

Guy Dangerfield
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Dear Guy,

Regarding your letter dated 24 April 2023, on the subject of 'Sold Out' trains, the SISJ Programme Team have been investigating further information to provide a succinct response and develop a way forward. We have been exploring the following:

- The prevalence of Sold Out messaging and how often it is being used
- Engagement with the Rail Ombudsmen and Trading Standards
- A proposed way to achieve industry agreement on the use of Sold Out messaging and move forwards

To quantify the prevalence of the use of Sold Out messaging, the RDG Data Team did some analysis using reservations data in RARS and comparing with what was displayed on TOC websites. The analysis shows that around 1.5% of LNER services, from the start of the year to date, displayed Sold Out messaging. For Avanti, we struggled to quantify a proportion due to inconsistencies with when the messaging was being applied, but it was evident and in use. For Cross Country we couldn't find examples of the Sold Out messaging being used.

We have also been in discussion with the Rail Ombudsmen and Trading Standards for their view on TOCs use of Sold Out messaging. Their view is that in declaring trains as Sold Out on websites when customers could still travel by purchasing tickets via other channels, this could result in legal action as it is a breach of Consumer Protection under Unfair Trading Regulations. This is because the information is misleading and impacts the customers decision making process, i.e. the customer could rightly believe that the train is not available, so they either must travel on a different service, or not travel at all.

An alternative option considered was to replace Sold Out with 'not available online'. The view of the Ombudsman here was that stopping sales online but allowing tickets to be purchased at station is in breach of the Equality Act, as it discriminates against those that cannot access those channels. Furthermore, 3rd party retailers who do not retail at stations have a license to sell all tickets, so cannot be excluded from certain segments of the market.

Given the above, our recommended solution is for TOCs to replace the Sold Out message with a busyness warning, but still allow customers to buy tickets if they choose to ignore this warning. This warning could include stating that all seats are booked and/or that the customer may not be able to board if the train is too busy. The ORR are also supportive of this position.

In terms of next steps, given the clarity provided by the Rail Ombudsmen and Trading Standards, we no longer feel it is necessary to take this issue to Schemes and Services Board. Instead, we will send a letter from RDG to the TOCs who are using Sold Out messaging to inform them that they are in breach of the regulations mentioned above and to work with the SISJ programme on the recommended solution.

The next steps are outlined below:

- Letter from RDG to TOCs using Sold Out messaging
- Elicit requirements for the busyness warning solution
- Collaboration with operators and retailers on the message sentiment to be shared with passengers
- Develop requirements for deployment

If you have any queries or would like clarification on anything raised in this response, please do not hesitate to reach out.

Yours sincerely,

Adam Blower

Head of Customer Information