

Know your rights! The Consumer Rights Act 2015 and transport users

On October 1 2016 the Consumer Rights Act 2015 will apply in full to all transport services, including passenger rail services across the United Kingdom.

What difference will this really make for transport users? The main changes are likely to affect rail passengers. Bus and coach passengers and drivers who pay tolls are less likely to see changes to complaints handling or rights.

Rail passengers

The current situation

Until now the relationship and contract between a passenger and train company was largely governed by the train companies' uniform National Conditions of Travel:

http://www.nationalrail.co.uk/times_fares/46427.aspx

The Conditions cover a wide range of issues: in addition to things like the rules on buying tickets, what happens if you do not have a valid ticket, refunds, and the carriage of luggage, they also set out compensation arrangements for when things go wrong.

The Conditions apply to all operators in Great Britain except Heathrow Express (which has its own Condition). They set out the minimum which train companies must offer in terms of compensation for delays. In fact virtually all train companies offer more than this minimum; full details of each train company's compensation arrangements are set out in each company's Passenger Charter document.

Compensation for delays

All train companies have to have in place a compensation scheme. There are two models – the original 'Passenger's Charter' scheme and the newer 'Delay Repay' scheme. Details of who offers what and the difference between the two can be seen here: http://www.nationalrail.co.uk/times_fares/ticket_types/125173.aspx

As rail franchise contracts are renewed (either with new operators or the existing ones continuing) Delay Repay schemes are replacing the older Charter schemes. Delay Repay schemes are a huge improvement on the old Charter schemes in that they cover *all* delays – under the Charter scheme delays outside the control of the railway could be excluded. Season ticket holders can also now claim for individual delays – under the old scheme compensation would depend on average performance over the past year.

Not having to check the cause of the delay has made claiming easier (and more cost effective for the companies to administer) and in one case (becoming more common) has helped lead to automatic payment: <https://www.c2c-online.co.uk/tickets-and-fares/c2c-smartcard/automatic-delay-repay/>

But Delay Repay is not perfect:

- *trigger for delays*

The minimum trigger for compensation is 30 minutes. We consider this is too high. It does not take into account short journeys – 30 minutes is a huge threshold to reach for a five minute journey; and it does not reflect the impact of regular delays below 30 minutes (for instance a season ticket holder could be 20 minutes late every day and still have no entitlement to compensation).

Following pressure from Transport Focus and others the Government has promised to lower the trigger to 15 minutes. We look forward to this being brought in as soon as possible.

- *volume of claims*

Not enough people are claiming what they are entitled to. Following pressure for better promotion from Transport Focus and others (particularly the recent supercomplaint launched by Which?) more passengers are now making compensation claims: <http://www.transportfocus.org.uk/news-events-media/news/rail-companies-should-do-more-to-promote-passengers-rights-to-refund-and-compensation/>

We have updated our work in this area. This new work shows rates of claim have climbed significantly – this report, commissioned by the Department for Transport and carried out jointly by Transport Focus and ORR will be published soon. But there is still considerable room for improvement in both awareness of rights and the volume of claims.

Another general issue is that the Conditions limit the train companies' liability to pay compensation to the delay provisions included in each company's Passenger's Charter or Delay Repay provisions, and seek to exclude any further liability.

Mediation

One of Transport Focus's roles is to mediate complaints where train companies and other industry service providers (such as Trainline) and passengers cannot reach agreement. <http://www.transportfocus.org.uk/i-want-make-complaint/>

In some cases we or individual passengers reach agreement on complaints with train companies which go beyond the minimum entitlement set out in the Conditions of Travel. Train companies will look at individual complaints on a case by case basis but are keen not to set precedents which they will be held to in future.

The number of and the ways that complaints are handled are independently monitored by the rail regulator - Office of Rail and Road (ORR): <http://orr.gov.uk/what-and-how-we-regulate/licensing/licensing-railway-operators/licence-obligations/complaints-handling-procedures>

The new Act

The new Act applies to a whole range of consumer transactions:

<http://www.legislation.gov.uk/ukpga/2015/15/contents>

The Government has set out how it thinks the Act will apply to rail passengers:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/550780/consumer-rights-act-2015-application-to-transport-services.pdf

In very broad terms the new Act brings together lots of earlier legislation and re-affirms that:

- services must be provided with reasonable care and skill
- information provided to a consumer before making a purchase, whether oral or in writing, is binding where the consumer relies on it.

So, the Act gives passengers a new **right** to claim compensation for things that go wrong beyond train performance failings. It is important, however, to understand how this new right will apply and how useful it might be.

The National Conditions of Carriage and the Passenger's Charter or Delay Repay compensation arrangements remain in force; the new right adds to them, it does not alter them or reduce their effect.

What might happen in practice?

Many claims against train companies are still going to centre on poor performance – the key driver, as we know from our research, of daily passenger satisfaction:

<http://www.transportfocus.org.uk/research-publications/research/national-passenger-survey-introduction/>

The new right could be applied to areas which are currently not covered by the industry's compensation arrangements. For example, a failure to provide advertised catering arrangements, or reserved seating intended to enable a family or group of friends to sit together, or a failure to warn an intending passenger of longer journeys because of planned engineering works or comfort issues. Claims for consequential losses such as missing a flight would still need to be pursued through the courts unless agreement can be reached.

Passengers making a claim of this kind can refer to the Act. However, if they are making a complaint and seeking redress that goes beyond that set out in a Delay Repay scheme or beyond what a train company may have offered in an individual case passengers are going to have to take the train company to court to obtain compensation, as opposed to the relatively simple current arrangements which are dealt with by train companies on a 'no fault' basis.

Passengers will generally need to show one of two things. Did the train company (or, for example, Network Rail) provide the service with reasonable care and skill? Did the train company mislead them in some way - was information that they relied on incorrect? In many cases this might be very difficult or impossible to prove.

There are also practicalities that apply to all legal claims. The passenger will have to draft a claim which is legally sound and pay fees to get it issued, and further fees if there is to be a court hearing. Even though virtually all such cases would be dealt with by the less formal Small Claims Procedure we do not think that this will be an easy or user-friendly system, and the fees involved will be beyond the price of many tickets. The passenger will also have to persuade the court that the loss suffered can be quantified (and the fees charged by the court will vary according to the amount claimed).

Part of the package of wider consumer rights includes a cheaper form of legal redress, known as Alternative Dispute Resolution (ADR). This is designed to avoid the need to go to court. Currently ADR is not in use on the railway, but we continue to press for the introduction of a binding dispute resolution system.

Claims that involve novel or substantive legal issues might also be deemed unfit for the relatively fast track Small Claims procedure. They might then be referred to the main County Court system with its attendant fees and the risk that costs might be awarded against an unsuccessful party. Quite a deterrent.

The train companies could also seek to show that their Delay Repay schemes are an adequate compensation method in a mass transport, heavily Government funded and regulated environment. The rail industry Delay Repay schemes go well beyond anything seen in other transport sectors such as aviation. They also go beyond the Act in one important aspect – they offer compensation irrespective of the cause of the delay, you do not have to prove that there was fault (that is, a lack of care and skill).

So, a claim may have to be relatively large or a claimant very determined to mount a successful claim.

The real effect?

Perhaps the most likely effect is a far more subtle one. Strengthening and broadening rail passengers' rights is welcome. This will focus more attention on the consistent delivery of the basics of train services such as length of trains and information.

Train companies and others are likely to pay far more attention to their written material to make sure what they are promising is clear and deliverable. We will probably see statements on timetables and in other places about the endeavours that will be made to provide the service, but that any disclaimers do not affect passengers' statutory rights.

Train companies will probably issue stricter guidance to staff about what information to give passengers. It will be even more important, for example, to tell passengers that a bus replacement service is in operation, catering or Wi-Fi is not available or a

connecting journey only has First Class for part of the way. If you can argue that you would not have bought the ticket if you had known that in advance then you may have a case. Similarly, if a cheaper ticket was not available on a ticket vending machine or if booked assistance does not materialise could this constitute lack of care and skill?

Complaints procedures might well be given more attention to make sure they provide better explanations to passengers as to why things went wrong. We are already looking at the advice we give passengers (and publish) to see if there is anything we need to tighten up in the light of the new Act. We will start to build up a bank of good practice and procedure. There will probably be more focus on complying with regulatory codes of practice.

Transport Focus, through its complaint handling work, will monitor and report on how the new Act works in practice. Joint working with the Office of Rail and Road will help ensure that existing complaints handling procedures are adhered to and improved.

Once the promised 15 minute Delay Repay trigger is in place we will closely watch its effect. Above all we will continue to press train companies to advertise the fact passengers can claim compensation and monitor and report on take up.

Conclusion

So, does the Act bring about a revolution in rail passenger rights? No, it perhaps modernises them and brings them into line with other consumer sectors. However, it does shine a welcome light on compensation schemes and complaints and helps to remove any temptation to hide behind the 'small print'. In addition, and perhaps most importantly, it adds more incentive to provide what has been promised to passengers.

Bus and coach passengers

The contract between bus and coach passengers and the providers of services is much more straightforward in some regards. There are, as in rail, conditions of carriage that set out the terms and conditions for each bus company. But they are not (at present) franchised in the same way as rail services and they are largely free from the type of economic and consumer regulation that applies to the railways. For example, there is less in terms of standardised complaints handling mechanisms or minimum compensation payments.

There are fewer third parties involved in bus and coach services and arguably far more of service delivery is in the sole hands of the operators which could make applying some aspects of the Act easier. However, there is one vitally important area that bus companies do not have control over. A company cannot influence local traffic conditions - road works, vans blocking bus stops, breakdowns etc all mean that a bus company has less much less control over punctuality and delays. Proving a lack of care and skill for a delay could be much harder than in rail.

The relatively lower level of bus and coach fares may also put passenger off claiming. So all the above caveats about practicality may well apply in bus and coach complaints. We will work with the bus industry Bus Appeals Body to see what impact the Act has on complaints.

Road users

There are relatively few instances where road users pay at point of use for a service. Tolls, such as the Severn Bridge Crossing or the Dartford Crossing, are perhaps the most common example. Given the relatively low cost of tolls some of the caveats set out above probably apply again – so the impact of the Act is hard to gauge at the moment. We will discuss with Highways England their initial views on this.