

# Draft guidance on ORC protocols and dispute resolution – Licensed Taxi Drivers Association (LTDA) response



## Introduction

The Licensed Taxi Drivers Association (LTDA) is the professional and authoritative voice of London taxi drivers, representing over half of London's black cab drivers, including many who regularly work at Heathrow using the Taxi Feeder Park (TFP) which is part of the 'Other Regulated Charges' (ORC).

The LTDA regularly represents our members along with other taxi trade organisations in meetings and negotiations with Heathrow Airport Limited (HAL) concerning the operation and management of the TFP. In recent years, these negotiations have at times proved to be challenging specifically around the cost of entry to the TFP and HAL's cost recovery. With an uneven distribution of power between the parties, within the existing protocol the taxi trade can at times seem to be at a significant and unfair disadvantage. This can in turn negatively impact consumers by increasing the cost of taxis to the end user. It is vital that this protocol is strengthened to address these issues and ensure that HAL and ORC users are held to account effectively and that decision-making is fair and transparent.

We strongly agree that collaboration, consultation and transparency are key to ensuring that ORCs can continue to deliver in the best interest of consumers. To that end we welcome the proposed high-level principles set out in this draft guidance designed to strengthen and shape the new ORC protocols and dispute resolution mechanisms, and ensure that they are robust and effective.

## Greater transparency on ORC charges

The consultation document sets out some areas in which the current ORC protocols fall short. Our primary concern is the second point around how ORC charges are transparently challenged, the level of independent assurance on cost allocation and how adjustment mechanisms are developed and implemented.

The Taxi Feeder Park's position in the ORC reflects the unique attributes of the London licensed taxi trade and the importance of the service licensed taxis provide at Heathrow. Unlike other forms of transport or ORC activity at Heathrow, the taxi trade is not a commercial entity. Taxis are a form of publicly hireable transport, largely provided by self-employed individuals, and tightly regulated by a public body, Transport for London. Licensed taxis provide an important service to passengers travelling around, and on from, Heathrow Airport, which must be protected. They are a vital, fully wheelchair accessible part of the transport network, serving passengers who may have no other suitable means of transport at their disposal, including elderly people and those with limited mobility, requiring a door-to-door service.

Taxis are also compellable, meaning that they must take a passenger anywhere they wish to go, within designated parameters. As a result, licensed taxis often serve passengers, who find themselves in difficult circumstances and our drivers engage in unprofitable journeys to support them. This includes making short journeys between terminals or airport hotels in periods of disruption or high demand and transporting passengers with lots of luggage or travelling with small children, which can make using other forms of transport challenging. Such journeys help to keep the airport running smoothly ensuring passengers have a range of transport choices available to them at fair prices. The TFP's position in the ORC protects taxi drivers livelihoods and the vital service we provide – ultimately protecting the consumer and keeping taxis affordable.

We hope that these draft proposals will help to strengthen the ORC mechanisms and further protect the position of the Taxi Feeder Park and ultimately the interests of consumers (taxi passengers). We believe these draft principles would help to craft an ORC protocol which is better able to manage, what are at times, competing commercial and public interests and ensure that passengers and other airport users benefit from fair charges and services.

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As the CAA notes in the consultation, the need for greater transparency became apparent in the wake of the pandemic (in the latter half of 2020) when we saw first-hand how vulnerable the taxi trade can be to external circumstances and factors which impact both our members (self-employed taxi drivers) and HAL's business. There was a significant under recovery of costs from the Taxi Feeder Park, as passenger numbers and movements plummeted during the Coronavirus crisis. HAL's first instinct was to attempt to recoup the under-recovery within 12 months by trebling the price for drivers to enter the TFP. This would have been an unnecessarily punitive cost, imposed on already devastated taxi drivers, who had provided an uninterrupted service at the airport throughout the pandemic.

One of our biggest concerns at the time was the lack of transparency around HAL's costs and how the figures for the under-recovery, used to determine the proposed increase, were calculated. HAL refused to provide further details when requested, specifically a more detailed breakdown of their costs. This made it difficult for us to challenge their proposals effectively. In this example, HAL only agreed to reduce the proposed increase (doubling instead of trebling the cost) following interventions from various external stakeholders made on our behalf, including the CAA.

With this in mind, we strongly agree that the new protocols must *"facilitate reasonable transparency of cost information so that ORC users understand the charges that they are asked to pay."*

We also agree that there is a clear need to ensure greater clarity consultation and transparency across the ORC governance process and to ensure that *"the right costs are allocated to the right parties."* In recent years this has been one of the taxi trade's most pressing concerns and we are glad to see the CAA seeking to strengthen the protocols in this regard.

### **Information sharing**

The focus on ensuring information is provided in a timely manner is also important, as at times we feel HAL may have dragged their feet or stalled during negotiations. It can often be challenging to raise a dispute or challenge HAL's positions as they hold all the information and data meaning that we need their cooperation. This is a strange and at times problematic dynamic which we believe these new principles to help shape the ORC protocols would help to address.

Like the CAA, we therefore welcome HAL's commitment to review the quality and breadth of information that it currently provides to ORC users and we hope improve it. This is important to ensure that there is not an asymmetry in power between the two parties and to allow for effective challenge.

### **Effective consultation**

We also welcome the proposals to ensure effective consultation as in the past, HAL has made decisions with profound consequences for our members and repercussions for consumers, with little or no opportunity for discussion or input from the taxi trade, or on very short timescales giving us little time to effectively oppose them.

It is therefore vital that HAL takes a best practice approach to consultation – one which fully takes into account the views of ORC users and with clear timescales and processes in place to ensure that the consultation is effective and conducted in a fair and open manner.

### **Good governance**

The principles for governance arrangements are also important to ensure that the decision-making processes are clear and easy for ORC users to understand and engage with as necessary, particularly with regard to charge setting. In the past, when HAL has sought to change or increase the TFP entry price – the charge paid by our members to use the TFP – it has been unclear how the decision was reached and on what basis it was made, with HAL generally only providing top line figures and little



detail on how the figures were calculated. Without such information it can be difficult to oppose or negotiate with HAL and to challenge its position.

We also agree that it is in the interests of consumers that there is an independent assurance on ORC charges and cost allocation going forward, as decisions made by HAL on these matters can at times seem arbitrary and are made with little regard for the consumer. For example, when looking to raise the TFP entry price in 2020, HAL not only insisted that this was a justified increase with little information provided to justify it but also asserted that the additional cost to our members (taxi drivers) should be passed on to the passenger by being added to the fare. Not only was this not possible without authorisation from our regulator, Transport for London, but it also required a lengthy statutory public consultation process and HAL had not acknowledged this or built in the appropriate timescales to allow for this to be undertaken and agreed before the increase was made. It is clear from this that decisions made with regard to cost allocation and charges can have a direct and damaging impact on consumers and that therefore such decisions must be made in a fair and transparent manner.

It is also positive to see the focus on equivalence and recognition that the obligations go both ways between the ORCs and HAL., as this would give the taxi trade greater assurance that HAL will meet its obligations and deliver the service the trade pays for as part of the TFP.

#### **Dispute resolution function**

Having been involved in a disagreement around costs and pricing recently with HAL, we believe there is a clear need for an effective, independent dispute resolution function when parties are unable to come to agreement. Indeed, in the last two years we strongly believe that the CAA's influence and intervention has helped to bring HAL back to the negotiating table in relation to the TFP entry fee and plans to dramatically increase it in the wake of the pandemic. It is therefore vital that ORC users can continue to raise issues with the CAA.

We believe that the CAA is right to oppose HAL's view that the dispute resolution function should solely be limited to procedural matters. This would essentially give HAL free reign to do as it pleases as long as it can show that the ORC protocols have been followed. Most of the recent issues raised with the CAA and disagreements between the taxi trade and HAL have been around operational and most importantly commercial matters, and this is likely to be the case in future, it is therefore vital that these are covered by a dispute resolution mechanism.

The whole point of the ORC is to regulate the activities and to ensure that HAL treats ORC users fairly and that its own commercial interests are balanced against those of the ORC users and ultimately are in the best interests of end users (consumers) – in our case the passengers licensed taxis serve.

#### **Conclusion**

We believe these proposed high-level principles will have a positive impact on the development of the ORC protocols and look forward to working with HAL, the CAA and others to develop this further.

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