



Penalty fares

The appeals process

February 2020

Introduction

Transport Focus understands the importance of revenue protection in order to prevent ticketless travel. Those who fare evade are, in effect, being subsidised by fare paying passengers. The important issue is to distinguish between those who make a genuine mistake and those who intentionally avoid paying for their journey.

Transport Focus welcomed the new penalty fare regulations which came into force on 6 April 2018. The revised regulations now give passengers the right to submit a third stage appeal, reviewed by a panel which is independent from the rail industry. Transport Focus was heavily involved in the implementation and recruitment of the independent appeal panel, ensuring that the passenger voice was taken into account, and fairness and consistency was applied.

Prior to the implementation of the Independent Appeal Panel, Transport Focus investigated and where appropriate, successfully mediated with train operators on behalf of the passenger, in circumstances where we felt that a Penalty Fare had been unfairly issued or where discretion had not been appropriately applied.

Some of the issues flagged within cases that had been raised with Transport Focus gave rise to our *Ticket to Ride* research in 2012 and *Ticket to Ride – an update* in 2015. These highlighted several concerns we had in relation to a lack of differentiation between those that were attempting to evade a fare and those that have made a genuine error.

Current process

Passengers must purchase a valid ticket to travel at the first available opportunity. If they do not and are travelling within a Penalty Fares area, they may be issued a Penalty Fare Notice (PFN).

Upon receipt of a penalty fare, passengers have 21 days, starting the day after the notice was issued, to submit an appeal to the relevant appeal body. There are two appeals bodies: Appeals Service (AS) and Penalty Services (PSL), between which all Penalty Fare appeals are assessed depending on the train operator involved.

The appeal body assesses the passenger appeal to establish whether correct process has been followed in terms of issuing the Penalty Fare and to take any mitigating factors into account which may make it appropriate to withdraw the notice. There are currently three stages of appeal available to passengers.

If an appeal is declined at the first stage, the passenger has the right to submit a second stage appeal to the same body within 14 days. If the second appeal is also unsuccessful, the passenger has a further 14 days to submit their third stage appeal which will be heard by an Independent Appeals Panel (IAP).

The Independent Appeal Panel was implemented following a revision to Penalty Fare Regulations in April 2018, and assesses evidence to reach a decision on individual cases. The Independent Appeal Panel's decision is final and cannot be overturned by any other body. However, if a passenger feels that the process has not been followed correctly and approaches Transport Focus, we will review this as part of our ongoing role as passenger representative.

Issues identified

Since the revision of Penalty Fare regulations in 2018, passengers continue to make contact with Transport Focus and London TravelWatch. As a result of investigation into individual cases, we have identified the following areas of concern with the new process:

- signposting
- accessibility
- investigation
- lack of discretion
- quality of responses
- consistency
- transparency.

Signposting

It has become evident from our investigation that many passengers are unclear about the appeals process in general. Currently, the penalty fare notice itself only provides details of how to make the first appeal but does not inform passengers of the process in its entirety.

Passengers must seek out this information themselves or wait until they hear back from the appeals body as to what the next stage is. Transport Focus and London TravelWatch believe information regarding the whole process should be available from the outset. If a passenger is aware that they can later submit an appeal to an independent body, it will encourage them to continue with the process. They can also make arrangements if they are unavailable, for whatever reason, during part of the process for example going on holiday.

We have also noticed that some passengers are not being made aware of their right to submit a second stage appeal following a decline at first stage. Letters issued by the appeal bodies following rejection of a first stage appeal state that the appeal has been declined and that the passenger must pay within 14 days or risk further action.

It is not made clear that a second stage appeal being submitted will 'stop the clock' and prevent further action being taken in the meantime. Transport Focus has concerns that passengers who have received these letters may have felt their only option was to pay the fine otherwise risk further action which could include prosecution, thus losing their right to submit a second stage appeal.

In order to appeal to the Independent Appeals Panel, passengers must make a submission via the relevant appeals body's website or by post. The appeals body will then pass the appeal to the independent panel (IAP).

The IAP is intended to be independent from both appeals bodies and the rail industry. However, the referral process does not appear independent from a passenger perspective, particularly considering that third stage appeals are submitted via the appeal body that has rejected your appeal twice previously. Passengers, understandably, expect a separate website or address via which to submit their appeal to the Independent Appeal Panel, and it has caused confusion when they are provided with the same appeals body's contact details.

Example:

After receiving a Penalty Fare Notice (PFN) Mr H appealed to the relevant body as per the instructions on the Penalty Fare Notice. This appeal was rejected at first stage and so he appealed to the appeals body again. This appeal was also rejected and Mr H was advised that he could appeal to the Independent Appeal Panel via the same appeals body's website.

Mr H went online but could not find the relevant section for submitting a third stage appeal to the panel. He contacted the train operator which was also unaware of the process. As the appeals body does not have a telephone number or email address for enquiries, Mr H used the standard webform form after logging in to the appeal body portal to enquire and being unaware that this was actually the section to submit an appeal to the Independent Appeal Panel. Mr H subsequently received a response stating, *"You have used your appeal to ask "Is this the site where I make a 3rd appeal?""*

Accessibility

Passengers often contact Transport Focus and London TravelWatch frustrated that they cannot get in touch with anyone from the appeals body. The only option is to make an appeal via the website or by post. There is no telephone number or email address to contact for assistance - only a premium rate payment line. Should a passenger have any queries or require assistance with the website there is no immediate way to get in touch.

Example:

Mr F received a PFN from South Western Railway. However, when he tried to appeal, the website did not recognise his reference number. There was no telephone number or email address to request immediate assistance, only a postal address. As he was going on holiday, he ended up missing the deadline and incurred £70 admin fees. After contacting Transport Focus we discovered there wasn't a fault with the website but he had mistakenly been using the prefix linked to South West Trains instead of South Western Railway, the name of the new franchise. This case was protracted considering the issue was an easy mistake to make and could have been easily resolved through a quick telephone call. The case was unnecessarily protracted.

Investigation

Based on what we have seen, the appeals bodies and the Independent Appeal Panel are not always thoroughly investigating a case prior to making a decision. As a result, passengers who have a genuine reason for not having the correct ticket for their journey, or who have provided evidence of valid mitigation, have had appeals rejected at various stages throughout the process.

Example:

Mr D raised the issue regarding a lack of Penalty Fare signage. In line with Penalty Fare Regulations, signage must be in place at stations from which a penalty fare scheme is in place. The fact that signage was not in place to advise passengers of the requirement to 'buy before you board' was not considered by the appeal body and his appeal was rejected.

Following our review and some investigation with the train operator involved, it was discovered the signage from the entrance used by Mr D had been removed temporarily while works were carried out. The train operators could not confirm whether the sign was there on the date of travel and so the Penalty Fare was waived.

Example:

Mr Q was unable to purchase a ticket because the ticket vending machines at his departure station were not working. Mr Q was issued with a Penalty Fare. However, his appeals were declined at all stages. After contacting Transport Focus, it was discovered the ticket vending machines were offline at the time that Mr Q travelled and therefore, he should have been allowed to purchase a ticket on board. The Penalty Fare (which had been paid) was therefore refunded in full.

Appeal bodies and the Independent Appeal Panel should be ensuring that a thorough investigation has been carried out when assessing an appeal. Despite the above case having been rejected at all stages, it was ultimately overturned following intervention from Transport Focus.

Lack of discretion

Appeal bodies are empowered to apply discretion, where it is considered appropriate to do so given the circumstances of a case. However, it is evident that appropriate discretion is not always being consistently applied. Responses to appeals frequently cite rules/terms and conditions as reasoning for rejection when there are clear mitigating circumstances.

In addition to mitigating factors for passengers not having a valid ticket for their journey, Transport Focus has received contact from many passengers who have forfeited their appeal as it has been submitted out of time, despite having a valid reason for doing so.

Example:

One passenger, who was pregnant, unexpectedly had to rush from work to hospital. She attempted to purchase a ticket via the app, which she uses on a daily basis, but this was not working at the time. When the passenger arrived at the station there was a queue that would have caused her to miss her train. She boarded the train and continued to attempt to purchase a ticket via the app but was unsuccessful.

Upon arrival she explained to the ticket inspector that she was experiencing very concerning symptoms relating to her pregnancy and provided evidence of all of her previous ticket purchases and that the app was not allowing her to purchase another. She asked to purchase a ticket however, the inspector showed no empathy or discretion and issued a Penalty Fare Notice.

The passenger had in fact suffered a miscarriage and this meant that she was late in submitting her first appeal. The appeal was rejected on the basis that there was no reasonable mitigation for the late appeal. It was only when Transport Focus got involved that the train operator immediately cancelled the Penalty Fare.

The inspector could have used his discretion in the first instance, although technically acting within the regulations, but it is also concerning that the appeals body did not deem the circumstances reasonable mitigation for overturning the Penalty Fare.

Quality of responses

Often responses from the appeals bodies and the Independent Appeal Panel do not provide sufficient detail or explanation as to why the appeal has been rejected. Both are supposed to take mitigating circumstances into account and can apply discretion where it is deemed appropriate, and evidence of doing so should be included in responses. In addition, the response issued to an appeal should clearly explain the reason for upholding or rejecting an appeal.

Having reviewed some of the responses this does not appear to be happening consistently.

Example:

One passenger who mistakenly threw away the return portion of his ticket and only had the outbound received the following response from the Independent Appeal Panel:
“Passenger must provide a valid ticket when asked. In this instance you were not able to provide a valid ticket when asked, and therefore you were correctly issued a penalty fare notice. The panel has therefore declined your appeal.”

In this instance, no reference was made to the circumstances outlined in his appeal and therefore, the passenger did not feel that his mitigation had been considered. It would have been appropriate for the appeal body to state that they did not feel the circumstances presented warranted waiving the Penalty Fare.

Consistency

There are certain circumstances whereby the appeals body and the Independent Appeal Panel will reject an appeal, yet the train operator will exercise discretion when approached by Transport Focus.

Example:

Miss D misplaced her outbound ticket shortly after using it to get through the barriers at the beginning of her journey. She had proof of purchase and the return portion of her ticket but was issued a Penalty Fare by the staff member on board.

In her appeal, Miss D provided proof of purchase for the ticket as well as evidence of the same ticket having been purchased every day that week. Her appeal was declined by both the appeals body and the Independent Appeal Panel.

Miss D then contacted Transport Focus and following our intervention, the train operator was happy to offer a refund of the Penalty Fare that had been paid, as a gesture of goodwill given the evidence presented.

The above example demonstrates the need for train operators to ensure that the relevant appeal body is assessing cases and applying the same discretion that they would. If the train operator is willing to exercise discretion under certain circumstances, then the appeals body should have accepted the appeal in the first instance without the need for the passenger to proceed through three stages of appeal and then make contact with Transport Focus or London TravelWatch.

There are likely many passengers whose appeal has been rejected that would not think to contact Transport Focus or London TravelWatch and have therefore, lost out.

Example:

Another passenger (Mrs A), was visiting the UK and had her e-ticket checked by a staff member prior to boarding. While on board, her phone battery died and so Mrs A was unable to show her ticket on arrival, when requested. She was issued with a Penalty Fare by the Inspector who advised that it would be waived if she sent in a copy of her ticket the following day. She did this but the appeal was declined.

Mrs A contacted Transport Focus and we made contact with the train operator who empathised and offered to refund the cost of the Penalty Fare to Mrs A.

Passengers often tell us they had been advised by frontline staff that the Penalty Fare would be waived if they subsequently appeal and submit their ticket, yet this is not the case. There needs to be consistency between the information provided by frontline staff and the process being followed by the appeal bodies.

Transparency

We believe there is merit in building greater transparency into the Penalty Fare process. This means publishing:

- the numbers of penalty fares issued
- the number of appeals made at stage 1 and 2 (and the proportion upheld and rejected)
- the number of appeals made at stage 3 (and the proportion upheld and rejected).

The aim in making this data public would be twofold:

- to improve public trust and confidence in the system.
- to ensure Transport Focus, London TravelWatch (and to an extent DfT) are able to assess the effectiveness of the system and can better hold the industry to account.

Recommendations

Transport Focus continues to receive appeals from passengers which are later overturned following our intervention. This suggests that the appeal process is not robust.

As such, we recommend the following steps be taken to ensure fairness, independence and consistency:

- Passengers must be made aware of whole appeals process from the outset, their right to appeal and how to do this at every stage in the process. Letters should be clear, in plain English and have instructions for progressing to the next stage of the process should the passenger wish to do so.
- Passengers should be able to contact the appeals body directly should there be any urgent queries or concerns.
- The point of access to the Independent Appeal Panel must be more independent from the appeal bodies that are assessing first and second stage appeals. We suggest that the training of the panel should be carried out by an independent body.
- There must be a consistent approach in reviewing appeals and all mitigating factors must be considered prior to rejecting an appeal. If a train operator overrules a second or third stage appeal following Transport Focus' intervention, and will always do so under the same circumstances, a process must be put in place to ensure that this discretion is being applied at first stage appeal, where appropriate.
- Consistent messaging should be in place to ensure that front line staff are not misinforming passengers regarding the appeal process.
- Publication of penalty fare statistics as detailed above.



Transport Focus is the operating name of the Passengers' Council

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