

Ticket to ride? Full report

May 2012



Ticket to Ride?

1. Introduction

One of Passenger Focus's core functions is to help passengers when they have a complaint against a rail company. Such complaints are traditionally centred on poor performance and subsequent claims for compensation but in recent times we have noticed an increasing number of complaints from passengers being accused of travelling without a valid ticket. In the 2011 calendar year we received just under 400 appeal complaints from passengers who were being pursued for 'ticketless travel' – 13% of our overall total. Our colleagues at London TravelWatch report similar experiences.

Ticketless travel is an important issue - and one that Passenger Focus has consistently argued needs addressing. Passengers who avoid paying their fare are in effect being subsidised by the vast majority of fare-paying passengers. Passenger Focus has never had a problem with the rail industry penalising those who deliberately set out to avoid payment. It is right that they take steps to deter, to catch and to punish such people. But in doing so they must make sure they do not scoop up those who make an innocent mistake alongside those who deliberately avoid payment.

Not everything is clear-cut. There are many reasons why someone may not have a ticket or have one that is considered invalid and yet our complaints post-bag shows that the system very often fails to differentiate intent from innocent mistake. Indeed, sometimes the fault is not even the passenger's – if someone buys the wrong ticket from a ticket machine because the relevant information is unclear (or absent) they are still deemed to be at fault. Discretion can be difficult to apply on the spot, which is why it is important that systems and processes allow for a proper appeal procedure where the individual circumstances surrounding a case can be reviewed.

Our own investigations reveal that this is not always happening. There is an inconsistent approach into how passengers are dealt with. This covers not only the nature and extent of any punishment but also the degree of protection offered. For example, the same action in one area may result in nothing being done, in another a fine may be applied and in another you could end up with a criminal conviction. Why should passengers in one area receive a higher level of protection than those in another?

The following contains details of how the existing system works, the problems experienced by passengers and our emerging conclusions. We also include real-life examples to illustrate the impact on passengers. N.B. These cases have been suitably anonymised to prevent individuals from being identified.

2. The 'rules'

There are two key documents setting out passengers' rights and obligations when travelling on the railway: the National Rail Conditions of Carriage and the Railway Byelaws.

The basic rule is that, before boarding a train, a passenger must have with them a valid ticket (or other form of authority to travel) for that train. This does not apply if there were no facilities to buy a ticket before boarding or if the train company has put up notices saying you can buy one on board. The Byelaws also contain another exception: where an authorised member of staff has given permission for someone to travel without a valid ticket. Oddly, this is something not included in the Conditions of Carriage.

If a passenger does not have (subject to these exceptions) a valid ticket for the journey they are making then a train company has three main options:

a) *Bring a criminal prosecution*

The Rail Byelaws make it a criminal offence to travel without holding (and being able to show on request) a *valid* ticket. Simply being in possession of a ticket is not enough – it must be valid for the train the person is on and the class of accommodation they are in.

Byelaws have legal standing and so a breach of the Byelaws becomes in itself an offence punishable in law – it is not necessary to prove that there was any intent to defraud; the simple fact that the passenger was in breach of the ‘rules’ is in theory enough to mount a prosecution. This is often referred to as ‘strict liability’.

If found guilty by a court the passenger would be subject to a fine of up to £1000.

However, an operator can also prosecute for ‘intent to avoid a rail fare’ under legislation dating back to 1889 [The Regulation of Railways Act - s.5 (3)]. This has the sanction of a fine and/or up to 3 months’ imprisonment.

b) *Charge a full-price single or return fare*

If a passenger does not have a valid ticket the National Rail Conditions of Carriage allow the train company to charge the full fare for the journey. Full fare in this respect means the highest-priced single or (if requested by the passenger) return fare - i.e. the Anytime fare. Passengers cannot use railcards or take advantage of any discounts.

This can be a significant cost, especially on longer-distance services. For example, the Anytime single fare from London to Newcastle is £150.50 while that from London to Manchester is £148.

c) *Charge a ‘Penalty Fare’*

A train company can apply to operate a Penalty Fare scheme. This gives them the ability to charge either twice the full single fare to the next station at which the train is due to stop, or £20, whichever is the greater. A new ticket would also be required for any travel beyond the next stop.

In England and Wales a train company has to apply to the Department for Transport (DfT) to introduce a penalty fare scheme. In Scotland it would be Transport Scotland. In

doing so it must comply with a set of regulations. These cover such things as: training of staff, provision of ticket facilities, the display of warning notices and the operation of an appeals process.

While the rules are common to all train companies there is considerable discretion and inconsistency in how they are applied.

The first point of contact is when a member of staff finds someone without a valid ticket. Some on-train staff will simply sell a ticket while others will choose to take action for ticketless travel. It can often depend on who approaches you – it is not impossible to buy a ticket on board a train one day and to be penalised for trying to do the same thing on the same train on another. The industry points out that it prints a warning on the back of tickets issued on trains – i.e. to alert passengers to the potential risk of doing so again – though it must be asked how often people read the back of tickets.

Showing the right amount of discretion at this stage is always going to be a question of balance and judgement. This report does not set out to define or determine this – its aim is to explore what happens *after* the decision has been taken to punish a passenger for not having a valid ticket.

3. The Issues

Passenger Focus's main concern is the degree of inconsistency between these three options. This is both in terms of the degree of protection offered to passengers and the level of discretion allowed by the process.

a) *Prosecution*

The Byelaws set out a basic level of protection (e.g. there were no facilities to buy a ticket). Beyond these however, it is silent. This gives a train company considerable leeway in how it deals with passengers.

A typical process would involve a member of staff (who is specifically trained to do so) taking a statement from the passenger. The passenger would be formally cautioned before making any statement and would be sent a follow-up letter asking for their views/reasons for not having a ticket. The train company would then decide to either initiate a court summons or to invite the passenger to settle 'out of court' (usually involving an administration fee).

There is no formal appeal mechanism. Passengers will have the chance to set out their side of the story when contacted and, ultimately, the opportunity to put their defence before a court. But, the 'strict liability' interpretation mentioned above seems to limit the grounds for defence to those set out in the Byelaws - i.e. that there was no means to buy a ticket or they were given permission to board without one.

Train companies can process prosecutions themselves or they can contract with one of several third-party organisations that will do so on their behalf. How these third

parties act seems to depend entirely on the specific contract they have with the train company. Some contracts set out circumstances in which passengers should not be prosecuted but there is no consistency between operators or common standards that need to be applied beyond those set out in the Byelaws and Conditions of Carriage.

It used to be thought that prosecution was more of a last resort (i.e. where the person had a track record) or where there was evidence of intent to avoid paying. However, we have received some complaints where the organisation has jumped straight to prosecution without pursuing other avenues first or where it is a first offence. In such cases the passenger is presented with a threat – admit the offence and pay costs or go to court and risk being convicted.

When a train company outsources its prosecution to a third party it can sometimes be hard for the passenger to get a sense that someone has taken a wider look at their case. The organisation will often adopt a line based on the 'strict liability' argument while the passenger will invariably provide reasons why they did not have a ticket. It can sometimes feel that the lack of a direct relationship between the passenger and the train company prevents the case being looked at through customer service 'eyes'.

The following cases illustrate this point:

Case 1: Miss A (17 years old) could not produce her ticket when asked. The case was processed on behalf of the train company by its agent. Despite having proof of purchase *and* the return half of the ticket, she was threatened with prosecution unless she was willing to pay £92 to 'settle'. It was explained that a strict liability policy was being applied so it didn't matter if she could prove she had bought a ticket, what mattered was that she did not produce it when asked.

Upon taking this case up with the operator we were informed that the train company could not intervene with the decision made by its agent. They suggested that the amount be paid in full but that the passenger could then contact the customer service department to see whether any refund could be considered given the circumstances behind the case.

The impression given was one of a process that has a momentum of its own. It did not matter that you could prove that you had had a ticket; it did not matter that the train company might consider a goodwill gesture; what mattered was that you paid up.

Case 2: Mr B has learning difficulties. He was travelling on his own for the first time and ended up on a train that did not stop at his required station. He got off at the next station and went to find a phone to arrange for someone to collect him. He was stopped leaving the station and tried to explain the situation as best he could but was asked a series of questions that he struggled to answer/understand. He was initially issued with a demand for £104 and a threat that a prosecution could follow if it was not paid. His family contacted the train company, requesting that allowances be made for his disability. This appeal was declined. They then sent a cheque for the full amount but with the proviso that they did not accept any liability for wrongdoing. Seemingly because of this the train company returned the cheque and began to initiate prosecution. After Passenger Focus escalated the complaint the case was dropped.

It is not always easy to spot hidden disabilities so we can understand why the station staff acted as they did. It becomes far less excusable after this was pointed out in subsequent correspondence and completely unacceptable to return the cheque and begin a prosecution.

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Case 3: Mrs C had her ticket checked on board the train. When she got off she left her ticket behind, believing that as it was an unstaffed station she would not need it again. A ticket check was in operation; she did offer to pay again but this request was declined and her details were taken. The next thing she received was a court summons (the train company states that a prior letter was sent but the passenger claims not to have received one). The passenger explained her circumstances and asked the company to look at CCTV footage which would show her ticket being checked on the train. The train company relied on the 'strict liability' interpretation arguing that she didn't have a ticket when asked and so was liable. The train company did offer an out of court settlement if she paid £85 – the original ticket price was £2.

There is no dispute that Mrs C should have kept hold of her ticket. It is also not unreasonable for staff on the day to be doubtful when confronted with an 'I left it on the train' defence. What is of issue, though, is that even though Mrs C had no prior record of ticketless travel the first response was to mount a criminal prosecution. Would it not have been possible, and perhaps more proportionate, to let her pay

again but to put her details on file? If there was any repetition then the company would be in a strong position to take action.

b) Charging the full fare for the journey

The National Conditions of Carriage allow a train company to charge the full, peak fare for the journey. The passenger can pay then and there. However, passengers do not always have the means to pay immediately – or in some cases insist on complaining/appealing before paying. At such times the train company can issue what is known as an Unpaid Fare Notice (UFN). This is not a fine or a penalty – it is simply a ‘bill’ for the fare for the train you are on.

Passengers will be given a fixed time in which to pay (this can differ between operators, there is no standard period). The notice will say that passengers can ‘appeal’ but that this does not negate the need to pay within the fixed time period. In other words, even though a passenger can appeal it does not always ‘stop the clock’ on the need to pay up – a passenger waiting to hear back before paying can run a risk of missing the deadline.

Many train companies’ contract out the processing of UFNs to a third party. As part of our investigations we spoke to two of these: we were particularly interested in how they assessed passenger appeals and whether there were any standard grounds for appeal. The answer was no: while some train companies produced a list of acceptable grounds for appeal (over and above that set out in the Conditions of Carriage) for their agents to apply, this was very much on an ad-hoc basis.

Once the deadline had passed and the debt has not been paid then the train company (or its agent) can begin to take escalatory action. This would usually take the form of ‘chase-up’ letters (which can often result in an administration fee being added to the original debt). If a debt still remains unpaid the operator can pursue via the usual civil process for unpaid debts. This is a civil rather than a criminal law action but it can nonetheless badly affect someone’s credit rating. However, if it wishes, the company does have the option of reverting to a prosecution for breach of the byelaws (see above).

Our concern again rests again on the strict interpretation of liability. With train companies taking revenue protection much more seriously it is crucial that passengers are given every opportunity to purchase a ticket before they get on a train.

The first hurdle is actually being able to buy a ticket. In 2009 we asked passengers about their priorities for improvement¹. We found that improvement to queuing times

¹ Rail Passengers’ Priorities for Improvement. Passenger Focus. 2009

was the seventh highest priority (out of 31 different criteria tested), coming just behind traditional priorities such as fares, punctuality, getting a seat and information. In 2010 we published research² looking at queuing times at larger regional stations which found that queuing standards were regularly being breached.

Is it right to expect passengers who have queued for a ticket to miss their train because the company cannot meet its own queuing standards? We do not think so. The industry sometimes argues that you cannot walk out of a supermarket without paying for your shopping simply because you have queued for five minutes. True but supermarkets also react to queues by putting in extra staff and opening more tills. Ultimately if you do not like the way your supermarket acts you can find another. Railways do not generally have competitive pressures – if you do not like the way your train company sells its tickets - tough luck.

To their credit, train companies have invested in new forms of ticketing: ticket vending machines and internet sales, especially when coupled with the ability to pick up tickets from the ticket machine, have reduced reliance on the ticket office. However, this is not without consequences for ticketless travel.

Passenger Focus research in 2010 on ticket vending machines³ showed that some passengers struggle to buy a ticket from a machine as they were not provided with precise enough information to ensure they got the correct ticket at the right price. Particular problems surrounded the restrictions attached to some tickets – for example travelling with an off-peak ticket during peak times; using an Advance ticket on the wrong train; or travelling on the wrong route or by a different operator's train.

It is also possible that you cannot buy the exact ticket you require – some ticket machines do not sell the full range of tickets. At such times the expectation is that you buy 'something' and swap it at the first opportunity. Other machines may be 'card' only and not accept cash payments.

In short, we believe that there are a number of perfectly valid reasons why a passenger may not have a ticket or where they have one but it is not valid for use on that particular train. Having a very black-and-white approach to ticketless travel completely ignores the fact that buying a ticket is not always a black-and-white process.

² Still waiting for a ticket? Ticket queuing times at large regional rail stations. Passenger Focus. July 2010

³ Ticket Vending Machine Usability. Passenger Focus. 2010

For example:

Case 4: Mrs D bought tickets online via a train company. When travelling on the final leg (a different company) she was told that her ticket was not valid at that time of day and issued with an unpaid fare notice for £58.40.

She appealed only to be told (by the third party operating on behalf of the second train company) that the ticket was invalid and that she needed to pay up. She then contacted the customer services department of the first train company (the one from whom she originally bought the tickets) who promptly told her that her tickets were valid. With our help she was able to get the second train company (the ones who issued the UFN) to rescind it. Confused?

If the industry sometimes struggles with restrictions and complexity what price the passenger? Everyone makes mistakes from time to time, which is why it is important that there is a review/appeal mechanism to pick these up. What is worrying here, is that the third-party agents did not – they simply endorsed the train company's action.

Case 5: this wasn't a case received by Passenger Focus – it comes from the Guardian (28.1.12) – but is a perfect example of what can happen when process runs up against reality. Mr E bought a ticket via the internet and elected to pick it up from the ticket machine at the station. However, on arriving the machine was malfunctioning so he couldn't get his ticket. He asked a member of staff what he should do and was advised to board. He was subsequently issued with a UFN for £162.50. On arriving at his destination station he went to the ticket office and was issued with his pre-booked tickets. The train company apologised for the fact that the ticket machine was not working and for the advice given by the member of staff but did not revoke the UFN. He then appealed to the agents used by the train company to process UFNs who also refused to revoke it. The argument used was again one of 'strict liability'. They even threatened 'further action' if this was unpaid.

Once again we have the industry hiding behind the 'strict liability' interpretation and once again we see a disconnect between the operator and the agents operating on its behalf. The train company apologised for the fact that the machine wasn't working and for the advice given by its staff but still it was the passenger's fault. It took the intervention of a newspaper in this instance before someone looked at this from a customer service perspective.

This case also highlights the inconsistency between the Byelaws and the Conditions of Carriage. Being given permission to board from a member of staff is accepted in the Byelaws but not, seemingly, by the Conditions. Why?

Customer service also features in this next example:

Case 6: Two elderly, disabled passengers had tickets for a specific train. One of the passengers fell over and was in pain. In a desire to get home they travelled on an earlier train. They acknowledged that their tickets were not valid but felt that the train company would understand the circumstances. Wrong assumption: they were issued with an unpaid fares notice for £239.

Would it not have been possible for them to pay any *additional* costs for travelling earlier without being hit with a bill for two brand new peak single fares?

The drive toward 'smart-ticketing' could also increase risks for passengers. With a paper ticket you at least have something that could be shown as proof of purchase. With new technologies – such as smartcards, tickets via mobile phones or bar codes - the proof of purchase is heavily reliant on the technology working and on occasions it fails. Until a member of staff tells them how would a passenger know that his or her electronic ticket had not loaded correctly?

c) *Issuing a Penalty Fare*

If you are in a designated Penalty Fares area the train company will treat you in accordance with the Penalty Fares rules. You are liable to pay either twice the full single fare to the next station at which the train is due to stop, or £20, whichever is the greater.

Unlike unpaid fare notices and prosecutions, passengers have more to fall back on than the National Rail Conditions of Carriage. Penalty Fare schemes set out an explicit set of rules on when they can be issued and when they cannot. For example, a penalty fare should not be issued where the passenger has a ticket but which is not valid for that particular route or where he/she has got the restrictions wrong.

Discretion must also be used for passengers with disabilities or who do not speak English very well. Interestingly, discretion should also be shown where long ticket office queues have built up, or where fewer ticket windows are open than normal. This goes well beyond the basic provisions in the Conditions of Carriage and the Byelaws – which as we have seen only really concern the opportunity to have purchased a ticket in advance.

One specific requirement of operating Penalty Fares is that there must be an independent appeals body for passengers who feel they have been unfairly issued a Penalty Fare. There are currently two accredited agencies offering this service: the Independent Penalty Fares Appeals Service (IPFAS) and the Independent Appeal Service (IAS). These are independent bodies though it must be said that IPFAS is part of the Southeastern train company – albeit with separate management structures. Both organisations also have arms that provide other revenue protection services for train companies – for example, both will also process UFNs on behalf of train companies.

While Passenger Focus can provide advice for passengers and may be able to deal with associated aspects of the complaint (e.g. staff attitude) the core of the issue (the appeal against the penalty) is dealt with by IPFAS and IAS. They are the appeal bodies in such cases – we have no power to overturn their decisions.

These bodies handle appeals in accordance with guidelines approved by the DfT. These set out a number of scenarios where appeals will be upheld and those that will be declined. This is designed to ensure consistency across operators but, for obvious reasons, it is not made public. They will typically uphold cases where an operator has failed to meet the requirements of its scheme (e.g. if warning notices were not properly displayed or where appropriate discretion has not been used).

There is also a set procedure for handling appeals. Passengers have 21 days to appeal against a Penalty Fare or to pay it. The address/process is set out in the paperwork given by the ticket inspector. If the appeals body upholds the appeal the passenger does not have to pay (N.B. they are still required to pay the fare for the journey taken – just not the penalty bit).

Penalty Fare schemes have more in the way of passenger protection and safeguards than the Conditions of Carriage and the Byelaws – which is welcome - but this does not make them perfect. In December 2010 the DfT consulted about proposals to increase the penalty from £20 to £50. Our submission⁴ reflected many of the points made here about queuing times, vending machines and discretion.

It also raised concerns about the suitability of penalty fares schemes for longer-distance operators. On such routes the fare to the next station can be considerable, even without doubling it.

Our next case provides a very vivid example:

Case 7: Miss F bought an Advance Ticket for a long-distance journey. She used her railcard – which reduced the fare from £14 to just under £10. Due to upsetting personal circumstances she forgot her railcard when she travelled. Despite having her ticket checked on route she was challenged at the destination and issued with a Penalty Fare Notice for £260 (twice the most expensive peak fare for that journey). She was willing and able to prove that she had a railcard after the event but to no avail. She did not have the railcard with her on the day so had an invalid ticket.

It took the intervention of Passenger Focus to get a senior manager to review the case whereupon the penalty was waived in the light of the extenuating circumstances.

⁴ <http://www.passengerfocus.org.uk/news-and-publications/document-search/document.asp?dsid=3556>

While this was welcome it highlights two fundamental issues:

- the passenger could retrospectively prove she had a railcard
- The disproportionate nature of the penalty. A £4 saving was met with a £260 penalty. The punishment was way in excess of the offence.

The next example illustrates the inflexible nature of the system.

Case 8: Mr G could not produce his ticket when asked and was issued with a Penalty Fare Notice. He found the ticket shortly after but unfortunately the inspector who issued it had left the train by then. He approached station staff immediately he got off the train but they couldn't help him. The passenger has a card receipt showing the ticket purchase was made a week in advance and the ticket itself is printed with the date it was sold. The passenger appealed but it was rejected.

We originally contacted the train company who said that if the appeal body had rejected the appeal they would not intervene. We contacted the appeal body who pointed to the 'rules' which do not allow a passenger to produce a ticket after travel. We believe that, unless the train company can demonstrate past behaviour which might indicate that this is a fraudulent claim, it is pretty unreasonable when a passenger finds his ticket shortly after a penalty notice has been issued that it cannot be rescinded. The line "you couldn't produce it when asked" may be technically correct, but it does not feel like either good customer service or natural justice.

Case 9: In a similar but even more extreme case Mr H couldn't find his ticket when asked. He did have the receipt and the return portion but he was still issued with a penalty fare notice. The passenger is registered blind and assumed that he had dropped the ticket and not noticed.

His appeal to independent review body was rejected. He then wrote to the train company who also confirmed that the penalty was issued correctly and would not overturn it. Neither response made any mention of the fact that the passenger is blind.

We pointed out this rather pertinent fact to the train company. Their response was that 'it was the responsibility of the passenger to have all their travel documents' and suggested that we go back to the appeal body – they maintained they were not able to overturn the penalty fare once issued. We did - they ultimately agreed to overturn the penalty once the passenger provided proof that he was registered blind.

We often detect a sense of irritation on the part of the train company that we take such cases back to them. They see this as a function of the independent appeal service. That may be so, but we believe that the passenger is their customer and while the appeal service applies a somewhat mechanistic approach to appeals it is their duty to take a wider look from a customer service perspective. Good companies look at circumstances behind the complaint, they don't hide behind process.

4. Conclusions

Our investigations reveal an inconsistent approach, characterised by:

a) *Differing levels of passenger protection*

Penalty Fare schemes come with a more developed and explicit set of protections for passengers. While we may want these extended it does not detract from the fact that they exist. In the case of Unpaid Fare Notices the only national grounds for appeal are the clauses in the Conditions of Carriage. Everything else depends on the particular train company applying discretion or agreeing specific grounds for upholding appeals with its agent. There are some examples of train companies who have developed guidelines – we are aware, for instance, of at least one operator which has agreed that passengers forgetting to carry their railcard (but who can prove they had one) will not be dealt with as having boarded without a ticket. These are welcome but they are a piecemeal, company-by-company response rather than something that applies across all operators.

Equally, penalty fare schemes must factor in excessive queuing times when reviewing an appeal but there is no explicit requirement to consider this in the Conditions of Carriage. They simply rely on the issue of *whether* there were means to purchase rather than how adequate they were. Unless the train company tells its UFN provider to allow such appeals it will apply the conditions and reject them.

b) *Impact of third-party organisations*

Third party organisations have considerable freedom. They can sometimes process cases up to debt collection or criminal prosecution level without engaging the train company. This emphasises the importance of the instructions given by the train company in the first place. Several of the worst cases received by Passenger Focus were only resolved by us bringing the case to the attention of a senior manager within the train company at the last minute – this sometimes feels like it is first time that someone has looked at the case from a customer service rather than a contractual perspective. Train companies may be able to delegate responsibility, they cannot delegate accountability.

c) *Process for appealing*

Penalty Fares again offer a higher level of protection. If issued with a Penalty Fare Notice you have 21 days in which to appeal against the decision. You are then told whether your appeal has been successful and if not you are then given a further 10-

14 days in which to pay without incurring any further charges. With Unpaid Fare Notices, however, you are effectively told to pay up in a fixed time irrespective of whether you have heard the outcome of your appeal.

d) Prosecutions

The 'strict liability' interpretation of the Byelaws gives too much power to the industry. Car parking offences no longer carry the threat of criminal sanctions: you cannot be prosecuted for shoplifting without some proof of intent – so why should the railway be different? Indeed, it must be asked whether strict liability is consistent with article 6 of the Human Rights Act concerning the right to fair hearing.

Over reliance on strict liability means that it can be particularly hard for the passenger to get a sense that someone has taken a proper look at their case.

5. Recommendations

Our submission to the DfT (see above) sets out our recommendations on Penalty Fares. Rather than reiterate these we have focussed the rest of this paper on Unpaid Fare Notices and prosecutions. It looks at improving the process and way that such cases are dealt with rather than improvements to the entire fares and ticketing structure itself⁵.

a) Reform of the Unpaid Fare Notice process

- i) Individual train and station staff need to be clearer with passengers about what an Unpaid Fares Notice is. Staff need to be frank about what is going on. It's not an administrative nicety that will necessarily be overturned if you "write in". It's a legally binding invoice for, in many cases, a substantial sum of money.
- ii) Train companies should monitor the number of UFNs being issued by on-train staff. Are staff handling situations in a similar manner or are a large number of UFNs due to individual members of staff being overzealous? In such cases any problem could be addressed through training.
- iii) The industry (in this sense we mean the DfT and the Association of Train Operating Companies – ATOC) should work to produce a common process and timescales for appeals that are no less favourable to passengers than if a formal penalty fares scheme was operated.
- iv) Train companies must bring customer relations considerations into the appeal process to a much greater degree – it is no good having the Conditions of Carriage on your side if it has generated huge ill-will towards the company amongst reasonable, law-abiding people.
- v) Train companies need to retain overall accountability even when they have transferred responsibility for UFNs to a third party. In the longer term item iii) above will set common processes. In the short term train companies should agree specific grounds for upholding appeals and monitor results. This would include the points set out in section b) below.

⁵ An outline of our wider work on fares and ticketing can be seen in 'Fares and Ticketing Study. Passenger Focus. 2009.

- vi) If a passenger has been advised by a member of staff to board a train without a valid ticket they should not be penalised for doing so. We note that both the Byelaws and the Penalty Fare Rules allow for this scenario – UFNs should be brought into line as well.
- b) *ATOC and train companies to introduce clear and consistent guidelines on when discretion should be shown. This should include where:*
- i) A passenger cannot produce a railcard
 The Conditions of Carriage allow for a season ticket holder who leaves his/her ticket at home to be given a ‘life’ and not to be penalised. Why should railcard holders not get similar treatment? If a passenger claims to have forgotten their railcard then their name/address⁶ could still be taken and the passenger be required to present it within a fixed time. If they fail to do so then they could be pursued for deliberately trying to evade payment. Ideally there would be a central database of railcards so that things could be checked centrally.
 - ii) A passenger has a ticket, but not for that particular train
 - ideally, we believe the industry should be looking to charge the difference between what a passenger has already paid and the price of the cheapest walk-up fare valid on that train, possibly plus an administration fee to deter people from doing it habitually.
 - if this is deemed excessive then at the very least the passenger ought only to be charged the *cheapest* walk-up fare that is valid for that train at the point of boarding – i.e. rather than the Anytime peak fare.
 - iii) A passenger has missed his/her booked train
 - if a passenger misses their booked train because of delays and cancellations to other rail services there should be no additional charge. Ideally this would apply to cross-London connections (i.e. using London Underground services)
 - if you go to a ticket office on the same day, i.e. before you get on a train, and say you have missed the train you were booked on the charge should be the difference between what the passenger has already paid and the price of the cheapest walk-up fare valid at that time (again possibly plus an administration fee to deter people from doing it habitually).
 - Finally, and without suggesting that passengers with the cheapest possible ticket for, say, the 2230 service who get on a high peak train should get away with it, be reasonable with passengers who have missed one off-peak train and are on the next one. Does it really matter if

⁶ In doing so staff need to be mindful of a passenger’s personal security. There should always be an option to give these in a written rather than spoken form to avoid being overheard. This is also a concern of the Suzy Lamplugh Trust.

somebody is on the 1105 or the 1135 most days of the week? Is the one-off gain of revenue from a new ticket sale worth it if as a result the passenger runs down the train company to everybody they know and/or resolves to drive next time and potentially for the rest of their life?

- c) *Greater clarity is needed surrounding the process by which a train company decides to prosecute.*

It could be argued that the heart of the problem is that the regulations were written at a time when tickets were primarily purchased at ticket offices. Staff could provide advice and 'getting it wrong' suggested some intent or recklessness. These self-same regulations are still being applied despite the fact that passengers are often expected to pick their way through route options and restrictions without adequate information and without direct input from trained staff.

In the longer term we feel there may be a need for the DfT to revisit the powers vested in train companies through the Byelaws. As written, they enable someone who makes an innocent mistake to be turned into a criminal: leaving a railcard at home should not constitute a criminal offence. Prosecution ought to be accompanied by some intent to avoid payment.

This may require legislation – so is unlikely to be a quick fix – but there is still much that DfT and the industry could do in the shorter term. We feel there is a need for a code of conduct covering the following:

- Train companies should not move to prosecution (unless there is clear evidence of intent to avoid payment) for a 'first offence'. A person's details can be taken and a record kept. If anything this could help a train company - a passenger cannot claim to be unaware if they have previously been warned.
- if a person does not have a ticket but can demonstrate proof of purchase (e.g. through a receipt or credit card statement) they should not be prosecuted or threatened with prosecution
- It is essential that train companies actively manage their relationship with their agents. Train companies *must* ensure that safeguards are built into any contracts and that their agents are following these. Reliance on 'strict liability' by third parties is unacceptable.

- d) *Greater transparency is required.*

It will be important to establish a sense of scale when dealing with ticketless travel - at present we only have details of the cases we have received ourselves. We hope to get a better idea of just how many penalties/UFNs/prosecutions are actually being issued or processed but we think there is merit in building greater transparency into the process come what may. Generally, more transparency means more accountability and requiring train companies to publish numbers of penalty fares and

unpaid penalty fares notices issued (and for what), the number of appeals and numbers of appeals upheld (including reasons) may impact on their behaviour.

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