

27 January 2010

Dear David

National Rail Penalty Fares Rules, Policy & Charge Change Proposals

Introduction and general comments

Passenger Focus¹ welcomes the opportunity to comment on the proposed changes to the existing penalty fares rules and policy. Comments and views have been sought throughout the organisation and are included here.

We welcome the intention to remove differences between the various penalty fares schemes, especially where their areas of validity abut. This should help considerably in reducing passengers' confusion.

Passenger Focus, and its predecessor bodies, have supported penalty fare schemes as a means of ensuring that revenue due to the train companies is not lost to them. That support, however, has always been given with the proviso that the scheme is

- fair to passengers;
- supported by adequate retail facilities at stations;
- easy to understand;
- consistent;
- undertaken with due discretion so that passengers who have innocently fallen foul of the scheme do not have the full rigour of the regulations brought down upon them; and
- provided with effective arrangements to appeal against the issue of a penalty fare.

¹ *Passenger Focus* is the operating name of the Rail Passengers Council, the statutory body (established under the Railways Act 2005) to represent the interests of rail passengers.



Specific comments on the consultation

These comments are arranged in paragraph order of the document, for ease of reference.

2.6 The Penalty Fares Rules 2009

Paragraph 2.6 is erroneously numbered 2.5, which it shares with the previous paragraph.

4.1 – 4.2 Is a penalty fares scheme appropriate?

We agree that those services where a frequent stopping pattern hampers effective on-train ticket examination are best suited to penalty fares schemes. These are typically urban and suburban services; in many cases, however, such services may extend well beyond the immediate urban/suburban area. Under such circumstances, we generally prefer that a penalty fare scheme apply to an entire line of route or franchise area, for ease of application by the industry and comprehension by passengers. Within such areas we accept that some stations may need to be exempt. We touch on this again immediately below.

4.3 – 4.5 Penalty fares trains and stations

Generally speaking, we prefer no exceptions, though we accept that in some circumstances this may be unavoidable – for instance at unstaffed stations where persistent vandalism prevents deployment of ticket machines. Exceptions to the rule, which may be wholly justified, need to be clearly explained to avoid misunderstandings by and confusion to passengers.

4.6 – 4.10 Compulsory Ticket Areas (CTAs)

Given the administration problems, we trust that most companies will shun the perceived need for a CTA at stations. If, however, such a CTA is introduced at a gated station, the needs of non-travellers who are assisting or meeting passengers, especially those with luggage or disabilities, must be suitably accommodated.

4.11 – 4.14 Ticket facilities

Nowadays train companies are taking revenue protection much more seriously, both in terms of inspecting tickets and installing ticket gates. In such circumstances, it is crucial for passengers to be given every opportunity to obtain a ticket before boarding the train. Passenger numbers are also increasing which, in turn, exerts greater strain on ticket outlets to meet demand in a timely manner. For passengers this has become an increasingly serious concern. The spring 2009 National Passenger Survey, for instance, saw 13% of passengers rate ticket-buying facilities as poor; a further 15% were unimpressed by them.

While part of the solution is to provide alternative points of sale (i.e. internet or telesales) many passengers will still rely on the station ticket office. For them, the matter of queuing times is uppermost. This is far from being an isolated concern: in 2007, our research² into national

² *Passengers' priorities for improvements in rail services*, Passenger Focus, 2007; page 9.



priorities for improvement revealed that improvements to shorten queuing times was the sixth highest priority of 30 different criteria, just behind traditional priorities such as fares, punctuality, getting a seat and information.

The queuing-time standards require that the industry make “reasonable endeavours” to ensure that no passenger has to queue for more than five minutes at peak periods and three minutes off-peak. Retail facilities at stations *must* meet the needs of passengers.

We are concerned that passengers should not miss trains if, having queued longer than the stipulated three/five minutes, they still have not been able to buy a ticket. Under such circumstances they should be able to board trains and purchase tickets either on board or at destination, at the booking-office price. The train company needs not only a system in place to ensure that this information is advised to on-train (and other revenue-protection) staff but also a mechanism to ensure that it is used; presence of a system alone is of scant benefit to passengers if its provisions are not invoked in sufficient time to enable them to take advantage.

Passenger Focus's mystery shopping research early in 2007 showed that queuing targets were being exceeded at certain times, especially at larger stations. This triggered wider research³, published in 2008, to investigate queuing times at 12 major “Category A” stations. These results confirmed that queuing times are being exceeded on occasion – especially at weekends and evenings, times usually considered off-peak:

- Off-peak queuing times were longer than peak-time queues, with one in six passengers waiting longer than three minutes, whereas only 5% of passenger waited longer than five minutes in the peak
- Across all the stations surveyed, weekends saw the longest queues with 21% of passengers waiting longer than three minutes.
- London Victoria had the worst weekend queue lengths: three fifths of passengers waited longer than three minutes.
- London King's Cross (NXC windows and TVMs) suffered the longest waits at peak and off-peak periods: one in four waited longer than five minutes in the peak and three fifths waited longer than three minutes off-peak. One passenger waited 23 minutes on a Sunday.
- Stations with the highest passenger volumes were not necessarily the worst performers: London Waterloo (61 million passengers annually) came only just below average, whereas King's Cross (with but 20 million a year) had the longest queues.

³ ***Ticket Queuing Times at Major Stations***, Passenger Focus, 2008. The target was to collect 2,000 measurements at each of twelve major stations, evenly divided between ticket offices and TVMs. In total 13,406 ticket office and 13,860 TVM timings were recorded = 27,266 timings in all.



Based on our research, we are not convinced that train operators are paying sufficient attention to queuing times; neither are they rectifying known problems nor actively monitoring queue lengths.

This consultation document sets out an expectation that train operators will undertake checks and make arrangements when long queues build up at windows. This expectation must be backed up by a commitment to action which needs to be measured. If unmeasured, it is a false protection. For that reason, we recommend:

- active monitoring of queue lengths being written into franchise agreements;
- a review of staffing requirements in the off-peak, and;
- the need for penalty-fare/ticketless-travel schemes to be suspended at times when queuing standards are not being met.

At present, the Department for Transport's policy is too weak in this regard. It establishes a requirement but lacks a means of enforcing it.

Excess-fare windows at destination stations should also adhere to maximum waiting times: passengers should not have to queue for long periods or miss onward connections.

Rapidity of response is vital to both ticket queues which exceed the queuing standards and ticket machines, to ensure that the latter are fully functional.

During consultation in 2009 with East Midlands Trains over the introduction of a penalty fare scheme, Passenger Focus agreed with that company a process and wording in case of a temporary suspension of the scheme due to queue lengths or other reasons for failure to provide tickets immediately upon demand. (This text is attached at Appendix B.) We strongly believe that the DfT should require similar arrangements to be a formal element of all those penalty fare schemes which it approves in future.

Ticket Vending Machines

Ticket machines can provide a useful service to passengers. However, some of their limitations have particular relevance in connection with the charging of penalty fares:

- they must accept principal credit/debit cards;
- they must provide change in case of cash payment; and
- they must sell tickets to all destinations and by all permitted routes.

No passenger should be charged a penalty fare where the ticket machine fails in any of these categories.



While we have some concerns about the increasing use of ticket vending machines at stations as detailed in our report⁴, they are a useful addition to booking offices at larger stations.

At unstaffed stations or at other stations when the booking office has closed, there must be a means of explaining ticket validity and routeing, readily available to all passengers using TVMs, to ensure that they purchase a valid and the most appropriate ticket for their journey. Passengers should not have to guess which is the appropriate fare for the route on which they wish to travel, or at the time when they travel. Full details of validity and routeing⁵ of each type of ticket must be easily comprehensible and immediately available, especially in the case of return tickets. The industry must remove avoidable misunderstandings such as this. We have referred the widespread problem of incomprehensible or ambiguous routeings on ticket vending machines, such as these examples, to the Association of Train Operating Companies.

As reliance on ticket machines increases, passengers must have clear information about the validity of the ticket which they are about to buy. The same requirement applies also to the need to show clear details about ticket validity and routeing; TVMs cannot provide this detail nor can the National Rail Enquiries website, which merely defaults to a general message about Off-peak tickets being valid only at off-peak times. Passengers at unstaffed or destaffed stations need fuller information than this or they have no means of finding the information vital to the validity of their ticket – especially the return half. National Rail Conditions of Carriage 10 to 13 clearly require passengers to observe the relevant restrictions and routeing regulations, but no means of discovering these are provided in the absence of trained staff.

Not all passengers have credit cards and for that reason TVMs must accept cash and maintain sufficient supplies of change to meet demand. Recourse to records of the availability of change in each TVM must be available for subsequent investigation should a ticketless passenger claim that a machine, at the time when he tried to purchase his ticket, could not supply the change necessary to complete the transaction.

On a wider issue:

- the absence of easily available and understandable information on ticket validities for passenger use must be available at all TVMs. Without such basic information, passengers cannot be expected to know which ticket to buy for a journey at a particular time. In particular, details of specific restrictions on the validity of the ticket about to be bought, including relevant easements where applicable, must be available - not simply bland generalisations about ticket types.

⁴ **Buying a ticket at the station:** *Research on ticket machine use.* Passenger Focus. October 2008.

⁵ Brief details of two cases of such passenger misunderstandings of routeing are shown at Appendix A.



- passengers must be given sufficient detail about permitted routes or specific routes to enable them to select the correct one from the options available. Railway jargon such as 'via NXEA' or '✕ BIRMINGHAM' is meaningless to many passengers, especially infrequent travellers.
- each machine should be able to sell tickets to every destination and by all permitted routes. In the 21st century passengers should not have to buy a ticket to an alternative destination and exchange it en route due to the inability of the means of ticket issue to sell a ticket to the destination required, or by the route required, where this is a 'permitted route'. Some passengers may not know which other destination to choose.

Arrangements must also be in place to monitor queue lengths at TVMs. In many circumstances these now replace the traditional booking office where queuing standards apply. Identical queue-time arrangements are required at TVMs as at ticket windows.

TVMs must not deny passengers the ability to purchase Off-peak tickets in good time to enable all such purchasers to reach the platform to catch the first train on which use of such tickets is permitted. Clearly this requires sales to be made some time before the ticket becomes valid for travel; tickets can be bought from ticket offices before the period of validity begins and therefore the same arrangements must be available from TVMs. This is especially important where the train service is infrequent.

Section 4.14 mentions exceptional circumstances indeed. There can be very few National Rail stations small enough to have no ticket vending machines but where a booking office is open at all times.

4.15 Unstaffed stations

The definition of 'unstaffed' stations has changed noticeably since the Penalty fares regulations were first introduced. As mentioned in the previous paragraph, with the exception of major stations in the metropoli, there are probably almost no National Rail stations now where ticket sales points are staffed at all times when trains call. At the times when their booking offices are closed, such stations are, in effect, unstaffed. Therefore, the same provisions need to apply to these 'destaffed' stations as to stations which never have a staff presence.

If TVMs cannot provide the same ticket-issuing service and validity information provision as booking offices, we question how unstaffed or destaffed stations can remain within the penalty fare schemes. Passengers travelling from such stations are clearly at a major disadvantage when buying tickets.



4.16 – 4.24 *Publicity and Warning notices*

Adequate notice must be given in and around the area where penalty fares are to be applied. Warning notices must be clear and must also give passengers unequivocal details of those situations in which they can board the train without a ticket and not infringe the regulations.

Warning notices must be displayed at ticket sales points also, whether booking office or TVM. Equal prominence, in plain language, must be given to passengers as to their rights in the event that there is no means of purchasing the ticket which they need. We believe that the time is now right for a revised poster encompassing these recommendations.

The electronic media should also be exploited; a prominent notice should feature on the website of each operator which is about to introduce a penalty-fare scheme as well as an amended version once the scheme is in force.

Under section 4.20, details should be provided in whichever format the passenger reasonably requests.

4.25 – 4.26 *Authorised collectors*

We have concerns about authorised collectors' commission incentive in issuing penalty fares; this must be to the passenger's detriment by compromising the collector's discretion. If the industry wishes to continue with this questionable practice, we recommend that the number of upheld appeals against each collector be investigated. Any commission paid in respect of a penalty notice issued must be rescinded when an appeal is upheld.

4.28 – 4.32 *Instructions given to authorised collectors*

Ticket restrictions and Ticket routeing, page 16: as mentioned above, our ongoing research shows that ticket machines do not provide ticket validity information; they may show a general 'off-peak' message but without a full definition. The train operator must provide a rapid, simple and immediate means of providing passengers with all relevant validity and routeing information for the ticket which they are about to buy, including restrictions concerning the inward leg of a return journey. The excess fare in some cases is many hundred percent or more of the fare already paid. It is intolerable if passengers find themselves in this position due to lack of information at the point of sale.

4.30 Using discretion, pages 16-17, first bullet point: the terms of the operator's Disabled People's Protection Policy exclude disabled passengers, and certain categories of other passengers, from the requirement to buy a ticket before boarding where purchasing a ticket would involve unnecessary difficulty for them.



4th bullet point, page 17: a record must be available of the status of each ticket machine at the time when the passengers attempted to use it. Records of absence of change, for instance, must be available to penalty fares staff after the passenger who claims that the machine could not provide change, comes under notice.

5th bullet point, page 17: the industry needs to ensure that no long queues build up in the first place. As soon as queue lengths exceed the waiting times stated in the Ticketing and Settlement Agreement, the penalty fares status of that station must be suspended and that fact advised to on-train and other revenue-protection staff. Reaction to queue length must be rapid and robust; no passenger, who has allowed sufficient time to buy a ticket, should miss a train due to excessive queue length. Discretion must especially be shown where the service is infrequent or in the case of the last train or last connection of the day.

An additional bullet point should be inserted here:

- passengers who could not buy the ticket to the destination and/or by the route required.

A passenger should not have to buy the 'wrong' ticket and exchange it en route.

4.34 Selling tickets on penalty-fares trains

A constant complaint to Passenger Focus concerns inconsistency in on-train approach: we consider it wrong and confusing if a passenger can buy a ticket on the train one day – regardless of whether he is issued with a warning note by on-train staff when the ticket is issued – while being issued with a penalty fare for the same journey the next by a different member of staff.

Lower down, in the third bullet point of section 4.38, consistency of approach is lauded in the case of Appeals. We applaud this as it does reinforce our own conviction of the need for consistency and hence our call for sales to be similarly consistent.

4.37- 4.41 Appeals

An appeals process is a vital element of the scheme to ensure that passengers who have unintentionally infringed the rules are not subject to the full rigour of the regulations.

That said, we have a number of concerns about the manner in which the current appeals process is handled:

Independence: we question the independence of any appeals body which is funded by train companies and housed in the same building as that organisation's debt-collection service.



Appeals process duration and raising of additional penalties caused by the use of the appeals process:

We object in the strongest terms to the policy of charging administration fees to passengers who exceed the 21-day limit for paying penalty fares because they have exercised the right of appeal, an integral element of the scheme, without which no scheme has been approved. We understand that the penalty fares notice states that an additional administrative fee will be charged if the penalty fare has not been paid within 21 days. It also states that passengers have 21 days in which to appeal against the notice.

No additional time is allowed for the appeal to be decided before levying the fee. The right of appeal is explicitly provided for in law and therefore use of it should attract no charge. In our experience, appeals can take up to a fortnight to be decided; for that reason, in effect, levying the fee amounts to a £20 charge to exercise one's legal rights. An upheld appeal should not attract a non-payment penalty when no penalty-fare payment is required.

In cases where the appeal has been upheld, passengers have still been charged a £20 fee for an infringement which it has been proved did not occur. It is our understanding that such an arrangement is a recent change; previously where an appeal was upheld, administration fees were waived. This new situation cannot be permitted to continue; an immediate reversion to the former arrangement is necessary.

Even if the appeal is rejected, the rejection notice should allow a period in which to pay before an administrative fee is added.

The 21-day limit calculation must be suspended as soon as an appeal has been lodged and not recommence until a response has been given.

This matter is being referred to the Minister for Rail.

Contact and payment: the ability to pay penalty fares at booking offices was withdrawn some time ago. With only a postal contact method, there is no choice but to remit payment by Royal Mail. Future schemes should require that supplementary charges are not added when there is reasonable evidence that disruption to the postal service due to strike action or for any other reason over which the public has no control, may have delayed payment.

In the 21st century it is unclear to us why such transactions, payments and appeals, cannot be undertaken electronically.

Calculation of the penalty fare charge

The rules for the calculation of the penalty fare charge (the penalty charge or twice the cost of the single fare, whichever was higher) were introduced at a time when penalty fare schemes



applied to frequently-stopping suburban services only. At that time, the maximum fixed penalty fare was usually higher than the doubled single fare.

Their wider application to operators of long-distance trains, throws up problems with this system of calculation. Consider, for instance, East Midlands Trains, where the penalty fare for a passenger wrongly boarding a Sheffield-bound train in London could be £132 (i.e. twice £66, the cost of the Standard Anytime single to Leicester if this is the first stop – a distance of 99 miles). As this level of penalty is disproportionate, we recommend that this aspect be reviewed.

Change to the penalty fare charge

We understand the logic behind the increase in the charge to £50. The half-price charge if payment is made within 21 days is welcome. However, given recent experience [see our comments regarding sections 4.37 - 4.41 above] we must reiterate our concerns about the application of the 21-day rule. Furthermore, the rise to £50 will be unacceptable without schemes which adequately address our concerns about passengers being allowed to travel when train companies cannot meet their booking office ticket-queuing times obligations.

If all the matters of concern outlined here about the application of penalty schemes are addressed, we shall not oppose the raising of the penalty charge. Given the continuing level of difficulty in some cases of attempting to comply with the rules of penalty fare schemes and the passenger-unfriendly nature of many of the current terms, it is important that the opportunity be taken now to remove or amend those terms or introduce new mechanisms to ensure that laid-down procedures actually work in practice to the passenger's benefit.

Yours sincerely

Philip Wilks
Senior Policy Officer



Appendix A

Examples of passenger confusion due to industry failure to provide clear information

Brief details of two recent cases advised to us:

(a) a passenger unfamiliar with the use of train company name abbreviations purchased a Cambridge to London Off-peak Day Return with Network-Railcard reduction from a ticket machine at Cambridge station. Unaware of the relevance of the terms 'NXEA' and 'Any Permitted' he purchased the NXEA version, but travelled to King's Cross. (The difference in fare between the two routes, using a Network Railcard, is 20p.) He received a penalty fare as travel took place on a different company's train.

(b) a passenger wanting to travel from Haddenham & Thame Parkway to a station in mid-Wales bought a ticket routed 'via Birmingham' as he was travelling via Birmingham. However, that fare applied to travel *via London* and then via Birmingham, but this was not explained. The 'via Banbury' option is actually the valid fare for the route by which the passenger actually wished to travel, although nowhere is this explained on the machine or elsewhere at the station. Even railway staff when questioned by him subsequently could not confirm which was the valid ticket for his journey by that route



Appendix B

The following wording was agreed between Passenger Focus and East Midlands Trains concerning the temporary suspension of their penalty fares arrangements. We strongly believe that the Department for Transport should require similar arrangements to be a formal element of all those penalty fare schemes which it approves in future.

Temporary Suspension of Scheme.

Standing Instructions.

To ensure the East Midlands Trains Penalty fare scheme is fair and consistent to all TOCs, customers and staff, we must follow the standing instructions set out below.

1. Station Staff will monitor in real time, queuing times at the ticket offices and TVM's. If these queuing times exceed the requirements of the Ticketing and Settlement Agreement (TSA) – that is, 3 minutes at off-peak times, 5 minutes at peak times – the station staff will make arrangements for route control/liaison to be informed that the Penalty fare scheme has been suspended for passengers who board trains at X. For the duration of the suspension customers at risk of missing their intended train will be permitted to pass through the barrier line, if applicable, and advised to purchase a ticket from on-board staff.
2. Route control/liaison in turn will inform all Revenue Protection and on train Ticketing staff by email or text message (Front line staff are issued with Blackberrys) that the Penalty fare scheme has been suspended at X and that the full range of 'walk up' tickets, with railcard discounts if applicable, should be sold on board. A log of the suspension of the Penalty Fare scheme will be kept on file at Route Control/Customer Liaison. This Log will be kept on file for 52 weeks from date of suspension of the Penalty Fares scheme. This email will also be received by the Revenue Manager and their nominated deputy.
3. Once queuing levels have returned to a level within the TSA requirements, the station staff will inform route control/customer liaison that the Penalty fare scheme has resumed for passengers who board trains at X. All records will be updated as in items 2 above.
4. Route control/customer liaison in turn will inform all Revenue Protection and on train Ticketing staff by email/text message that the Penalty fare scheme has been resumed at X.
5. In addition to the above, queuing surveys will be undertaken at relevant stations on an ad-hoc basis in line with the ATOC Retail standards Guidelines.
6. This information will also be relayed to the Prosecutions Department. The Log at the Prosecutions Department will record the following items
 - A. Ticket office closures (outside the advertised hours)
 - B. Ticket office staffing issues
 - C. TVM Failure
 - D. Automatic ticket Barrier failures/faults.
 - E. Times of Suspension of the Penalty Fares scheme.



This Log will also be kept on file for 52 weeks from the date of suspension of the Penalty Fares scheme.

7. Details of all suspensions will be passed to the Appeal service. In the event that a Penalty Fares Notice is issued during a suspension in error, the notice shall be immediately rescinded and any moneys paid by the customer refunded in full.

This brief will be issued to the following managers with a view to them arranging for full briefing of all frontline staff.

Revenue Manager

Prosecutions Manager

Penalty fare staff

Sales and Retail Manager

Station Managers

Route control/Liaison Managers

Mangers of on Train (ticket issuing) staff

Route Managers