



# Ticket to ride?

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It is right and proper that passengers buy a ticket. Passenger Focus has never had a problem with the rail industry taking steps to catch those who deliberately set out to avoid payment – those who do are effectively being subsidised by everyone else. In doing so, however, train companies must make sure they do not scoop up those who make an innocent mistake alongside those who deliberately set out to avoid paying. Our investigations reveal that this is not always the case – for example, people who forget to bring their railcard with them may well face the same punishment as those who set out to avoid paying altogether.



**B**efore boarding a train it is the passenger's responsibility to ensure that they have with them a valid ticket (or other form of authority to travel) for that train. Unless there were no facilities to buy a ticket or if a train company has put up notices saying you can buy one on board then you risk being pursued for 'ticketless travel' if you board without a valid ticket or authority. Train companies that wish

to do so have three main options: they can charge the full-price single or return fare, they can, in certain areas, charge a 'Penalty Fare', or they can bring a criminal prosecution.

It is hard to put a sense of scale on the issue. 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 – but we suspect this

is just the tip of an iceberg. What we do know is that these cases can have a big impact on passengers and staff. Passengers resent the 'fines' levied and the accusation they are cheats while front-line staff are left to manage the conflict this brings.

We believe that any revenue protection system needs to address five core principles. We set these out below along with our concerns about the existing system.

## 1 Consistency

While the basic 'rules' are common to all train companies there is considerable discretion and inconsistency in how they are applied. 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 no action being taken, 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?

### For example:

**As observed at Edinburgh.** A German tourist boarded with only the booking confirmation from a print-at-home ticket. The guard carefully explained the situation and allowed the passenger to travel without additional cost.

**Mr H selected the 'Print-at-Home' option** for his tickets but forgot to print them. On the day he took his email confirmation to the ticket office who told him to speak to the train conductor. He did so prior to boarding and was advised to get on. His details were taken later by a different member of staff. He subsequently received a court summons for not having a valid ticket.

## 2 Discretion

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 – on some routes 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 day.

Showing the right amount of discretion at this stage is always going to be a question of balance and judgement. We accept that it can be something of a no-win situation for staff – people only 'shout' when a situation has been badly handled, not when it has been handled well. But even if staff only get it wrong occasionally the consequences for the individual concerned can be severe.

**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.

Having a consistent set of criteria where discretion should be used will help reduce some of this conflict but there will always be a need for a robust appeal mechanism to act as a safety net.



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### 3 Fairness

This is probably the main complaint from passengers – often with good cause. It is widely acknowledged that we have a complex fare structure. It can sometimes be difficult to get all the information needed in order to buy the right ticket and yet we routinely encounter passengers who are being penalised for travelling at the wrong time, on the wrong train, or on the wrong route. At times there might be an even more fundamental issue – the ticket you want is not actually available or the ticket machine isn't working properly. We have also been contacted by passengers who are being penalised because they didn't have their ticket or railcard with them but who can prove retrospectively that they did actually have one.

**Miss A could not produce her ticket when asked.** 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'.

**Ms B could not produce her 16-25 Railcard when asked.** The ticket inspector issued an Unpaid Fares Notice and told her that this was just a 'reminder' and that if she could provide the railcard then it would be alright. Despite providing proof of her railcard her appeal was declined.

It used to be thought that prosecution was more of a last resort (i.e. where there was clear evidence of intent to avoid paying or where the person had a 'track record'). However, we have received some complaints where the organisation has jumped straight to prosecution where there is absolutely no intent whatsoever and where the mistake is a 'first offence'. The latter could be helped by a shift towards taking a person's details (in a safe and discreet way that does not compromise personal security) and building up a record. If anything this could help a train company – a passenger cannot claim to be unaware if they have previously been warned.



**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 was subsequently offered an 'out of court' settlement if she paid £85 – the original ticket cost £2 and she had no prior record of ticketless travel.

Another key aspect of fairness is the right to a fair hearing. Passengers issued with a 'Penalty Fare' have a formal appeal mechanism that they can use. This is not without its faults but at least it exists – outside Penalty Fare areas there is no such mechanism. If you do not have a valid ticket on these services you may be required to pay the full, peak fare. This can be a significant cost, especially on longer-distance services – e.g. the Anytime single fare from London to Newcastle is £150.50 while that from London to Manchester is £148. If not paid then and there you will be issued an Unpaid Fare Notice (UFN) – which is basically an invoice to be paid in a fixed time. 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 and incurring admin charges.

**Due to earlier delays and cancellations Ms W was unable to pick up her booked tickets**

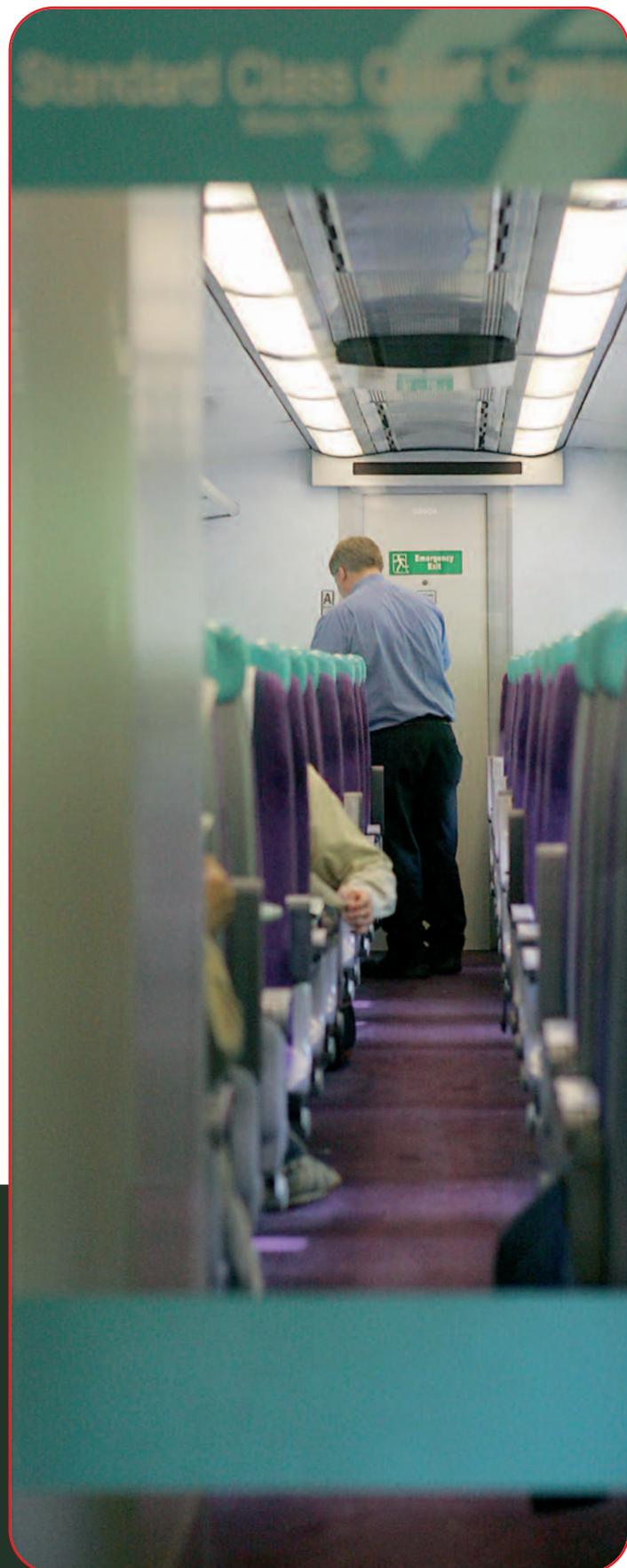
from a ticket machine as planned. She rang the train company and was advised to board and use her email confirmation. She was given a UFN for boarding the train without a valid ticket. Even though she was able to collect the original tickets at the end of her journey, her appeal was rejected.

And finally, punishment must be proportional to the 'offence'. Being asked to stump up an additional £150 for getting on the wrong train between London and Newcastle for instance is a considerable outlay for most people and that's before we start to factor in the impact of a couple or family travelling together. Likewise, facing a potential criminal prosecution for something as innocent as leaving your railcard at home.

**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. She forgot her railcard and was issued a penalty fare 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.

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### 4 Accountability

Train companies can outsource many aspects of revenue protection. How these third parties act seems to depend a great deal on the specific contract they have with the train company. Some are even able to process cases up to debt collection or criminal prosecution level without engaging the train company.

When a train company has outsourced these functions 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'. 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 the first time that someone has looked at the case from a customer service rather than a contractual perspective. While train companies may be able to delegate responsibility, they cannot delegate accountability.

**Mrs D bought tickets online from a train company.** When travelling on the final leg (on a different company's train) 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 penalty) to rescind it.

### 5 Transparency

At present we only have details of the cases we have received ourselves – there is no information from the industry as to how many fines are issued or prosecutions mounted. We think there should be. Not only will this provide a better sense of scale but, generally speaking, more transparency drives more accountability. Requiring train companies to set out how many penalties are issued, for what, and how many are subsequently overturned may impact on their behaviour.

## What we want

We set out below four key areas that we want train companies to improve. This is just a summary – a more detailed analysis of the issues and our recommendations can be found at [www.passengerfocus.org.uk](http://www.passengerfocus.org.uk)

- Introduce a code of practice for use in non-penalty fare areas which sets out clear and consistent guidelines on how passengers who board without a valid ticket should be dealt with<sup>1</sup>. This must include areas where discretion should be shown and cover train companies and their agents. This includes:
  - clear rules for dealing with passengers with disabilities (including hidden disabilities), children and people for whom English is not a first language.
  - rules for where a passenger has a ticket, but not for that particular train or has missed a booked train.
  - a formal right of appeal against any decision.

Some train companies already operate 'local' guidelines and these can form a useful starting point when building a more consistent set of national criteria.

- Passengers should not face a criminal prosecution without proof of intent to defraud.
- Greater flexibility where a passenger can prove they bought a valid ticket but cannot produce the ticket when required. This could include:
  - a debit/credit card receipt
  - subsequently showing that you did have a railcard – ultimately we see no reason why this could not be automatically checked via a secure database.
- Greater transparency of how many penalties are issued, for what, and how many appeals are subsequently upheld or overturned.

## What Next?

We are already talking to the Association of Train Operating Companies (ATOC) about the development of the code of practice we mention above. In order to make this as good as possible we want to hear from passengers about their own experiences.



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## What do the rules say?

	<b>Criminal Prosecution (criminal law)</b>	<b>Being charged a peak fare</b>	<b>Being issued a Penalty Fare</b>
<b>Authority (law or regulation)</b>	Railway Byelaws (it is an offence to breach a byelaw)  1889 Regulation of Railways Act (offence to evade payment)	National Rail Conditions of Carriage (NRCoC) create a contract between the passenger and the train company	Penalty Fares Act  Formal statements setting out Rules and Policy
<b>Exceptions to the need to have a valid ticket for travel prior to boarding the train</b>	(i) there was no means of buying/validating at the station of origin or (ii) there was a notice permitting journeys to be started without a valid ticket; or (iii) an authorised person gave permission to travel without a valid ticket  1889 Act – requires evidence of intent to evade payment	(i) There was no ticket office or ticket machine open / working. (ii) there was a notice permitting journeys to be started without a valid ticket.	(i) Same protections as per Byelaws and NRCoC. (ii) Additional set of protections laid down in penalty fare policy: <a href="http://assets.dft.gov.uk/publications/rail-penalty-fares/rail-penalty-fares-policy.pdf">http://assets.dft.gov.uk/publications/rail-penalty-fares/rail-penalty-fares-policy.pdf</a>
<b>Passenger Rights</b>	Passenger given legal caution. Passenger invited by letter to make observations/comments Cases sometimes 'settled' in return for payment (ticket cost and fees); or Court summons	Pay then and there or be issued with an Unpaid Fares Notice (i.e. invoice to pay within a fixed period). Admin fees can be added for late payment. No formal appeal mechanism. Civil debt collection can be pursued	Passenger given a Penalty Fare Notice (PFN) which can be paid then and there or an appeal lodged within 21 days. Appeal criteria set by Govt. Appeal judged by an independent body. If lose appeal then need to pay. Admin charges can be levied for late payment. Civil debt collection can be pursued
<b>Scale of penalty</b>	Fine up to £1000 (Byelaws). 1889 legislation (fine up to £1000 and/or 3 months' imprisonment)	Highest price single/return fare for the journey (i.e. peak fare, no railcard discounts allowed)	Twice single fare to next station or £20 – whichever is the greater



## Contact us

© 2012 Passenger Focus

One Drummond Gate  
Pimlico, London SW1V 2QY

t 0300 123 0860

w [www.passengerfocus.org.uk](http://www.passengerfocus.org.uk)

e [info@passengerfocus.org.uk](mailto:info@passengerfocus.org.uk)

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name of the Passengers' Council

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