

## Transport Focus response to the Department for Transport consultation on rail Penalty Fare value reform - June 2021



Transport Focus is an independent consumer organisation – a champion for the transport user. Our mission is to make a difference for transport users and to make transport services better. We gather evidence, especially research with transport users, and use this to drive change and make a difference. We aim to be useful to those who make decisions about transport and to help them make better decisions for the user.

The small minority that travel without a ticket are in effect being subsidised by the vast majority of passengers. It is right that train companies deter those who may not buy a ticket. But in doing so they must make sure that effective safeguards exist for passengers and ensure that discretion is shown where passengers have made an innocent mistake. We therefore welcome the opportunity to respond to the Department for Transport's consultation on Rail Penalty Fare value reform.

### Question 1

**Do you think the current £20 minimum Penalty Fare value is set at a sufficient level to act as an effective deterrent?**

No, we believe the value should be increased to a greater amount to be effective.

We recognise that the value of the Penalty Fare has not increased since 2005 and so has been reduced in real terms because of inflation. We believe a sensible and proportionate increase can help ensure Penalty Fares continue to act as a deterrent.

### Question 2

**Your preferred rail Penalty Fare formula is:**

The options presented in the consultation are:

#### *Option 1*

*Maintain the current formula but increase the minimum value of a Penalty Fare from £20 to a greater amount.*

#### *Option 2*

*Replace the current penalty of £20 or twice the full single fare to the next station at which the train calls, with a single charge that's applicable in all circumstances regardless of the price of the ticket that should have been purchased.*

#### *Option 3*

*Replace the current penalty of £20 or twice the full single fare to the next station at which the train calls, with a surcharge that's charged in addition to the value of the ticket that should have been purchased at the start of the journey.*

Transport Focus's preference is for option three, the surcharge.

If the current formula was retained, as in option one, then this could continue to constrain the suitability of Penalty Fares as a means of revenue protection for long-distance journeys. With Anytime fares that can often cost hundreds of pounds the current formula doubling this amount can lead to a charge that is clearly disproportionate.

If, as in option two, there was a single charge used consistently across the network, it is hard to see how this could act as an effective deterrent on long-distance journeys, with higher ticket costs, unless it was set at a level excessively high for comparatively inexpensive short-distance journeys.

Option three has the benefit of being simpler than the existing formula and therefore easier to communicate, while offering greater opportunity for the charge to be consistent across the rail network. It could potentially enable the charge to be a national scheme used consistently by all train companies. This could benefit passengers as Penalty Fares offer more protection and safeguards to passengers making an innocent mistake than other approaches to revenue protection that often rely on criminal prosecution and strict liability under the railway byelaws.

Our preference for option 3 is on the understanding that, in addition to the surcharge, the passenger will be charged for – and receive to complete their journey(s) – a ticket of *their choosing*. While we would not expect this to include Advance Purchase tickets, we would otherwise expect passengers to be able to choose from the full range of ticket types that would have been available – off peak or anytime, single or return etc, and use a railcard if held. We take the view that the surcharge alone can deal with the 'penalty' and so there is no need for the fare for the journey to also be issued on punitive terms.

### **Question 3**

**What do you think the value of the Penalty Fare should be set at for your preferred option (as indicated at question 2)?**

We note the Department for Transport's preference is for the National Rail Penalty Fare to be brought more closely into line with TfL's Penalty Fare (£80 and halved if paid within 21 days). We do not have any specific evidence to inform a view on the appropriate value, but can see the value of consistency in this area.

### **Question 4**

**Do you agree with the proposal that the value of a Penalty Fare should be reduced if the penalty is paid within a set number of days?**

Yes. We believe this proposal is helpful. It can enable a balance to be struck between a higher value that can act as an effective deterrent without requiring the penalty paid to necessarily be seen as disproportionate.

It is important passengers that choose to appeal should also be able to reduce the penalty if it is paid within a set number of days of their appeal being rejected. Passengers should not be faced with a choice of paying the reduced penalty or 'taking a chance' on appealing and having to pay the full value if their appeal is not upheld.

#### **Question 5**

**Do you agree that the value of a Penalty Fare should be increased if there's a previous charge issued to the same individual within the preceding 12 months?**

No. We are not convinced that the additional level of complexity this would add to the administration of Penalty Fares is worthwhile. It is possible a passenger could make an innocent mistake, for example forgetting their season ticket, twice in the same year. We believe there is value in keeping the system simple and that operators have sufficient tools to deal with people they believe are repeat offenders intentionally trying to evade payment for their journeys.

#### **Question 6**

**Do you think the name of the 'Penalty Fare' remains appropriate?**

We do not have any evidence to suggest the name 'Penalty Fare' is not appropriate or that it is causing substantial confusion for passengers.

#### **Question 7**

**Do you have any suggestions for alternative scheme names?**

It is important that passengers can easily understand signage and other communications about Penalty Fares so they can know what they need to do avoid being issued with a penalty. We would therefore strongly recommend testing any proposed alternative name with passengers to check understanding before implementation.

#### **Question 8**

**Please use the below section to make any other suggestions you have about Penalty Fares.**

If the value of a Penalty Fare increases, it will be more important than ever that Penalty Fares schemes are operated robustly and train operators ensure that passengers are treated fairly. A higher value Penalty Fare in effect 'raises the stakes'. It is reasonable for passengers to expect in return that operators will be vigilant in ensuring they fulfil 'their side of the bargain'. This means ensuring the

fundamentals that underpin the operation of Penalty Fares are delivered consistently, including:

- Sufficient signage and communications to ensure passengers understand what is required of them.
- Adequate retail facilities e.g. sufficient TVMs in accessible locations, acceptable queuing times, clarity on Promise to Pay and visibility of when Ticket Vending Machines are out of order.
- Staff trained and supported to listen to passengers and exercise discretion. Customers should feel listened to when they give their reasons for ticket buying facilities not meeting their needs, and be confident they will receive a certain level of customer service when challenged on ticketless travel.
- A customer should expect the outcome of their appeal to reflect any supporting evidence or vulnerabilities that were a part of the appeal to be acknowledged. Appeal decisions will include reasons why any disclosed vulnerabilities will, or will not, be considered.
- After the Final Stage Appeal, when a passenger has exhausted their appeals, they should be advised at this stage of the full outstanding Penalty Fare they are required to pay.

Some of these points were also addressed in the report Transport Focus and London TravelWatch published in February 2020 - [Penalty Fares - The appeals process](#). As a result of investigation into individual cases, this report identified concerns with the process and recommended 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 should be more independent from the appeal bodies that are assessing first and second stage appeals.

Finally, we would also like to make a point about the composition of the Independent Appeal Panel – the final point of appeal against a penalty fare. Transport Focus and London TravelWatch were involved in the original recruitment of the panel members. It is not clear, however, what the process is for appointing new members or re-appointing existing panel members. We believe that this is something that could be addressed as part of any wider review of Penalty Fares.

**Transport Focus**  
**June 2021**