an operating culture that focusses on delivering what is best for customers (passengers and freight) rather than what is easiest for the railway. We understand the pragmatic decision to create GBR out of Network Rail to avoid the highly complex transfer of assets, people and contracts into a new organisation, but it will be essential that GBR embeds a new customer-first culture right from the start.

Accountability and transparency will be key. There is clearly a balance between creating a regulatory regime that allows GBR to be agile and decisive while at the same time also ensuring it remains accountable to passengers and taxpayers. The consultation sets out several ways in which GBR will be held to account:

- Secretary of State will set a long-term strategy, clearly articulating the government's vision and desired outcomes for the railway on behalf of its users and taxpayers.
- Secretary of State will have the power to issue directions and guidance to shape how GBR carries out its functions
- GBR will be held to account by the Secretary of State through its Chair and Board.
- GBR will be subject to a substantively streamlined and simplified licence. This will be set by the Secretary of State and enforced by the ORR
- The creation of a powerful new passenger watchdog, the Passenger Standards Authority (PSA).

It is right that government(s) set the strategic direction and priorities for rail. Rail is a public service in its own right, as well as facilitating other governmental objectives (e.g. economic, social and environmental goals). It is also heavily dependent on taxpayers' money. So it is right that government(s) have a role in establishing the strategic direction and vision of GBR and that the PSA has a role in commenting on this and ensuring that the passenger voice is at its heart. However, the ability of GBR to be independent and act as a directing mind will be lost if Ministers intervene in ways that aren't predictable or helpful. Getting the balance right will be essential. We note that the power of Ministers to intervene and issue directions and guidance is currently broad. The risk is that this results in a series of short-term initiatives that potentially work against the longer-term passenger interest. Therefore, we think it is important to provide further assurance and clarification on the potential circumstances in which directions and guidance would be issued.

Question 2: Do you agree that the Secretary of State should be responsible for issuing and modifying a simplified GBR licence enforced by the ORR, and that the ORR's duties with respect to GBR should be streamlined to reflect the new sector model?

As mentioned above, it is right that government(s) set the strategic direction and priorities for rail. Though, in the spirit of transparency, it will be important that this is a consultative exercise. Setting GBR's licence is a way of delivering this direction. We note that the licence is to focus on "the minimum viable set of conditions that are required for safety, performance (reliability and cancellations), efficiency, and passenger experience." We agree with the emphasis on reliability and punctuality, something that all our research shows is key to the passenger experience. We also welcome the focus on the 'passenger experience' – if passengers are to be at the heart of the new railway, then what they experience and feel matters.

We believe there are two principles that could help ensure focus on the passenger experience. The first is engagement. If GBR is to put passengers at the heart of the railway it will need to engage with users and understand what they want. The PSA can help with this but it will be essential that GBR builds its own mechanisms as well. It will be especially important to involve people with a lived experience of disability in decision making. Co-creation of plans and proposals will be of benefit to all. We think it is important that there is reference to engagement and accessibility within GBR's licence.

The second principle is transparency. There is consumer benefit in GBR being an open organisation, publishing data that allows people to see how it is doing and which can be used to hold it to account. The licence could help to create the environment/expectation for this to happen.

We note that the licence will apply only to GBR and that there will be services provided to passengers by other organisations – either open access operators or on networks where GBR is not the infrastructure or service provider. We think there is value to passengers in there being a degree of consistency between GBR licence conditions and non-GBR licence conditions. Passengers do not always see differences between parts of the network, so building in consistency and continuity from the start will help ensure passengers experience a seamless experience.

Question 3: Do you agree that the Secretary of State should be responsible for setting a long-term strategy for GBR to align with government priorities?

We support the Secretary of state creating a long-term vision/strategy. In order to ensure that this puts the passenger at the heart of the railway we think the PSA should be a statutory consultee on the strategy.

We believe that setting out the long-term aims and objectives of the railway will give a clear 'direction of travel' in terms of work programmes. This could be backed up by long-term technical strategies on things such as electrification, the environment and rolling stock that are then delivered through individual enhancement projects or via the five-year control period renewal and maintenance process.

Setting out the strategic direction would send a clear message to the supply sector, giving it more confidence to invest / tool-up to meet future demand. A supply side sector that is better prepared should result in a more agile and responsive market that can deliver projects more quickly than now and potentially at lower cost – for example, having to tool-up a production line (and train staff) for a one-off build of rolling stock will be more costly than having a steady stream of orders. The passenger dividend from this comes from projects being delivered earlier, which means passengers get to experience the benefits of the investment earlier. For example, through new rolling stock, improved passenger information, new station facilities or through more reliable infrastructure enabling more punctual journeys. If this work is also delivered at a lower cost, it reduces pressures on fare increases or allows for additional investment elsewhere on the network.

A longer-term strategy would also potentially improve accessibility. It would enable a more joined up approach to accessibility planning (for example, in linking station and train initiatives) and better allow accessibility to be designed in from the start.

A new voice for passengers

Question 4: What are your views on the proposed functions of the new passenger watchdog?

Question 5: Which of the approaches would best enable the establishment of the new passenger watchdog?

We have taken questions 4 and 5 together. We agree that there is a continuing need for an organisation that represents the interests of passengers and ensures their voice is heard. We agree with the suggestion that the new watchdog is built from the existing passenger watchdog, Transport Focus. We believe this is the best way to incorporate Transport Focus's existing skills and knowledge.

We also welcome the fact that these enhanced rail functions would sit alongside Transport Focus's existing legislative duties for bus, coach, tram and road users,

allowing the PSA to have a multi-modal focus from the start. Few rail passenger journeys start and finish at the train station itself, so building in a multi-modal focus from the start will help ensure that Government and passengers maximise the benefits of investment on infrastructure and services.

We agree with the broad functions assigned to the PSA in the consultation and believe that this should include taking on the consumer licence functions currently performed by ORR such as passenger assistance, passenger information, and complaints. This is also in line with the aims set out in the Getting Britain Moving policy document. We believe there are passenger benefits from doing so:

- Bringing these functions and expertise under one roof creates more of a one-stop shop for passengers.
- It sends a clear message to passengers and GBR that the new passenger watchdog will be a powerful body with a powerful voice
- It would allow Transport Focus to draw on insight and expertise gained from its existing engagement with rail operators – providing a rounded input into the consumer function activities and ensuring that the consumer standards to be transferred from the ORR reflect user priorities. For example, Transport Focus has worked with DfT on previous research on passengers’ propensity to claim Delay Repay and the ease of claiming it. This experience and knowledge could help when looking at the industry standards on compensation. Likewise, Transport Focus’s experience of dealing with unresolved complaints already gives it an insight into the issues being raised by passengers and the experiences of passengers when submitting a complaint.
- It would allow Transport Focus to draw on its experience with other modes and through this promote modal integration and the end-to-end journey – for example in promoting links and accessibility between rail and bus.
- Transport Focus has a strong existing focus on national and regional engagement with stakeholders and passengers – something that is one of its strengths. This would strengthen user input into the standard setting process and provide a rich source of data for monitoring purposes.
- And on a more practical level there is currently a degree of overlap between Transport Focus and ORR when it comes to the consumer functions. Both organisations can be active in the same area and can potentially duplicate monitoring and investigatory actions. For example, we could both separately approach train companies about the provision of Passenger Assist and potentially come up with conflicting requests. Having the consumer functions with the PSA avoids this potential confusion and makes it clear for operators where responsibility lies.

We still see, however, an important distinction between the ORR (as regulator) and the PSA (as passenger champion). It would be the job of the PSA to be an advocate,

clearly on the side of passengers, rather than acting as an impartial regulator. The PSA will set some consumer standards, monitor delivery, investigate issues and make recommendations. But enforcement powers for breaches of standards would remain with the regulator, with the PSA referring issues for consideration and action.

We also agree that the new watchdog will need increased statutory powers. We believe this should include:

- Acting as a statutory consultee on government and GBR policies, strategies and business and infrastructure plans
- Powers to request information from GBR and other rail bodies. This will enable it to effectively monitor passenger experience (especially on the delivery of services to disabled passengers).
- The legal right/ability to make recommendations and for decision makers to have regard to these recommendations and a duty to respond to them

We also think there is value in the watchdog having the ability to require GBR (and other rail bodies) to attend public meetings/hearings. We think this power (which could be capped at twice per year as per current requirements) would be an important way of demonstrating genuine accountability to users. It would build on Transport Focus's existing power (set out in operator and station licences) requiring licence holders to "engage in reasonable liaison...attending meetings and providing information as may be reasonably required [by Transport Focus]"

It will also be important that the PSA is independent and not seen as an arm's length body that is under the direct control of DfT. While the PSA's main focus will be on GBR, it must also be able to say uncomfortable things to those in power when necessary. This independence needs to be baked into the system – for example, through legislation, the appointments process or through funding arrangements.

We note that the consultation refers to DfT working with the devolved governments in Scotland and Wales to ensure the new passenger watchdog will function effectively with all train operators across Great Britain. We welcome continued efforts to clarify the PSA's relationship with devolved national administrations. For instance, it is not clear at present whether the PSA will have statutory consultee/advisor status in Scotland and Wales as well as England, whether Scottish and Welsh Governments will be under any duty to have regard to the PSA's recommendations, and whether the PSA's powers, such as the right to request information, will also apply to Scottish and Welsh services?

We believe there are benefits from a consistent approach to consumer representation, not least when passengers cross borders. We look forward to additional discussions/clarity on this issue.

Question 6: Which of the options to establish the Alternative Dispute Resolution function as part of the passenger watchdog would deliver the best outcome for passengers in your view?

We support the proposal that the new passenger watchdog would have a role in moderating unresolved passenger complaints and resolving disputes. We also agree that some form of binding Alternative Dispute Resolution (ADR) should remain an option for passengers.

We note that there are two options for delivering ADR:

- Transfer ORR's sponsorship of the Rail Ombudsman (RO) to the new passenger watchdog
- Transfer the powers and functions of the RO to the new passenger watchdog through legislation

It is difficult to look at the provision of ADR in isolation from the rest of the complaint process – appeals must work seamlessly with the other stages of the complaint process. For example, how would appeals that are not eligible for ADR be processed – would they go direct to the PSA (or London TravelWatch if in the London area)?

However, it is possible to apply some broad consumer-based principles to the provision of ADR. Passengers want a system that is:

- demonstrably independent
- free
- easy to use
- has high awareness/profile
- can impose a binding decision on the operator,
- provides access to data that can be used to improve services for passengers and promote best practice

Both options listed above have the potential to meet these criteria.

However, we agree that transferring sponsorship is the simplest option with the least disruption to the passenger experience. The RO already has the skills, experience and resources required and these could continue seamlessly. Many passengers are also already aware of the RO and how to access its services. Operators are also familiar with the process. Having to start from scratch and create a brand-new department within the PSA would require a considerable amount of work in recruitment and training as well as requiring a whole new set of industry processes. It would also create additional uncertainty during the transition phase.

Transferring sponsorship also retains the reassurance and confidence that comes from being able to brand the service as an Ombudsman (i.e. that the appeal process is independent). It may be difficult for an in-house version to be able to call itself an Ombudsman and there is always the risk that without this it is not seen as being truly independent.

The ADR role would by its nature be more of a neutral assessment of a case, taking the passenger and operator comments into account before reaching a balanced decision. This could potentially be at odds with the PSA's wider role as a passenger advocate which is firmly on the side of passengers.

Whichever option is chosen it will be important that the PSA has access to richer statistics/data on industry complaints – i.e. a deeper understanding of what types of cases are resulting in an appeal. Access to train company/GBR complaint data, coupled with RO data would give the PSA a clear picture and help it monitor the passenger experience. This would enable the PSA to focus on the identification of problem areas and best practice, which in turn would help ensure a focus on continual improvement.

There would also be a benefit in bringing all rail bodies within the remit of the RO. This would ensure that all passengers have the benefit of ADR mediation and resolution – as it stands some complaints are not within the RO's jurisdiction. The reform programme has the opportunity to address this.

Making the best use of the rail network

Question 7: Does the proposed new access framework enable GBR to be an effective directing mind that can ensure best use of network capacity?

We believe that open access has been of benefit to passengers. It has promoted price competition and a focus on customer service as well as opening up new services. However, we also agree with the consultation that the current access arrangement need reform. Fragmented control, disjointed information, multiple decision makers and lack of a single process have hampered efforts to improve reliability and maximise capacity. If GBR is to act as a directing mind it will be important for it to have a degree of control over access arrangements to the network.

We agree that a new, simpler framework will allow GBR to take a wider look at how best to maximise use of the network. It will also allow it to take a more proactive, longer-term approach based on what is best use of capacity rather than being driven by individual applications/proposals.

We believe GBR will, like Network Rail currently, have the best understanding of operational requirements and constraints. However, there is clearly potential for a conflict of interest with GBR giving itself preferential access over freight and open access providers. To that end we note and support the fact that GBR will have to take into account government priorities, the goals of devolved governments and Mayoral Strategic Authorities, and that new statutory duties will ensure GBR's access decisions are transparent and accountable. We welcome the obligation on GBR to set policy and standard contracts transparently and in consultation. We also welcome the statement that GBR will be required to consult (and have regard to consultee responses) on how it fulfils its duties for access to and use of the network. This will include setting out timescales, information requirements and decision-making criteria – making it clear how other parties are involved and consulted on decisions. Access right are potentially a contentious issue, transparency can help to mitigate concerns.

Question 8: What – if any – key access rules and requirements for GBR should be updated and included in legislation?

Question 9: Does the proposed role of the ORR, acting as an appeals body to ensure fairness and non-discrimination, provide sufficient reassurances to operators such as freight and open access wishing to access the GBR-managed network?

Given the potential conflict of interest arising from GBR considering its own proposals alongside those of other parties, it will be essential that the rules and process surrounding access are transparent. It will be important for GBR to publish clear requirements, to consult widely on plans and set out clear reasons for accepting or rejecting applications. It will be important that this accountability and transparency is baked into proposals from the outset.

We also strongly support the role of ORR as an 'appeal body' if there are disputes. We agree that it should be able to recommend and in certain circumstances, direct remedies where it finds that GBR's decision-making has been discriminatory and has not followed its own processes.

Question 10: Do you foresee any unintended consequences of the ORR retaining its existing powers with regard to other infrastructure managers which might affect the smooth passage of trains between the GBR and non-GBR network?

Question 11: The government intends to include in primary legislation a power to enable amendments to the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 to ensure consistency between GBR's processes and those used by other infrastructure managers. Do you agree with this approach?

We have taken question 10 and 11 together. Passengers do not tend to be aware of who owns what part of the network – they see rail travel, and the network, as a whole. To that end it will be important that there is a degree of consistency between GBR and other infrastructure managers when it comes to matters affecting the passenger experience.

Therefore, we support proposals to amend the Access and Management Regulations to ensure consistency between GBR's processes and those used by other infrastructure managers

Financial framework

Question 12: Do you agree with the proposed legislative approach regarding a 5-year funding settlement for Great British Railways?

We support the continuation of 5-year funding settlements for rail. We agree that aspects of the current process have worked well and been of benefit to passengers and should be retained. As mentioned above, a longer-term funding settlement gives rail's supply-side partners greater stability and confidence to invest, thus potentially creating a more agile and responsive market that can deliver projects more quickly than now and potentially at lower cost. Both of which have a clear passenger benefit.

Passengers want a reliable, punctual, frequent service on which they can get a seat. Integrating planning and budgets for infrastructure and operations into a single business plan could help deliver this in a simpler, more efficient manner. Having separate plans for infrastructure and for operations increases inefficiencies and leads to misaligned incentives, poor decision-making and missed opportunities.

However, it will be important that the passenger voice is heard when setting business plans. Transport Focus already ensures that passenger priorities are reflected in rail settlements and looks forward to continuing this work with GBR. This mirrors arrangements for the Strategic Road Network which also has a multi-year funding strategy, called a Road Investment Strategy (RIS). Transport Focus has a role within the RIS process, ensuring that road users' interests are represented and carrying out research on users' priorities for improvement to inform the process, in addition to measuring road user satisfaction. The PSA should take a similar approach on rail.

In addition, we would ask whether there is scope to align the timing of funding settlement periods for rail and roads. Being able to co-ordinate and align funds and objectives could help when it comes to planning an integrated transport system.

Fares, ticketing and retailing

Question 13: Do you agree with the legislative approach set out above to retain the Secretary of State's role in securing the overall affordability of fares and continuing to safeguard certain railcard discount schemes?

We support the continuing role of government in setting parameters and guardrails when it comes to rail fares, including mandating certain concessionary discount fare schemes (such as railcards and child fares). Rail has an important social role in getting people to and from work and education as well as providing links to essential services. Therefore, it is right that fares setting isn't just a commercial decision and that these wider benefits and safeguards are factored in. There will be a clear passenger benefit from involving the PSA in fares, ticketing and retail development.

One such area is the continuing need to ensure people without access to bank accounts or digital payment means can continue to access the railway. There is undoubtedly a trend towards digital ticketing but people without a bank account will have little choice but to use cash. Other people use cash by choice, for example because they find it helps them better manage their money to make ends meet. We believe there is a continuing need for a cash option at stations. It will be important that the railway remains accessible to everyone – that includes the minority of people that rely on cash.

Question 14: What, if any, safeguards are needed to ensure a thriving and competitive rail retail market while also ensuring GBR can deliver a high-quality offer to its customers?

All Transport Focus's research on fares and ticketing shows that passengers want a system where buying a ticket is as simple and easy as possible and where they can have confidence that they have purchased the best ticket for the journey they want to make.

Third party retailers have helped to drive innovation in the sector and improve quality for passengers. It was third parties, for instance, that first offered split ticketing solutions for passengers. Their continued presence alongside GBR's new retail portal should help ensure that commercial pressures to innovate and improve remain.

This requires independent retailers having confidence that there is a level playing field and that they will be treated fairly - it will be harder for them to invest and innovate without this.

Central to this will be ensuring:

- Access to products

Independent retailers do not currently have access to all products – will they in future? If they do have full access will there be a requirement on them to sell all products? If third parties have the choice of what they sell, then will GBR become the ‘retailer of last resort’ and how will this ‘public service’ element be reflected in financial settlements?

- Funding arrangements.

Third party retailers typically rely on booking fees to cover part of the costs of business, something that existing train companies are prohibited from charging. For the record, Transport Focus believes that allowing or requiring the new GBR retail portal to charge booking fees would not be in passengers’ best interests. The better solution would be to set commission rates at a level that allows an efficient retailer to make a reasonable return without levying a booking fee on the passenger.

It will also be important that any protections being put in place do not themselves inhibit innovation. For example, there are benefits from linking retail systems with real-time performance data and delay repay systems. The aim being that you can automatically be sent live information about delays to your journey and be able to claim compensation for those delays without having to log onto another system or have another account – a one-stop-shop. It would not be in passengers’ best interests if GBR was prevented from developing such systems because of the risk of a challenge from third party providers who may not be allowed to do so (e.g. third party retailers are currently not allowed to process delay replay claims). One quick (and relatively simple) way of avoiding this is to allow third party retailers to also provide/offer such services. This could include processing Delay Repay claims and ensuring that delay/change of journey information is passed onto the passenger (either from the third party itself or via a data sharing agreement with the train company).

We are aware of concerns from third party retailers about the fairness of the current licencing regime. They argue that their competitor (i.e. train companies) are – via the Rail Delivery Group (RDG) - the people who grant access to the market, set commission rates and determine what products they can sell. They perceive a clear conflict of interest here. We can see value in this licencing function being moved to a body like ORR, which can give much more reassurance to the third party market.

Finally, it will also be important for basic fares and ticketing information to be made available in a standard open data format – this will allow innovators to develop new services/offers for passengers. In saying this we acknowledge that some data will be deemed commercially confidential.

Devolution

Question 15: The government intends that GBR's statutory duty in relation to devolved leaders should strike a balance between enhancing their role whilst also ensuring that GBR has the appropriate flexibility to direct the national network. Do you agree with this approach?

Devolution can clearly bring benefits for passengers – for example, better targeted investment, the greater ability to link transport to other policy activities such as employment and education and in involving local people in design decisions. Decisions are generally made better when they are made closer to the people affected by them. However, it is also clear that passengers also see the railway as a national network and want to be able to travel seamlessly from one nation or region to another. Therefore, we agree that there has to be a balance between the needs of devolved leaders and GBR's wider ability to plan rail as a network.

We agree with the proposal that devolved leaders will be consulted on GBR's activity (including the development of railway plans, strategies and services), are able to scrutinise GBR's performance and that GBR has due regard to devolved transport strategies. It will be essential that the design of GBR and the PSA take devolution into account.

Question 16: Do you agree with the proposed approach in Scotland on enabling further collaboration between track and train while preserving the devolved settlements?

Question 17: Do you agree with the proposed approach in Wales on enabling further collaboration between track and train while preserving the devolved settlements?

We note (and support) that existing devolved accountabilities in Scotland and Wales will remain in place. We also welcome the commitment to continue discussions and to put in place strong joint working arrangements between GBR, ScotRail and Transport for Wales.

Therefore, we agree in principle with the proposed approach in Scotland and Wales. However, much will depend on this ongoing engagement with Scottish and Welsh Governments, so it is hard to comment in detail at this point.

It will be essential that the design of GBR and the PSA take devolution into account.

Question 18: Do you agree with the government's approach of making targeted amendments to existing legislation to clarify the role of devolved leaders in relation to GBR?

We broadly agree with this approach. It will be important that all parties have clarity on roles and responsibilities.

As mentioned, we support the requirement for devolved leaders to be consulted on GBR's activity (including the development of railway plans, strategies and services), are able to scrutinise GBR's performance and that GBR has due regard to devolved transport strategies.

We also agree with the proposal to create a 'right to request', whereby Mayoral Strategic Authorities can request devolution of parts of the network, subject to meeting certain requirements. Merseyrail and Transport for London have both shown how devolution can benefit passengers, so it is right to keep this option open.

And finally, we agree with the proposal for targeted amendments to legislation to allow / encourage partnership working. These partnerships will range across a spectrum depending on the ambitions and institutional capability of partners, and will include engagement on strategic priorities, close collaboration on the delivery of rail elements of Local Transport Plans and opportunities for partners to invest in the railway. Deeper local commissioning partnerships, where a Mayoral Strategic Authority could take on service specification responsibilities and revenue risk, could also be agreed where financial devolution is in place. As mentioned above, we believe there are passenger benefits from closer engagement between national and regional authorities.

Transport Focus
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