

Ticket to Ride – an update

February 2015



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1. Introduction

Passenger Focus has always taken the view that everyone should buy a ticket when travelling on the railways. Passengers who avoid paying their fare are, in effect, being subsidised by the vast majority of fare-paying passengers.

We agree that train operators should take steps to stop those who deliberately try to avoid paying, but what about the honest passenger who simply makes a mistake?

In response to a growing number of complaints from passengers we looked closely at the processes and protections surrounding 'ticketless' travel. Our subsequent report, *Ticket to Ride?*¹, was published in May 2012 and set out a number of concerns along with a series of recommendations.

Since publishing that report we have continued to press for change. The need for change seems to have been accepted by the industry, though there is still much debate around the shape this should take.

Some improvements have been made, and more work is in hand, but many thorny issues still need to be resolved. The following two examples demonstrate that change is possible and happening, but it is not consistently applied. They both involve passengers who forgot their railcard when travelling.

The passenger bought a ticket with a railcard reduction but left the railcard at home when travelling; despite paying the difference on the train he was sent a letter warning about criminal prosecution. He replied enclosing proof that he had a valid railcard at the time but was still sent a further letter threatening criminal prosecution unless he paid an additional £229. The train company acknowledged that he had a railcard and that there was no fraud involved but this simply did not matter – his 'crime' was that he could not produce a valid ticket at the time of the ticket check.

The passenger bought a ticket with a railcard but could not produce it when asked during the return leg. The train manager explained that she would have to pay the difference between the full fare and the reduced-price ticket. The passenger paid an excess fare of £57, but the guard explained it would be refunded if the valid railcard could be produced at a later date. Ten days later the railcard arrived at the passenger's home, posted to her by an unknown passenger who had found it. A phone call to customer service was answered promptly, and details were quickly recorded, leaving the passenger to email images of the original tickets and the valid railcard, along with the reference number. No explanation was required as details were recorded during the original phone call. Less than a week later £57 in rail vouchers arrived in the post, along with a reminder that a railcard must always be carried.

¹ [Ticket to Ride?](#) Passenger Focus. May 2012

2. The past - what we found in 2012

One of the main themes of our 2012 report was inconsistency; different outcomes and different penalties were being imposed for similar 'offences'. One passenger may be required to buy a new ticket and another may have to pay a penalty, while another could face court for similar failures to comply with regulations.

In the report we raised the issue of rail staff using discretion in different ways depending on their interpretation of the passenger's motivation, the policy of the train company, and the way the company applies the rules.

Sometimes action taken by the train company simply did not look like fair play, or feel like common sense. For example, someone who lost one of their tickets but had proof of purchase could still be penalised as if they had no ticket, as could those who could prove they had a valid railcard but who did not have it with them when travelling. To many law-abiding passengers it just did not (and still does not) seem logical.

At the heart of our investigation was something called 'strict liability'. There are two key documents setting out passengers' obligations when travelling on the railway: the National Rail Conditions of Carriage and the Railway Byelaws.

They both put the onus on the passenger to have with them (and be able to produce on demand) a valid ticket or other form of authority to travel for the train they are on. The only exceptions are where there are no facilities to buy a ticket before boarding, if the train company advertises that you can buy one on board or, in the case of the Byelaws, an authorised member of staff has given permission for passengers to travel without a valid ticket.

Apart from these instances, liability rests with the passenger. The industry does not have to prove that you set out to evade payment, nor does it have to give due regard as to why you did not, or could not, buy a ticket - all it has to demonstrate is that you did not have a valid ticket at the time.

This 'strict liability' creates a net that draws in the passenger who has made an honest mistake at the same time as catching the intentional fare dodger. What we found missing was an effective mechanism that filtered out the innocent mistake.

In our report we called for the revenue protection system to address five core principles:

- consistency
All Train Operating Companies (TOCs) need to operate under the same basic revenue-protection rules. Why should passengers in one area receive a higher level of protection than those in another area?

- discretion
Staff who first encounter a passenger with an invalid ticket decide which course of action is taken. Showing the right amount of discretion at this point is always going to be a question of balance and judgement. Having a set of criteria that is used consistently would help support the decision-making process. Nonetheless there will always be the need for a robust appeal mechanism to act as a safety net.
- fairness
It is widely acknowledged that the fares structure is complex, yet passengers are penalised for 'getting it wrong'. Prosecution is sometimes being used as a first port of call, rather than action taken only where intent to avoid payment can be proved. The system must be seen to be fair and even-handed.

Appeals must also be seen to offer passengers a fair hearing. It should offer the opportunity to review information, or examine new information that was not available when staff took the original decision. Finally, to be fair, penalties and punishment must be seen to be proportionate.

- accountability
Train operators must be accountable when they outsource functions to third parties. Delegating responsibility should not equate to delegating accountability.
- transparency
Train companies should set out how many penalties are issued, for what and how many are subsequently overturned.

3. The present – what has happened since 2012

Since publication we have continued to push these issues with the rail industry and Government.

We have also increased our understanding of the issues and started to press for wider, more systemic changes. We have:

- worked with a large number of train operators looking at the revenue-protection system and the processes they use; this involved arguing our case with senior managers as well as getting involved at the coalface with individual revenue-protection staff
- continued to present new cases to individual train companies and also to the Association of Train Operating Companies (ATOC) and used these case studies to push both for change
- observed revenue-protection officers at work

- met British Transport Police to understand its role in revenue protection and prosecutions, and pushed our concerns about the application of legislation
- had discussions with officials at the Department for Transport (DfT) and pressed for change
- raised our concerns directly with ministers, both through correspondence and in person
- pressed for data in order to define the size of the problem
- commissioned legal advice on the operation of the rail Byelaws.

At the heart of everything we did were the stories we heard from passengers. These act as valuable case studies but we never lose sight of the fact that they can also represent genuine hardship for people, hence we continue to argue individual cases with the powers-that-be. Some of the cases we received are set out in this report.

We were pleased that ATOC took our report seriously. Its first step was to agree and then publish a code of practice entitled *Arrangements for travel ticket irregularities*² on behalf of all its train-company members.

This was an attempt to ensure that ‘ticket irregularities’ (when a passenger does not hold a ticket or holds an incorrect ticket for the journey being made) are managed in a structured and consistent way.

Part of this involved pulling existing rules and regulations into one place but it did also establish some important principles:

- enshrining the operator’s responsibility for selling the right ticket and making education and assistance the ‘first line of revenue protection’ - changes being made include but are not limited to:
 - better explanation of ticket types
 - better access for passengers to the National Rail Conditions of Carriage
 - clearer information on tickets.
- committing train companies to publishing revenue protection policies and procedures on their own websites and on the National Rail website, together with the code of practice
- establishing an appeal mechanism for Unpaid Fare Notices³ (UFNs) consistent with that in place for Penalty Fare Notices⁴ (PFNs).

² *Code of Practice - Arrangements for travel ticket irregularities*. ATOC. May 2013

Some of the work on improving retailing has started. Clearer information on tickets is being piloted on behalf of the industry by Northern Rail. This involves spelling out the details on relevant restrictions, such as the times of travel or on which company's trains or by which route the ticket can be used, on the actual ticket itself.

Our own audits also show that the information on some ticket-vending machines (TVMs) has improved. For example, some now provide better information on time restrictions and the age restrictions applying to child tickets, but there is still room for much improvement.

ATOC continues to work on the thorny topic of making ticket restrictions clearer. One key area is if the ticket describes the route allowed as 'any permitted'. This does not mean any route is permitted; it means that perhaps not all routes are permitted and fails to specify which *are* permitted. This can therefore be misleading. Indicating routes allowed and restrictions, in a way easily understood by all, is a key step to ensuring passengers can select the appropriate ticket for their journey.

A number of other initiatives were also announced in the Department for Transport's (DfT) fares and ticketing review⁵. We were pleased that this reflected many of the concerns raised in our fares research⁶ and in our submission to the review⁷.

This included a trial of introducing single-leg tickets (allowing mix-and-match tickets, one for the outward leg and one for the return, thereby avoiding complex restrictions and higher 'Anytime' fares in both directions).

It also involved a new code of practice on ticket information (designed to establish the information that passengers need to purchase the correct ticket). The latter is now being taken forward by the Office of Rail Regulation.

Some TOCs have already made positive changes. Two operators currently address the railcard issue, allowing those who forget their railcard to purchase another ticket but apply for a refund of the additional ticket bought when they are able to demonstrate they have a valid railcard; others are considering this approach.

³ If a passenger does not have a valid ticket, one of the options in the National Rail Conditions of Carriage allows a train company to charge for a brand new ticket. The passenger can pay this then and there. However, passengers do not always have the means to pay immediately – or in some cases insist on appealing before paying. At such times the train company can issue an Unpaid Fare Notice. This is not a fine or a penalty – it is simply a 'bill' for the fare for the train used.

⁴ A penalty fare is a special fare charged at a higher-than-normal price because the purchaser did not comply with the normal ticket-purchasing rules. This is currently set at either twice the full single fare to the next station at which the train is due to stop, or £20, whichever is the greater. Passengers will be issued with a Penalty Fare Notice (PFN) which can be paid on the spot or they can appeal within 21 days. The rules can be seen at: <https://www.ircas.co.uk/docs/SRA%20-%20Penalty%20Fare%20Rules%202002.pdf>

⁵ *Rail fares and ticketing: next steps*. DfT. October 2013

⁶ *Fares and ticketing study*. Passenger Focus. 2009

⁷ *Response to the Government's rail fares and ticketing review*. Passenger Focus. 2012

ATOC has also agreed a national dispute-resolution process for Unpaid Fare Notices that mirrors the penalty-fares appeal scheme. The use of UFNs was one of the main concerns raised in *Ticket to Ride*. Passengers typically only had 10 days to pay, irrespective of whether they had appealed. This meant that they could receive 'chase-up' letters and potentially incur administration fees for non-payment if they waited to hear the outcome of their appeal before acting.

ATOC's code of practice now gives UFNs the same 21-day timeframe for appeals as for penalty fares – something we welcome.

And, finally, we are pleased that ATOC has established an industry-wide working group to continue looking at revenue protection, recognising and signifying that this is the beginning of a process rather than the end.

While all of these initiatives are welcome, the most important change that has happened since we started driving these issues has been one of a growing acceptance that the current revenue-protection system needs an overhaul.

When we started work on revenue protection, the commonly-held belief was that the system was sound, but occasionally there were unfortunate outcomes for honest passengers. Today it is widely accepted that there are real problems that need to be resolved.

Passenger Focus recognises the importance of preventing fare dodging, but this must be done in a way that resolves the issues with the present system and protects the honest passenger.

4. The future – the current issues

Most passengers regularly pay their fare. It is a small percentage actively seeking to avoid paying fares, or responding to an opportunity to avoid fares. Beyond this we are aware that there are a number of passengers who make an honest mistake and travel with an invalid ticket.

It is hard to get a proper sense of the scale of the problem and of the impact on passengers as there is little information in the public domain. To help address this we asked train companies to tell us how many Unpaid Fare Notices they issued and how many prosecutions they undertook.

Five train companies responded directly to our request. They indicated that, between them, they had issued over 16,500 Unpaid Fare Notices in the year up to end of March 2013; in addition nearly 11,000 cases were prepared for prosecution (with about half being settled before reaching the courts). With this being just five out of 20 plus train companies we can see that this affects large numbers of passengers.

The key question we have sought to explore, and which the ATOC working group will need to address is, whether the current system can filter these groups and take appropriate action in each case, most of the time.

While there is now a code of practice that all operators have to adhere to, there is still much leeway in how this is applied. This leads to considerable discrepancies in practice and in outcomes for passengers.

In the current system, train operators are the victim, the investigators, the decision makers and the prosecutor. It is a powerful position to be in and passengers need assurances that there are appropriate checks and balances. We believe the whole system requires an overhaul; however, in the short term there are immediate matters to address.

We have examined the system in current use and have found pivotal points where further checks and balances could be introduced to ensure fairness and consistency of practice. These are outlined below.

Information Provision

Revenue protection is not a standalone system - it sits within the retailing and information-provision systems. Buying the right ticket, and understanding when it can be used, is the first (and most effective) step to avoiding use of an invalid ticket. Doing this, however, is not always easy with the current, complex fares structure. Therefore the provision of retailing information becomes the first pivotal point where operators can intervene and help the honest passenger.

TVMs have been particularly problematic in some cases. In July 2010 we investigated how easy the machines were to use, and how easy it was to locate the appropriate ticket for the journey⁸.

Since then we have worked with train operating companies and manufacturers, urging improvements. During July 2014 we undertook a sample audit of TVMs. We found some improvements (such as with the display of child ages) but many still do not provide fundamental information on restrictions. With a growing proportion of ticket issues now going through TVMs, this matter requires urgent attention.

Ensuring all train companies are aware of the rules surrounding operator-specific retailing schemes could also be beneficial. For example, 'print at home' is web-specific. If there are issues in printing the ticket then web support is available. However, some passengers fail to absorb this information and go to the station seeking help.

We have reports that some operators are not aware of the details of other operators' schemes and are not always best placed to help. Frequently passengers are just told

⁸ *Ticket Vending Machine Usability - Qualitative research*. Passenger Focus. 2010

they have not read the instructions, or have not used the system correctly and therefore must bear the burden of correcting their error. As new ticketing technologies are introduced this confusion could easily spread.

Passengers are also sometimes ill-informed about the actual requirements and the associated penalties for getting it wrong. Posters and leaflets may be available but may not be sought out by passengers who are unaware that such a system exists.

Many honest passengers are unlikely to consider they need information in the first place; they are not expecting to find themselves wrong-footed and are increasingly used to customer-service standards from high-performing retailers who put things right for them without question. They are not expecting an error to cause a problem, much less lead to a penalty or threat of prosecution.

Posters that are a critical part of the penalty-fares system can be 'lost' when displayed with other posters. They are also sometimes positioned a short distance from the station entry points, or angled in a way that loses impact. Train companies frequently comment that posters for other purposes often go unnoticed by passengers. Why should information about penalty fares be any different? Posters and leaflets are variable and standard explanations or wording might help passengers navigate the system.

It would also be beneficial if TOCs were to consider new ways to get the messages across. Passenger Focus notes that many train operators now make on-board announcements about ticket validities prior to the start of the journey and, while this is welcome, care needs to be taken to avoid the tone being more intimidating than informative.

TOCs could also do more to publicise revenue protection policies on their websites. Although this has improved since the introduction of the ATOC code of practice, there is still wide disparity in the amount and detail of information provided.

First point of contact

The first point of contact between the passenger with an 'irregular' ticket and a member of staff is critical. Managing this well can mean the difference between a satisfied customer and a deeply-offended one.

The current penalty fares scheme has guidelines on categories of passengers that should receive special consideration, such as those for whom use of or reading English is problematic or those with mobility issues.

We sometimes receive complaints from passengers who clearly meet the 'vulnerable' criteria and where discretion could, and should, have been used. Such cases may (or may not) be rare, but if the guidance is followed they should never happen.

At the moment there are no national systems to ensure proper, consistent use of discretion guidelines to eliminate poor practice and disseminate good practice across the whole network. Much seems to depend on the approach of individual franchise operators.

Some work is needed to ensure the guidelines are followed consistently across the network - this means a common set of guidelines for both penalty fares and unpaid fares.

Training for revenue protection staff tends to centre on the legalities and process. While some TOCs do focus on the use of discretion this area of training is variable. There is an opportunity to align and rationalise training in line with common sets of guidelines.

In order to filter out the honest passenger, operators could usefully adopt the principle of 'no loss – no penalty'⁹. This would include changing the National Rail Conditions of Carriage to ensure that passengers who forget a railcard are offered the same protection as passengers who forget to carry their season ticket –that is, pay for a ticket but get the cost refunded on production of their railcard if valid for the time they travelled.

This principle would not apply to cases where loss would have occurred had the passenger not been noticed by staff.

A passenger was penalised for changing trains at Portsmouth Harbour rather than Fratton (as per his ticket) for a connection to Fareham. His existing ticket was confiscated, forcing him to buy another, and he was issued a penalty fare.

He had a ticket, he never attempted to leave the station at Portsmouth and the train he was supposed to catch at Fratton was the exact same train he was going to board at Portsmouth. So precisely what advantage was he trying to gain from this innocent mistake? His appeal was initially rejected but eventually overturned when we intervened.

A child was caught travelling in the wrong zones. He was charged a penalty fare despite the fact that the ticket he had bought and the ticket he should have bought were exactly the same price – there was no revenue loss whatsoever to the company. The mother complained only to be told 'rules are rules'.

A second principle that could usefully be applied at this stage is captured in the following questions:

“Is this the first time the passenger has made this mistake?”

⁹ If the train company has received the correct payment for the journey undertaken then they will have suffered no revenue loss as a result of any error on the part of the passenger. In such cases there should be no penalty or fine passed on to the passenger.

“Is this a mistake anyone could have made?”

If there is no evidence of a pattern of problems with tickets then the action taken should reflect this. In addition, passengers who have bought the wrong ticket should be given ‘credit for trying’ (except for where intent to defraud is suspected, such as an adult travelling on a child ticket). If there is evidence in favour of the passenger, for instance, some proof of purchase or part of a ticket – then why not give the passenger the benefit of the doubt?

These three case studies illustrate where this could apply.

A passenger didn't pick up all of his tickets when collecting from a ticket machine. He had proof of purchase as well as the other tickets but was given a penalty fare. This was for twice the return fare, despite actually having one half of the ticket in his possession: more than £90.

The appeal was rejected and payment demanded. It was only when subsequent enquiries from the online ticket provider confirmed that the ticket machine was faulty that the penalty fare was overturned.

A passenger collected her tickets and passed through the ticket gates, but lost one ticket somewhere on the journey. She had the return half of the ticket, the Ticket on Departure receipt showing the correct fare, and the confirmation details.

She was issued an Unpaid Fare Notice. She appealed but lost - proof of purchase being deemed immaterial.

A passenger bought tickets online to be collected from a TVM. He tried but was unable to get them to print at the station. The conductor on the train advised him to board and issued him with an Unpaid Fare Notice which he was told could be revoked once he showed his tickets.

On arrival he immediately printed out his tickets and went to the ticket desk but was told he had to follow the appeal process and write in.

He did, enclosing details of the tickets and his confirmation email. While waiting to hear the outcome he received a further letter adding administration fees to his bill.

There is also an opportunity to remove unnecessary points of conflict. Some passengers find their credit card refused at times when seeking to purchase tickets on board trains. This can happen even when there are funds in the account - it appears this is frequently due to bank security measures. No receipt for a failed transaction is available. If staff were to provide a card that confirmed the passenger had tried to pay, it would assist if the passenger is later stopped by revenue-protection staff elsewhere.

Another avoidable problem is caused when station staff allow passengers to board trains without providing them with the proof that they have been authorised to travel.

A review of the criteria for the recruitment and training of revenue-protection staff might also be considered to ensure staff are able to meet the changing requirements of the role. This is another area where there is scope for a national, consistent approach.

The safety net - appealing against a penalty or unpaid fare notice

Managing the first point of contact is always going to be a question of balance and judgement. Having a consistent set of criteria where discretion should be used will help but even with the best intent there will be times when it goes wrong. This is where a good appeal mechanism comes into its own as it acts as a safety net which catches and filters out the honest mistake.

At the time of our original report there was no proper process for disputing Unpaid Fare Notices – passengers had 10 days to pay irrespective of whether they had received a response to their appeal.

It was for this reason that we focussed on UFNs rather than penalty fares at the time. We are pleased that the ATOC code of practice has resolved this by bringing Unpaid Fare Notices into line with the 21-day timeframe used for penalty fares.

However, we still have concerns at the appeal mechanisms currently in place for passengers.

The need for a common set of appeal criteria covering both penalty fares and unpaid fares. This builds on our previous comments about the need for consistency on both penalty fares and unpaid fares.

The process now allows 21 days for a passenger to appeal. Having appealed, however, it is not unreasonable for the passenger to await the outcome of that appeal before taking any further action.

We believe that having appealed the 'clock' should then stop on any further action until the passenger has been informed of the outcome. If the appeal is lost then the passenger should be given a fixed time in which to pay.

No administration fees should ever be charged until this additional time has elapsed. At present we have instances of admin fees being added before the passenger has heard the outcome of his/her appeal – how can it be considered an appeal process if you have to pay up before you know whether you have been successful?

A passenger received a penalty fare for not having a ticket. He argued that this was because the permit to travel machine was broken. He videoed the broken machine and sent this off as part of his appeal as proof. This was all within the 21-day appeal window. He subsequently received a letter saying that as he had not paid within 21 days he now owed an extra £20 in administration fees. The very next day he received an email saying his appeal had been successful but that he still owed £20 in admin fees.

On querying the justice in being found not guilty and yet still having to pay, he received a letter stating that failure to pay could result in a criminal prosecution. We intervened and the fee was 'waived'. The passenger was only days away from paying simply to remove the anxiety of being taken to court.

A passenger couldn't find her ticket. While a Penalty Fare Notice was being written she found it. Instead of stopping, the member of staff continued to issue it and told her to go to her local station where they would void the notice.

On doing so, needless to say, she was told that she would have to appeal in writing. She did. She ultimately received a letter saying that her appeal had been successful but that she still had to pay admin fees as she had not paid the penalty within the permitted timeframe.

These were subsequently overturned but this represents an awful lot of time, effort and anxiety when there was no loss to the train company in the first place.

Non-payment of a penalty fare should not be transmuted into a criminal prosecution. Debt collection is usually a civil action and yet we have received cases where the 'railway' uses threats of criminal law (including imprisonment) to 'encourage' payment of a debt.

We do not think that strict liability should be used to chase debts. If there were any indication of deliberate wrongdoing then the prosecution option should have been used from the outset.

A passenger bought a ticket on the train. His young person's railcard had expired and the replacement was in the post. The guard on the train gave him the benefit of the doubt and sold him a discounted ticket. On arrival he was issued a penalty fare and his ticket and expired railcard confiscated.

The fact that the ticket was sold by a member of staff who was fully aware of the situation was rejected in the appeal. The passenger's mother continued to press for this to be taken into account – all that happened was that the 'bill' kept increasing. When it had reached £60 they received a letter threatening criminal prosecution. This letter 'explained' that the maximum penalty was a fine of £1000 and/or three months' imprisonment.

The mother paid the fine at this point. We were able to get this overturned on appeal as there was evidence that the guard did sell the ticket as claimed. It was the threat of criminal action that led to someone paying for something unjustly.

The bodies assessing appeals should be audited on a regular basis to check compliance with the relevant criteria, and the results of this made public. This is not to imply any wrongdoing on their part but simply to promote greater accountability and public confidence in the system. We would liken it to the way that punctuality statistics under the old Passenger's Charter compensation regime were regularly audited by an outside agency.

There are also some improvements that could be made to make it easier to actually pay the penalty or the unpaid fare:

- agreed quality standards for the maximum time a passenger should wait on hold before being able to pay a penalty by phone
- passengers who do have queries should be able to access telephone advice
- passengers should be able to pay a penalty electronically within one hour of its issue
- websites should be reviewed to ensure that they are easy to use and avoid any obstacles to payment or query
- systems should be in place for ensuring passengers are advised when postal correspondence is received by the appeals body to avoid the following scenarios: "I sent it", "No you didn't"; "You lost it", "No we didn't".

The passenger left his railcard at home and was issued a penalty fare. He had proof that he had a railcard so wanted to appeal. He kept trying to do so online but the details of the appeal were not logged on the system until after the 21-day limit had passed, meaning that he could not register his appeal.

He could, admittedly, have appealed in writing, but when the process says that you can appeal online it is not unreasonable to expect the paperwork to be uploaded so that you can do so within the permitted time limit.

A further £20 penalty was added as a result – meaning a £40 penalty for a £1.70 fare when he could subsequently prove he had a valid railcard in the first place.

Prosecution

Another pivotal point is reached when train companies are considering prosecution.

The rail industry has an unusual position in law, in that it can mount criminal prosecutions without having to prove intent – the principle of strict liability. Railway Byelaw 18 makes travelling without a valid ticket the offence; the operator does not need to demonstrate intent to defraud or even show that they have incurred a loss.

Where intent is found or suspected they also have the option of prosecuting under the Regulation of the Railways Act 1889 which carries a maximum punishment of three months' imprisonment.

We set out in our original report our belief that passengers should not face a criminal prosecution without proof of intent to defraud. It is interesting to note that local authority car-parking enforcement has been decriminalised – the rationale being that people should not end up being criminalised for a simple car parking offence. We have continued to push this with the industry and directly with Ministers but to no avail.

We believe that the strict liability nature of Byelaw 18 gives all the power to the industry (and their agents) and too often means that the voice of the individual passenger gets ignored. It's easy for passengers to ask whether the company has even read their appeal given that strict liability means they are almost invariably guilty come what may. Passengers with genuine reasons for not having a valid ticket can all too easily get the sense of being stuck within a process that will grind on until they admit guilt and pay.

There are even times when the passenger is in the right but can't get the industry to see this. The following case is a perfect example of an inexorable process in action.

A passenger had a valid ticket for her journey. The guard wrongly felt that it was invalid and issued an Unpaid Fare Notice (for £154) on the grounds of her having 'no ticket'.

She checked at the ticket office where she had bought the ticket and was told that it was valid. She appealed. She received a letter saying that as she had not paid within 10 days, admin fees were being added (total bill now £169). A subsequent letter then rejected her appeal on the grounds that she did not produce a valid ticket at the time of asking – which was completely wrong as the ticket was valid; the error lay completely with the train guard.

When she again contacted them to explain that the ticket was valid she received a letter stating that her case was to be referred back to the train company with a recommendation that they issue a summons for criminal proceedings which could result in a fine or imprisonment. This could be avoided if she paid £189 (further admin fees being applied). This was followed with a more formal notification that legal proceedings had begun. The justification given in this notification was all about 'strict liability'. At this point the 'bill' was for £209

Only on her third appeal did the agency finally check with the train company who confirmed that the ticket was valid. They sent her a truly disgraceful letter saying that her appeal was successful and that the Unpaid Fare Notice was being withdrawn because of 'extenuating mitigating circumstances' – since when has having a correct ticket in the first place been a 'mitigating circumstance'?

Moreover, we have concerns at the level of threat contained within some of the letters sent by train companies. The Regulation of the Railways Act (RoRA) carries with it the threat of imprisonment and a criminal record, while the Byelaw 'only' has

the threat of a fine (up to £1000) and is not a recordable offence. Unfortunately, we do not always see the industry make this distinction in letters to passengers.

These letters frequently make use of the RoRA to threaten passengers with the higher-end penalties of imprisonment and a criminal record while, we believe, then using the Byelaws to proceed as they require no burden of proof.

The following example demonstrates how the line between the two can be blurred to the train company's benefit:

A passenger did not have a valid ticket so was liable to enforcement – though it is worth pointing out that the case was dropped on appeal by us so there were mitigating circumstances. There was also no evidence of any past history.

What is striking in the letter is the sheer level of threat it contained. It says that the train company will press for the maximum penalty which included, and we quote:

- “ • A criminal record (always)*
- Fine of up to £1000 (always)*
- Prison sentence*
- Suspended sentence*
- Community service*
- Seizure of any computer equipment (if involved)*
- Compensation (always)”*

Such letters add to the anxiety faced by passengers. It would be easy to form the impression that the full threat of the law is used to scare passengers into 'settling' by paying a hefty administration fee at a later date. Letters should inform and avoid any appearance of intimidation.

The industry has argued that it needs the flexibility that Byelaw 18 gives and that it is a very useful tool against passengers who have incurred multiple penalty fares or been issued with numerous Unpaid Fare Notices. Our caseload does not give any sense of prosecution being reserved for repeat offenders - on the contrary, it frequently seems to be a first response.

There was also a very high-profile case in the media recently in which prosecution was not used even in what appeared to be the most 'open and shut' circumstances. The passenger in question was alleged to have evaded fares over a five-year period but was still able to reach a settlement with the train company in question. It is hard to underestimate the negative message this sends about the use of prosecution – it seeming more like revenue generation than justice.

The evidence-gathering process is also an issue we have looked at. When a ticketless passenger is stopped, a 'ticket irregularity report' is filled in. The purpose of this report should be clarified. In some cases it seems to be used to gather all the necessary information for a potential prosecution. In other cases it seems to simply

report an incident with a follow-up letter then inviting the passengers to provide all relevant detail and potentially inadvertently incriminating themselves.

A passenger could not show a railcard alongside the ticket. She stated that the member of staff asked her to pay a £20 penalty fare on the spot and when she couldn't he completed a witness statement. A court summons was subsequently issued which appears to be the first time the passenger saw the witness statement which asserted that she had admitted to 'intent' to avoid paying - something the passenger denies ever doing. The prosecution was dropped when we intervened.

This was in a penalty fares area; a penalty fare was offered but withdrawn as it would not be paid then and there (ignoring the right of appeal) and the case reached as far as a court summons on the back of a disputed admission of guilt without any apparent contact or verification in between.

We believe that these cases show how the power given to the industry under Byelaw 18 is being misused in some instances. We would ultimately like to see Byelaw 18 repealed, but in the shorter term want to see the industry adopt a more progressive attitude to dealing with its customers. This would involve using criminal law as more of a last resort and certainly not as a form of debt collection or of revenue generation through the 'settlement' fees levied.

The Government gives the industry a great deal of autonomy and power when it comes to revenue protection – far more, it would appear, than any other commercial undertaking – but there does not seem to be enough attention given to the necessary checks and balances that should surround the use of this power. We believe that, at the very least, Government needs to set out guidelines /expectations governing the use, and threat, of prosecutions.

The underlying principle must be one of proportionality. The examples provided in this report demonstrate disproportionate responses and penalties in many cases.

5. Recommendations

We welcome the improvements that have been made since our original report in 2012. Some individual train companies have made improvements, for example by introducing new rules when passengers forget to carry their railcard, and others are considering this approach. ATOC has its working group grappling with many of these issues. We anticipate progress in the next six to 12 months and will continue to press our concerns as outlined in this report.

That dialogue has commenced, and the fact that work has started is to be welcomed but there is still a long way to go. Initially we considered that greater consistency and

solutions to specific issues would rectify the problems with the revenue protection system. There is still a need for these interventions.

However, as we have undertaken further work and developed a greater understanding of the issues, it appears that some problems are systemic and that there is a need to address the causes as well as treating the symptoms.

The current revenue-protection system was designed in another age and it is time to update it and make it serve the needs of the industry *and* passengers of the 21st century. We believe this means removing the existing triple-tier system of penalty fares, unpaid fares and byelaw prosecutions. We think it should be replaced by a single, unified process with common processes, forms, and appeal mechanism, along with a common training programme to ensure consistent application.

Some of these issues are complex to unravel and will require time and application, but some changes can, and should, be undertaken promptly.

Areas for immediate focus include:

- ensuring consistency of approach for penalty fares and unpaid fares
- the principle of 'no loss–no penalty' must underpin revenue-protection activity

No criminal prosecution should be brought (or threatened) where there has been no revenue loss to the operator (and therefore no gain to the passenger).

The most obvious examples being when a railcard has not been presented at the time of the ticket inspection but can subsequently be proved to have been held, not printing off 'print-at-home' tickets, and not having all parts of a ticket but where a receipt/bank statement can show it had been purchased. Where a passenger has a clear proof of purchase or entitlement (such as a valid railcard) there should be a set procedure, including timescales, for producing evidence and receiving the reimbursement of additional charges or revoking penalties.

- action taken and penalties imposed should be proportionate
- the bodies assessing appeals should be audited on a regular basis to assess compliance with the relevant criteria, and the results of this made public
- once a passenger has appealed, the 'clock' should then stop on any further action until the passenger has been informed of the outcome

If the appeal is lost, the passenger should be informed and given a set time in which to pay before any admin charges for non-payment can be added. No administration charges should be charged when an appeal is upheld.

- Government needs to set out guidelines/expectations controlling the use, and threat, of prosecutions under the Byelaws

Passengers should not face a criminal prosecution without proof of intent to defraud.

In the longer term, as we have previously set out, this means removing the ability to prosecute without proof of intent – which is entirely in line with previous moves to decriminalise parking offences and similar to recent discussions surrounding the TV licence fee.

However, as this would require legislation, in the interim we would like to see:

- Letters sent to passengers about prosecution or offering a settlement in lieu of prosecution not using intimidatory language or tone. In particular the practice of threatening imprisonment under the Regulation of the Railways Act (which would require proof of intent) must not be used when seeking settlement of something that would otherwise be pursued by the Byelaws.
- Non-payment of a penalty fare should not be transmuted into a criminal prosecution. Debt collection is usually a civil action and yet we have the 'railway' using threats of criminal law (including imprisonment) to 'encourage' payment of a debt.

Passenger Focus will continue to press operators, ATOC and DfT to find solutions to these issues.

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