



Queen Margaret University

CONSUMER DISPUTE RESOLUTION
CENTRE

**Report for ORR: a review of good
practice in complaints handling
procedures and guidance**

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The views and statements expressed in this report reflect the research team's independent views and do not necessarily represent the views of ORR.

Executive Summary

1. Introduction

Train companies and station operators are required under the conditions of their licences to establish and comply with a complaints handling procedure (CHP) to handle customer complaints. ORR approves licence holders' CHPs and monitors compliance with these.

In 2015, ORR published guidance on complaints handling procedures for train and station operators.¹ The guidance sets out what ORR will look for when exercising its approval role and when monitoring for continuing compliance. Since the guidance was published, circumstances have changed. Passengers and train operators are increasingly using social media, particularly Twitter, and passengers' expectations about the means and speed of complaint handling are likely to have changed accordingly.² A new Rail Ombudsman was introduced in 2018 of which train companies and station licence holders are required to become members.

ORR commissioned Queen Margaret University (QMU) to carry out this research to support and inform a review of its guidance. The purpose of the research was to help ORR to consider whether its current complaints handling guidance continues to reflect good practice, in order to ensure that the requirements it places on train and station operators keep pace with the latest developments and consumer expectations. The research was intended to build on a 2018 report by QMU for ORR on complaints handling in regulated sectors with an ombudsman.³

The research considered three main areas:

- approaches to the regulation of first tier complaints handling in other regulated sectors
- current good practice in complaints handling
- ORR's current guidance on complaints handling procedures

The initial desk research focused on six regulated sectors: rail, financial services, energy, communications, water (England and Wales) and legal services (England and Wales) as well as three ombudsman schemes with a

¹ *Guidance on complaints handling procedures for licence holders*. ORR 2015.

<https://www.orr.gov.uk/sites/default/files/om/complaints-handling-procedure-guidance-2015.pdf>

² See for example Ofcom's *Online nation report*

https://www.ofcom.org.uk/_data/assets/pdf_file/0027/196407/online-nation-2020-report.pdf For a discussion of increased use of digital technologies in the transport industry see footnote 12.

³ Williams, J., Brennan, C., and Vivian, N. 2018. *On track for first-tier complaint handling: A review of organisational complaint handling in regulated sectors with an Ombudsman for the Office of Rail and Road* <https://www.orr.gov.uk/sites/default/files/om/a-review-of-organisational-complaint-handling-in-regulated-sectors-with-an-ombudsman-for-the-office-of-rail-and-road.pdf>

role in setting out good practice for complaints handling in the relevant regulated sector.⁴ The research also looked at aspects of the public transport system in Victoria, Australia.⁵

Interviews were also held with representatives of the Financial Conduct Authority (FCA) and the Scottish Public Services Ombudsman (SPSO). Informal discussions were held with representatives of Ofcom, Ofwat and the Public Transport Ombudsman Victoria (PTOV). Interviews were also held with representatives of six of the 23 mainline train companies about their views and experiences in relation to ORR's current complaints handling guidance.

2. Approaches to the regulation of first-tier complaints handling in other regulated sectors

The research found that regulators take similar approaches to setting out requirements relating to first-tier complaints handling. The basis for complaints handling requirements varies between sectors. They may be set out in statute, licence conditions, guidance, codes of practice, codes of conduct or a combination of all or some of these. While some of the terminology used differs among regulators - for example they may have an 'approved complaints code of practice', 'standards of conduct' or a 'code of conduct' - these documents are all similar in their approach. Overall, the regulators we looked at, such as the FCA, Ofcom and Ofgem, take a broadly principles-based approach combined with more detailed rules where required.

A range of approaches were also found across ADR schemes with complaints handling responsibilities. SPSO has a statutory power to promote best practice in relation to complaints handling and to lead the development of simplified and standardised complaints handling procedures across Scottish public services. The Parliamentary and Health Service Ombudsman (PHSO) is currently working to introduce a similar approach to SPSO for health complaints in England. Higher education providers in England and Wales are required to become members of the Office of the Independent Adjudicator (OIA)'s independent student complaints scheme and to comply with its rules and procedures.

How complaints data is used to encourage the improvement of service quality

The ways in which regulators and ombudsman schemes use complaints data to help drive improvement vary across sectors. The FCA requires financial services firms to report detailed complaints data every six months, which it publishes in summary form on its website. An important feature of the

⁴ Scottish Public Services Ombudsman, the Parliamentary and Health Service Ombudsman, and the Office of the Independent Adjudicator.

⁵ Public Transport Ombudsman Victoria.

complaints handling landscape in financial services is the ‘feedback loop’ between the FCA and the Financial Ombudsman Service (FOS). The FCA expects firms to consider relevant guidance published by FOS, as well as decisions by FOS on similar complaints, when assessing complaints. FOS shares information with the FCA, such as trends and common problems it sees, that could inform future regulation by the FCA.

Ofcom’s approved complaints code of practice requires providers to record complaints information for compliance monitoring purposes. Ofcom monitors complaints which it receives about providers’ complaints handling and publishes a quarterly complaints report, which is used to incentivise good complaints handling and improve service quality. Both sectoral ADR schemes also provide feedback to providers to ensure they learn from complaints.

SPSO’s approach is to encourage compliance through regular and ongoing collaboration with organisations. The SPSO interviewees told us that it had taken the SPSO many years of supporting sectors to improve the complaints handling culture. Its revised model complaints handling procedures (MCHPs), which providers are required to adopt by April 2021, are intended to bring an increased focus on SPSO’s key performance indicators and greater standardisation across sectors. SPSO intends to issue a core set of indicators that all organisations will be required to report against.⁶ Providers will be required to publish their annual complaints performance reports.

ORR’s guidance and approvals role

ORR was the only regulator reviewed for this research which approves each individual provider’s complaints procedure. Ofcom previously had a similar approach but moved away from this in 2011. Due to concerns about standards of complaints handling in the telecommunications industry, it introduced an approved complaints code of practice setting out minimum standards for complaints handling which providers are required to follow.

3. Overview of good practice in other regulated sectors

The definition of a ‘complaint’

This is very similar across sectors, with most definitions making a reference to ‘any expression of dissatisfaction’. One difference is that the ORR definition expressly includes expressions of dissatisfaction which relate to company or industry policy. While the definitions used by the other regulators and ADR schemes which we reviewed do not make explicit reference to policy, most refer

⁶ Apart from the NHS MCHP [Draft NHS Model Complaints Handling Procedure \[word version\] \(spsso.org.uk\)](https://www.spsso.org.uk/draft-nhs-model-complaints-handling-procedure-word-version) which already includes a set of complaints performance indicators (Appendix 6)

to an 'expression of dissatisfaction', which is arguably wide enough to include policy issues. Ofgem and Ofcom also state that a complaint is any expression of dissatisfaction where a response is explicitly or implicitly expected to be provided. While other regulators and ombudsman schemes we reviewed do not expressly provide in their definition of a complaint that a response should be given, this is implicit in their requirements relating to complaints handling.

Complaints made via social media

Most regulators and ADR schemes reviewed for this report do not make specific provision for dealing with complaints made via social media. Some, such as Ofgem and Ofcom, only appear to make provision for complaints to be made in writing, by email or by telephone. Others have high level provisions which suggest wider application: both the FCA and Legal Services Board rules provide that complaints processes should allow complaints to be made by 'any reasonable means.'

SPSO recently updated its MCHPs to provide further guidance on complaints made via social media. The MCHPs state that complaints may be raised on social media, but it is left up to individual organisations whether they decide to accept or respond to complaints on social media.

Twitter is widely used as a communication tool in the rail industry. The ORR complaints guidance expects licence holders to have a social media policy. Where the circumstances of a complaint on social media lend themselves to investigation, the licence holder is expected to assist the complainant in making a formal complaint through the appropriate channel. However, licence holders are not required to report on the volumes of complaints received on social media as a complaints channel.

Where regulators or ombudsman schemes do make specific provision for social media complaints, they generally require providers to acknowledge these where the complaint is made through their own social media platform, and to direct the customer to their complaints process. No regulator or ombudsman scheme we reviewed *requires* providers to deal with complaints via social media, or to monitor complaints made via social media platforms other than their own corporate platform.

Our interviewees suggested it may not be appropriate to deal with anything other than simple complaints via social media. First, it may be difficult to engage effectively with complainants via such a platform. Second, social media is a public forum, and companies may not be keen to deal with complaints in public.

Response times

While dealing with complaints quickly is important to consumer satisfaction, there is a balance to be struck between speedy resolution and providing a satisfactory and full response. Some regulators require providers to resolve complaints 'promptly', 'swiftly' or 'in a timely manner'. Most have an eight-week limit after which the complainant can take their complaint to the relevant ADR scheme.

Some regulators and ombudsman schemes, like Ofwat and SPSO, set out specific timescales within which complaints should be responded to. Some use measures to incentivise early resolution of complaints. ORR requires train companies to make a full response to 95% of complaints within 20 working days. The FCA incentivises early resolution of complaints by exempting complaints which are resolved within three working days from some of the formal complaints handling requirements. Ofwat requires providers which fail to provide a substantive response within 10 working days to pay the customer £20.

Some regulators and ombudsman schemes recognise that some complaints are by their nature more complex and may therefore take longer to investigate. Where this is the case, it is important to keep the complainant informed about the progress of the complaint. As the ORR complaints handling guidance states, speed is not the only determinant of an effective response. Recent research suggests that other considerations, such as getting the desired outcome and an easily accessible process, are also important determinants of consumer satisfaction.⁷

Publicising and signposting to ADR

As is the case in rail, membership of an ADR scheme is a requirement in all of the regulated sectors considered in this report. It is important that consumers are signposted effectively to ADR by the provider at the appropriate stage. Effective signposting is also important in helping to ensure that complaints are not referred to ADR prematurely.

There are three possible stages at which consumers can be signposted/made aware of the ADR scheme.

Before a complaint is made – most of the regulators and ombudsman schemes we looked at for this report require providers to include information on ADR in their published complaints procedures. Some regulators also require providers

⁷ *Putting Things Right: Household complaints practices in the England and Wales water industry*. Ofwat and CCW. 2020. <https://www.ofwat.gov.uk/publication/putting-things-right-ofwat-ccw-report/>

to provide information about the ADR scheme in other ways, including on consumers' bills (Ofcom) or in their contract with the provider (Solicitors Regulation Authority (SRA), FCA).

At the time of the complaint – none of the regulators reviewed specifically require providers to tell complainants at the time of making the complaint about their right to go to ADR. Most regulators only require providers to advise complainants of their internal complaints handling procedure at the time of the complaint. Most also stipulate that the complaints handling procedure must include reference to the relevant ADR scheme.

When the complaints process is concluded or the matter remains unresolved – across the sectors reviewed, the provider is generally obliged to signpost the complainant to ADR at whichever of 1 or 2 is the earlier:

- 1) the complaint has been fully investigated and has been through all stages of their internal complaints procedure and cannot be resolved to the complainant's satisfaction. In some sectors, such as financial services, public services in Scotland and water, signposting to ADR is required in the final response to the complainant, irrespective of whether the complaint is resolved to the complainant's satisfaction. In others, such as communications, this is only required where the complainant tells the provider they are unhappy with the outcome and the provider doesn't intend to take any further steps to reach a different outcome.
- 2) a specified time period – generally 8 weeks or 40 days – has elapsed, and the complaint remains unresolved.

The recent review of the Rail Ombudsman scheme recommended that the 40 working day period should be reduced to 20 working days after the date of the first complaint; something which the Rail Ombudsman supports. This review also suggested that a reduction in time may help to reduce the number of consumers contacting the ombudsman prematurely.⁸

Safety complaints

None of the regulators we reviewed for this report have specific requirements relating to safety complaints. Public transport providers in Victoria, Australia are required to respond to 'urgent complaints' (i.e. safety or emergency complaints) within 3 days, rather than the standard 7 days. While the SPSO's MCHPs do not explicitly refer to safety, they contain several references to 'high-risk' or 'high-profile' complaints. Complaints identified as 'serious, high-risk or

⁸ *Review of the Rail Ombudsman for ORR*. Red Quadrant. 2020. P.52. <https://www.orr.gov.uk/media/10745>

high profile' should normally be handled immediately at stage 2 and be acknowledged within 3 working days.

Access for vulnerable consumers

There is increasing recognition by regulators and ombudsman schemes that getting processes right for vulnerable consumers leads to better outcomes for all consumers. Regulators such as Ofgem have published or consulted on vulnerability strategies or guidance in recent years. These documents tend to be general in their application, rather than focusing specifically on complaints.

Ofcom, SPSO and PHSO specifically require regulated providers/public services to ensure that their complaints handling procedures are sufficiently accessible to vulnerable customers. The FCA also published guidance for firms in February 2021 on the fair treatment of vulnerable customers, which will require them to consider the needs of vulnerable customers when designing their complaints processes.⁹

ORR's current CHP guidance, while not referring directly to vulnerable consumers, underscores that no one should be excluded from lodging a complaint, and sets out expectations on licence holders regarding access routes for complainants. ORR's guidance on Accessible Travel Policies also sets out the information that train and station operators must provide in their passenger leaflets and on the assisted travel page on their websites so that disabled and older passengers know how to provide feedback or make a complaint.

4. Review of the current ORR guidance on complaints handling

The key findings from the interviews with the six train companies were as follows:

The ORR CHP approvals process and the current guidance

All interviewees said that the guidance had informed their current complaints handling procedures. They did not use the guidance on a day to day basis but found it to be a useful reference point if something arose outside of the usual circumstances. Overall, they found the ORR approval process straightforward and no strong feelings were expressed about whether the process should change.

Interviewees were interested in improving the current guidance to look at new ways of doing things, reflect the changing expectations of consumers and

⁹ [GC20/3: Guidance for firms on the fair treatment of vulnerable customers \(fca.org.uk\)](https://www.fca.org.uk/publication/finalised-guidance/fq21-1.pdf)
<https://www.fca.org.uk/publication/finalised-guidance/fq21-1.pdf>

challenge train companies more. Culture within the rail industry, including resistance to change and its impact on complaints handling, was frequently mentioned. While there had been a culture shift within the rail industry this was viewed as having some way to go. ORR was seen to have a key role in helping complaint managers to drive internal change within their companies, and there was an appetite to work collaboratively with ORR to achieve this.

The need for standardisation and consistency across the industry was highlighted. Some thought that a model CHP underpinned by clear foundational rules could be useful. The current rules were viewed as setting a minimum standard and some thought they could be more aspirational. Some interviewees highlighted the need for flexibility so that the guidance was able to adapt to new developments and did not act as a barrier to innovation or a driver for the wrong behaviour.

Suggestions on specific aspects of the guidance that needed updating were:

- updating the data protection requirements to reflect GDPR changes
- updating the guidance to reflect the introduction of the Rail Ombudsman
- more detail about assisted travel and the Claims Allocation and Handling Agreement (CAHA)
- updating the section on social media and web chat.

Learning from complaints

Some interviewees felt that there should be a greater emphasis in the guidance on changing the culture around learning from complaints. They argued that the complaints data was not being used effectively to drive continuous review and service improvement internally or more widely by ORR and the Department for Transport to address systemic issues within the rail industry. Some felt that limited progress had been made in addressing some of the root causes of complaints, such as overcrowding, overly complex and expensive pricing and delay repay.

Regulatory pressure was also seen to be very important in driving internal change and obtaining internal buy-in, ensuring that resources were made available to drive service improvements for customers. It was important to interviewees to feel that they were being monitored by the regulator and that the data they already produce was being actively used to provide feedback on where practices need to be improved. Reputational regulatory measures such as complaints tables were seen to have an internal impact in directing resourcing towards complaints. There was also a perception that there was potential for closer working between the Rail Ombudsman and ORR.

Response times and quality

Interviewees said that the vast majority of complaints were resolved well within the 20 working day timescale. Many train companies' CHPs use shorter timescales, including commitments to respond within five, seven and ten days. Interviewees did not see the 95% indicator as a driver for resolving complaints quickly since their intention was always to resolve them much more quickly than that. It was noted that flexibility may sometimes be required – for example, at times of significant disruption, when train companies have little control over the volume of complaints received. Most interviewees were quite relaxed about the timescale being reduced, so long as they had the ability to take account of circumstances where this may not be met. There was, however, widespread concern that reducing this timescale would place a disproportionate emphasis on time, which could be at the expense of quality of complaints handling.

Quality Indicators

There was general agreement that while time is important, this should not be the only indicator used, and that there was a need to develop indicators that looked at other issues such as quality and accuracy of response. Accuracy was widely used as one appropriate measure in relation to assessing quality, and it was recognised that devising performance indicators to take greater account of quality was not easy. All interviewees employed extensive quality management programmes to support complaint handlers to deliver good quality complaints handling, by drawing on best practice.

It was suggested that train companies and ORR could make greater use of existing data sources including ORR's survey on passenger satisfaction with complaints handling and data from the Rail Ombudsman. Some train companies commented that the survey data on passenger satisfaction with complaints handling could be more user friendly. Another suggestion was placing more emphasis on reporting on the impacts complaints have in addressing wider system improvement. There was a desire to collaborate with the regulator to come up with revised standards and indicators.

Publicising the ombudsman and signposting

Clear statements raising awareness of and publicising the Rail Ombudsman were found on all interviewees' websites and in their CHPs. Two different approaches were taken in relation to raising awareness of the ombudsman and signposting when a complaint is made. Interviewees either highlighted the existence of the ombudsman in the acknowledgement sent when a complaint is received, or they signposted only at the point where the complaint was at deadlock or at 40 days. They did not express concerns about any potential

requirement to publicise the existence of the ombudsman at the start of the complaints process.

With regard to the recent recommendations to reduce the timescale passengers must wait before accessing the Rail Ombudsman, it was noted that, while it may not always be possible to meet any reduced timescale, this would only affect a very small number of complaints.

Complaints made via social media

Interviewees had different approaches and views on complaints made via social media. These were not necessarily handled by the customer relations (or equivalent) team, but by the control or operations team or by communications teams. The current approach is that the social media team responds and gives the customer the information to resolve the issue. Where that is not appropriate, or the customer remains dissatisfied, they are asked to send a direct message to the train operator and/or signposted to the formal complaints procedure.

Some interviewees were increasingly questioning their approach to social media. There was a recognition that many of the contacts received via social media are an “expression of dissatisfaction” and could therefore be viewed as complaints. Others thought, however, that the distinction between complaints raised on social media and other complaints was appropriate. Some felt that it may no longer be appropriate to deal with complaints differently according to the channel used and that because complaints via social media do not need to be reported, an important source of customer feedback is not being captured.

Some were however concerned that a requirement to report on complaints received via social media could lead to a big increase in reported complaints, which would impact on resourcing. Some questioned the value of including complaints which have been resolved immediately in their complaint figures whilst others were strongly in favour of doing so.

Safety complaints

Overall, the interviewees demonstrated that a joined-up and proactive approach was taken to safety complaints. These were prioritised and treated urgently and were usually allocated to the appropriate specialist team.

5. Conclusions

The research led us to some key conclusions, which are set out in more detail below. In reaching these conclusions, we draw attention to some of the limitations of our research. Our interview sample size was small, and some of

our findings primarily reflect the views and perceptions of the train companies we interviewed. Our conclusions are based partly on these views and perceptions along with the findings from our research into good practice among the regulators and ADR schemes we reviewed and interviewed for this report.

The need to drive cultural change in the rail industry

One of the clear messages from the research is that working to improve complaints handling culture within the industry and promoting a greater emphasis on customer experience should be a priority for the train companies and the regulator. While train companies must take responsibility for driving culture change within their own businesses, ORR was seen by our train company interviewees as having a key role in supporting complaint managers in driving that cultural change within their own businesses.

ORR's approvals role

The requirement for all providers' complaints procedures to be approved by ORR and then re-approved when they make any material changes is not reflected in other regulated sectors. Other regulators instead leave it to providers to ensure that they are meeting the required standards. If the requirement for all providers' complaints procedures to be approved by ORR were removed, this could free up time and resource within ORR to focus on other work which may have a greater impact in improving provider's complaints processes and passengers' satisfaction with complaints handling.

ORR guidance – overall approach

The current ORR complaints guidance is not used by train companies on a day to day basis although they may refer to it if faced with something out of the ordinary. While many key issues, such as accessibility, fairness, and prompt resolution, are contained in the guidance, they are somewhat 'buried' in the text. ORR could develop a clear set of upfront overarching principles that underpin complaints handling practice similar to those produced by other regulators and ombudsman schemes. These should be at the forefront of complaints handling and would have the advantage of future proofing and providing a degree of flexibility where required. The regulators and ombudsman schemes we reviewed for this report all use similar approaches. While the terminology used varies across sectors, all use a broadly principles-based approach combined with more detailed rules where required.

Learning from complaints

The importance of learning from complaints in order to improve future complaints handling and to address systemic issues was a key issue arising from the interviews with train companies. There was also a clear desire that ORR and the Department for Transport should follow up on complaints data which highlights systemic issues and help train companies to take steps to address these. Regulatory pressure from ORR and reputational regulatory measures such as complaints tables were viewed as having an important internal impact in directing resourcing towards complaints. It is suggested that this requirement to learn from complaints would be central to the revised set of general principles described above.

The role of the Rail Ombudsman

A recent review of the Rail Ombudsman commissioned by ORR recognised the impact and influence role of an ombudsman, and made a number of recommendations on how the ombudsman can develop its role in this area, particularly in relation to feedback loops to industry.¹⁰ There was a perception amongst some train company interviewees that there was also potential for closer working between ORR and the Rail Ombudsman and that greater use could be made of the data generated by the ombudsman. ORR should therefore continue to consider what steps if any are needed to address this perception. For example, the FCA and Ofgem both have memoranda of understanding with their ombudsman schemes, and this may be something worth considering.

The definition of a 'complaint'

The definition of a 'complaint' used across sectors is very similar, with most making reference to 'any expression of dissatisfaction'. The ORR definition expressly includes expressions of dissatisfaction which relate to company or industry policy.

However, interviewees told us that the ability of train companies to deal with some complaints is limited as they do not set policy which is common to the whole industry such as ticket pricing or the delay repay policy, and have no control over it. There was a feeling that the industry, ORR and wider stakeholders should actively take forward learnings from these issues.

¹⁰ *Review of the Rail Ombudsman for ORR*. Red Quadrant. 2020.

Complaints made via social media

How complaints made via social media are dealt with is fairly consistent across regulators and train companies. Complainants are generally directed to other methods of registering their complaint, primarily online. Our findings suggest that there is less reason to treat complaints made via social media differently to other complaints than there may have been previously. This is likely to be particularly true of the rail industry, where both passengers and train companies make extensive use of social media.

In practice, train companies already resolve many complaints via social media, in much the same way as they deal with face to face complaints. It will not be appropriate to deal with all complaints via social media. Where this is the expressed preference of the customer however, it may be reasonable to accommodate this (subject to data protection requirements).

If ORR's guidance is to place a greater emphasis on the value of learning from complaints, it is important that this information is captured. ORR could work collaboratively with the industry to explore how this can be done in order to ensure that the data gathered is meaningful, that a standardised approach is taken to data recording and that this data is used to drive improvements within the industry.

Response times and quality issues

Our train company interviewees told us that the majority of complaints they dealt with were closed in much less than 20 working days. Most were fairly relaxed about the prospect of shortening this timescale but expressed concerns that a disproportionate emphasis on time could be at the expense of quality of complaints handling.

Consumer satisfaction with complaints handling is generally lower in relation to rail than in other sectors considered for this report. While speed of resolution is important to complainants, quality of complaints handling and consistency are also important. There was a perception among interviewees that more could be done by train companies and ORR to make use of existing data sources.

ORR and train companies should therefore consider giving greater prominence to some of these existing metrics, such as the 10 working days indicator and consider introducing new metrics like average response times in order to provide a more complete picture of industry performance.

ORR could also work collaboratively with train companies to identify whether its existing survey on passenger satisfaction with complaints handling could be improved to make its outputs more user friendly. It could also work with train

companies to develop a suite of additional or adapted indicators of good complaints handling practice which focus on issues other than the speed of resolution, such as quality, some of which may already be covered in its existing passenger satisfaction survey. It could also encourage companies themselves to work together, perhaps in partnership with the Rail Delivery Group.

Publicising the Rail Ombudsman at the start of the complaints process

Highlighting the existence of the ombudsman at the point when a complaint is made is an important way of building trust in the train company's own complaints handling process at an early stage. The review of the Rail Ombudsman suggested that premature contacts from complainants was an issue. However, the feedback from the train companies who publicise the existence of the ombudsman from the start was that this had not been an issue for them. Any revised complaints handling guidance should build on the good industry practice that is already taking place in relation to this.

The 40 working day time period for resolution and signposting

There was concern that the emphasis on time as a primary driver for complaint resolution could impact on quality, particularly in relation to more complex complaints or during periods of significant disruption when there are higher complaints volumes.

We conclude that it would be appropriate to reduce referral timescales within the rail industry. In doing so, we highlight that UK private sector ombudsman schemes work to a 'fair and reasonable' standard. They can decide that it is not fair and reasonable for the customer to expect the complaint to be resolved within the shorter timescale due to its complexity or where the customer causes the delay. This could also be incorporated into the general principles as part of any revised guidance.

All sectors require the ADR scheme to be signposted at the end of the specified time period ('deadlock') or at the point where a final decision is reached, whichever is the earliest. Where a final decision is reached, some regulators such as Ofcom require the provider to signpost the complainant to the ombudsman scheme only where the complainant tells them that they are unhappy with the final decision. In other sectors, such as financial services, public services in Scotland and the water industry, providers are required to signpost the complainant to the ADR scheme at the point when a final decision is given, even if the complaint is upheld. This is good practice in our view.

Safety complaints

Complaints about safety issues are not currently distinguished from other categories of complaint in the guidance. It may be worth considering whether to distinguish them from other types of complaint in the guidance. However, in practice train companies already deal with these complaints as a priority.

Chapter 1: Introduction

1.1 Background to the report

1. The Office of Rail and Road (ORR) is the independent safety and economic regulator for the GB rail network and the Monitor for Highways England. The rail sector operates on a franchisee basis, under which the government awards franchises to train companies following a competitive tendering process. ORR issues licences to train operating companies and Network Rail and it also has powers and responsibilities under consumer and competition law.
2. One of ORR's strategic objectives is to support a better service for customers.¹¹ Its passenger facing work is focused on four main areas: passenger information, assisted travel, complaints handling and ticket retailing. Other than ticket retailing,¹² these are all the subject of conditions in the licences issued by ORR.
3. Train companies and station operators are required under the conditions of their licences to establish and comply with a complaints handling procedure (CHP) to handle complaints from customers and potential customers. As part of its role, ORR approves licence holders' CHPs and monitors compliance with these.
4. In 2015, ORR published guidance on complaints handling procedures for train and station operators.¹³ This guidance sets out what ORR expects from licence holders when exercising its approval role and when monitoring for continuing compliance. It is designed to support licence holders in:
 - providing an easily accessible complaints handling service to customers
 - developing and maintaining sound customer-centric complaints handling protocols and practices
 - using empirical data and evidence relating to complaints to drive through service improvements
 - understanding how the ORR will regulate in this area
5. In the six years since the guidance was published, circumstances have changed. In November 2018, a new alternative dispute resolution (ADR) scheme, the Rail Ombudsman, was introduced. The ombudsman's role is to provide redress where a complainant has reached the end of the train company's complaints process but does not feel that the matter has been resolved. In 2019, ORR introduced a licence condition requiring train companies and station licence holders to become members of the Rail Ombudsman scheme. In its first year of operation, passengers raised 3261 complaints with the Rail Ombudsman.¹⁴

¹¹ <https://www.orr.gov.uk/about/how-we-work/strategy-duties/strategy/strategic-objectives>

¹² ORR's work on ticket retailing stems from its consumer law powers

¹³ *Guidance on complaints handling procedures for licence holders*. ORR. 2015.

<https://www.orr.gov.uk/sites/default/files/om/complaints-handling-procedure-guidance-2015.pdf>

¹⁴ *The Rail Ombudsman Annual Review 2019*. Rail Ombudsman. 2019.

https://static.railombudsman.org/roweb/wp-content/uploads/2020/03/25211504/Rail_Ombudsman_Annual_Review-FINAL3.pdf

6. Passengers and train operators are increasingly using social media, particularly Twitter.¹⁵ With continued growth in the use of social media usage nationally, passengers' expectations about the means and speed of complaint handling are likely to have changed.¹⁶ There have also been changes to complaints handling requirements and guidance in other regulated sectors.
7. In its 2020 Annual Rail Consumer Report, ORR announced its intention to undertake a review of its complaints handling guidance for licence holders to ensure that it remains fit for purpose.¹⁷ ORR commissioned Queen Margaret University to carry out the present research to support and inform the review. The purpose of the research was to consider whether aspects of the current complaints handling guidance continue to reflect good practice and to provide an overview of approaches to the regulation of first-tier complaints handling in other regulated sectors. The research was intended to build on a 2018 report by Queen Margaret University for ORR on complaints handling in regulated sectors with an ombudsman, *On track for first-tier complaint handling* ('our 2018 *On Track report*').¹⁸

1.2 Characteristics of good complaints handling

8. As our 2018 *On Track* report noted,¹⁹ there is considerable consensus in the literature on the fundamental characteristics that should underpin good complaints handling, as shown in table 1 below.

¹⁵ See for example Ofcom's *Online nation report*. Ofcom. 2020.

https://www.ofcom.org.uk/_data/assets/pdf_file/0027/196407/online-nation-2020-report.pdf. For a discussion of increased use of digital technologies in the transport industry see for example Cottrill, C., Gault, P., Yeboah, G., Nelson, J.D., Anable, J. and Budd, T. 2017. Tweeting Transit: An examination of social media strategies for transport information management during a large event. *Transportation Research Part C: Emerging Technologies* 77, 421–432. Golightly, D., & Houghton, R. J. 2018. Social Media as a Tool to Understand Behaviour on the Railways. In Kohli, S., Kumar, A., Easton, J. M., & Roberts, C. (Ed.), *Innovative Applications of Big Data in the Railway Industry* (pp. 224-239). IGI Global. Golightly, D., & Durk, J. 2016. Twitter as part of operational practice and passenger experience on the railways. In P.E. Waterson, E. Hubbard & R. Sims (Eds.), *Proceedings of EHF2016. Contemporary Ergonomics and Human Factors 2016*. Loughborough: CIEHF. and the UK Government Office for Science. 2018. *Future of Mobility: Evidence Review: Data and digital systems for UK transport: change and its implications*. UK Government Office for Science. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766718/D_ataanddigital.pdf

¹⁶ A YouGov poll for MoneySavingExpert reported that 89% of consumers thought that a bank or energy company should have 28 days or less to handle their complaint before they can take the complaint to the relevant ombudsman. page 12. The report argues that in a digital world, consumers expect complaints to be resolved more quickly than they have been in the past. Barnes, W. and Sitharanjan, T. *Justice delayed: the case for shortening the Ombudsman 8-week rule*. MoneySavingExpert. 2019. https://images6.moneysavingexpert.com/images/documents/Justice_delayed_2019.pdf

¹⁷ *Annual Rail Consumer Report 2020*. ORR. 2020. <https://www.orr.gov.uk/monitoring-regulation/rail/passengers/annual-rail-consumer-report>

¹⁸ Williams, J., Brennan, C., and Vivian, N. 2018. *On track for first-tier complaint handling: A review of organisational complaint handling in regulated sectors with an Ombudsman for the Office of Rail and Road* <https://www.orr.gov.uk/sites/default/files/om/a-review-of-organisational-complaint-handling-in-regulated-sectors-with-an-ombudsman-for-the-office-of-rail-and-road.pdf>

¹⁹ Ibid. P.24

Table 1: Characteristics of good complaints handling

Good complaints handling should ²⁰
• be customer focused
• be free, simple and easy to use
• be clearly communicated, and understood by all involved
• be responsive, timely and flexible
• be objective, impartial and fair
• be proportionate and consistent
• be open and accountable
• put things right so far as possible
• seek early resolution
• deliver continuous improvement

9. Consumer research studies have found consistently that what consumers want when they make a complaint include the following:²¹
- to be treated with respect, courtesy and fairness, and as a ‘valued customer’
 - to be listened to and feel understood
 - a recognition that their complaint is individual and unique
 - clear information about how to complain from the start of the process
 - a process that is simple, quick and easy to navigate
 - to be given clear timescales which are met where possible, and to be kept up to date with progress of the complaint
 - a named point of contact to ensure continuity
 - trained staff with the appropriate expertise, who are empowered (within agreed parameters) to offer a solution, without having to defer to anyone else
 - reassurance that action will be taken to ensure that the situation will not happen again
 - a meaningful apology from the organisation if it is at fault

²⁰ *Improving your complaints process for complainants and for you: A brief guide for organisations.* QMU.2018. <https://www.qmu.ac.uk/media/5454/complaints-handling-guide-online.pdf>

²¹ See for example Slater, K. and Higginson, G., 2016. *Understanding Consumer Experiences of Complaint handling: A Report for Citizens Advice.* Stockport: DJS Research. [https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Understanding%20consumer%20experiences%20of%20complaint%20handling_DJS%20report%20final_June2016%20\(2\)%20\(1\).pdf](https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Understanding%20consumer%20experiences%20of%20complaint%20handling_DJS%20report%20final_June2016%20(2)%20(1).pdf); *Dealing with Dissatisfaction: Complaint handling in Energy, Water, Telecoms, Financial and Legal Services and Royal Mail*; Consumer Focus. 2012. *Yours Disgusted Yours Delighted.* London Regional Passengers Committee. 2000.

1.3 Passenger rail service complaints

10. ORR publishes data about complaints made by passengers regarding rail services in Great Britain each quarter. This includes data about complaints volumes, complaint types, and response times.²² From 2013-14 to 2019-20, the complaints rate for franchised train companies, which account for 99% of all complaints, “has been fairly stable, with a complaints rate between 29.0 and 30.5 complaints per 100,000 journeys except for a drop to 27.4 complaints per 100,000 journeys in 2015-16”.²³
11. In 2019-20, the top five complaint categories were:
 - punctuality/reliability
 - facilities on board
 - sufficient room for all passengers to sit/stand
 - ticketing and refunds policy
 - other ticket buying facilities - online ticket sales
12. Most complaints were dealt with within the requirements set out in the ORR complaints handling guidance. This states that a full response must be made to 95% of complaints within 20 working days. Overall, 94.7% of complaints were closed within 20 working days in 2019-20. A total of 16 out of 23 train companies met the industry requirement to close 95% or more of their complaints within 20 working days. Eight of these closed 100% of complaints within that timescale (when rounded to a whole number).²⁴

1.4 Passenger satisfaction with complaints handling

13. Our 2018 *On Track* report noted concerns about low rates of consumer satisfaction with complaints handling in the rail sector, and low levels of trust in complaints handling.²⁵
14. While in 2019-20 there was a very slight increase (0.6%) in consumer satisfaction,²⁶ overall satisfaction with the complaints handling process remained low at only 30%. More than half of consumers (54%) reported that they felt more negatively about the train company in light of how their complaint had been handled, and only 13% said they felt more positive about them.²⁷ Satisfaction with the outcome of the complaint (31%) was slightly higher than satisfaction with the complaints handling process.

²² See <https://dataportal.orr.gov.uk/statistics/passenger-experience/passenger-rail-service-complaints/>

²³ *Annual Rail Consumer Report 2020*. ORR. 2020. Para 122.

²⁴ *Ibid.*

²⁵ Williams, J., Brennan, C., and Vivian, N. 2018. *On track for first-tier complaint handling: A review of organisational complaints handling in regulated sectors with an Ombudsman for the Office of Rail and Road*.

²⁶ There was an increase of 0.6% compared with 2017-18, the last year for which data was available. See <https://dataportal.orr.gov.uk/media/1756/passenger-satisfaction-complaints-handling-factsheet-2019-20-q4.pdf>

²⁷ *Passenger Satisfaction with Complaints Handling: 2019-2020 Factsheet*. ORR. 2020.

<https://dataportal.orr.gov.uk/media/1756/passenger-satisfaction-complaints-handling-factsheet-2019-20-q4.pdf>

15. Levels of satisfaction with the complaints handling process varied widely between train companies, ranging between 11% and 49%. While the satisfaction levels for those train companies at the higher end of the range compare favourably with those in other sectors, the average satisfaction levels are lower than in other regulated sectors considered for this report. They are also lower than in the UK air travel sector, which has satisfaction levels of between 51-57%.²⁸
16. Table 2 below shows levels of consumer satisfaction in some other regulated sectors. This information is not readily available for all sectors. While some financial services firms do collect this data, there is no requirement on firms to report on this to the FCA.²⁹ Many water companies do not routinely collect consumer satisfaction data. Ofwat and the Consumer Council for Water (CCW) have recently called on companies to improve their understanding of complainant satisfaction.³⁰

Table 2: Consumer satisfaction with complaints handling in regulated sectors

Sector	Rail	Communications	Energy	Legal Services (England and Wales)	Financial services	Water	Air travel
Satisfaction levels	Complaints handling - 30% Complaints outcome - 31% ³¹	Mobile phones - 58% Broadband - 53% Landlines - 54% ³²	32% ³³	36% ³⁴	Data collected by the FCA and published as raw data	Not routinely collected ³⁵	51%-57% for various aspects of complaints handling

²⁸ CAP1916: Wave Eight: UK Aviation Consumer Survey. Civil Aviation Authority. 2020. The survey breaks down consumer satisfaction into 5 separate issues: helpfulness and friendliness in dealing with the complaint (57%); speed of response (55%); fairness of treatment (54%); redress offered (53%); how well they were informed about progress (51%).

https://publicapps.caa.co.uk/docs/33/SavantaComRes_CAA_UKACR_Wave%208_full%20report.pdf

²⁹ The FCA monitors complaints handling satisfaction through its 'Financial Lives' survey which it carried out in 2017 and 2020. The raw data on complaints satisfaction is available via the FCA's website.

³⁰ Putting Things Right; Household complaints practices in the England and Wales water industry. Ofwat and CCW. 2020. [Ofwat-CCW-Joint-Report-on-Complaints-Practices.pdf](https://www.ofwat.gov.uk/wp-content/uploads/2020/10/C-MeX-and-D-MeX-shadow-year-research-report-for-PR19-report-by-BMG-Research.pdf)

³¹ Annual Rail Consumer Report 2020. ORR. 2020. Note: satisfaction rates vary between 11%-49% between different train operating companies.

³² Comparing Customer Service: Mobile, home broadband and landline. Ofcom. 2020.

https://www.ofcom.org.uk/data/assets/pdf_file/0014/201434/comparing-service-quality-2019.pdf

³³ Customer satisfaction with energy supplier complaint handling 2018: research report prepared for Ofgem. Quadrangle Research. 2018.

https://www.ofgem.gov.uk/system/files/docs/2018/09/quadrangle_ofgemchs2018_researchreport.pdf

³⁴ This figure is for the number of consumers who said their complaint had been resolved to their satisfaction so is perhaps more about outcomes. Research into the experiences and effectiveness of solicitors' first tier complaints handling processes Research commissioned by the Solicitors Regulation Authority and Legal Ombudsman. London Economics. 2017. <https://www.sra.org.uk/globalassets/documents/sra/research/first-tier-complaints.pdf?version=4a1ac4>

³⁵ Note: Ofwat monitors complainant satisfaction more generally as part of its C-MeX metric:

<https://www.ofwat.gov.uk/wp-content/uploads/2020/10/C-MeX-and-D-MeX-shadow-year-research-report-for-PR19-report-by-BMG-Research.pdf>

1.5 Characteristics specific to the rail sector

17. As noted in our 2018 *On Track* report, the rail sector has some specific characteristics which may impact on complaints handling, which should be borne in mind when comparing it to other sectors.³⁶ These include:
- the sector operates on a franchisee basis, under which the government awards franchises to train companies following a competitive tendering process. Franchises cover a defined geographical area or service type. There is accordingly little opportunity for train companies to compete with one another³⁷
 - passengers therefore have little opportunity to shop around or switch provider when they experience poor service. This reduces any incentive on train companies to improve their service or provide redress in order to gain or retain customers
 - the relationships between train companies, station operators and Network Rail add complexity to the landscape in terms of where responsibility for complaints lies
 - as with other natural monopolies, this increases pressure on regulators to proactively monitor and take action using complaints data to drive improvement
 - complaints about rail often involve a short-term inconvenience. Consumers can quickly lose interest in pursuing their complaint if they experience barriers to complaining

1.6 Aims of the research

18. The aim of the current research was to help ORR consider whether its current guidance to licence holders on complaints handling procedures continues to reflect good practice, so that the requirements ORR places on train and station operators keep pace with the latest developments and consumer expectations. This research builds on, but also expands upon, the findings from our 2018 *On Track* report. Drawing on both desk research and interviews with a sample of regulators and train companies, it considers three main areas:
- approaches to the regulation of first tier complaints handling in other regulated sectors
 - current good practice in complaints handling
 - ORR's current guidance on complaints handling procedures

1.7 Methodology

19. The methodology adopted was a desk-based review followed by online interviews with a regulator (the Financial Conduct Authority), an ombudsman

³⁶See footnote 1 Pp.20-21.

³⁷Note: there are some franchises which are in public ownership, and there are also open access arrangements. As a result of Covid-19, Government has put in place recovery agreements, i.e. temporary amendments to existing franchise agreements in order to mitigate the financial impacts resulting from the pandemic. See: <https://www.gov.uk/government/publications/payments-to-passenger-rail-operators-under-emergency-measures-agreements-emas-march-to-september-2020>]

scheme (the Scottish Public Services Ombudsman) and six train companies. Informal discussions also took place with representatives of Ofcom, Ofwat and the Public Transport Ombudsman Victoria.

20. An initial desk-based review was first carried out to identify approaches taken in relation to complaints handling by regulators in other regulated sectors. This included both the regulated sectors examined in our 2018 *On Track* report (see table 3 below) and the additional sectors chosen for inclusion in the present research (see table 4).
21. The additional sectors were selected because they are comparable to the rail sector. One of the main features of the rail sector is that it is a quasi-monopoly. Although providers can change when a new franchise is awarded, in most cases consumers have no option to switch provider, as there will generally only be one provider of rail services on the route they use. Rail shares characteristics with the public sector where there is typically no option for consumers to change provider. The research therefore considered good practice in complaints handling in public services. In addition to the Scottish Public Services Ombudsman (SPSO), which was included in our 2018 *On Track* report, we looked at:
 - 1) the Parliamentary and Health Service Ombudsman (PHSO) which recently consulted on a new Complaints Standard for health complaints in England; and
 - 2) the Office of the Independent Adjudicator (OIA), which adjudicates higher education complaints in England and Wales.
22. Like the SPSO, both the PHSO and the OIA are independent redress/ombudsman schemes rather than regulators. As with the SPSO, both organisations also have a role in setting out good practice for complaints handling in the relevant regulated sector.³⁸
23. The research also looked at aspects of the public transport system in Victoria, Australia, which shares some characteristics of the GB rail sector, by reference to the Public Transport Ombudsman Victoria (PTOV).
24. We also looked at the household water sector in England and Wales, which has some parallels with the rail sector. While the ongoing relationship with the customer might be slightly different, the sector operates as a quasi-monopoly, with customers obliged to use the provider which operates in their geographical area. Household water and sewerage services are essential services provided by 17 privately owned household water and sewerage and water only companies. The size of the market is therefore comparable to that in the rail sector.

³⁸ For a discussion of SPSO's statutory role, see para 41.

25. For all the additional sectors shown in table 4, other than water and sewerage services, the research focused on the relevant ombudsman/ADR scheme. The relevant regulator for each sector is included for completeness but was not considered in depth as part of the research.

Table 3: Regulated sectors reviewed in *On Track for First-tier Complaint handling (2018)*

Sector	Regulator	Ombudsman /ADR Scheme
Communications	Ofcom	Ombudsman Services: Communications Communications and Internet Services Adjudication Service (CISAS)
Energy	Ofgem	Ombudsman Services: Energy
Finance	Financial Conduct Authority (FCA)	Financial Ombudsman Service (FOS)
Solicitors (England and Wales)	Legal Services Board (LSB) Solicitors Regulation Authority (SRA)	Legal Ombudsman
Public Services (Scotland)	N/A	Scottish Public Services Ombudsman (SPSO) ³⁹

Table 4: Additional regulated sectors reviewed

Sector	Regulator	Ombudsman/ADR Scheme
Higher Education (England and Wales)	Office for Students	Office of the Independent Adjudicator for Higher Education (OIA)
Health (England)	Care Quality Commission	Parliamentary and Health Service Ombudsman (PHSO)
Water and sewerage services (England and Wales)	Ofwat	CCW, and choice of adjudication (WATRS is the industry appointed scheme)
Public transport (Victoria, Australia)	Transport for Victoria ⁴⁰	Public Transport Ombudsman, Victoria

26. Secondly, a review of current good practice in complaints handling was undertaken. This looked at both the sectors originally included in our 2018 *On Track* report and the additional sectors set out in table 4. Specific areas of focus for the review of good practice included:
- The definition of a ‘complaint’
 - Complaints made via social media
 - Response times
 - Escalation and signposting to ADR
 - Safety complaints
 - Access for vulnerable consumers

³⁹ Although not a regulator, the Scottish Public Services Ombudsman (SPSO) was included because it is widely recognised as a leader in the public sector in driving improvement of first-tier complaints handling. See <https://www.spsso.org.uk/about-us>

⁴⁰ Formerly Public Transport Victoria.

27. In addition to the desk-based research, interviews were held with representatives of the Financial Conduct Authority (FCA) and the SPSO, to identify any lessons to be learnt from their approach to complaints handling. Informal discussions were also held with representatives of Ofcom, Ofwat and PTOV.
28. Finally, interviews were held with train companies about their views and experiences in relation to ORR's current complaints handling guidance. Interviews were held with representatives of six train companies, representing around a quarter of the 23 mainline train operators regulated by ORR.⁴¹ The interview sample was agreed with ORR and was chosen to represent a cross-section of different types of licence holders, including a mix of owner groups, routes (i.e. long distance, regional and commuter routes), and a geographical spread.
29. The interviews focused primarily on the following issues:
 - ORR's CHP approvals process
 - ORR's approach to core standards and service standards
 - how companies use complaints to drive improvement
 - response times
 - dealing with social media complaints
 - publicising and signposting to ADR
 - quality indicators
 - the handling of safety complaints

⁴¹ Note: ORR also regulates other station only and charter operators who also hold a complaints handling condition in their licence and are therefore covered by its complaints handling guidance.

Chapter 2: Approaches to the regulation of first tier complaints handling in other regulated sectors

2.1 Introduction

30. The desk research reviewed approaches taken and methods used by regulators in other regulated sectors in relation to the regulation of first-tier complaints handling, including the balance struck between general principles and detailed rules and guidance. This included:
- gathering evidence and insight from regulatory bodies about the relative success of their models in driving positive outcomes for consumers
 - how complaints data is used to encourage the improvement of service quality
 - identifying any equivalents to ORR's guidance and approvals role

2.2 The regulator's role in influencing complaints handling practice

31. Regulation has been defined as *“a process for assessing or analysing the delivery of defined activities against a framework of ideas or standards based on evidence and widely accepted good practice in relation to quality.”*⁴²
32. A recent literature review on effective regulation for the Care Quality Commission⁴³ identified various respects in which regulation can have positive impacts. Some of these are particularly relevant in relation to complaints handling and are set out below:
- producing published standards can signal what the regulator thinks it is important to focus on and set out its expectations regarding performance. They can also create a framework to support and encourage quality improvement within organisations, whether through self-assessment, or through providing a mechanism for assessing organisations and/or enforcement against them where necessary
 - ongoing monitoring and information gathering can incentivise improvement in performance and service quality, enhance the credibility of regulated organisations by demonstrating their performance against published standards and promote organisational learning. It can also be used to determine whether to use regulatory interventions and/or notify regulated organisations that poor performance data may lead to further regulatory activity

⁴² *Rapid literature review on effective regulation: Implications for the Care Quality Commission*. Care Quality Commission. 2020. P.4.
<https://www.cqc.org.uk/sites/default/files/20200128%20Effective%20Regulation%20Literature%20Review%20Final%20report.pdf>

⁴³ Ibid.

- published information, learning and best practice can also help to identify trends in the delivery of regulated activities, to inform and encourage compliance and support learning and improvement within regulated organisations.
33. The duties of the regulators previously considered in our 2018 *On Track* report (updated to take account of any changes) and of Ofwat and CCW, and their role in influencing complaints handling practice are set out in table 5 below. The duties and role of the three ombudsman schemes considered as part of the current research, together with SPSO, which was included our 2018 *On Track* report are set out in table 6.

Table 5: Regulators' role in influencing complaints handling practice across sectors

	ORR	Ofgem	Ofcom	FCA	Legal Services	Ofwat/ CCW
Duties	ORR has a number of duties which it must balance when exercising its functions. These include, but are not limited to, the following: "to protect the interests of users of railway services", "to promote the use of the railway network in Great Britain for the carriage of railway passengers" and to "promote improvements in railway service performance" ⁴⁴	Duty to protect the interests of gas and electricity consumers	Duty to further the interests of citizens in relation to communication matters and consumers in relevant markets, where appropriate, by promoting competition.	Operational objectives include securing an appropriate degree of protection for consumers	Approved regulators must require approved persons to have effective procedures in place for the resolution of complaints ⁴⁵	Ofwat - to further the consumer objective to protect the interests of consumers, wherever appropriate by promoting effective competition CCW - to represent the interests of domestic and business consumers of licensed water suppliers, water and sewerage companies. Research (e.g., tracking surveys), campaign work, complaints guidance, reports and industry workshops.
How do they influence complaints handling?	Licence conditions Guidance on complaints handling procedures for licence holders Core data reference guide ⁴⁶	General Standards of conduct are set out in licensing conditions. The Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 also prescribe complaints handling standards and some information requirements ⁴⁷	Operators must comply with Ofcom's General Conditions of Entitlement, which impose certain conditions relating to complaints handling and require organisations to comply with Ofcom's Approved Code of Practice for Customer Service and Complaints Handling ⁴⁸	Rules and guidance in FCA Handbook DISP 1 Dispute resolution: Complaints Thematic reviews	SRA Codes of Conduct for firms and solicitors Legal Services Board have also issued section 112 requirements and section 162 guidance for approved regulators relating to complaints handling ⁴⁹	Ofwat - Guaranteed Standards Scheme, set out in the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008, regulation 7 ⁵⁰ CCW - complaint reporting guidance for water companies ⁵¹

⁴⁴ These duties are set out in section 4 of the Railways Act 1993.

⁴⁵ Section 112 Legal Services Act 2007. The Legal Services Board can also specify requirements that these arrangements must satisfy in relation to first-tier complaints procedures.

⁴⁶ *Reference Guide for ORR Core Data Compliance reporting for 2020-21*. ORR. 2020. <https://www.orr.gov.uk/media/10746>

⁴⁷ <http://www.legislation.gov.uk/uksi/2008/1898/regulation/3/made>

⁴⁸ *Review of the General Conditions of Entitlement Revised General Conditions*. Ofcom. 2017. C4.4 https://www.ofcom.org.uk/data/assets/pdf_file/0023/106394/Annex-14-Revised-cleanconditions.pdf

⁴⁹ See for example https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/2016/201607_Version_2_Requirements_Guidance.pdf

⁵⁰ [The Water Supply and Sewerage Services \(Customer Service Standards\) Regulations 2008 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

⁵¹ *Complaint Reporting Guidance*. CCW. 2019. <https://www.ccwater.org.uk/wp-content/uploads/2019/08/Complaint-reporting-guidance-2019.pdf>

Table 5: continued

	ORR	Ofgem	Ofcom	FCA	Legal Services	Ofwat/CCW
When did the rules commence?	2015 ⁵²	2008	2011 (most recent changes in 2018)	2001	2010 SRA Handbook replaced by SRA Standards and Regulations in November 2019	2008 - Guaranteed Standards Scheme 2017- CCW guidance

Table 6: ADR schemes' role in influencing complaints handling practice

	Scottish Public Services Ombudsman	Office of the Independent Adjudicator	Parliamentary and Health Service Ombudsman	Public Transport Ombudsman, Victoria
Duties	Power to publish a statement of principles concerning complaints handling procedures and to publish MCHPs. ⁵³	To provide a scheme for the review of qualifying complaints by students about their higher education provider	To provide an independent complaints handling service for complaints that have not been resolved by the NHS in England and UK government departments	Objective of providing a cost-free, efficient, effective, fair, informal and accessible alternative to court for users of public passenger transport services in Victoria or people affected by transport related activities of a member ⁵⁴
How do they influence complaints handling?	Statement of Complaint Handling Principles approved by the Scottish Parliament. Model complaints handling procedures (MCHPs) published for all Scottish public service providers. Complaints handling training, guidance and resources. ⁵⁵	Good Practice Framework: Handling student complaints and academic appeals ⁵⁶	Principles of Good Complaint Handling ⁵⁷ Recently consulted on a Complaints Standard framework for health complaints specifically. ⁵⁸	Public Transport operators are expected to comply with the Public Transport Industry's Complaints Management Policy, Victoria ⁵⁹
When did the rules commence?	2012-2017 (reviewed in 2020) ⁶⁰	2015. Updated December 2016	N/A	2017

⁵² Note: responsibility for the approval and monitoring of train and station operators' complaints handling procedures transferred from the Department for Transport to ORR in 2013, who took on the existing (2005) Strategic Rail Authority guidance. ORR updated this guidance, publishing its current guidance in 2015.

⁵³ Section 16G Scottish Public Services Ombudsman Act 2002 as amended by the Public Services Reform (Scotland) Act 2010.

⁵⁴ *Public Transport Ombudsman Ltd Charter 2013*. PTVO. Para 1.2.

<https://www.ptovic.com.au/images/documents/Charter%20June%202013.pdf>

⁵⁵ <https://www.spsso.org.uk/how-we-offer-support-and-guidance>

⁵⁶ [oia-good-practice-framework.pdf \(oiahe.org.uk\)](https://www.oiahe.org.uk/oia-good-practice-framework.pdf)

⁵⁷ *Principles of Good Complaint handling*. PHSO. 2009

<https://www.ombudsman.org.uk/sites/default/files/page/0188-Principles-of-Good-Complaint-Handling-bookletweb.pdf>

⁵⁸ *Complaint Standards Framework: Summary of core expectations for NHS organisations and staff*. PHSO.2020. https://www.ombudsman.org.uk/sites/default/files/Complaint_Standards_Framework-Summary_of_core_expectations%20.pdf

⁵⁹ *The Victorian Public Transport Industry's Complaint Management Policy*. Public Transport Victoria. 2014. <https://www.ptv.vic.gov.au/assets/default-site/footer/customer-service/feedback-and-complaints/B9c95ab9c0/PTV-Complaint-Handling-Procedure.Pdf>

⁶⁰ The first MCHPs were implemented in 2012 and rolled out thereafter up to 2017. All MCHPs (except NHS) were updated and published in January 2020. Providers have until April 2021 to implement any changes.

34. As with ORR, regulators are generally under a duty to ensure that the interests of consumers are protected. In some instances, this includes an explicit duty to ensure there are effective procedures in place for first-tier organisations to resolve complaints (see Ofgem, Legal Services Board and the SPSO).

2.3 Regulatory approach to complaints handling

35. As shown in table 5, the basis for complaints handling requirements varies between sectors. They may be set out in statute, licence conditions, guidance, codes of practice, codes of conduct or a combination of all or some of these. While some of the terminology used differs among regulators - for example they may have an 'approved complaints code of practice', 'standards of conduct' or a 'code of conduct' - these documents are all very similar in their approach. Overall, the regulators we looked at take a broadly principles-based approach, combined with more detailed rules where required. As our 2018 *On Track* report noted, while detailed rules offer greater clarity and can be easier to enforce, they can quickly go out of date or can lead to a tick box approach, rather than necessarily achieve the desired outcomes. In some cases, however, a degree of prescription may be required.
36. In relation to the energy market, for example, Ofgem has in recent years moved towards more principles-based rules set out in its Standards of Conduct,⁶¹ which operate in addition to the relatively prescriptive statutory minimum standards on a fairly limited range of process issues set out in the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008. For example, energy suppliers must ensure that they treat customers fairly.
37. Ofwat operates similarly prescriptive minimum standards in the water sector,⁶² but does not have a formal role in the handling of most complaints. In recent years, it has become more involved in this area, having undertaken in its 2019 strategy to "improve the customer complaints handling process so that customers are helped more effectively and quickly."⁶³ It recently published a report (jointly with CCW) on household complaints practices in the water industry, which made a number of recommendations for improvement.⁶⁴ The regulator sees this as a way of setting out its expectations of companies. These include requiring companies to write to Ofwat and CCW setting out an action plan for implementing each of the recommendations. The recommendations are akin to

⁶¹ The domestic standards of conduct are set out in standard licence condition of the gas and electricity supply licences. For a guide see *Licence guide: Standards of Conduct*. Ofgem. 2017.

https://www.ofgem.gov.uk/system/files/docs/2017/10/standards_of_conduct.pdf

⁶² The statutory Guaranteed Standards Scheme, as set out in the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008, prescribes eight minimum standards of service for customers which water and sewerage companies must operate within, as set out by Ofwat. <https://www.ofwat.gov.uk/wp-content/uploads/2017/03/The-guaranteed-standards-scheme-GSS-summary-of-standards-and-conditions.pdf>

⁶³ <https://www.ofwat.gov.uk/wp-content/uploads/2019/10/Time-to-act-together-Ofwats-strategy-1.pdf>

⁶⁴ *Putting Things Right: Household Practices in the England and Wales Water Industry*. Ofwat and CCW. 2020. <https://www.ofwat.gov.uk/wp-content/uploads/2020/11/Ofwat-CCW-Joint-Report-on-Complaints-Practices.pdf>

high level principles, rather than detailed requirements, and the expectation is that companies will come up with their own way of complying with them.⁶⁵

38. As in the energy sector, financial services firms are also subject to a set of general principles set out by the FCA. These include a principle which requires firms to pay due regard to the interests of their customers and treat them fairly.⁶⁶ While there are a lot of detailed rules on complaints processes in the FCA Handbook,⁶⁷ these are a combination of overarching principles to inform complaints handling practice and specific rules. Firms are required to investigate complaints competently, diligently and impartially and assess them fairly, consistently and promptly.⁶⁸ While there are prescriptive rules on issues where the FCA's priority is to ensure consistency – such as acknowledging complaints, timelines, referrals to the ombudsman and complaints reporting – how firms actually respond to and resolve complaints is more principles-based and relies more on the judgement of the firm's knowledge and experience of the individual consumer. A previous FCA thematic review found that firms were taking a very legalistic approach to complaints, which was not necessarily in the consumer interest, as well as being very resource intensive for firms.⁶⁹
39. Ofcom's General Conditions require communications providers to have procedures for handling complaints that comply with the Ofcom approved complaints code of practice for customer service and complaints handling ('Ofcom's approved complaints code').⁷⁰ The approved complaints code was introduced in 2011 and a revised code was introduced in October 2018. Ofcom's approved complaints code establishes a regulatory requirement for providers to resolve complaints in a 'fair and timely manner' and also outlines minimum expectations about the accessibility, transparency and effectiveness of providers' complaints handling procedures.
40. The Legal Services Board (LSB), the oversight regulator for legal services in England and Wales, has issued guidance which approved regulators (the Law Society and Solicitors Regulation Authority) must have regard to when regulating first-tier complaints handling.⁷¹ This guidance sets out requirements on signposting and the approved regulators must ensure that the authorised persons whom they regulate comply with these. The Solicitors Regulation Authority (SRA) then sets out in its codes of conduct⁷² standards on the outcomes

⁶⁵ From informal discussion with Ofwat representative.

⁶⁶ *FCA Handbook*. PRIN 2.1.1 Principle 6. Note: the FCA handbook can be accessed via this link: <https://www.handbook.fca.org.uk/handbook>

⁶⁷ *DISP Dispute resolution: Complaints*.

⁶⁸ DISP 1.4.

⁶⁹ From interview with FCA representative.

⁷⁰ *Ofcom Approved complaints code of practice for customer service and complaints handling*. Ofcom. 2018. https://www.ofcom.org.uk/data/assets/pdf_file/0025/132829/Ofcom-approved-complaints-code-of-practice.pdf

⁷¹ *First-tier complaints handling: section 112 requirements and section 162 guidance for approved regulators*. Legal Services Board. 2016.

https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/2016/201607_Version_2_Requirements_Guidance.pdf

⁷² [SRA | Code of Conduct for Solicitors, RELs and RFLs | Solicitors Regulation Authority SRA |; Code of Conduct for Firms | Solicitors Regulation Authority](https://www.sra.org.uk/code-of-conduct)

and indicative behaviour it expects when solicitors and firms deal with complaints.

2.4 Ombudsman schemes' approaches to complaints handling

41. SPSO, the statutory complaints/ADR body to which all unresolved first-tier complaints across the Scottish public sector are escalated, has a very broad jurisdiction encompassing public sector organisations of all sizes, ranging from the Scottish Government to local authorities and health boards down to individual NHS GP and dentist practices.⁷³ While it is not a regulator, following a review of public sector complaints handling in Scotland, SPSO was given a specific power under the Public Services Reform (Scotland) Act 2010 to promote best practice in relation to complaints handling and to lead the development of simplified and standardised complaints handling procedures across the public sector.
42. In 2011, the Scottish Parliament approved SPSO's Statement of Complaints Handling Principles.⁷⁴ Taking a sectoral approach, SPSO then developed, in collaboration with the relevant public sector organisations, a series of model complaints handling procedures (MCHPs). Public authorities are required to comply with the MCHP where one is specified for that organisation.⁷⁵ Currently there are six MCHPs in existence covering local authorities, the housing sector, further education, higher education, Scottish Government and associated public authorities, and the NHS.⁷⁶ The MCHPs were introduced gradually over several years from 2012 onwards. They were all updated in 2020, aside from the NHS MCHP, which was first introduced most recently (in 2017).⁷⁷
43. All of the MCHPs follow the same format, including a shared understanding of what is a complaint, a two-stage process which encourages complaints to be resolved at the front line (within five working days) wherever possible, an investigation stage of 20 working days which provides the organisation's final decision, and active learning from complaints. All organisations under SPSO's jurisdiction are obliged by statute to have a complaints handling procedure which aligns with the relevant MCHP where one is specified for that sector. The SPSO supports the development of CHPs and monitors compliance.
44. The MCHPs contain a mixture of general principles and detailed requirements.⁷⁸ While they are quite prescriptive on some matters, they give organisations

⁷³ See Schedules 2&3 of Scottish Public Services Ombudsman Act 2002 for full list.

⁷⁴ *Statement of complaints handling principles*. SPSO. 2011.

<http://www.valuingcomplaints.org.uk/sites/valuingcomplaints/files/resources/principles.pdf>

⁷⁵ Section 16C Scottish Public Services Ombudsman Act 2002.

⁷⁶ The Scottish Government asked the SPSO to lead on the development of an NHS CHP in Scotland, and compliance is required under the Patient Rights (Scotland) Act 2011 as amended, and associated Regulations and Directions.

⁷⁷Note: there was also previously a separate MCHP for social work complaints, but in 2020 this was combined with the local authorities CHP.

⁷⁸ The CHPs are underpinned by the approved Statement of Complaints Handling Principles.

greater flexibility and guidance in other areas. Organisations have discretion to adapt the MCHP to ensure it reflects their corporate identity and language.

45. Public sector bodies can download a copy of the relevant MCHP and are encouraged to put their own corporate identity on it and provide links to internal policies where appropriate. The aim is “*to have that standardised core text*” across public services so that they are all using the same procedure. (SPSO interviewee 1).
46. Representatives of SPSO told us for this research that as the final stage for public service complaints in Scotland, SPSO is well placed to have an overview of complaints handling. SPSO has two main aims: remedying matters for the complainant where appropriate; and using the results of investigations to drive public service improvement. Organisations under SPSO’s jurisdiction can approach them for advice, guidance and support with complaints handling.
47. PHSO is currently working to introduce a similar approach to SPSO in relation to health complaints in England. Following an invitation from the House of Commons Select Committee on Public Administration and Constitutional Affairs to explore the ‘state of local complaints handling’ across the NHS and UK Government departments, it recently published a draft Complaint Standards Framework for consultation.⁷⁹ The draft framework is not prescriptive but sets out common principles of good practice. It is intended to be voluntary rather than statutory, having been agreed among the relevant organisations. PHSO will monitor and report on the extent to which individual organisations are meeting the expectations in the framework, while its regulatory partners will embed the framework into their work on complaints handling. It is intended that a model complaints handling process along the lines of those produced by SPSO will be developed alongside it for use by health bodies.⁸⁰
48. Higher education providers in England and Wales are required to become members of the independent student complaints scheme run by the Office of the Independent Adjudicator (OIA), and to comply with its rules and procedures.⁸¹ The OIA has produced a Good Practice Framework for providers on handling complaints and academic appeals,⁸² which sets out overriding principles and operational guidance on matters such as timeframes, progression between

⁷⁹ *Complaint Standard Framework: Summary of Core Expectations for NHS organisations and staff*. PHSO.2020.

⁸⁰ Source: transcript of PHSO webinar held on 10 September 2020. <https://www.ombudsman.org.uk/news-and-blog/events/make-complaints-count-complaint-standards-framework-webinar#Transcript>

⁸¹ All ‘qualifying institutions’ are required to be members of the scheme in terms of section 11, and to comply with its rules under section 15, of the Higher Education Act 2004.

⁸² [oia-good-practice-framework.pdf \(oiahe.org.uk\)](https://www.oiahe.org.uk/oia-good-practice-framework.pdf)

informal, formal and review stages, and record-keeping. The framework states that it:

“informs the way we consider complaints and academic appeals from students. It is not intended to be an exact template for dealing with every complaint and academic appeal. Each provider remains free to draft its own policies and procedures to fit its own size and context. Where a provider chooses to depart from the framework, we will consider whether the process it follows is reasonable when it reviews individual complaints.”

2.5 How complaints data is used to encourage the improvement of service quality

49. As noted earlier in this chapter, ongoing monitoring and data collection by regulators can incentivise improvement in performance and service quality, enhance the credibility of regulated organisations by demonstrating their performance against published standards, promote organisational learning, and can be used to determine whether regulatory intervention is required. Publishing data, learning and best practice can also help to identify trends in the delivery of regulated activities, inform and encourage compliance and support learning and improvement within regulated organisations.
50. The ways in which regulators and ombudsman schemes use complaints data to help drive improvement varies across sectors. These were explored specifically with reference to the organisations interviewed for the present research i.e. the FCA and SPSO. Information was also obtained from Ofcom about its monitoring in this area, which is included here.
51. The FCA requires regulated firms to report all complaints, including those which are resolved within 3 working days. Firms are generally required to submit 2 reports a year to the FCA, covering six-month periods. They are required to report factual data including the numbers of complaints, the nature and type of complaints, how long they took to resolve, whether they were upheld, whether any financial compensation was awarded, and if so, how much. Unlike ORR, the FCA does not report on customer satisfaction with complaints handling, although the FCA interviewee said that firms are required to treat their customers fairly and that having processes to monitor satisfaction with complaints handling would be one way that firms could monitor compliance with this requirement. While this information is not collected routinely, the FCA may ask for it if, for example, it carried out another thematic review on complaints handling. The FCA itself carries out a large-scale consumer tracking survey, Financial Lives, every three years, looking at consumers' views and experiences of the financial services sector, which includes high level questions on satisfaction with complaints handling.
52. The FCA interviewee made the point that regulated providers range in size from very small financial adviser firms to large investment banks and insurance companies, while the services provided vary significantly in complexity. Given

the breadth of the regulated market, there is accordingly a balance to be struck in terms of the nature and quantity of information that firms could be expected to produce.

53. The complaints data reported by firms is available on the FCA website, which shows the aggregate data across the sector for each six-month period, as well as firm-specific data across different product categories. One issue with this approach which was identified by the FCA interviewee is the time lag between complaints being dealt with and being reported to the FCA. As firms are given a month after the end of the reporting period to submit the data, compared to other indicators, there are limitations to the use of firm complaints data as an early indicator of consumer harm in relation to a particular firm or sector. The data is often more helpful as a means of comparing complaints handling performance across different firms or sectors and providing important transparency to stakeholders.
54. An important feature of the complaints handling landscape in financial services is the 'feedback loop' between the FCA and the Financial Ombudsman Service (FOS): *"FOS performs a crucial 'feedback' role in identifying poor practice and systemic issues and reporting this back to the regulator, government and industry."*⁸³
55. This was acknowledged by the FCA interviewee, who pointed out that the FCA rules refer to FOS guidance in relation to complaints and vice versa, and that firms are also conscious of FOS guidance when dealing with complaints.
56. Recent FCA guidance published in early 2021 also proposes that firms collect management information to help them understand how their customer journey affects their vulnerable consumers and the outcomes they experience in order to help them to understand if vulnerable consumers are being fairly treated.⁸⁴ This is discussed further at section 3.8 in connection with access for vulnerable consumers. As with existing FCA guidance, FOS will take that guidance into account when considering complaints involving vulnerable customers.
57. Ofcom's approved complaints code requires providers to keep a record of complaints information for compliance monitoring purposes. They are required to record details of each individual complaint, including what the complaint was about, the channel through which it was made, copies of all complaints correspondence and when the complaint was resolved or closed. They must also record monthly data on the number of complaints received each month, the number of ADR letters sent where the complaint was unresolved after eight weeks, the number of ADR letters sent each month for unresolved complaints at

⁸³ O'Neill, S. 2020. *The pros and cons of a private right of action for consumers in light of evidence from other sectors and countries: a report for the Financial Services Consumer Panel*. Para 132. https://www.fs-cp.org.uk/sites/default/files/fscp_report_final_version_23_july_20.pdf

⁸⁴ *Guidance for firms on the fair treatment of vulnerable customers*. FCA 2021. <https://www.fca.org.uk/publication/finalised-guidance/fq21-1.pdf>

any other time, the number of complaints resolved (or presumed to be resolved) to the complainant's satisfaction and the number of complaints closed on the basis that they were frivolous or vexatious. These records must be retained for at least twelve months after the complaint was resolved or otherwise closed.⁸⁵

58. From 2013 until 2019, Ofcom ran a monitoring and enforcement programme which monitored providers' compliance with aspects of the code.⁸⁶ Its objectives were:
- to ensure that providers had codes of practice that complied with Ofcom's approved complaints code
 - to identify any problems (including consumer concerns) in relation to providers' compliance with the approved code
 - to ensure that providers were making consumers aware of ADR, to address concerns that consumers may not typically be receiving the written notification that providers are required to send to complainants whose complaints remain unresolved after 8 weeks
59. The enforcement programme resulted in investigations into three providers for complaints handling failures, resulting in significant fines. It also led to improvements to providers' complaints handling processes, through targeted engagement with poor performing providers. It ensured providers' policies and procedures support effective signposting of ADR, including material increases in the volume of ADR letters being sent. In September 2019, the programme was closed because it was no longer considered necessary to undertake this enhanced level of monitoring.
60. Ofcom continues to monitor complaints which it receives about providers' complaints handling and publishes a quarterly complaints report, which is used to incentivise good complaints handling and improve service quality. Both ADR schemes for the sector⁸⁷ also publish data on case outcomes and provide feedback to providers to ensure they learn from complaints. They can also provide feedback information to Ofcom, helping it to raise issues with providers if required.
61. The SPSO representatives interviewed for this research told us that their approach, as an ombudsman rather than a regulator, has always been to encourage compliance through collaboration with organisations, rather than through enforcement. They said that while it is a legal requirement for organisations to comply with the MCHP, and there is action SPSO can take to ensure compliance, they prefer to engage with staff in organisations, ideally to encourage them and enthuse them about complaints handling.

⁸⁵ *Approved complaints code of practice for customer service and complaints handling*. Ofcom 2018. https://www.ofcom.org.uk/data/assets/pdf_file/0025/132829/Ofcom-approved-complaints-code-of-practice.pdf

⁸⁶ https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/all-closed-cases/cw_01101

⁸⁷ Ombudsman Services: Communications and Communications and Internet Services Adjudication Service (CISAS).

62. SPSO generally meets quarterly with 'network groups' (i.e. networks of complaints handlers formed to help support the development and sharing of best practice in their own sectors) to discuss sector specific issues. SPSO provides updates for each meeting, setting out information about recent complaint statistics and current trends and themes which are arising. The interviewees told us that levels of engagement vary among sectors, but that some groups are keen to drive improvement in their sector and to work together to learn from complaints. SPSO also engages with some sectors under its jurisdiction via online forums, keeping them updated on relevant SPSO news and complaints handling resources. These forums provide a means for complaints handlers to share experiences and good practice tips and resources among themselves.
63. While the interviewees acknowledged that this level of engagement with providers required a significant level of time and staff resources, they saw this as "*part and parcel of our day-to-day work*". They told us that it had taken SPSO many years of supporting sectors to improve the complaints handling culture. They saw this partnership working and focus on culture as vital to improving things and to getting, and keeping, providers on board. They said getting organisations to see the value of complaints could not happen overnight, or just by publishing a CHP – organisations need to work on their complaints handling culture.
64. The new MCHPs, which providers are required to adopt by April 2021, are intended to bring an increased focus on SPSO's key performance indicators and greater standardisation across sectors, as to date such indicators have only applied in some sectors. SPSO intends to issue a core set of indicators that all organisations will be required to report against.⁸⁸ This is likely to be focused on numbers of complaints received, complaints closed within the five and 20 working day timescales, average timescales for dealing with complaints; the outcomes at all stages, and learning from complaints. The revised MCHPs require providers to publish their annual complaints performance reports. SPSO intends to take a risk-based approach to the reports published by organisations and where appropriate ensure compliance with the MCHP.

2.6 ORR's guidance and approvals role

65. While other regulators produce rules or guidance for the bodies they regulate, ORR is the only regulator reviewed for this research which approves each individual provider's complaints procedure (CHP). Each provider's licence requires them to establish and comply with a CHP, and ORR approves CHPs with reference to its published guidance on complaints handling procedures.
66. Ofcom previously had a similar approach, under which each provider was required to have their individual complaints code of practice approved by the

⁸⁸ Apart from the NHS MCHP [Draft NHS Model Complaints Handling Procedure \[word version\] \(spsso.org.uk\)](https://www.spsso.org.uk/wordpress/wp-content/uploads/2020/04/Draft-NHS-Model-Complaints-Handling-Procedure-Word-Version-2020-04-20.pdf) which already includes a set of complaints performance indicators (Appendix 6).

regulator. It moved away from this approach in 2011, having decided that due to concerns about standards of complaints handling in the telecommunications industry, regulatory intervention was required. It therefore introduced an approved complaints code setting out minimum standards for complaints handling which providers are required to follow.

67. When consulting on introducing the approved complaints code, Ofcom explained the reasoning behind this change in approach as follows:

“We could simply issue more prescriptive guidance about what needed to go in each CP’s [communication provider’s] individual Code before they would be approved by Ofcom but felt that this would be very convoluted approach to improving complaints handling procedures across the industry. It would effectively entail Ofcom establishing minimum standards (through guidance) but would also require Ofcom to assess and make a judgment on the appropriateness of all CPs’ complaints handling procedures before approving individual Codes – a much more intrusive step than simply dealing with those CPs who breach a single Code containing minimum standards.”⁸⁹

68. While it may be possible to approve each provider’s individual complaints procedure within a market such as rail, where the number of regulated providers is comparatively small, this is less feasible in other sectors. The FCA, for examples, regulates over 50,000 firms, while Ofcom regulates more than 500 providers. The SPSO representatives interviewed for this research made this point, suggesting that this was one advantage of their approach of developing simplified and standardised sectoral model procedures. They said that for the implementation of the revised MCHPs, there is no requirement for each organisation to send SPSO their CHP. However, to provide support with implementation, SPSO is offering to carry out compliance assessments for those organisations that wish confirmation that their procedure is compliant. For complaints handled by organisations from 1 April 2021, where a complaint is referred to SPSO as the final stage, SPSO will look at the revised CHP put in place by an organisation to ensure it is compliant and that the organisation has handled it in line with its own policy and procedure.

⁸⁹ A review of consumer complaints procedures. Ofcom. 2010.
https://www.ofcom.org.uk/data/assets/pdf_file/0028/58690/statement.pdf

Chapter 3. Overview of good practice in other regulated sectors

3.1 Introduction

69. The desk research included a review of good practice in complaints handling in other regulated sectors. Firstly, it updated the review of good practice in the sectors included in our 2018 *On Track* report, to identify any changes since 2018. Secondly, it reviewed good practice in both those sectors and the additional sectors included in this research. The information obtained from the desk review was augmented by information collected during interviews/informal meetings with regulators.
70. The main areas of focus for the good practice review were:
- the definition of a ‘complaint’
 - complaints made via social media
 - response times
 - publicising and signposting to ADR
 - safety complaints
 - access for vulnerable consumers

3.2 Update on sectors included in our 2018 *On Track* report

71. The review found that little had changed in terms of complaints handling within these sectors during the two years since the publication of our 2018 *On Track* report. There were only two notable changes. Firstly, in January 2020, SPSO published updated model complaints handling procedures (MCHPs) for all sectors under its jurisdiction,⁹⁰ following a review to establish the effectiveness and usability of the existing procedures. Public sector organisations are required to implement any changes by April 2021. The MCHPs have been revised to standardise the core text across all of Scotland’s public services while retaining individualised sector-specific content and examples in each individual MCHP and also to update them in line with:
- feedback from organisations within the SPSO’s jurisdiction
 - issues identified in casework
 - recent research and good practice in relation to using alternative resolution approaches, promoting positive complaint behaviours and improving access to complaints for vulnerable groups⁹¹

⁹⁰ Other than the NHS - the MCHP for that sector was introduced more recently than others, in 2017. Note: the MCHPs for local authorities and social work have been combined into a single document following the review.

⁹¹ <https://www.spsos.org.uk/the-model-complaints-handling-procedures>

72. Secondly, the Solicitors Regulation Authority has since 25 November 2019 required solicitors' firms in England and Wales to publish their firm's complaints policy on their website.⁹²

3.3 The definition of a 'complaint'

73. As table 7 shows, the definitions of a 'complaint' which are used across sectors are very similar. Most of them make reference to 'any expression of dissatisfaction', although the detail of what is included varies slightly. Some, such as the FCA and the Legal Services Board, expressly state that this includes both oral and written expressions of dissatisfaction, although it is likely that this is accepted in other sectors too. One issue which may arise from this definition is the extent to which dissatisfaction expressed by a consumer on social media might constitute a complaint.

⁹² Solicitors Regulation Authority. *Transparency rules. Rule 2: Complaints information.* <https://www.sra.org.uk/solicitors/standards-regulations/transparency-rules/#rule-2>

Table 7: Definition of ‘complaint’

Definition of complaint	
ORR	‘Any expression of dissatisfaction by a customer or potential customer about service delivery or company or industry policy’ ⁹³
Ofgem	‘Any expression of dissatisfaction made to an organisation, related to any one or more of its products, its services or the manner in which it has dealt with any such expression of dissatisfaction, where a response is either provided by or on behalf of that organisation at the point at which contact is made or a response is explicitly or implicitly required or expected to be provided thereafter’ ⁹⁴
Ofcom	‘Complaint’ means: (a) an expression of dissatisfaction made by a Domestic or Small Business Customer to a Communications Provider related to: (i) the Communications Provider’s provision of Public Electronic Communications Services to that Domestic or Small Business Customer; (ii) the complaint-handling process itself; or (iii) the level of customer service experienced by the Domestic or Small Business Customer; and (b) where a response or resolution is explicitly or implicitly expected’ ⁹⁵
FCA	‘Any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a financial service or a redress determination, which: (a) alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience; and (b) relates to an activity of that respondent, or of any other respondent with whom that respondent has some connection in marketing or providing financial services or products, which comes under the jurisdiction of the Financial Ombudsman Service’ ⁹⁶
Legal services (England and Wales)	‘An oral or written expression of dissatisfaction, which alleges that the complainant has suffered (or may suffer) financial loss, distress, inconvenience or other detriment’ ⁹⁷
Higher Education (England and Wales)	“An expression of dissatisfaction by one or more students about a provider’s action or lack of action, or about the standard of service provided by or on behalf of the provider.” ⁹⁸
Water (CCW)	“any inbound contact from a customer not eligible to switch retail provider or customer’s representative that expresses or implies dissatisfaction with the charges, service or functions provided by the company”. ⁹⁹
Public Transport, Victoria	“an expression of dissatisfaction about our products, services, staff or the handling of a complaint” ¹⁰⁰
SPSO	“an expression of dissatisfaction by one or more members of the public about [the organisation’s] action or lack of action, or about the standard of service provided by or on behalf of [the organisation]” ¹⁰¹

⁹³ *Guidance on complaints handling procedures for licence holders*. ORR. 2015. Para 2.7.

⁹⁴ The Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008.

⁹⁵ *General Conditions of Entitlement Revised General Conditions*. Ofcom. 2018.

https://www.ofcom.org.uk/__data/assets/pdf_file/0021/112692/Consolidated-General-Conditions.pdf

⁹⁶ *Glossary*. Financial Conduct Authority. <https://www.handbook.fca.org.uk/handbook/Glossary.pdf>

⁹⁷ *First-tier complaints handling: section 112 requirements and section 162 guidance for approved regulators*. Legal Services Board 2016.

https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/2016/201607_Version_2_Requirements_Guidance.pdf

⁹⁸ *The Good Practice Framework; Handling Student Complaints and Academic Appeals*. OIA. 2016. p.8

<https://www.oiahe.org.uk/resources-and-publications/good-practice-framework/handling-complaints-and-academic-appeals/>

⁹⁹ *Complaint Reporting Guidance*. CCW. 2019. Appendix 1. <https://www.ccwater.org.uk/wp-content/uploads/2019/08/Complaint-reporting-guidance-2019.pdf>

¹⁰⁰ *The Victorian Public Transport Industry’s Complaint Management Policy*. Public Transport Victoria. 2017.

<https://www.ptv.vic.gov.au/assets/default-site/footer/Customer-service/Feedback-and-complaints/b9c95ab9c0/PTV-Complaint-Handling-Procedure.pdf> Public Transport Victoria is now called Transport for Victoria.

¹⁰¹ The definition of complaint is found in the various MCHPs. For example you will find the definition on p.3 of the Local Authority MCHP <https://www.spsos.org.uk/sites/spsos/files/csa/LAMCHPPart2.pdf>

74. The ORR guidance, while noting that all expressions of dissatisfaction deserve a response, makes a distinction between complaints and feedback in order to be clear what is within the scope of the guidance.¹⁰² It notes that feedback can be positive, negative or neutral about a licence holder's services, and may not necessarily require corrective action or formal review of a decision. The guidance also points out that feedback can take various forms, including the use of social media, online forums or dedicated consumer websites. It states that sometimes feedback might be used by complainants to make what could be characterised as a complaint. Licence holders are expected to have mechanisms for identifying and dealing with such complaints in accordance with the guidance.¹⁰³
75. The ORR definition expressly includes expressions of dissatisfaction which relate to company or industry policy. The definitions used by the other regulators and ADR schemes we reviewed do not make explicit reference to policy. With the exception of the water industry, their definitions of a complaint all make reference to an 'expression of dissatisfaction', which is arguably wide enough to include policy issues. Ofgem and Ofcom also explicitly state that a complaint is any expression of dissatisfaction where a response is explicitly or implicitly expected to be provided. While other regulators and ombudsman schemes we reviewed do not expressly provide in their definition of a complaint that a response should be given, this is implicit in their requirements relating to complaints handling. Whether a response is explicitly required may be a particular issue in relation to whether expressions of dissatisfaction via social media should be treated as complaints.

3.4 Complaints made via social media

76. Most regulators do not appear to make specific provision for dealing with complaints made via social media. Some, such as Ofgem and Ofcom, only appear to make provision for complaints to be made in writing, by email or by telephone. Others have high level provisions which suggest wider application, with both the FCA and Legal Services Board rules providing that complaints processes should allow complaints to be made by 'any reasonable means.' The FCA representative interviewed for this research suggested that a complaint raised via social media could, in certain circumstances, be viewed as having been made through reasonable means.
77. Under ORR's current guidance, licence holders are expected (but not required) to have a social media policy in place to ensure that passengers are fully aware of:
- their approach to social media
 - the scope and opportunity to make a complaint via social media platforms

¹⁰² *Guidance on complaints handling procedures for licence holders*. ORR. 2015. Para 2.8.

¹⁰³ *Ibid.* Para 2.9-2.10.

- the extent to which the licence holder engages with its social media followers¹⁰⁴
78. The guidance goes on to say that *“where the circumstances of the complaint on social media lend themselves to an investigation, the licence holder should assist the complainant in making a formal complaint, which will then be dealt with in accordance with the licence holder’s CHP. The complainant should then be asked whether their feedback should be treated as a formal complaint and be advised of what that means in terms of processes and timescales.”*¹⁰⁵ Licence holders are not required to report comments received through social media as complaints to ORR as part of their complaints reporting requirements.¹⁰⁶
79. Twitter is widely used as a communication tool in the transport industry.¹⁰⁷ A 2014 independent review of the Public Transport Ombudsman Victoria noted that public transport was a critical service for younger people, who were heavier users of social media.¹⁰⁸ Given the increasing prevalence of social media, it seems likely that it is now used even more by rail users than it was at that time.¹⁰⁹
80. The SPSO recently updated its MCHPs to provide further guidance on complaints made via social media. The MCHPs state that complaints may be raised on social media, but it is up to individual organisations whether they decide to accept or respond to complaints on social media. Where they decide not to do this, they must at least acknowledge such complaints, and where a complaint is raised via the organisation’s own social media channel, such as its official Twitter address or Facebook page, they must explain to the complainant they do not take such complaints and tell them how they can complain.
81. Where an organisation does decide to accept or respond to very simple complaints on social media, the MCHP suggests that the organisation may respond to such complaints in exceptional circumstances. This might be where the issue is likely to affect a large number of people and it is possible to provide a very simple response.¹¹⁰ In the rail sector, for example, this might be the case where many passengers complain via a train company’s social media account that their train has been significantly delayed. In that situation, the train operator may wish to issue a general apology via the same account.

¹⁰⁴ Ibid. Para 3.14.

¹⁰⁵ Ibid. Para 3.17,

¹⁰⁶ *Reference Guide for ORR Core Data Compliance reporting for 2020-21*. ORR. 2020. p.8.

¹⁰⁷ See footnote 15 for references.

¹⁰⁸ *Public Transport Ombudsman Final Report 2014 Independent Review* PTOV. 2014. p.12

https://www.ptovic.com.au/images/PDFs/2014_1009_PTO_Final_Report_09102014.pdf

¹⁰⁹ See footnote 12.

¹¹⁰ See e.g. MCHP for local authorities. Part 2: When to use this procedure. Paras 18-22.

<https://www.spsos.org.uk/sites/spsos/files/csa/LAMCHPPart2.pdf>

82. In the water sector too, there is provision for complaints to be accepted via social media. The guidance,¹¹¹ which is primarily focused on complaints reporting, states that companies should manage contacts to suit the customer's preferred contact channel.¹¹² It also points out that Ofwat now requires companies to offer at least five communication channels, including at least three online channels, for receiving customers and complaints.¹¹³ On the other hand, it also states that companies *may* offer a route for customers to complain via social media. They are only required to consider a contact as a potential complaint where the customer has used the company social media handle. If the company considers that a response is required, it should contact the customer and conclude the contact within 24 hours. Any contact that continues beyond 24 hours should be reported as a complaint.¹¹⁴
83. In general, the approach by regulators, where they do make specific provision for social media complaints, is that where they are made through the provider's own social media platform, firms must at least acknowledge them and direct the customer to their complaints process. No regulator *requires* providers to deal with complaints via social media, although the FCA representative interviewed for the research suggested that some Fintech companies, for example, may prefer to deal with their customers through that means.
84. There are various reasons why it may not be appropriate to deal with anything other than simple complaints via social media. Firstly, it may be difficult to engage effectively with the complainant via such a platform. The SPSO representatives said the emphasis of social media was generally on short communication. Once a complaint develops into something more detailed, for example an investigation that goes well beyond straightforward resolution, it is difficult to have a constructive and longer engagement with a customer via social media. That is why SPSO encourages complaints to be dealt with through the CHP, although organisations could potentially take contact from the customer via social media.
85. Secondly, social media is by its nature a public forum, and as the FCA interviewee pointed out, many companies are unlikely to be keen to deal with a complaint so publicly. Moreover, as the SPSO MCHPs point out, organisations must also be mindful of their data protection obligations when responding to issues on a public forum.

¹¹¹ *Complaint Reporting Guidance*. CCW. 2019. <https://www.ccwater.org.uk/wp-content/uploads/2019/08/Complaint-reporting-guidance-2019.pdf>

¹¹² Ibid. Para 2.2.

¹¹³ Ibid. Para 2.2.3. Note: Ofwat's new customer measure of experience (C-MeX), and which covers engaging with customers (but not complaints specifically). One of the 'information principles' which it sets out is that each company should provide different information and use different communication channels to meet the needs and preferences of particular customer groups.

¹¹⁴ Ibid. Para 2.2.3.

86. There may be tensions, however, between such considerations and any requirement to interact with a consumer via their preferred channel. As noted above, water companies are required to manage customer contacts to suit the customer's preferred contact channel, and to offer at least three online communication channels. However, they are not specifically required to deal with complaints via social media.
87. Such tensions were also recognised by the FCA interviewee. They noted that, while there are no specific FCA rules about complaints made via social media, the FCA principles state that *"a firm must pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading."*¹¹⁵ They suggested that if a customer had complained to a firm through its social media channels, this could be seen as demonstrating a need or preference to receive information, or at least receive an initial response with guidance on next steps, through that channel. Given that the Principles are a general statement of regulatory obligations and can set expectations in situations where there are no detailed rules or guidance, firms would therefore need to consider whether in this situation they should respond to a client via social media.
88. No regulator or ombudsman scheme we spoke to requires organisations to monitor complaints made via social media platforms which are not controlled by them. Tables 8 and 9 below set out how the various regulators/ombudsman schemes approach complaints made via social media.

¹¹⁵ Principle 7: Communications with Clients.
<https://www.handbook.fca.org.uk/handbook/PRIN/2/?view=chapter>

Table 8: Complaints made via social media – regulators

ORR	Ofgem	Ofcom	FCA	Legal Services	Ofwat/CCW
<p>Licence holders are expected to have a social media policy in place to ensure that passengers are fully aware of:</p> <ul style="list-style-type: none"> -their approach to social media -the scope and opportunity to make a complaint via social media platforms -the extent to which the licence holder engages with its social media followers <p>Where the circumstances of the complaint on social media lend themselves to an investigation, the licence holder should assist the complainant in making a formal complaint, which will then be dealt with in accordance with the licence holder's CHP¹¹⁶</p>	<p>The Gas and Electricity (Consumer Complaints Handling Standards) Regulations (2008) envisage complaints being made either in writing (including by email) or orally (by telephone or in person).</p> <p>Standards of Conduct - Suppliers must make it easy for consumers to contact them.</p> <p>Consumers' expectations are met by the supplier's processes and their issues are resolved appropriately.</p>	<p>There is no specific mention of social media in the current Ofcom approved complaints code, which provides for complaints to be made by 'at least the following three means':</p> <ul style="list-style-type: none"> (a) telephone; (b) post; (c) either an email address or an internet web page form 	<p>FCA Handbook DISP rules state that a complaints procedure must allow complaints to be made by any reasonable means.</p>	<p>First-tier complaints handling processes should allow complaints to be by any reasonable means¹¹⁷</p>	<p>Companies should: a) manage contacts to suit the customer's preferred contact channel and b) consider any inbound customer contact as a potential complaint.</p> <p>Companies may offer a route for consumers to complain via social media. They should report complaints through their social media channels to CCW. The contact should only be considered as a potential complaint where the customer has used the company social media handle.¹¹⁸</p>

¹¹⁶ *Guidance on complaints handling procedures for licence holders*. ORR. 2015. Para 3.17.

¹¹⁷ First-tier complaints handling: section 112 requirements and section 162 guidance for approved regulators. Legal Services Board. 2016. Para 19. [20160708_s112_Requirements_Guidance_FINAL \(windows.net\)](https://www.lsb.gov.uk/20160708_s112_Requirements_Guidance_FINAL_(windows.net))

¹¹⁸ *Complaint Reporting Guidance*. CCW. 2019. Paragraph 2.2-2.3. <https://www.ccwater.org.uk/wp-content/uploads/2019/08/Complaint-reporting-guidance-2019.pdf>

Table 9: Complaints made via social media – ADR Schemes

Scottish Public Services Ombudsman	Office of the Independent Adjudicator	Parliamentary and Health Service Ombudsman	Public Transport Ombudsman Victoria
<p>Complaints may be raised on digital platforms (including social media).</p> <p>Organisations may choose whether to accept or respond to complaints on social media. However, organisations must at least acknowledge complaints that are raised in this way.¹¹⁹</p>	<p>Providers will normally ask students to submit a complaint by email or online using the appropriate form.</p> <p>On receipt of a complaint, the provider should undertake an internal evaluation to check that the complaint is submitted ...in the correct format¹²⁰</p>	<p>Organisations clearly advertise how people can raise complaints in a way that suits them.</p> <p>Organisations offer a range of ways people can give feedback, including online¹²¹</p>	<p>In relation to PTOV complaints to PTOV raised on their social media channel these are recorded and the complainant is then asked if they would like to continue their complaint within the established procedures of the PTOV.</p> <p>Organisations are expected to comply with the Victorian Public Transport Industry's Complaint Management Process. This guidance does not expressly mention social media complaints.¹²²</p>

3.5 Response times

89. It is in the interests of both consumers and providers that complaints are dealt with promptly and without undue delay. As noted in chapter 1, consumers want to be given clear timescales which are met where possible. Dealing with complaints quickly is important to consumer satisfaction,¹²³ although there is a balance to be struck between ensuring that a response is quick and providing a satisfactory and full response.
90. This is broadly recognised by regulators. Some regulators require providers to resolve complaints ‘promptly’, ‘swiftly’ or ‘in a timely manner’. These regulators, including Ofcom, FCA and Ofgem, do not set out a specific timeframe for dealing with complaints, although most do have an eight-week limit after which the complainant can take their complaint to the relevant ADR scheme.
91. SPSO sets out specific timescales within which complaints should be responded to. SPSO requires Scottish public bodies to provide a stage 1 ‘frontline response’ for complaints which are straightforward and easy to resolve and require little or no investigation within 5 working days. In exceptional circumstances, there is provision for organisations to extend the timescales for handling complaints at stage 1 for a further 5 working days (10 working days in total). During the interview with representatives of SPSO, they stated that around 85% of complaints dealt with by local authorities are closed at stage 1.

¹¹⁹ Model CHPs as updated. See e.g. the local authority MCHP part 2: *When to use this procedure*. Paras 18 - 22. [LAMCHPPart2.pdf \(spsos.org.uk\)](https://www.spsos.org.uk/LAMCHPPart2.pdf)

¹²⁰ *OIA Good Practice Framework: handling student complaints and academic appeals*. Paras 30 and 53.

¹²¹ *Complaint Standards Framework: Summary of core expectations for NHS organisations and staff*. PHSO. 2020. https://www.ombudsman.org.uk/sites/default/files/Complaint_Standards_Framework-Summary_of_core_expectations%20.pdf

¹²² <https://www.ptv.vic.gov.au/assets/default-site/footer/Custom-service/Feedback-and-complaints/b9c95ab9c0/PTV-Complaint-Handling-Procedure.pdf>

¹²³ See for example Slater, K. and Higginson, G., 2016. *Understanding Consumer Experiences of Complaint handling: A Report for Citizens Advice*. Stockport: DJS Research.

92. Under the SPSO MCHPs, if a complaint is not resolved within that timeframe, if the customer remains unhappy with the stage 1 response, or if the complaint is not simple and straightforward or relates to serious high-risk or high-profile issues, it should be dealt with through a stage 2 investigation and a final response provided within 20 working days.
93. Under its guaranteed standards scheme, Ofwat requires water companies to provide a substantive response to a written complaint within 10 working days. The Public Transport Ombudsman Victoria has different time limits for different complaint types. In general, providers have 7 days to respond to complaints, but only 3 days for 'urgent' complaints, which broadly includes safety or emergency issues.
94. Some regulators use measures to incentivise the early resolution of complaints. ORR's requirement that 95% of complaints must be fully responded to within 20 working days is an example of this approach. Compliance with the requirement is generally high, with 16 out of 23 train companies meeting or exceeding this target in 2019-20. It can be difficult on occasion for companies to meet the target when they receive a much higher volume of complaints than usual due to major travel disruption, for example.¹²⁴
95. The FCA incentivises early resolution of complaints by exempting those complaints which are resolved within 3 working days from some of the formal complaints handling requirements.¹²⁵ This appears to be an effective incentive: the six-monthly aggregate complaints data for financial services firms for the second half of 2019 and the first half of 2020 shows that around half of all non-PPI complaints were resolved within 3 days.¹²⁶ Similarly, ORR's complaints guidance states that licence holders should give discretion to customer-facing staff to resolve certain types of complaint on the spot. Such face-to-face on-the-spot resolution is not expected to be considered as a complaint or recorded as such.¹²⁷
96. The guaranteed standards scheme for water companies (which applies only to written complaints) states that if a provider fails to provide a substantive response within 10 working days, they have to pay the customer £20. Over the three years between 2016 and 2019, an average of 78% of written complaints were dealt with within 10 working days, although this varied among companies and according to the subject matter of the complaint.¹²⁸

¹²⁴ ORR *Annual Consumer Report 2019-20*. Pp 45-47.

¹²⁵ Rather than being required to send a detailed response letter, firms are only required to send a 'summary resolution communication' (DISP 1.5.4 *FCA Handbook*) and do not have to comply with the 'complaints forwarding rules' which apply where the provider believes that another firm may be solely or jointly responsible for the matter complained about. (DISP 1.5.1).

¹²⁶ Note: the levels of PPI complaints dealt with in 3 days were much lower than others, perhaps due to their complexity. [Aggregate complaints data: 2020 H1 | FCA](#)

¹²⁷ *Guidance on complaints handling procedures for licence holders*. ORR. 2015. Para 2.11.

¹²⁸ *Putting Things Right: Household complaints practices in the England and Wales water industry*. Ofwat and CCW. 2020. <https://www.ofwat.gov.uk/publication/putting-things-right-ofwat-ccw-report/>

97. Many schemes explicitly recognise that it may not be possible to deal with all complaints quickly. Some complaints will by their nature be more complex than others and may therefore take longer to investigate. SPSO recognises, for example, that some complaints are so complex that they will take longer than 20 working days to investigate fully.
98. Where a complaint is likely to take a bit longer to investigate, it is important to keep the complainant informed about the progress of the complaint. The SPSO MCHPs point out that in such circumstances it is important to be realistic and clear with the complainant about timeframes, and to advise them early if it will not be possible to meet the 20 working day timeframe, and why this is the case. Similarly, the PHSO draft framework expects providers to give clear timeframes to complainants for how long it will take to investigate the issues, taking into account the complexity of the matter. The FCA rules and ORR guidance also require providers to keep the complainant informed as to the progress of their complaint.¹²⁹
99. As the ORR complaints handling guidance acknowledges, speed is not the only determinant of an effective response.¹³⁰ A recent report by Ofwat and CCW noted that while speed of resolution is a factor in overall customer satisfaction, other considerations, such as getting the desired outcome and an easily accessible complaints process, have more effect on how satisfied a consumer is with the overall complaints process. It cited other research by the Institute of Customer Service which suggests that factors such as reassurance, managing expectations and keeping promises are more important to customer satisfaction than the speed of resolution. The report therefore concluded that:
- “Speed could be viewed as a ‘hygiene’ factor; that is, if a consumer gets the right outcome and knows why something took a little longer, they might not be as concerned by the speed. If a consumer is kept in the dark and does not get the outcome they were hoping for, the fact that it took longer than expected or felt reasonable becomes a further reason for dissatisfaction.”¹³¹*
100. The current requirements regarding timescales for both the resolution of complaints and for signposting to ADR across regulated sectors are shown in tables 10 and 11 below.

¹²⁹ DISP 1.6.1; *Guidance on complaints handling procedures for licence holders*. ORR. 2015. Para 3.38.

¹³⁰ Ibid ORR para 3.36.

¹³¹ *Putting Things Right: Household complaints practices in the England and Wales water industry*. Ofwat and CCW. 2020. P.16.

Table 10: Timescales – Regulators

	ORR	Ofgem	Ofcom	FCA	Legal Services	Ofwat/ CCW
Timescales	<p>'Promptly and fairly'</p> <p>Licence holders must make a full response to 95% of complaints within 20 working days¹³²</p>	<p>Regulated providers must receive, handle and process complaints in an efficient and timely manner and allocate and maintain such level of resources as may reasonably be required to do so¹³³</p>	<p>Regulated providers' CHP should ensure any complaint is resolved to the complainant's satisfaction in a timely manner¹³⁴</p>	<p>Complaints should be assessed promptly and the respondent "should aim to resolve complaints at the earliest possible opportunity."¹³⁵</p>	<p>LSB: Complaints must be dealt with comprehensively and swiftly¹³⁶</p> <p>SRA: Providers must ensure that complaints are dealt with promptly¹³⁷</p>	<p>The provider must provide a 'substantive response' to the customer within 10 working days or they must pay the customer £20¹³⁸</p>
Timescale: ADR	40 working days or deadlock whichever is the earlier	8 weeks or deadlock whichever is the earlier	8 weeks or deadlock whichever is the earlier	8 weeks or deadlock whichever is the earlier 15 business days for payment services and e-money complaints	8 weeks or deadlock whichever is the earlier	8 weeks or deadlock whichever is the earlier

¹³² Note: timescales may be revised if the train company receive a sudden or unexpectedly large increase in complaint volumes and instead they will be asked to use 'reasonable endeavours'. to resolve complaints *Guidance on complaints handling procedures for licence holders*. ORR. 2015.

¹³³ The Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008.Regulation 7.

¹³⁴ *Ofcom Approved complaints code for customer service and complaints handling*. Ofcom. 2018.

¹³⁵ DISP 1.4.1 and 1.4.3 *FCA Handbook*. <https://www.handbook.fca.org.uk/handbook/DISP/1/>

¹³⁶ *First-tier complaints handling: section 112 requirements and section 162 guidance for approved regulators*. Legal Services Board. 2016. https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/2016/201607_Version_2_Requirements_Guidance.pdf

¹³⁷ *Code of Conduct for Solicitors, RELs and RFLs*. Solicitors Regulation Authority. Para 8.5. <https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/>

¹³⁸ This applies to written complaints only: Guaranteed Standards Scheme -*The Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008 (legislation.gov.uk)*. Regulation 7.

Table 11: Timescales – ADR schemes

	Scottish Public Services Ombudsman	Office of the Independent Adjudicator	Parliamentary and Health Service Ombudsman	Public Transport Ombudsman Victoria
Timescales	<p>Straightforward and easy to resolve complaints requiring little or no investigation are to be handled at Stage 1.</p> <p>Frontline response (Stage 1) - 5 working days or less (unless there are exceptional circumstances)</p> <p>If not resolved at Stage 1, or where the complaint is complex, serious or high- risk:</p> <p>20 working days (Stage 2) (unless there are exceptional circumstances)¹³⁹</p>	<p>A good complaints process allows for the identification of complaints which require particularly swift action.</p> <p>Formal complaint and any associated review should normally be completed within 90 calendar days.¹⁴⁰</p>	<p>Complaints should be dealt with promptly.¹⁴¹</p> <p>Staff make sure they respond to complaints at the earliest opportunity.</p> <p>Staff consistently meet expected timescales for acknowledging a complaint and give clear timeframes for how long it will take to look into the issues, taking into account the complexity of the matter¹⁴²</p>	<p>'Urgent complaints - 3 business days.</p> <p>'Standard' complaints - 7 business days¹⁴³</p>
Timescale: ADR	Once the customer has received the final response from the organisation, and within 12 months of when the customer knew about the problem (unless there are exceptional circumstances).	On completion of the review stage.	No clear timescale - when the complaints process has been exhausted.	No time limit - the customer must give the operator a 'reasonable opportunity' to resolve the complaint

¹³⁹ <https://www.spsso.org.uk/time-limit-for-making-complaints-to-spsso>

¹⁴⁰ *Good Practice Framework: Handling student complaints and academic appeals*. OIA. 2016. [oia-good-practice-framework.pdf](https://www.oia-good-practice-framework.pdf) ([oiahe.org.uk](https://www.oiahe.org.uk))

¹⁴¹ *Principles of Good Complaint Handling*. PHSO. 2009 <https://www.ombudsman.org.uk/sites/default/files/page/0188-Principles-of-Good-Complaint-Handling-bookletweb.pdf>

¹⁴² *Complaint Standards Framework: Summary of core expectations for NHS organisations and staff*. PHSO.2020. P.6

¹⁴³ Note: 'urgent complaints' generally relate to imminent safety issues, emergency situations, accessibility and property damage p3 <https://www.ptv.vic.gov.au/assets/default-site/footer/Customer-service/Feedback-and-complaints/b9c95ab9c0/PTV-Complaint-Handling-Procedure.pdf>.

3.6 Publicising and signposting to ADR

101. Where a complainant has reached the end of the provider's complaints procedure, and they are still not satisfied their complaint has been resolved, they have the right to take their complaint to an independent ADR scheme. Membership of an ADR scheme is a requirement in all of the regulated sectors considered for this research, most of which have an independent ombudsman scheme. While there are some notable exceptions such as FOS,¹⁴⁴ research has found that consumer awareness of ADR schemes is low across both regulated and non-regulated sectors.¹⁴⁵ While a more recent survey found some evidence of greater general awareness of ADR, there is little information available about awareness of specific ADR schemes.¹⁴⁶ Most ADR schemes in the study did not collect data on levels of consumer awareness; some appeared to believe that consumers must be aware of their existence because scheme members were required to signpost consumers to them.¹⁴⁷
102. Given the apparent low levels of consumer awareness, it is important that consumers are signposted to ADR by the provider in an effective manner at the appropriate stage. Effective signposting is also important in helping to ensure that complaints are not referred to ADR prematurely and are within the jurisdiction of the ADR scheme.
103. There are broadly three possible stages at which consumers can be signposted/made aware of the ADR scheme. These are:
- before a complaint is made
 - at the time the complaint is made
 - at the point when either the complaints process is concluded, or the matter remains unresolved at the end of the prescribed time limit (usually 8 weeks/40 working days)

Before a complaint is made

104. Promoting awareness and publicising the existence of ADR at this stage will usually be as part of a provider's published complaints procedure. There are, however, some instances where regulators also require providers to provide information about the relevant ADR scheme in other ways. Ofcom, for example, requires providers to provide information about the relevant ADR scheme in

¹⁴⁴ 89% of consumers were aware of FOS overall in 2019-20, although this varies among different groups. In particular, awareness is significantly lower among those aged 18-24. *FOS Annual report 2019-20*. P.32 <https://www.financial-ombudsman.org.uk/files/287580/Annual-Report-and-Accounts-for-the-year-ended-31-March-2020.pdf>

¹⁴⁵Slater, K. and Higginson, G. 2016. *Understanding Consumer Experiences of Complaint handling: A Report for Citizens Advice*. Stockport: DJS Research. The research found that only 28% of consumers in the sample were aware of ADR schemes operating in regulated sectors. Only 8% of consumers in the sample complained to an ADR scheme in regulated sectors when they had a problem with a business.

¹⁴⁶Gill, C. Creutzfeldt, N., Williams, J. O'Neill, S. and Vivian N. *Confusion, gaps and overlaps: a consumer perspective on alternative dispute resolution between consumers and businesses*. Citizen Advice. 2017. <https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Gaps%20overlaps%20consumer%20confusion%20201704.pdf>. The research referred to a YouGov poll carried out for Citizens Advice in 2017 which found that while only 15% of consumers had heard the term 'alternative dispute resolution', 77% said they had heard of ombudsman schemes.

¹⁴⁷ Ibid. The research reviewed 11 consumer ADR schemes across both regulated and non-regulated sectors.

consumers' bills.¹⁴⁸ The Solicitors Regulation Authority's code of conduct requires solicitors to tell clients in writing at the time they are engaged about any right they have to complain to the Legal Ombudsman.¹⁴⁹ Financial services firms are required to provide information about the Financial Ombudsman Service 'in a clear, comprehensible and easily accessible way' in the general conditions of any contract with a customer, as well as on their website.¹⁵⁰ While such a 'just in case' notification may not be directly relevant to most consumers at the time they receive it, it could help to ensure that they are aware of the ADR scheme if they wish to complain at a later date, and they can go back and refer to the relevant document then if needed.

105. The Public Transport Ombudsman Victoria has a membership awareness policy which highlights the importance of raising awareness of the ombudsman scheme.¹⁵¹ The ombudsman is keen to see transport operators highlight the existence of the scheme at transport hubs as well as on rail, tram and bus services. A survey they recently conducted with university students found that 49.5% of students thought information at stations and on public transport would make it easier for them to contact the ombudsman.¹⁵²
106. As tables 12 and 13 show, most regulators and ADR schemes require information on ADR to be included as part of providers' complaints procedures.

¹⁴⁸ Ofcom Approved complaints code of practice for customer service and complaints handling. Ofcom. 2018. Para 26.

¹⁴⁹ At section 8.3. <https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/#rule-8-2>

¹⁵⁰ DISP 1.2.1 (4).

¹⁵¹ McBurnie G. and Williams, J. 2019. *Independent Review of the Public Transport Ombudsman, Victoria*. PTOV. 2019. <https://www.ptovic.com.au/documents/independent-reviews/10-2019-independent-review-of-ptov-queen-margaret-university-1/file>

¹⁵² *Public Transport Ombudsman Annual Report 2020* <https://www.ptovic.com.au/documents/annual-reports/23-ptov-annual-report-2020/file> page 17. 49.5% said information at stations and on trains, trams and buses would make it easier for them to contact the Ombudsman; 45.8% said more information about PTO on campus, 33.2% said stronger social media presence, 32.6% more info about PTO online; 5.3% said nothing.

Table 12: Publicising and signposting to ADR - regulators

	ORR	Ofgem	Ofcom	FCA	Legal Services	Ofwat/CCW
As part of published complaint procedure	No ¹⁵³	Yes	Yes	Yes	Yes	No ¹⁵⁴
At time of complaint	No	No	No	No	No	No
At eight weeks or final decision reached (whichever is the earlier)	Yes	Yes	Yes	Yes	Yes	Yes

Table 13: Publicising and signposting to ADR - ADR schemes

	Scottish Public Services Ombudsman	Office of the Independent Adjudicator	Parliamentary and Health Service Ombudsman	Public Transport Ombudsman Victoria
As part of published complaint procedure	Yes	No ¹⁵⁵	Yes ¹⁵⁶	Yes
At time of complaint	No	No	No	No
When final decision is reached	Organisations must signpost to the SPSO in their stage 2 final response, which is to be provided to the customer within 20 working days (this can be extended in exceptional circumstances)	Yes. Complaints and any associated review should normally be completed within 90 calendar days ¹⁵⁷	Yes ¹⁵⁸	Must give the provider a 'reasonable opportunity' to resolve the matter - no set timescale

¹⁵³ The Current CHP guidance predates the introduction of the Rail Ombudsman and para 3.7 says: "Publicity material must contain details of where a complainant should go to if not satisfied with the response provided by the licence holder currently and as appropriate: Transport Focus, London Transport Watch and any relevant Alternative Dispute Resolution (ADR) bodies". The question that arises is whether "publicity material" includes the CHP itself and this could perhaps be made clearer.

¹⁵⁴ There does not appear to be any specific requirement on providers to have a published CHP

¹⁵⁵ There does not appear to be any specific requirement on providers to have a published CHP. There is no specific reference to including reference to ADR in any complaints process.

¹⁵⁶ Guidance from the Care Quality Commission says that information must be available to a complainant about how to take action if they are not satisfied with how the provider manages and/or responds to their complaint (although it does not specify when). It also says that information should include the internal procedures that the provider must follow and should explain when complaints should/will be escalated to other appropriate bodies.

¹⁵⁷ OIA *Good Practice Framework: Handling student complaints and academic appeals*. Para 35

¹⁵⁸ *Complaint Standards Framework: Summary of core expectations for NHS organisations and staff*. PHSO.2020. P.8

At the time of the complaint

107. Most regulators reviewed for this research currently require complainants to be advised of the organisation's internal complaints handling procedure at the time of the complaint.¹⁵⁹ Almost all regulators stipulate that providers' complaints handling procedures must include reference to the relevant ADR scheme. It appears, however, that none of the regulators reviewed specifically require providers to tell complainants at the time of making the complaint about their right to go to ADR. For example, Ofcom's approved complaints code states that the organisation complained to must "*promptly inform the complainant of (a) the process it will follow to investigate the Complaint with a view to resolving it to the Complainant's satisfaction; and (b) the timeframes in which the Regulated Provider will endeavour to carry out its investigation of the Complaint.*"¹⁶⁰

When the complaints process is concluded, or the matter remains unresolved.

108. Across the sectors reviewed, the provider is obliged to signpost the complainant to ADR in two situations. Firstly, where the complaint has been fully investigated and has been through all stages of the provider's internal complaints procedure, they must send a final decision letter to the complainant, setting out their decision and the reasons for that decision. In most cases, they are also required to inform the complainant of their right to refer the complaint to the ADR scheme and provide contact details for the ADR scheme. Where the provider has not resolved the complaint to the complainant's satisfaction, the final decision letter is sometimes referred to as a "deadlock letter".

109. In some sectors, such as financial services, public services in Scotland and water, providers are required to include details of the ADR scheme as a matter of course, even if the complaint is upheld.¹⁶¹ The FCA rules also require the provider to enclose a copy of FOS's standard explanatory leaflet with the final response letter.¹⁶² The OIA only requires providers to send a 'completion of procedures' letter, which must contain information about the OIA, automatically if the complaint is not upheld.¹⁶³ If a complaint is upheld, the guidance states it is good practice to send such a letter if the complainant requests it.¹⁶⁴

110. Ofcom requires providers to issue an 'ADR letter' to the complainant immediately where:

¹⁵⁹ For example Reg 4(6) of The Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 states that as "soon as reasonably practicable after becoming aware of the fact that the consumer complaint is not a resolved complaint" the regulated provider must "(i) direct the complainant to the complaints handling procedure on its website; and (ii) offer to provide a copy of the complaints handling procedure to the complainant free of charge".

¹⁶⁰ *Ofcom Approved complaints code of practice for customer service and complaints handling*. Ofcom. 2018. Para 6

¹⁶¹ See for example DISP1.6.2(1)e and SPSO *MCHP for Local Authorities Part 3*. Paras 65 and 72 - 74.

¹⁶² DISP 1.6.2 (d)

¹⁶³ *OIA Good Practice Framework: handling student complaints and academic appeals*. Para 77

¹⁶⁴ *Ibid*. Para 79

- they have told the complainant of the outcome of the investigation into the complaint
- the complainant has told the provider they consider the proposed outcome does not resolve the complaint to their satisfaction
- the provider does not intend to take additional steps to resolve the complaint to the complainant's satisfaction that would produce a different outcome¹⁶⁵

The provider is not therefore required to send such a letter unless the complainant has told them that they are unhappy with the outcome. The ADR letter must be written in plain English and must inform the complainant about their right to take their complaint to the ADR scheme at no cost to them, providing details of the relevant ADR scheme and stating that it is independent of the provider.

111. The second scenario in which signposting is required is where a specified time period, generally 8 weeks or 40 days, has elapsed, and the provider has not been able to provide a final response to the complaint. In these circumstances they must generally write to the complainant telling them this and informing them about their right to take the complaint to the ADR scheme.
112. In the water sector, there was until recently no stated time limit for escalating a complaint if it has not been resolved through the company's internal procedures. Unlike most other sectors, there is currently no ombudsman in the water sector in England and Wales, although consideration of the merits of introducing an ombudsman has been recommended by a parliamentary committee.¹⁶⁶ At present, complaints can be escalated to CCW, which provides a statutory independent alternative dispute resolution scheme, and if necessary, beyond that, to the industry funded Water Redress Scheme (WATRS). In 2020, the industry agreed to allow consumers to escalate their case to CCW after eight weeks to ensure that customers did not feel 'trapped' in the company's complaints process.¹⁶⁷
113. MoneySavingExpert has called for the eight week time limit to be reduced to 28 days across all sectors, on the basis that this is too long for people to have to wait given modern ways of living and providing services, and because this was supported by the vast majority of consumers surveyed.¹⁶⁸ The Rail Ombudsman considers that the 40 working days which providers currently have to attempt to resolve a complaint before the passenger can go to the ombudsman is too long. It has therefore recommended that the time period should be reduced to 20 working days after the date of their first complaint. In its 2019 annual review, the

¹⁶⁵ Ofcom Approved complaints code of practice for customer service and complaints handling. Ofcom. 2018. Para 11.

¹⁶⁶ Consumer Protection Report- Public Accounts Committee, July 2019. [Consumer Protection - Committee of Public Accounts - House of Commons \(parliament.uk\). In Scotland,](https://www.parliament.uk/business/committees/committees-a-z/commons-select/consumer-protection/) SPSO is the final stage for complaints about most water and sewerage providers.

¹⁶⁷ Putting things right: Household complaints practices in the England and Wales water industry. Ofwat and CCW. 2020. [Ofwat-CCW-Joint-Report-on-Complaints-Practices.pdf](https://www.ofwat.gov.uk/wp-content/uploads/2020/07/Ofwat-CCW-Joint-Report-on-Complaints-Practices.pdf)

¹⁶⁸ Barnes, W. and Sitharanjan, T. *Justice delayed: the case for shortening the Ombudsman 8-week rule*. 2019. https://images6.moneysavingexpert.com/images/documents/Justice_delayed_2019.pdf

ombudsman states that such a change has the support of consumer advocacy bodies.¹⁶⁹ The recent review of the Rail Ombudsman for ORR also recommended that the timescale should be reduced to 20 working days.¹⁷⁰

114. The FCA interviewee expressed concerns about the prospect of a shorter timescale for escalation to ADR, pointing out (as the MoneySavingExpert report acknowledged) that it may not be possible to resolve some more complex complaints such as those relating to investments or pensions within that timescale.
115. They also pointed out that FOS is “*a major disincentive to not dealing with complaints properly*”. This was partly due to the case fee and administrative costs involved, but also because the firm loses control of the relationship with the customer on the issue when a third-party steps in. The FOS process also, necessarily, takes some time, and the risk of losing the customer increases the longer a dispute takes to resolve.
116. The experience of SPSO is that most public sector complaints are dealt with within the 20 working day period, but the interviewees acknowledged that this does not always happen, sometimes with good reason. The most important consideration in such cases is whether the organisation has kept the complainant updated on progress. They said that, particularly in NHS complaints and some social work complaints, cases can take longer than 20 working days. In cases looked at by SPSO, they wanted to see that the customer had been advised of the delay, been given a revised timescale, and were kept up to date by the organisation during the investigation. The revised MCHPs state that organisations must contact the customer at least once every 20 working days to update them. SPSO would not necessarily be critical just because an organisation, in exceptional circumstances, had failed to meet the 20 working day timescale – as long as communication with the customer had been in line with the expectations in the relevant MCHP, and the organisation had made a record of everything to present as evidence to SPSO.
117. Technically, a customer can approach SPSO at any time, and SPSO has discretion to take a complaint at any time. However, in practice, SPSO will not generally deal with a complaint until the provider organisation has sent the complainant a final response. In cases where an organisation has not issued a final response to the customer within 20 working days (or longer in exceptional circumstances and the customer was notified) the SPSO has an interesting approach to chasing up an organisation which has not replied to the complainant: where the customer contacts SPSO for assistance, SPSO will send the customer a ‘difficulty getting a reply’ card. The customer then sends the card on to the

¹⁶⁹ https://static.railombudsman.org/roweb/wp-content/uploads/2020/03/25211504/Rail_Ombudsman_Annual_Review-FINAL3.pdf

¹⁷⁰ Review of the Rail Ombudsman for ORR. Red Quadrant. 2020.

organisation, and this alerts organisation staff that SPSO is aware of a delay in complaint handling. This acts as a prompt to the organisation to conclude their investigation and issue a final response to the customer as soon as possible.

118. A recent review of the Rail Ombudsman for ORR found that there were ‘a large number’ of consumers contacting the ombudsman prematurely because they did not have a deadlock letter.¹⁷¹ The review pointed out that this can waste the ombudsman’s resources, as well as leading to frustration for consumers. It suggested that reducing the number of days train companies have to resolve complaints may also reduce the number of out-of-scope contacts due to not having a deadlock letter. The review also recommended that consideration should be given to what else could be done to prevent consumers from contacting the Rail Ombudsman before they are eligible, in particular before they have a ‘deadlock letter’.

3.7 Safety complaints

119. The issue of how safety-related complaints are dealt with in other regulated sectors was explored. Safety is a vital issue within the rail industry, and as noted at section 3.5 above, public transport providers in Victoria, Australia are required to respond to ‘urgent complaints’, which broadly includes safety or emergency complaints, within 3 days, rather than the standard 7 days.

120. Safety issues could also arise in relation to some public services. While SPSO’s MCHPs do not explicitly refer to safety, they do contain several references to ‘high-risk’ or ‘high-profile’ complaints. When a complaint is received, the public body should take into account whether it is ‘high-risk’. Complaints identified as ‘serious, high-risk or high profile’ should normally be handled immediately at stage 2 and be acknowledged within 3 working days. While organisations may choose to provide other examples in their own process, SPSO defines potential high-risk or high-profile complaints as those that may:

- involve a death or terminal illness
- involve serious service failure
- generate significant and ongoing press interest
- pose a serious risk to the organisation’s operations
- present issues of a highly sensitive nature, for example concerning:
 - immediate homelessness
 - a particularly vulnerable person
 - child protection or
 - adult protection ¹⁷²

¹⁷¹ *Ibid.* P.52.

¹⁷² See e.g. MCHP for local authorities. Part 2: *When to use this procedure.*

3.8 Access for vulnerable consumers

121. There is increasing recognition among regulators that getting processes right for vulnerable consumers leads to better outcomes for all consumers. There has also in recent years been a move towards understanding ‘consumer vulnerability’ as encompassing wider considerations than consumers’ inherent personal characteristics. The Competition and Markets Authority has observed that some people may be vulnerable during particular periods in their lives such as illness, relationship breakdown or bereavement. It also noted that a wide range of consumers may be vulnerable in specific markets.¹⁷³ A study by the FCA found that 50% of UK consumers had one or more characteristics of potential vulnerability.¹⁷⁴
122. Regulators such as Ofgem¹⁷⁵ and the FCA¹⁷⁶ have published or consulted on vulnerability strategies or guidance in recent years. The UK Regulators Network also recently published a report on the challenges of identifying consumer vulnerability and an accompanying document on *‘Tips for Identifying Consumers in Vulnerable Circumstances.’*¹⁷⁷ These documents tend to be general in their application, rather than focusing specifically on complaints.
123. Ofcom’s General Conditions of Entitlement specifically require regulated providers to ensure that their complaints handling procedures are sufficiently accessible to customers *“whom the Regulated Provider has been informed or should otherwise reasonably be aware may be vulnerable due to circumstances such as age, physical or learning disability, physical or mental illness, low literacy, communications difficulties or changes in circumstances such as bereavement.”*¹⁷⁸
124. The FCA rules on complaints handling make no direct reference to vulnerable consumers. There are references in the FCA handbook to a general duty to establish and implement clear and effective policies and procedures to identify particularly vulnerable consumers and to deal with them appropriately, specifically in relation to consumer credit and mortgages, rather than more generally.¹⁷⁹
125. While the principles do not specifically refer to vulnerability, principle 6 states that a firm must pay due regard to the interests of its customers and treat them fairly and principle 7 says that a firm must pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and

¹⁷³ Competition and Markets Authority (2019) [Consumer Vulnerability: Challenges and Potential Solutions](#)

¹⁷⁴ Financial Conduct Authority.2017. [Understanding the Financial Lives of UK Adults](#)

¹⁷⁵ [licence_guide_standards_of_conduct_0.pdf](#) (ofgem.gov.uk);

https://www.ofgem.gov.uk/system/files/docs/2020/01/consumer_vulnerability_strategy_2025.pdf

¹⁷⁶ [GC20/3: Guidance for firms on the fair treatment of vulnerable customers \(fca.org.uk\)](#)

¹⁷⁷ https://www.ukrn.org.uk/wp-content/uploads/2020/09/UKRN_Literature-Review_200320.pdf;

<https://www.ukrn.org.uk/wp-content/uploads/2020/09/UKRN-Vulnerable-Consumers-Guide-1.pdf>

¹⁷⁸ Condition 4 and section 1 *Ofcom Approved complaints code of practice for customer service and complaints handling*. Ofcom. 2018

¹⁷⁹ FCA Handbook CONC 8.2.7 and MCOB 13.3.1c.

not misleading. The guidance on the principles also states that the way these principles apply depends in part on the characteristics of the client or the customer.¹⁸⁰

126. In February 2021, the FCA published guidance for firms on the fair treatment of vulnerable customers, which explicitly states: *“Firms should also consider the needs of vulnerable consumers when designing their complaints processes. They should consider how they can support vulnerable consumers to complain, if services are not meeting their needs, and get redress.”*¹⁸¹

127. The guidance states that firms should implement quality assurance processes throughout the whole customer journey to highlight areas where:

- they do not fully understand vulnerable customers’ needs
- the performance of staff has led to poor outcomes for vulnerable customers
- products or services unintentionally cause harm to vulnerable customers
- customer service processes are not meeting vulnerable customers’ needs¹⁸²

It also requires firms to collect management information that allows them to review the outcomes vulnerable consumers experience in comparison to other consumers, in order to help them to understand whether vulnerable consumers are being fairly treated.¹⁸³

128. The guidance lists various types of management information which firms may want to collect to capture outcomes for identified vulnerable customers. These include analysis of customer retention records, staff training and competence records, customer file reviews, customer feedback (both formal and informal), analysis of complaints to understand their root causes, and compliance reports to check if standards are being met in terms of treating customers fairly.¹⁸⁴

129. SPSO has always had a focus on vulnerable complainants. Its 2011 Statement of Complaints Handling Principles states:

*“A complaints procedure should be designed with regard to the needs of minority and vulnerable groups. Where appropriate, service providers should make available material and support to help people access and use the procedure.”*¹⁸⁵

130. The SPSO interviewees told us that updating the existing MCHPs to take account of new legislation and updates in good practice in terms of supporting vulnerable customers was a major focus of the recent changes. Organisations are now specifically required to state in their complaints processes that they have legal

¹⁸⁰ FCA Handbook. PRIN 1.2.1.

¹⁸¹ FG21/1: Guidance for firms on the fair treatment of vulnerable customers. FCA.2021. <https://www.fca.org.uk/publication/finalised-guidance/fg21-1.pdf> (fca.org.uk). Para 4.49.

¹⁸² Ibid. Para 5.6.

¹⁸³ Ibid. Para 5.9.

¹⁸⁴ Ibid. P.46.

¹⁸⁵ *Statement of complaints handling principles*. SPSO. 2011. P2.

duties to make their complaints service accessible under equalities and mental health legislation, to set out what this means and to give examples of how they will meet their legal duties. They must also state that they will seek to ensure that they support vulnerable groups in accessing their complaints procedure.

131. The MCHPs state:

“organisations should go beyond equality legislation in considering more widely what factors may impact on people’s access to complaint handling (for example, bereavement or homelessness). There may also be users (or a specific group of users) who are subject to additional barriers to raising a complaint which goes beyond the support required for accessing day to day services. For example, neutral points of contact/advocacy where the relationship between front-line staff and users is significant and ongoing. Organisations should consider consulting with relevant third sector organisations in completing this section...An example of appropriate actions may include:

- *helping vulnerable customers identify when they might wish to make a complaint (for example, by training frontline staff who provide services to vulnerable groups)*
- *helping customers access independent support or advocacy to help them understand their rights and communicate their complaints (for example, through the Scottish Independent Advocacy Alliance or Citizen’s Advice Scotland); and*
- *providing a neutral point of contact for complaints (where the relationship between customers and frontline staff is significant and ongoing).]*¹⁸⁶

132. The PHSO draft complaints standards framework for health complaints in England provides that each stage in the complaints handling procedure should be responsive to the needs of each individual and should meet the needs of minority and vulnerable groups and make reasonable adjustments where required. Organisations should also make sure people know how to access advice and support to make a complaint, including giving details of appropriate independent complaints advocacy and advice providers and other support networks.¹⁸⁷

133. ORR’s current CHP guidance, while not referring directly to vulnerable consumers, underscores that no one should be excluded from lodging a complaint, and sets out expectations on licence holders regarding access routes for complainants. ORR’s guidance on Accessible Travel Policies also sets out the information that train and station operators must provide in their passenger leaflets and on their assisted travel page on their websites so that disabled and older passengers know how to provide feedback or make a complaint. The guidance includes a further requirement that licence holders provide clear details on the availability of redress when assistance has not been delivered as booked. Licence holders are required to make sure their complaints and redress

¹⁸⁶ Model CHPs Part 2: When to use this Procedure – ‘supporting the customer’. Paras 11-15.

¹⁸⁷ *Complaint Standards Framework: Summary of core expectations for NHS organisations and staff*. PHSO. 2020. P.6

information is easy to understand, available via multiple channels and provided in alternative formats to ensure the needs of all passengers are met.

Chapter 4: Review of the current ORR guidance on complaints handling: views from industry

4.1 Introduction

134. Drawing on the review of good practice in other sectors, and the interviews carried out with six train companies, this chapter considers whether ORR's current complaints handling guidance continues to reflect good practice and/or whether there are gaps that should be addressed or potential improvements that could be made. The interviews were intended to gather train companies' views on the ORR guidance and to identify any examples of good practice and innovation which could be used to inform improvements to the guidance.
135. The following issues were explored in the interviews:
- the ORR CHP approvals process
 - ORR's approach to core standards and service standards
 - how companies use complaints to drive improvement
 - response times
 - dealing with social media complaints
 - publicising and signposting to ADR
 - quality indicators
 - the handling of safety complaints
136. This chapter of the report highlights key findings from the interviews with the six train companies. While these cannot provide a full picture of train companies' many and varied experiences of the complaints handling guidance, it provides some insight into their perspectives.

4.2 The ORR CHP approvals process and the current guidance

137. The first issue explored with the interviewees was their views on the current guidance, how they use it and the current approvals process.
138. There was a range of views as to the usefulness of the 2015 guidance. All the interviewees said the guidance had informed their current complaints handling procedures, and one interviewee commented that it was *“very helpful and insightful”* (TC3) in that respect. The interviewees reported that although the guidance was not used on a day-to-day basis, it was a useful reference point if something arose outside of the usual circumstances, such as checking how to deal with frivolous and vexatious complaints:

“I know it's there and, if I have a particular incident or a complaint ... that's outside of the norm I would probably refer to it just to kind of reaffirm my knowledge or to make sure that I'm doing things as I'm meant to be doing them.” (TC2)

“It's not a document that we refer to every single time we get a complaint in or look at a complaint. We probably would use it more in situations where there were perhaps

legalities that were mentioned by a customer and we wanted to check what our complaints handling process says.” (TC3)

139. Overall, the interviewees reported they found the approval process “*quite straightforward*” (TC2) and no strong feelings were expressed that the process should change.

140. In relation to the content of the guidance, there was a greater appetite for change. It was noted that post Covid-19, there was “*a great opportunity to ...look at new ways of doing things*” (TC2) as well as “*a golden opportunity to do something that’s different and reflects the changing expectations of customers as well*” (TC1). There was also an appetite to work collaboratively with ORR to achieve this:

“But we’re looking for the change, so let’s have a conversation, let’s get the right people in the right room, all of that sort of stuff. Let’s get some standards set up, get some documentation signed off and all of this, that will get things moving, it really would. And I get it, they don’t want to come and upset all of us against all the other things we’re being measured against as businesses. But we are one of those, one of those few parts or few functions that within the rail are actually crying out for someone to come and give us a hand with this, from a regulation point of view. So, they just need to turn up.” (TC6)

141. Some felt that the guidance could be more challenging:

“It feels like the CHP is also ticking a bit of a box. We’ve given you some very vague guidance there about what the minimum standards should be, off you go and make it all better. And of course, here we are five years later and it’s not better, nothing’s better, nothing’s changed. Tickets are still very expensive or complex, people are still complaining.” (TC5)

“I wouldn’t say from my point of view it gives us what good looks like, I don’t think it does that. But I think yeah, I think it tells us what the expectation is from a compliance point of view.” (TC6)

142. Culture within the rail industry and its impact on complaints handling was frequently mentioned:

“There’s the right way, the wrong way and the railway. [They] do it their way because it’s the railway and it’s always been done that way. So yeah, it’s a huge industry that is very resistant to change.” (TC5)

143. There was recognition, however, that there has been a culture shift within the rail industry and there was now a greater emphasis on customer experience. There was also a perception this still had some way to go, and that the regulator should play a key role in driving that change:

“I think as an industry ... we were catching up whereas other industries are really, really, far in front, but I think probably in the last two to three years there has been a huge shift from focusing on actually running an operational railway to putting the customer at the heart of that. I think historically rail was probably an industry where it was about running

a train from A to B and getting the train there on time. Whereas now, there is much more of a customer focus, and I think that is right across rail not just here.” (TC4)

144. In terms of what the interviewees would like to see in any revised guidance, there was acceptance that it is difficult to draft what a good CHP should look like. The need for standardisation and consistency was highlighted as otherwise there was potential for train operators to deal with and report on the same issue differently. There was a perception that different people were doing different things:

“I think the big challenge for me is standardisation and how we make sure everybody has a level playing field.” (TC1)

145. There was some suggestion that a CHP underpinned by clear foundational rules could be useful, and that the current rules were a minimum standard and could be more aspirational.

“It has to be concise; it has to be meaningful, it has to have a ... clear purpose. Whilst obviously we’re going to have to underpin it with some rules and foundational rules, I think we need to strip it back to something that’s much more straightforward and ... then people will understand the importance of complying with it. Whereas, at the minute, it feels like something we dust off every 5 years.” (TC1)

“I mean it just sets out minimum standards regarding complaint handling really. I mean, there’s no concern, no sort of ‘dictation’ of what good is at all... It only says what bad is I guess, because you know it sets out that minimum standard, and if you’re not hitting those, you’re not doing particularly well.” (TC5)

“I like things in black and white. I would much rather see a standards document for the industry, best practice whatever you want to call it, industry charter, whatever you want to call it.” (TC6)

146. Two interviewees also highlighted the need for flexibility so that the code was able to adapt to new developments and did not act as a barrier to innovation (TC1 and TC2). One (TC1) also highlighted the need for flexibility so that train companies did not become overly obsessed with indicators and numbers that drive the wrong behaviour. There was a general consensus (discussed in detail later) that while time is important, this should not be the only indicator and there was a need to develop indicators that also looked at other issues such as quality and accuracy of response.

“So, I think it’s difficult. I just think we have to bring in some of those softer areas, like I said, the quality, the accuracy, the sense that when a customer does get in touch that it will have a butterfly effect somewhere else, that there might be something else that happens as a result of that instead of having sort of a very sterile dry document.” (TC1)

147. Some thought that having a model CHP like the SPSO has produced (TC3) or a best practice guide (TC2) would be useful.

“I think RDG [Rail Delivery Group] at the moment are trying to do something where they’re kind of putting together a best practice guide for complaint handling. So, I think that’s a good idea. It’s not regimented, it’s not set-in stone, but it’s best practice. So if all train operating companies can adhere to the best practice, then it’s going to be better for the customer. But then it’s deciding what is best practice and who do we benchmark ourselves against.” (TC2)

148. When asked about any specific aspects of the guidance that needed updating, the following areas were mentioned unprompted by interviewees:
- updating the data protection requirements to reflect GDPR changes
 - updating the guidance to reflect the introduction of the Rail Ombudsman
 - one commented that it would be useful if there was more detail about assisted travel and another said the same about the Claims Allocation and Handling Agreement
 - updating the section on social media and web chat: this particular issue is explored further at section 4.7

4.3 Learning from complaints

149. Some interviewees also felt that there should be a greater emphasis in the guidance on changing the culture around learning from complaints. Three (TC1, TC5 and TC6) argued strongly that the guidance and the complaints data generated from it were still not being used effectively to drive continuous review and service improvement internally and externally across the industry. They argued that despite the *“huge amount of rich feedback”* (TC6) generated by the complaints data, it was not being used more widely to deliver real change and address systemic issues within the rail industry that would have a *“butterfly effect somewhere else”* (TC1) on customer experience.

“But complaints ... it should be driving change in our businesses. And the honest answer is, it only does in some degree. I think we’re better at it than we used to be. But yeah, I’m sure other places are doing, are sort of light years ahead.” (TC5)

“Is the complaint handling procedure just going to be based on how well we hit various gates and targets? Alternatively, what we do with it and how we identify actual insight?” (TC1)

150. Interviewees were, however, able to give examples of where complaints had driven change. One gave several examples where complaints had driven service improvements.

“If something gets highlighted regularly, it’s always at the top of the complaints, not just from customer relations but across the whole kind of spectrum of information that we receive from customers, then it’s kind of identified and a team will be set up to review it and see what can be done.” (TC2)

151. However, others acknowledged that this may not always happen when firefighting high complaint volumes.

“This year [due to lower complaint numbers due to Covid-19] has been quite good for that. So numbers are low, so we do not have pressure on us. When we have pressure on us, it’s hard to – your focus – when you’ve got high volumes, your focus is on getting them down and the time doesn’t appear to be there. It probably is if everybody kind of took a step back, but you don’t, you fire fight.” (TC3)

152. Regulatory pressure was seen to be very important in driving internal change and obtaining internal buy-in. Three interviewees highlighted the importance of feeling that they were being monitored and that the data they provide was being actively used to provide feedback on where practices need to be improved and on good practice. The perception of these three interviewees was that the regulator could more actively monitor and make greater use of existing data reporting.

“So, I think there’s no sense that there’s any monitoring takes place or that we drive, that there’s any insight that comes out the end of it that is worthwhile.” (TC1)

“It doesn’t really mean anything because nobody’s actually looking at that data, really. Nobody’s digging into it, it all gets sent off to the ORR every month, and then they go alright, great, and nobody though feeds back on it and looks at it.” (TC5)

“We are chucking the numbers over the fence every week, no one is looking at it. So again, I think that would be something I’d urge the ORR to look at, is...complaints about complaints, basic fundamentals, but with the caveat of complaints about complaints because the industry policy is making it difficult for the customer. And the TOC cannot influence that, we don’t write the policy to the industry, so all we’re going to do is send back the appropriate template to say, we’ve logged it in our reporting for the ORR. I’m sure they’ll look at it, they’re not. So, it’s that sort of stuff, that again should be driving the changes in our world. I’d love to see that being looked at some point.” (TC6)

153. There was recognition that in any organisation with limited resources, regulatory pressure was important for influencing internal debate to ensure that resources were made available to drive service improvements for customers. One interviewee gave the example of how accessibility has moved up the agenda over the last five years, including a dedicated role at board level. Ensuring accessibility is now a key measure of success *“as much as running the train service now.” (TC6)*

154. In contrast, there was a feeling that complaints did not receive the same level of attention.

“If someone came to me in my team with something that wasn’t on the table of the regulated measures, it always loses its priority over the stuff that is regulated. Because of course it does, we’re not naive to that. But I think the regulator can influence that which would really start to drive the change if they get the measures right.” (TC6)

"We do not have that support within our world, which is the... customer service relations world. We are very much the problem child that tells you when things are going wrong. So, a real missed opportunity for me, we do not have the voice internally in the industry or with the regulators to drive the change." (TC6)

"We find it hard work to make an impact I guess internally sometimes." (TC5)

155. Evidence of the impact that reputational regulatory measures can have was provided by two other interviewees who highlighted the internal impact that reputational measures such as complaints tables have in directing resourcing towards complaints.

"It goes without saying that the customer deserves a speedy response. From our point of view though, we definitely do not want to be named and shamed." (TC3)

"Nobody wants to be top of the Ombudsman board." (TC4)

156. The introduction of the Rail Ombudsman was seen to be impacting on this area, but there was also a perception that there was potential for much closer working between the Rail Ombudsman and the regulator.

"I think the ombudsman was the big thing that brought about the big change in the big way that people looked at things, because for the first time ever complaints not only offer potential reputational risk, they also had a commercial risk as well because of the more and more stuff that ...goes to the Ombudsman. The more and more it cost you as a business." (TC4)

"The one thing that could measure us in our current set-up, is the Ombudsman because that is complaint handling specific. They could be working very, very closely with the Ombudsman at the detail of that stuff and changing the measures aligned to what they're seeing. But they're not, and that's a missed opportunity for me and that's been live for over two years now." (TC6)

157. Interviewees also thought that complaints should be used more by the regulator and the Department for Transport to drive systemic change across the rail industry. Some argued that limited progress had been made in relation to addressing some of the root causes of complaints, such as overcrowding, overly complex and expensive pricing and delay repay.¹⁸⁸ However, complaint numbers on these issues indicate that these problems still remain.

"The customer wants to sit down, so they don't care how quickly I respond, they don't care about those sorts of things, they just want to sit down. And as an industry we're saying, well, you're not going to sit down because we're not going to invest in it. So, we are there in the middle and like, well how quickly we respond to it and what we say, it might make you feel a little bit better about it, I might explain why this is happening, but the root cause,it is not going to be addressed." (TC5)

¹⁸⁸ ORR recently consulted on improving access to delay compensation through a new licence condition, code of practice, and other measures. See <https://www.orr.gov.uk/search-consultations/consultation-improving-access-delay-compensation> . ORR is not the regulator for fares and is not responsible for fares policy.

“We can do lovely responses. We can write you really, really quickly. We can handwrite it in gold ink, but it doesn't change the issue, does it”? (TC5)

“How do we have that open, honest conversation where, you know, you can disregard a couple of thousand complaints a year that are about delay repay policy because people are peed off with the policy, not with the TOC who is implementing the policy as such.” (TC1)

4.4 Response times and quality

158. One issue explored in depth with the interviewees was the requirement to resolve 95% of complaints within 20 days. Overall, the interviewees highlighted that few complaints took as long as 20 days to resolve, and said they always strived to resolve complaints as quickly as possible. They emphasised that in the vast majority of cases, complaints were resolved well within this timescale. They were frustrated about any perception that they would deliberately take longer.

“So we have to have a target, absolutely. I just think it's how it's applied and how it's perceived perhaps needs to be changed because there is an assumption that TOCs [train companies] sit there and twiddle their thumbs and wait till day 19 before they start sending anything. That's not how we operate really and the ORR should be slapping us on the wrists if we do that. So maybe we need to be just – we need to just change what that target looks like. The vast majority of cases are answered within 20 working days but there are always going to be a small percentage of cases that reach that point but ... Is that the end of the world if we're still having some sort of discussion with a customer”? (TC1)

159. It was also noted that the emphasis on 20 days could itself drive dissatisfaction, as many consumers expected resolution to be quicker than that.

“I think what probably drives a bit of dissatisfaction from a customer point of view is that a lot of us train operators referenced the fact that we've got up to 20 working days to answer the complaint ... and I think sometimes a customer reads that [and thinks that] ...we're not going to do anything for 20 days, But that's genuinely not the case. I don't think it's in anybody's interest to sit on a complaint for longer than you need to.” (TC4)

160. All the interviewees advised that they reported internally on shorter timescales. ORR also requires train operators to report on the percentage of complaints responded to within 10 working days. A quick review of individual CHPs also indicated that many train companies' CHPs do make reference to shorter timescales, including commitments to respond within five, seven and ten days. One interviewee also indicated that they reported internally on responses within 48 hours. Average response times was also widely used internally.

161. Since most complaints were resolved well within the 20 working day period, the interviewees did not see the 95% indicator as a driver for resolving complaints quickly, although they noted that it was at times useful for internal buy-in.

*“So, it’s more of a stick to bash our colleagues internally, if you like. (TC1)
We push very, very quickly on that and say, you need to get back to us because we’re going to go out of this time scale, we have an ORR requirement, we will be breaching SLAs [Service Level Agreements] ... and when you start to have those conversations in that kind of language, it pushes people to respond.” (TC3)*

162. There was recognition that, during times of significant disruption, train companies had little control over the volume of complaints received. While the majority of complaints are resolved in less than 20 working days, there are occasions where flexibility is required.

“I think one of the challenges with rail, unlike other industries, is that the demand and the complaints that you receive is very much driven by what happens out on the network operationally.” (TC4)

“You can’t flex up and down that easily. You have a pretty standard pot of people who work for you and you can’t just flex up and down like that and be ready for everything. So there are going to be times when we are much more pushed than others and it’s very, very difficult to churn stuff out and make it meaningful at that point as well.” (TC1)

163. Since the majority of complaints are already resolved well within the 20 working day timescale, most interviewees were fairly relaxed about this being reduced, so long as they had the ability to take account of circumstances where this may not be met. There was, however, widespread concern that reducing this timescale would place a disproportionate emphasis on time and that this would be at the expense of quality of complaints handling.

“I think, in becoming sort of obsessed with numbers and targets, you then run the risk of losing quality, you then run the risk of losing the ability to investigate because the clock’s ticking away and it’s ticking and it’s ticking.” (TC1)

“This is why I think the current policy is fit for purpose because we can comfortably achieve that and deliver that for the customer. I would worry if the ORR were to reduce it to ... that that quality could, if you’re not on top of it, fall for everyone in the industry.” (TC2)

“So speed is important but so is quality and getting a good substantial response takes time. So I’m not going to put my hand up and say, let’s go less than 20 days. I don’t think that’s a necessarily reasonable request, despite the fact that it can be done at times.” (TC3)

“We should be held to account for doing that right the first time round, which is a first contact resolution.....approach to it, right. Well, what we’re looking at, which is the bit that worries me, is like we will hold you to account by reducing your handling time. What you are going to do is make me rush it then, more than I already do, because that’s the thing you pull me over the coals on.” (TC6)

“Actually...most customers don't mind too much how long you take to reply long as it's the right answer with the right detail and they don't have to speak to you again.” (TC6)

164. There was recognition that some complaints were more important than others, and that these should therefore be treated more urgently. It was also clear that in practice the train companies already prioritised complaints regarding safety (see section 3.7).

“I think we just need to be very clear, some complaints are more important than others as well. But they're all treated in the same pot, they're all dealt with by using the same standards, if you like.” (TC1)

165. One interviewee identified that they already used a system where they essentially triaged complaints so that easy to resolve contacts and enquiries were allocated to a 24-48 hours work stream.

“So I think looking at the timescales, maybe we could, as an industry, adopt that kind of approach where, for quick enquiries, we get them in and out, so people are not asking for timetables and then we're sending it 2 weeks later after they have travelled.” (TC2)

166. The reference guide for data reporting currently permits train companies to place a complaint on hold while waiting for the complainant to respond.¹⁸⁹ This is known in the industry as ‘stop the clock’. ‘Stop the clock’ applies when calculating the percentage of complaints that have been responded to within 20 days. It does not apply when calculating the timeframe for any referral to the Rail Ombudsman. Some of the train operators interviewed make use of ‘stop the clock’ for complaints where they required additional information from the customer. There appeared to be a little inconsistency in their understanding of whether and how it could be used in relation to complaints that need to be signposted to the ombudsman.

4.5 Quality Indicators

167. Consideration of the relationship between time and quality led to a discussion on how quality can be assessed. Interviewees highlighted the importance of their customer relationship software. Previously ‘TOCRM’ was widely used by the rail industry as a customer relations management system but the interviewees suggested there has been a move away from this to other systems such as Salesforce, Zendesk or their own system.

168. It was clear that all of the interviewees employed extensive quality management programmes to support complaint handlers to deliver good quality complaints handling, by drawing on best practice. This demonstrated a substantial commitment to improving customers’ experiences. The type of system used varied according to the type, size, and history of the operator.

¹⁸⁹ <https://www.orr.gov.uk/media/10746>

169. There was recognition that devising performance indicators to take greater account of quality was not easy. Some of the interviewees were part of wider train operator groups and had taken part in wider conversations about how to assess quality. One (TC2) indicated that the conclusion had been that *“they couldn’t measure quality.”*

“It’s quite hard to put into guidance... It would need to be, I guess, some numerical target that says, we would expect 85-90% of responses to have met your individual quality measures and we would report on the ORR periodic report, we would report those numbers.” (TC3)

170. Accuracy was widely used as one appropriate measure in relation to assessing quality.

“If we say we have to have a balance between quality and accuracy versus timeliness – because they’re the 3 things that we could say are important – quality, accuracy and timeliness. None of us should be sitting on complaints for longer than we need to, but we might have a small bunch of complaints that need extra attention and I think how we find that balance between those areas, when 2 of them aren’t measured at all, quality and accuracy aren’t measured at all. So that’s pretty important and I know quality is subjective, accuracy isn’t subjective, you’re either right or you’re wrong.” (TC1)

“It is very difficult because it can be quite subjective. But things like...customers coming back to us on complaints to say that they were not happy with the first response might be a measure that’s worth looking at, you know.” (TC3)

“We don’t speak to people seven times, we want to speak to you once and we want to tell you, right thanks very much for speaking to us, speak to you when it next goes wrong, that’s it. That’s the bit that’s missing as an industry, is quality focus.” (TC6)

171. It was also suggested that train companies and the regulator could make greater use of the existing data sources including the data from the Rail Ombudsman and data generated by ORR’s survey on passenger satisfaction with complaints handling. TC1, TC2 and TC3 commented that they would make greater use of the passenger satisfaction survey if the data was presented in a way that was more user friendly.

“It’s not easy to use. So it’s a bit time consuming to pick out the relevant stuff and we could probably be better with it. So we do use it but not to the extent it could be used.” (TC3)

172. Other interviewees highlighted the impact the ombudsman scheme is having already on their commercial practices.

“I think the ombudsman will have changed the industry, which is probably one of the reasons why it’s driving us down that more customer focused route, because clearly you know, the ombudsman can now intervene and say yes you do this.” (TC4)

173. Another suggestion was more emphasis on reporting on the impacts complaints have in addressing wider system improvement. Current reporting requirements for ORR include reporting on the top five key areas passengers have complained about in the past year and the action taken to address them.¹⁹⁰

174. As might be expected, when placed on the spot interviewees were often unable to come up with specific indicators that could be used. There was however a desire to collaborate with the regulator to come up with standards and indicators. There was also a recognition that these were likely to be more challenging than the existing focus on time.

“Which then should be mapped to a new set of standards that we are held to account on with our input on... I can tell you all day long where we think the problems are. I would if I was there. I'd be measuring us in a very different way and my life would be a lot harder.” (TC3)

“So that's the stuff I would expect to actually see in the contractual compliance with the ORR to be honest, that's the stuff they should be telling us. Well, these are the minimum standards guys, these are the 10 things you're doing without any question. These are the things that you should be doing for the next 12 months, and these are the things that you might want to do as a nudge. These are the good stuff, the stuff that drives a real customer experience change.” (TC6)

175. In devising new indicators, making sure that the customer relationship management systems in use can provide that data was highlighted as important.

“I think we definitely still need to always kind of have this caveat that, you know, we can only do at the moment what our systems will allow us to do.” (TC3)

4.6 Publicising the ombudsman and signposting

176. Clear statements raising awareness and publicising the Rail Ombudsman were found on all the interviewees' websites and in their CHPs. The review of the Rail Ombudsman found that most train companies were providing signposting information for the ombudsman on their website but noted that fewer than half of consumers asked about signposting in the Rail Ombudsman's first annual consumer survey felt that the ombudsman was well signposted by their train company.

177. Two different approaches were taken in relation to publicising the ombudsman and signposting to the ombudsman when a complaint is made. Three out of five who answered this question highlighted the existence of the ombudsman scheme in the acknowledgement sent when a complaint is received (TC1, TC2 and TC5). TC2 also gave details of how it worked in relation to telephone complaints.

¹⁹⁰ Reference guide for ORR Core Data complaint reporting for 2020 – 21. ORR, 2020. P.32

“So it's part of our acknowledgment. So even if you don't even complain, I'll tell you about it.” (TC5)

“Phone is a little bit different because if someone calls in with a complaint and if they're not happy with what the agent's said to them or offered them ...they can request a 2-hour call back from a manager. So a manager will call within 2 hours. ...And at that stage, we would take on the complaint as an escalation ... We would advise them ... if they're not happy with us, that the next course of action would be to escalate their complaint to the ombudsman and we'll give them those details.” (TC2)

178. Other train companies signposted at the point where the complaint was at deadlock or at 40 days (whichever was the earlier) (TC3, TC4).

“The only point that we would physically say here now you need to take your case to the Ombudsman is at the point where we feel we've achieved a block and that's always well been within the 40 days anyway.” (TC4)

179. These companies did not think that it would be a particular issue if they were required to raise awareness of the Rail Ombudsman at the start of the complaints process.

“We felt it maybe sent a bit of a negative message to a customer to say, the second you complain to us, we're going to tell you that, if you don't like, you know, if we don't do something, you can do this. It just felt a bit negative from a language point of view and that was the reason we didn't go for it.” (TC3)

“If it had to be right at the start, I don't think it makes much difference from our point of view. We're not trying to hide the ombudsman.” (TC4)

180. In terms of timescales, interviewees suggested the 40 working day period was chosen because this time period is standard across private sector ADR schemes.

“I think the only reason 40 days was agreed was because it was an industry average.” (TC3)

“The 40 working days, it was only every introduced because other service sectors have got this sort of 40 working day position.” (TC1)

181. One interviewee (TC2) reported that in the very few cases where the complaint was still being dealt with at 40 working days and the complainant had been advised of their right to go to the ombudsman, they had chosen not to and had stayed with the train company to get their complaint resolved.

182. On the question of whether that timescale should be reduced, it was noted that this should only affect a very small number of complaints, since most complaints are resolved within 20 working days. It was noted that it may not be possible to meet this timescale at times of significant disruption and that, as with the discussion over time more generally, this may have an impact on quality.

"It's not gonna cause me any concerns because I think the only difference is that you probably are going to get some cases that will slip over to outside the 20 days, but you're not talking vast amounts. So you know it's not going to generate a huge uplift in volume from the ombudsman, because for that to be true then, that would mean that there's a number of TOCs out there that are sitting on complaints going over this 95% in 20 day target." (TC4)

"It wouldn't have a huge impact on us. We very rarely get to that stage. I mean, if it was to come down, then we could absolutely live with it and we could work with it. We would probably like to see some caveats in there to say, some things take a bit longer to investigate than others and give your operator a chance, you know, whilst we appreciate that it's past whatever time scale it is, just as you were saying there, so some flexibility within there." (TC3)

183. The interviewees discussed the impact that the requirement to advise customers that they have a right to go to the ombudsman may have. At least two train companies (TC2 and TC3) said their experience was that so long as the complaint is still being proactively dealt with, the customer is happy to continue to deal directly with the train company.

"We have had conversations with customers to say, we've been really busy, technically, you can go to the ombudsman, we can still work on that and we've had co-operation from customers. So it's not a huge issue from that point of view. What we do find is that a lot of customers just go to the ombudsman out of time. Once it's out of time, they go themselves without a deadlock letter." (TC3)

184. One interviewee (TC1) suggested it would be useful to have some research on the impact of signposting to the ombudsman when the train company is still trying to resolve the complaint.

"Does it encourage people to go to the ombudsman? I've no idea. It'd be interested to see what that insight looks like. Has it made any difference? Does it suddenly make people go, oh, do you know, I might actually do that now, I'm going to go to the ombudsman now." (TC1)

185. There also appeared to be a difference in approach between train companies which signpost from the start, those which signpost when they propose a resolution, and those which do not signpost until the customer indicates that they are not happy with what is proposed.

"We tell them at the point where we have done all we can. Or if we're at 40 days, which is very rare. So it's basically at the point where – look, we're really sorry, we've not been able to resolve this to your satisfaction, we're not going to change our stance on this, we feel we've done the right thing, we can therefore say to you that you now have the option of taking it further to the ombudsman and use this as a deadlock letter and it goes into the deadlock speak." (TC3)

“However, the only point that we would physically say here now you need to take your case to the ombudsman is at the point where we feel we have achieved a block and that’s always well within the 40 days anyway.” (TC4)

4.7 Complaints made via social media

186. ORR’s guidance on CHPs defines complaints as *“an expression of dissatisfaction by a customer or potential customers about service delivery or company or industry policy”*.¹⁹¹ It excludes face-to-face on-the-spot resolution. ORR’s 2020-21 reference guide for its core data compliance reporting also states that:

*“Comments received through social media should not be included in the complaints data. However, there may be circumstances in which the feedback on social media lends itself to further investigation. The licence holder should assist the complainant in making a formal complaint which will then be dealt with in accordance with the licence holder’s Complaints Handling Procedures (CHP). For example, this may involve signposting the complainant to a webform or providing an email address at which they can log formal complaints. This complaint will then be in scope to be included within section B and should be added to the category in which the formal complaint was received.”*¹⁹²

187. The guidance includes a number of provisions relating to social media platforms. Licensed train operators are expected to have a social media policy and to assist customers in making a formal complaint where the feedback on social media indicates that an investigation is necessary.¹⁹³ The interviews explored whether this guidance should be updated and, in particular, whether issues raised via social media should be included within the definition of a complaint.

188. In relation to social media, different approaches and views were taken by the train companies. Complaints raised via social media were not necessarily handled by the customer relations (or equivalent) team. Contacts raised via social media were instead dealt with by the control or operations team or by the communication teams.

189. The current approach taken by the train companies was similar to that taken in other industries as discussed in chapter 3 of this report. The social media team responds and gives the customer the information to resolve the issue. Where that is not appropriate (for example where the complaint names a member of staff or the complaint requires further investigation) or the customer remains dissatisfied, they are asked to send a direct message to the train operator and/or signposted to the formal complaints procedure. An example is given below.

“Therefore, what happens at the moment – I’m just going to say, for example, overcrowding. I’m really sorry this has happened, I apologise for it, I’ll try and explain it on Twitter. The customer says, no that’s not good enough, I want to make an official

¹⁹¹ *Guidance on complaints handling procedures for licence holders*. ORR 2015. Para 2.7.

¹⁹² *Reference Guide for ORR Core Data Compliance reporting for 2020-21*. ORR 2020. Pp. 7 – 8.

¹⁹³ *Ibid* para 3.14 – 3.17.

complaint. That's normally the wording the customer will use, an official complaint cos they think maybe via Twitter, it isn't being acknowledged as an official complaint. They will then take it offline and they will say, OK, can you follow me or follow you and then we'll do a direct message? And then that conversation, as I say, we'll raise this complaint for you in the customer relations system, here is the customer relations reference number, our customer relations team will be getting back to you. And that will all be done offline, that won't be done in the Twitter feed, that will be done via direct message and then the customer will have a reference number and know that the customer relations team will get back to them [via email or phone]." (TC2)

190. Some interviewees indicated that they were increasingly questioning their approach to social media, highlighting that it includes much more than Twitter and includes instant messaging and web chat. There was a recognition that many of the contacts they receive via social media are an "expression of dissatisfaction" and could therefore be viewed as complaints.

"At the moment you know you are saying an expression of dissatisfaction should be recorded, as a complaint, and if you read my social media feed, I'm sure 90% of the comments when we're in disruption will be an expression of dissatisfaction." (TC4)

"It's a complaint however you do it, whether you talk to me at the station or tweet me, whatever, it's still the same complaint. But we [only] really count these sort of narrow ones... this narrow sort of channel that we use." (TC5)

191. Others thought, however, that the distinction between complaints raised on social media and other types of complaint was appropriate.

"The complaints system is for formal complaints, where a customer has said, you know, thanks social media, you've given me the answer, I'm still not happy with it, what do I do now? And that would be the same if it was face to face, you know, I get your point but that doesn't help me, I want to take this further. And then whichever channel, be it face to face or social media, would say, this is the route you take, you can go online, you can call them, etc, and make the complaint formal." (TC3)

192. One interviewee highlighted that the most important question should be "what is best for the customer?"

"If a customer makes a complaint via social media, what do you do with it? How is it dealt with? What is best for the customer? So it's all very well handing them off to a customer relations team, which is what most – I think most TOCs do as well – contact that customer relations team, blah, blah, blah, blah. But if a customer's contacted you via social media, say Twitter, for example, they might not want that. They might want you to deal with it and have you got a team in your social media that have got the time to deal with it, that can deal with it in a way a customer relations team can deal with it? So we're looking at the moment of how we can interact and kind of merge the two, whether that means making the social media team bigger." (TC2)

193. The interviewees had different views on the appropriateness of including complaints received via social media in the regulated data. It was suggested that

when the current guidance was introduced in 2015, a pragmatic approach had been taken to social media. At that time, if you had 2000 tweets to respond to, *“it would take as many people to record the feedback as it would to tweet”* (TC5). Four of the interviewees suggested that the position may now have changed (TC2, TC4, TC5 and TC6). Train companies were thinking long term about how social media is being used in the rail industry. It may no longer be appropriate to deal with complaints differently according to the channel used.

“I think it's the way of the world nowadays and I suppose there's two ways you can do it. And this is something that I think [name of train company] needs to think about long-term and what the long-term plan is in relation to the type of service that we're gonna offer and announcements that we make. Because...in theory you could see you could service it on social media. there's no reason why not.” (TC4)

“I think it's different now, I think you know, now you're going to record those sorts of issues a lot quicker and a lot easier and mostly automatically, to be honest with you.” (TC5)

“I just think now that it just needs to be maybe up to date with other forms of the way people complain, what – is it going to go down the social media route and do we need to – as I said, do we need to look more – should there be more information if somebody complains via social media.” (TC2)

194. It was also pointed out that because current reporting requirements do not require complaints via social media to be reported, an important source of customer feedback is not being captured.

“How does anybody know the amount of complaints any TOC is getting through social media if we're not having to report on it or not record it? Which is then – I wouldn't say it's a good thing but if we do set it up in our CRM [customer relationship management] system, if we do log it on our CRM system, we then have that we've got that information.” (TC2)

195. There was concern that a requirement to report on complaints received via social media could lead to a big increase in the number of complaints and the impact that this could have on resourcing. One interviewee (TC4) suggested that it would triple the volume of complaints, while another noted that:

“Because it would be a resolved complaint that would literally just be put into the system to say it had come through. It would be given a reference number and it would be opened and closed in one transaction and it would be added on to our numbers. From a resource point of view, my assumption at the moment is that it wouldn't need extra resource because the investigation side of it, contact the customer side of it, all of that side wouldn't be necessary. So, it would hike up our numbers significantly in terms of what report to ORR and, unless every single TOC was doing that – I'd need to sit and think about the logistics of it all.” (TC3)

196. It was also queried whether including social media complaints within the data was really necessary. Some pointed out that it may end up capturing feedback which would never be escalated to a complaint, as social media can be used as a platform to “sound off” because a person is frustrated at that moment in time (TC3 and TC4).

“But when you reflect and settle down, maybe 10 or 15 minutes later then you might not quite feel quite the same way”. (TC4)

“A lot of the time, the negative sentiment is somebody who is on a train or at a station who’s experiencing something that they’re not happy with and have decided to use that channel to vent their frustration. But, you know, most of the time, it is just that - it’s a rant that we’ve acknowledged, and we have explained the rationale and we will give the customer the opportunity, if they want to take it formally, the channel to go down. I think that does need to be clear, that we’re – whilst the definition of a complaint is an expression of dissatisfaction, it doesn’t necessarily mean that every single person that contacts us, regardless of the channel, has to go through the formal process” (TC3)

197. Concerns around consistency of recording were also highlighted, as was the possibility of a customer raising repeated complaints on the same issue.

“You know, I totally understand that if a customer goes on social media, says I want to make a complaint that you know there is value in saying that should be recognized as a complaint and record a complaint for our reporting purposes. But when I go on there and say that’s the third time this week”? (TC4)

198. Two interviewees were strongly opposed to including social media complaints within the definition of complaint. (TC1 and TC3)

“It’s the worst thing we could possibly consider including social media as a complaint channel. It really is, for all sorts of reasons.” (TC1)

199. They questioned the value of including complaints which have been resolved immediately in the complaints figures, commenting that: *“it sounds like a bit of a paper exercise just so that we’re recording it as a complaint” (TC3)* and asking what value would be obtained from this.

“But if we start trying to deal with every single complaint type in the here and now and then categorise them as complaints via Twitter, I literally don’t know how we do it. You know, ... we had about 20 odd thousand tweets one day – there won’t be much expression of satisfaction in that. So, my stats for what they’re worth would absolutely crash and burn. So, I think we’ve got to be very cautious about that. I think we need to deal with people on social media, but do we then need to describe it as a complaint for the purposes of this? I’d be very, very cautious about that.” (TC1)

200. However, two other interviewees (TC5 and TC6) were strongly in favour of including complaints raised via social media. Others, while cautious, noted that provided the concerns highlighted above were addressed, this could be appropriate.

“I think it's different now, I think you know, now you're going to record those sorts of issues a lot quicker and a lot easier and mostly automatically, to be honest with you.” (TC5)

“If you're asking me, would I be concerned? I think it depends on what is determined to be a complaint on social media for reporting purposes and how that's now defined and determined would then feed into the wider industry what our concerns are. You know, we've got the ability to integrate our social channels as part of the CRM system.” (TC4)

4.8 Safety complaints

201. How train companies deal with complaints in relation to safety was also explored in the interviews. All of the interviewees reported a very proactive approach to safety complaints. Safety complaints were clearly prioritised and treated urgently (*“It will trump all of the other complaints that they've got and go to the top of their queue”* (TC1)) and were usually allocated to specialist teams, which could be either the health and safety teams or a specialist team which deals with the more complex complaints as set out below.
202. For TC1, any complaint involving a safety element was dealt with by a specialist safety team and this team would investigate and respond to the consumer. In TC2's case, the customer service function included a small specialist team who investigate complex complaints which included safety complaints, complaints about staff and any complaints that involve accessibility, discrimination or equality. This team liaises with the relevant operational departments to investigate what happened and then responds directly to the complainant. The aim is to respond to safety complaints within a maximum of 3 days.
203. For TC3, if the safety complaint includes a personal injury element it is dealt with by the health and safety team and a specialist claims team (*“there's usually claim implications within personal injury, so they go on a very different route”* (TC3)). If no injury has occurred, the complaint will be dealt with by the Health and Safety team only. TC3 did not have specific timescales for safety complaints but stated they would be dealt with urgently as a complex case.
204. For TC4, any complaints relating to safety were logged in the complaints system and immediately referred to, and dealt with by, the specialist health and safety team. They also ensured that the operational team were aware of the complaint as a priority one referral. If a claim for compensation related to property, this aspect of the complaint was dealt with by the general complaints team. If a claim for personal injury was made as part of the safety complaint, this aspect would be dealt with by the health and safety team, in conjunction with their insurance company.
205. TC5 also highlighted that safety complaints were “time critical” and that these complaints were referred straight away to their operational safety team. TC6 indicated that safety complaints were dealt with within 24 hours. The safety team

would investigate but the complaints team would contact the customer and keep them updated. Overall, the interviewees demonstrated that a joined-up approach was taken to safety complaints.

Chapter 5: Conclusions

5.1 Overview

206. Drawing on the findings from the desk research and the interviews, the following issues were considered:
- whether ORR's current complaints handling guidance continues to reflect good practice
 - whether there are gaps that should be addressed or potential improvements that could be made
 - whether there are alternatives to the core standards set out in the ORR guidance
 - the balance to be struck between higher level principles or outcome-based approaches as against the current position
207. The research led us to some key conclusions, which are set out in more detail below. In reaching these conclusions, we wish to draw attention to some of the limitations of our research. Our interview sample size was small, and some of our findings therefore primarily reflect the views and perceptions of the train companies we interviewed. Our conclusions are based partly on these views and perceptions, along with the findings from our research into good practice among the regulators and ADR schemes we reviewed and interviewed for this report.

5.2 The need to drive cultural change in the rail industry

208. While the importance of culture is mentioned within ORR's current guidance, it is contained in core standard 3, 'organisational culture', which is towards the end of the document. One of the clear messages from the research is that working to improve complaints handling culture within the industry should be at the front and centre of the train companies' and the regulator's priorities. Interviewees felt that there had been a culture shift within the rail industry and that there was now a greater emphasis on customer experience, but that there was still some way to go. While train companies must take responsibility for driving culture change within their own businesses, ORR was seen by our train company interviewees as having a key role in supporting complaint managers in driving that cultural change within their own businesses.

5.3 ORR's approvals role

209. The requirement for all providers' complaints procedures to be approved by ORR and then re-approved when they make any material changes is not reflected in other regulated sectors. Other regulators expect providers to ensure they are meeting the required standards, with the potential for regulatory action if they do not. If this requirement was removed, this could free up time and resource within ORR to focus on other work which may have a greater impact in improving train

companies' complaints processes and passengers' satisfaction with how their complaints are dealt with. Some of the actions that train companies and ORR could take to achieve this are discussed later in this chapter.

5.4 ORR guidance – overall approach

210. Our research found that regulators take similar approaches to setting out requirements relating to first-tier complaints handling although the terminology used varies across the different sectors. For example, in some industries it is called a code of practice while others refer to it as standards of conduct or guidance. In practice, all use a broadly principles-based approach combined with more detailed rules where required.
211. The current ORR complaints guidance is written in a way which is very focused on 'narrative' text and on 'core standards' which are included towards the middle of the document. The interviews with train companies suggest that they do not use the guidance on a day-to-day basis although they may refer to it if faced with something out of the ordinary.
212. While many of the key issues relating to good practice, such as accessibility, fairness, and prompt resolution, are contained in the guidance, they are somewhat 'buried' in the text, rather than being set out as a clear list of principles that underpin good complaints handling, similar to those produced by other regulators and ombudsman schemes. There is considerable merit in ORR setting out a clear set of upfront overarching principles that underpin complaints handling practice. These should be at the forefront of complaints handling and would have the advantage of future proofing and providing a degree of flexibility where required.
213. Specific provisions which sit under the principles could be clearly set out upfront. Examples might include issues relating to time, accessibility, social media complaints, response times, fairness and publicising/signposting to ADR. Several interviewees, either explicitly or by implication (since there was a perception that different train companies may do things differently), emphasised the importance of ensuring that any specific rules are clear, consistent, and applied equally. There was an appetite for a good practice guide which went beyond minimum standards and could be more aspirational. This document could be regularly updated as a 'living document' to help train companies drive continuous improvement.

5.5 Learning from complaints

214. One of the key issues arising from the interviews with train companies was the importance of learning from complaints. Firstly, it is important for train companies to learn from complaints in order to improve their own future complaints handling. Secondly, there was also a clear desire from our train company interviewees that ORR and the Department for Transport should follow up on complaints data

which highlights systemic issues and help them to take steps to address these. Regulatory pressure from ORR and reputational regulatory measures such as complaints tables were viewed as having an important internal impact in directing resourcing towards complaints. It is suggested that this requirement to learn from complaints would be central to the revised set of general principles described above.

215. While the importance of monitoring and feeding back learning from complaints is included in the current guidance, this is included at the end. This could create a perception that it is less important than other issues. It is suggested that this requirement for continuous improvement should be central to the revised set of general principles described above. We propose that this requirement should be more upfront in the revised guidance and overarching principles.
216. There was a clear desire for learning from complaints to be prioritised by both train companies and ORR, particularly in relation to complaints data which might highlight any systemic issues, and for steps to be taken to address these. ORR already collects a significant amount of data from train companies, including compliance core data and ORR's survey on passenger satisfaction with complaints handling. Some interviewees felt strongly that ORR and train companies could make more use of both the data which they already collect and the data collected by the Rail Ombudsman in order to help train companies drive learning from complaints internally.

5.6 The role of the Rail Ombudsman

217. The Rail Ombudsman also has a key role in the regulatory landscape. As a recent report for the Care Quality Commission noted: *“Regulation rarely exists as a bi-lateral relationship between the regulator and regulated. Rather, it exists in a networked regulatory environment with multiple other stakeholders.”*¹⁹⁴ It is therefore important for regulators to work with other stakeholders and with the regulated organisations themselves to achieve their aims. Our FCA interviewee highlighted the crucial importance of the feedback role FOS plays in identifying poor practice and systemic issues and reporting these back to the regulator, government and industry.
218. The review of the Rail Ombudsman recognised the impact and influence role of an ombudsman and made several recommendations as to how the ombudsman can develop its role in this area, particularly in relation to feedback loops to industry. The rail sector is unusual because ORR does not have the regulatory oversight of the ombudsman scheme that exists in other regulated sectors. There was a perception amongst some of our train company interviewees that there was also potential for closer working between ORR and the Rail Ombudsman, and that greater use could be made of the data being generated by the ombudsman. ORR should therefore continue to consider what steps if any are

¹⁹⁴ *Rapid literature review on effective regulation: Implications for the Care Quality Commission.* Care Quality Commission. 2020. P.21

needed to address this perception. For example, the FCA and Ofgem both have memoranda of understanding with their ombudsman schemes, and this may be something worth considering.

5.7 The definition of a 'complaint'

219. The definitions of a 'complaint' used across sectors are very similar, with most making reference to 'any expression of dissatisfaction'. One difference is that Ofgem and Ofcom explicitly state that a complaint is any expression of dissatisfaction where a response is explicitly or implicitly expected to be provided. While other regulators and ombudsman schemes we reviewed do not expressly provide in their definition of a complaint that a response should be given, this is implicit in their requirements relating to complaints handling.
220. The ORR definition also expressly includes expressions of dissatisfaction which relate to company or industry policy. The definitions used by the other regulators and ombudsman schemes we reviewed do not make explicit reference to policy. With the exception of the water industry, their definitions of a complaint all make reference to an 'expression of dissatisfaction', which is arguably wide enough to include policy issues. Interviewees told us that the ability of train companies to deal with some complaints is limited as they do not set the policy which is common to the whole industry, such as ticket pricing or the delay repay policy, and over which they had no control. As these issues are outside the control of providers, it was their perception that they are also out of scope for the Rail Ombudsman.¹⁹⁵ There was a feeling among interviewees that the industry, ORR and wider stakeholders should actively take forward learnings from these issues.

5.8 Complaints made via social media

221. Closely linked to the definition of a 'complaint' is the question of how complaints raised via social media should be dealt with, and whether they should be included in the complaints data. The approach to complaints made via social media was fairly consistent across the regulators, ombudsman schemes and train companies we reviewed. Complainants who complain via social media are generally directed towards other methods of registering their complaint, primarily online. Our findings suggest that there is less reason to treat complaints made via social media differently to other complaints than there may have been previously. This is likely to be particularly true of the rail industry, where both passengers and train companies already make extensive use of social media.
222. It appears that in practice, train companies already resolve many complaints via social media, in much the same way as they deal with face-to-face complaints. It will not be appropriate to deal with all complaints via social media. Where this is

¹⁹⁵ There are some issues that may be outside of the control of an individual member, but within the control of the wider industry, in which the Rail Ombudsman could make an award. This will depend on the specific circumstances of the case.

the expressed preference of the customer, however, it may be reasonable to accommodate this subject to data protection requirements being met. Our interviewees suggested that it is now possible to integrate social media channels as part of their customer relationship management systems, and that this process could be automated.

223. It should be noted that two of our interviewees did have major reservations over the wisdom and necessity of including social media complaints in their data reporting. However, if ORR's CHP guidance is to place a greater emphasis on the value of learning from complaints, it is important that this information is captured too. ORR should work collaboratively with the industry to explore how this can be done in order to ensure that the data gathered is meaningful, that a standardised approach is taken to data recording and that this data is used to drive improvements within the industry. While the same argument could be made in relation to face to face complaints, there does not appear to be the same potential to automate recording of this data as there is with social media complaints.

5.9 Response times and quality issues

224. Most complaints are dealt with well within 20 working days, and most train companies are meeting the requirement to make a full response to 95% of all complaints within 20 working days. The train companies we interviewed told us that the majority of complaints they dealt with were closed in much less than 20 working days.
225. Most of the train companies interviewed for the research were fairly relaxed about the prospect of shortening this timescale. They did have concerns, however, that reducing this timescale would place a disproportionate emphasis on time, which could be at the expense of quality of complaints handling. They said that they would like account to be taken of exceptional circumstances when it may not be possible to meet a shorter timescale.
226. Consumer satisfaction with complaints handling is generally lower in relation to rail than in other sectors considered for this report. While speed of resolution is important to complainants, there are other factors which may be equally or more important. These might include the accessibility of the process, how they feel they are treated by the provider, and whether they feel their complaint is valued.
227. Consistency in complaints handling is also vital from a consumer perspective. Many rail customers are repeat customers and have no choice over their service provider. They should be able to expect the same level of service and treatment, regardless of which train company provides the service. The existing complaints data suggests that consumer satisfaction varies significantly among providers and that this is not necessarily related to time.

228. There was a perception that more could be done by train companies and ORR to make greater use of the existing data sources such as ORR's survey on passenger satisfaction with complaints handling and the compliance data which companies already report on. Train company interviewees said that they also used average response times as an internal performance indicator. ORR and train companies should therefore consider giving greater prominence to some of these existing metrics, such as the 10 working days indicator. They should also consider introducing new metrics like average response times in order to provide a more complete picture of industry performance.
229. It was recognised by our interviewees that developing additional quality measures is not easy. ORR could also work collaboratively with train companies to identify whether its existing survey on passenger satisfaction with complaints handling could be improved to make its outputs more user friendly. It could also work with train companies to develop a suite of additional or adapted indicators of good complaints handling practice which focus on issues other than the speed of resolution, such as quality. Some of these may already be covered in its existing passenger satisfaction survey.
230. As the SPSO interviewees told us, cultural change does not happen overnight, but as a result of long-term partnership working, building up trust between those involved. It is also important for the train companies themselves to work together, and this could be further encouraged by ORR, perhaps in partnership with the Rail Delivery Group. Ofwat and CCW are working to encourage water companies to work together and share good practice in relation to complaints handling. In our conversation with an Ofwat representative, they told us that in a monopoly sector, where companies do not naturally gain a competitive advantage by keeping good practice and innovations to themselves, they should be keen to share these insights in order for standards to be raised and deliver better outcomes for customers.

5.10 Publicising the Rail Ombudsman at the start of the complaints process

231. The current ORR complaints handling guidance pre-dates the Rail Ombudsman, and any new guidance should make provision for promoting awareness of/signposting to the ombudsman. At present, the guidance does not clearly state that the licence holder's complaints procedure should include reference to the relevant ADR scheme.¹⁹⁶ This should be made explicit in any new guidance.
232. Some train companies highlight the existence of the Rail Ombudsman from the very first point when the customer contacts them to make a complaint. Highlighting the existence of an independent ADR scheme helps raise

¹⁹⁶ Para 3.7 of the current guidance states: "Publicity material must contain details of where a complainant should go to if not satisfied with the response provided by the licence holder currently and as appropriate: Transport Focus, London Transport Watch and Any relevant Alternative Dispute Resolution (ADR) bodies". It is not clear whether "publicity material" includes the CHP itself.

awareness and builds trust in the internal complaints handling mechanisms since customers know from the start that they can take their complaint to an independent body if they remain dissatisfied.

233. While the review of the Rail Ombudsman found that most train companies were providing signposting information about the ombudsman on their website, fewer than half of consumers asked about signposting in the Rail Ombudsman's first two annual consumer surveys felt that the Ombudsman was well signposted by their train company.
234. While it is good practice to raise awareness and publicise the existence of the appropriate ombudsman scheme early in the process, this can be a double-edged sword. The SPSO interviewees told us that organisations under their jurisdiction are required to publicise SPSO. Signposting to SPSO is required when organisations provide a final response at Stage 2. While publicity about SPSO is required and, indeed, welcomed by SPSO, there is a risk it can lead to premature complaints. Some ombudsman schemes also deal with significant requests for advice and information from complainants before raising a complaint.
235. The review of the Rail Ombudsman for ORR suggested that premature contacts from complainants was an issue.¹⁹⁷ However, the feedback from the train companies which publicise the existence of the ombudsman from the start was that this had not been an issue for them. In our view, any revised complaints handling guidance should build on the good industry practice that is already taking place in relation to this.

5.12 Signposting at 'deadlock' or 40 working days

236. All sectors require the ADR scheme to be signposted at the end of the specified time period ('deadlock') or at the point where a final decision is reached, whichever is the earliest. Where a final decision is reached, some regulators such as Ofcom require the provider to signpost the complainant to the ombudsman scheme only where the complainant tells them that they are unhappy with the final decision. In other sectors, such as financial services, public services in Scotland and the water industry, providers are required to signpost the complainant to the ADR scheme at the point when a final decision is given, even if the complaint is upheld.
237. Some of the train companies have already adopted this approach and this is good practice in our view. Signposting should not wait until the customer indicates that they are not happy with what is proposed, since this potentially means that only those customers who actively pursue their rights are informed of the existence of an external redress scheme. Research demonstrates that the

¹⁹⁷ *Review of the Rail Ombudsman for ORR*. Red Quadrant. 2020.

demographic of those who use ombudsman schemes is disproportionately male, retired, and with a higher-than-average income.¹⁹⁸ To wait until a decision is challenged to notify someone of their right to have the decision reviewed by an ombudsman can be a significant access to justice barrier for those who may have less knowledge of their consumer rights.

5.13 The 40 working day time period for resolution

238. The question of whether the 40 working day period should be reduced was discussed in detail with the train companies we interviewed. As discussed above, the current emphasis on time as a primary driver for complaint resolution was viewed as potentially impacting quality. This was of particular concern in relation to more complex complaints or during a period of significant disruption when there are higher complaint volumes.
239. Both the Rail Ombudsman and the review of the Rail Ombudsman have recommended that the time period should be reduced to 20 working days after the date of the first complaint.¹⁹⁹ The review of the Rail Ombudsman noted concerns that large numbers of consumers were contacting the ombudsman prematurely because they do not have a 'deadlock' letter. The report speculated that reducing the referral timescale to the Rail Ombudsman may also reduce the number of out-of-scope contacts which are due to not having a deadlock letter.²⁰⁰
240. The experience of SPSO is again relevant here. Public service organisations in Scotland should resolve complaints at the frontline within 5 working days and are then given a further 20 working days when frontline resolution has failed or is not appropriate. After 20 working days, a complainant might ask SPSO to consider a complaint, even though the organisation has not yet concluded its investigation and issued a final response. SPSO recognises the value of complaints being handled locally, so it would only exercise its discretion to take a complaint early in exceptional cases where the local process has not been exhausted. So long as there have been no avoidable delays resulting in the complaint taking longer locally, and the organisation has kept the complainant updated during the investigation, this will be compliant with the MCHP.²⁰¹

¹⁹⁸ Department for Business, Energy and Industrial Strategy (BEIS). *Resolving Consumer Disputes: Alternative Dispute Resolution and the Court System*. 2018. <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698442/Final_report_-_Resolving_consumer_disputes.pdf

; N. Creutzfeldt, *Trusting the Middle-Man: Impact and Legitimacy of Ombudsmen in Europe*. 2016. at <https://www.law.ox.ac.uk/sites/files/oxlaw/ombuds_project_report_nc_2.pdf>; B. Hubeau, 'The Profile of Complainants: How to Overcome the "Matthew" Effect' in *Research Handbook on the Ombudsman*, eds M. Hertogh and R. Kirkham (2018) 259.

¹⁹⁹ *Review of the Rail Ombudsman for ORR*. Red Quadrant. 2020.

²⁰⁰ Ibid. P.52.

²⁰¹ It should be noted, however, that technically a complainant can go to SPSO at any time during the process. SPSO aims to be open and accessible to complainants, with no barriers.

241. We have therefore concluded that it would be appropriate to reduce the current referral timescales within the rail industry. In doing so, we highlight that private sector ombudsman schemes in the UK work to a 'fair and reasonable' standard. They can decide that it is not fair and reasonable for the customer to expect the complaint to be resolved within the shorter timescale due to its complexity or where the customer causes the delay. This principle could also be incorporated into the general principles as part of any revised guidance.
242. Making customers aware of their right to go to the ombudsman does not preclude the train company from continuing to deal with the complaint if the customer is happy with this. The current experience of our interviewees was that, in the small number of cases where complaints reached 40 working days without being resolved, customers did not automatically complain to the Rail Ombudsman even after being told of their referral rights.
243. We note that this conclusion is likely to impact on the 'stop the clock' provisions that exist in relation to the ORR data guidance on reporting. 'Stop the clock' does not apply to ombudsman referrals and they are not used in other schemes or in other regulatory complaints processes. It will be necessary to remove this provision if the ombudsman timescales are reduced. If it is removed, it is also likely to impact on the current requirement to make a full response to 95% of all complaints within 20 working days.

5.14 Safety complaints

244. The final issue we explored was in relation to safety complaints. Complaints about safety issues are not currently distinguished from other categories of complaint in the guidance. It may be worth considering whether to distinguish them from other types of complaint in the guidance. In practice however, train companies already deal with these complaints as a priority.

Biographies

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Jane Williams is a Senior Lecturer in Dispute Resolution at Queen Margaret University in their Business School. She previously worked in consumer protection and has extensive experience of dealing with complaints and in running short courses for regulators, ombudsman organisations and complaint handlers in the public and private sector. Jane was a consumer representative on the Scottish Civil Justice Council and a member of their Access to Justice Committee. She is currently a member of the Scottish Legal Complaints Consumer Panel. Her current research focuses on ensuring complaints systems support all the key actors within it including those who complain, those who are complained about and complaint handlers who deal with those complaints. She has published on topics such as dispute design, fair decision making in complaints handling, consumer experiences of complaints handling, vulnerable consumers and the impact of being complained about. She has completed funded research and consultancy projects for BACS on consumer representation, Citizens Advice, Energy and Water Ombudsman New South Wales, Legal Ombudsman, Office of Rail and Road, and the Public Transport Ombudsman Victoria. Jane was the lead author of the 2018 report for ORR, *On Track for First-tier Complaint handling*.

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Sarah O'Neill is a non-practising solicitor and an independent consumer and legal policy consultant. She has many years' experience of working on consumer and access to justice issues. She has written widely in the areas of civil and administrative justice, consumer redress and alternative dispute resolution. Recent clients include the Financial Services Consumer Panel, Citizens' Advice Scotland, and Scottish Mediation. She was formerly a part-time Lecturer in Dispute Resolution at Queen Margaret University. During her time there, she worked on research and consultancy projects for Water UK, Citizens Advice and BACS. Sarah was previously Legal Officer at the Scottish Consumer Council, and then Director of Policy at Consumer Focus Scotland. She is a part-time legal chairperson of the First-tier Tribunal for Scotland (Housing and Property Chamber). She holds an MBA, and she is an accredited mediator. She is currently a board member with the Scottish Legal Aid Board.