

## **MoJ Consultation - Oversight and regulation of private prosecutors in the criminal justice system**

### **Submission from Transport Focus**

---

#### **Introduction**

Transport Focus is the independent consumer watchdog representing the interests of rail users throughout Great Britain; bus, coach and tram users across England, outside London; and users of the motorways and major 'A' roads in England. Working with transport providers and governments across England, Scotland and Wales – and in partnership with our colleagues at London TravelWatch – we ensure that the users' voice is heard.

We are responding to this consultation from our perspective as passenger champions and our understanding of the experiences of rail users.

Whilst outside the scope of this consultation, we note there is widespread recognition that fares, ticketing and retail for the rail industry is complex. People can, and do, make mistakes which sometimes end in serious consequences for passengers who had no intent to defraud. Conversely, there is also significant challenge to railway revenues as people use sophisticated techniques and concerted efforts to defraud. Conservative estimates suggest that fare evasion costs the railway a minimum of £240 million a year.

Transport Focus has always accepted that those who deliberately set out to avoid paying should be dealt with / face punishment. However, we remain concerned at the use of criminal prosecutions when there is no proof of intent to evade. This makes it too easy for simple mistakes to be treated as criminal activity.

We welcome the opportunity to respond to this consultation and are broadly supportive of the Government's suggestions to reform oversight and regulation of private prosecutions.

#### **Private Prosecutions and the Railway**

There are two ways in which the railway prosecutes fare evasion, firstly under the Regulations of Railways Act (RoRA) 1889 and secondly using the Railway Byelaws. The Regulation of Railways Act has higher sanctions up to and including imprisonment, but it does require proof of intent. Offences under RoRA would result in a criminal record.

Railway Byelaws 17 and 18 make ticketless travel a criminal offence. A Byelaw prosecution is classed as a criminal offence, but it is non-recordable. Under the Railway Byelaws, ticketless travel is a strict liability offence where passengers without tickets are automatically deemed to be guilty regardless of intention or circumstances. Transport Focus' position has been that criminal prosecution without proof of intent to evade offends natural justice. Objections to use of 'strict liability' is a long-standing Transport Focus policy position and documented in Ticket to Ride publications<sup>1</sup>.

Transport Focus believes that the strict liability prosecution clauses on ticketing should be removed from the Byelaws. If a Train Operating Company thinks someone is deliberately evading their fare they can use the Regulation of Railways Act. Other cases can be dealt with by the Penalty Fares procedure – the £100 penalty now providing sufficient deterrent in its own right.

However, we acknowledge that prosecutions under the Regulations of Railway Act are costly and time consuming, and that the Single Justice Procedure (SJP) will continue to be used where allowed. Therefore, we think it is important that the processes and protections around the use of SJP are improved to ensure fairness for all passengers.

The use of private prosecutions by the railway gained significant attention in 2024 when cases taken by several train operating companies were found to have used the SJP in error. The SJP can only be used for non-imprisonable offences - which include fare evasion cases brought using the Byelaws but not those under the RoRA which does carry the threat of imprisonment. Approximately 60,000 cases were declared invalid. While the issue with these cases was the incorrect citing of the Regulation of Railways Act 1889 when using the SJP, rather than issues of judgment on the merit of cases, this situation has had a negative impact on public perceptions and trust in the railway. It has also highlighted ongoing areas of concern for Transport Focus around the use of private prosecutions by the railway.

Under the current system, train operators are the victim, the investigators, the decision makers and the prosecutor. The issuing of fines as part of private prosecutions means that there could be financial incentive to take cases forward and increases the potential conflict of interest. This is a powerful position for the railway to be in, and passengers need assurances that there are appropriate checks and balances. The government's objective of ensuring sufficient safeguards to justice in the SJP is therefore welcome.

It is not always clear what criteria are used to determine if a prosecution should be taken forward or whether someone is allowed to settle out of court. Strict liability means that the train companies don't have to settle as, however genuine a passenger's reason for not having a valid ticket they are automatically considered guilty. Transport Focus is aware of people being prosecuted when there is no

---

<sup>1</sup> [Ticket to ride?](#) Transport Focus. 2012  
[Ticket to Ride – an update.](#) Transport Focus. 2015

financial loss to the railway. This feels wrong. We believe there is a need for the railway to demonstrate 'intent to evade paying' rather than relying on strict liability.

Furthermore, there is no consistent standard in the handling of ticketless travel across the railway. An action may result in a prosecution in one part of the country, but elsewhere there may be penalty fare or even no action at all. This can lead to uncertainty and a sense of unfairness among passengers. In a complex ticketing landscape this is especially the case where options for purchasing tickets also vary i.e. the ability to buy tickets on board on some routes but not on others. While fares and ticketing reform is needed to bring clarity to passengers in this regard, the Government aim of establishing consistent standards for private prosecutors, including accountability for their practices, may help in bringing a sense of fairness in how ticketless travel is handled.

The misuse of the SJP by some train operating companies resulted in approximately 60,000 convictions being overturned. This is a very significant number. However, there is currently a lack of data and transparency on the general use of private prosecutions by the railway, or other entities, to allow for an understanding of the scale involved. We would welcome Government efforts to improve transparency of private prosecutions.

## **Other information**

Concerns about Train Operating Companies' Revenue Protection practices have recently been investigated by the Office of Rail and Road for the Secretary of State for Transport. The findings of their review are expected to be published on May 15<sup>th</sup>. Once available we recommend that the Ministry of Justice read relevant parts of this report to inform this consultation.

## **Questionnaire Response**

Transport Focus does not bring private prosecutions. Therefore, a number of the questions are not applicable for this response and have been omitted.

### **Chapter 1: Consistency of Standards and Accountability**

#### **Code of Practice**

*5. Do you agree that some or all private prosecutors (apart from individuals bringing private prosecutions on their own behalf) should be bound by a mandatory code of practice?*

Yes

*Please provide reasons for your answer.*

The purpose of a code of practice is to ensure consistency of standards and accountability. To ensure consistency and as a principle of equality, it should therefore apply across the board. Individuals who are subject to a private

prosecution should not receive a different standard of treatment due to the size of the organisation bringing the prosecution, or the frequency with which they bring prosecutions. Furthermore, if there were to be different standards in place for different organisation it could be particularly confusing for people in places where remits may overlap or be otherwise unclear. For example, if Train Operating Companies were subject to a code of practice, but private operators of station car parks were not, rail passengers could be interacting with two separate sets of standards within one journey.

*6.If you agree that some or all private prosecutors (apart from individuals bringing private prosecutions on their own behalf) should be bound by a mandatory code of practice, do you think this code should apply to:*

All private prosecutors bringing prosecutions.

*7.If you agree that some or all private prosecutors (apart from individuals bringing private prosecutions on their own behalf) should be bound by a mandatory code of practice, please provide your opinions on requirements that could be included in the code (select all that apply):*

A requirement for the separation of functions between investigators and prosecutors

A requirement for the separation of functions between those who decide whether to commence a prosecution, and those who carry out the prosecution

A requirement to consider whether there is sufficient evidence to secure a conviction

A requirement to review the public interest test before commencing the prosecution, and keep it under review throughout proceedings

*Please provide any other requirements you think should be included in the code, including any considerations exclusive to private prosecutions such as a requirement for companies to report all prosecutorial activity to its Board of Directors.*

In addition, a requirement to consider mitigation before proceeding with the prosecution could be helpful.

A further requirement to publish details of prosecutions as set out in question 31.

## **Inspectorate**

*13.Do you agree that some or all private prosecutors (apart from individuals bringing private prosecutions on their own behalf) should be subject to inspections from an inspectorate?*

Yes

*14.If you agree that some or all private prosecutions should be subject to inspections from an inspectorate, should this requirement apply to (please select one):*

All organisations bringing private prosecutions

*15.If you agree that private prosecutors should be subject to inspections from an inspectorate, what would be a suitable consequence if a prosecutor fails an inspection?*

Requirement to declare to the magistrates' court any previous negative reports/failure to meet the required standards when applying for summons to commence a prosecution.

Removal of right to use SJP if applicable.

Removal of status as 'relevant prosecutor' if applicable, meaning a requirement to apply to the magistrates' court for a summons to commence future prosecutions.

While all these may be appropriate responses to a failed inspection, we would suggest a sliding scale in response with prosecutors being required to make a declaration to the magistrates' court in the first instance, but consideration given the removal of rights to use the SJP or of status as a "relevant prosecutor" in cases of sustained failures.

*16.If you have any other thoughts about an inspectorate for private prosecutors which have not been captured in the questions above, please provide these.*

While the inspectorate will not be able to oversee or deliver training to all staff who are involved in the bringing of private prosecutions, there is a clear need for ongoing training of such staff. To ensure consistency of standards and application of any code of practice, initial training will need to be provided. Refresher training may also be needed on a periodic basis. Training should include discrimination, disability, diversity and equalities training. The inspectorate could have an important role in setting training curricula and assessment.

## **Accreditation**

*17.Do you think there should be a system of accreditation for private prosecutors? If so, please specify whether you think this should be mandatory or voluntary.*

Yes, mandatory

*18.If you think there should be a voluntary system of accreditation, please provide detail of what the incentive should be for acquiring accreditation or the consequences for not being accredited.*

N/A as think it should be mandatory.

*19.If you think there should be a system of accreditation for private prosecutors, do you think this should be required at an organisational level or should it be a personal professional requirement for all individuals involved in bringing a prosecution?*

Organisational level: To streamline the administrative ask, organisational level would be more efficient. Given staff turnover and movement within organisations having individuals accredited who no longer require it would seem complex. The potential consequences for failing an inspection as listed in question 15 would also seem

more appropriate for organisations as opposed to individuals. However, organisational accreditation should come with requirements on staff training for all staff involved with prosecutions and stipulations on the requirements from staff of an accredited body and a role for the suggested inspectorate in ensuring that organisational requirements are being met. Staff at accredited organisations should be subject to performance monitoring and evaluation by the organisation.

## **Chapter 2: Improving Safeguards to Justice in the Single Justice Procedure**

*21. Do you think that Single Justice Procedure prosecutors should be required to take steps to engage with the defendant before commencing a prosecution, to understand their personal situation (mitigating circumstances) and assess whether the prosecution is in the public interest?*

Yes

*22. Do you think the prosecutor should be able to view the mitigating circumstances submitted to the court by a defendant before the case is reviewed by a magistrate?*

Yes

*23. If you agree that the prosecutor should be able to review the mitigating circumstances before the magistrate reviews the case, do you think there should be a statutory requirement for them to review this in all cases, and conduct a further assessment of whether it is in the public interest to continue the prosecution, then confirm to the court that they have done this?*

Yes

*24. Should there be a requirement for prosecutors to allow a certain period of time for people to respond to an initial notification in order to provide details of any their circumstances prior to issuing an SJP Notice?*

Yes

*Please provide the period of time you think appropriate.* While people should be able to provide details through simple online format, any time period should also be long enough to accommodate those who are not digitally engaged and need to use postal systems to submit details. We would therefore suggest a minimum of 30 days.

*25. Should there be a requirement to send a certain number of written notifications before issuing a Single Justice Procedure Notice?*

Yes

*Please specify how many written notifications you think appropriate.* A dual notification system may be useful where possible with people receiving both a letter and email to increase the likelihood of the message being received. Notifications should be sent through both mechanisms twice each.

### Chapter 3: Improving Transparency

*28. Do you agree that some or all private prosecutors (apart from individuals bringing private prosecutions on their own behalf) should be required to register with HMCTS prior to bringing a prosecution?*

Yes

*29. If you agree that some or all private prosecutions should be required to register with HMCTS prior to bringing a prosecution, should this requirement apply to (please select one):*

All organisations bringing private prosecutions

*30. Do you agree that some or all private prosecutors (apart from individuals bringing private prosecutions on their own behalf) should be required to publish their own data on the prosecutions they bring?*

Yes

*31. If you think some or all private prosecutors should publish data, what data should they be required to publish?*

Number of prosecutions brought per year

Offence types of prosecutions brought

Resulting number of convictions

Number of defendants who pleaded guilty: While there may be merit in publishing such data, a note of caution is needed given the current situation with regards to mitigation. With it currently only being possible to put forward mitigation at the point of the case coming before the magistrate, and mitigation requiring a guilty plea, there may be a significant number of guilty pleas where the case was not in the public interest, or which results in a discharge.

Equalities data

Other, please state:

- Data on overall percentage of pleas entered as guilty, not guilty, or no plea entered. Data on no plea entered could help to identify the extent of issues with people not being aware of prosecutions brought against them, which Transport Focus research has found is sometimes the case.<sup>2</sup>
- Some further data beyond equalities data which relates to income or benefit status may be useful as the ability to hire legal counsel to challenge a prosecution can affect the outcome of cases and may result in unequal rates of conviction.

---

<sup>2</sup> [Ticket to Ride – an update](#). Transport Focus. 2015

- A geographic breakdown of cases and convictions may also be useful to identify trends in both offences and reliance on use of private prosecutions.
- We would also suggest data on the number of first-time or repeat offenders could have merit.

*32. Do you agree that private prosecutors (apart from individuals bringing private prosecutions on their own behalf) should be required to assess their performance and/or regularly audit their own prosecutions?*

Yes. While such an audit would be a useful exercise for reflection and organisational improvement, a self-audit should not replace the function of an independent inspectorate.

*33. If you agree that private prosecutors should be required to assess their performance and/or regularly audit their own prosecutions, do you think this information should be published?*

Yes. It should be made clear in publications that these were internal audits, rather than an independent inspectorate report.

## **Equalities Analysis Questions**

### **Consistency of standards and accountability**

*36. From your experience are there any groups with protected characteristics who may be particularly affected, either positively or negatively, by the proposals in Chapter 1 of this paper? Please include which groups/individuals and explain your reasons. We would welcome examples, case studies, research or other types of evidence that support your views.*

We have not found any data in the public domain relating to how groups with protected characteristics are represented within private prosecutions by the rail industry but this should be a consideration.

*37. What do you consider to be the equalities impacts of each of the proposals in Chapter 1 on individuals with protected characteristics? Are there any mitigations the government should consider? Please provide reasons and evidence where possible.*

### **Improving safeguards to justice in the Single Justice Procedure**

*38. From your experience are there any groups with protected characteristics who may be particularly affected, either positively or negatively, by the proposals in Chapter 2 of this paper? Please include which groups/individuals and explain your reasons. We would welcome examples, case studies, research or other types of evidence that support your views.*



*39. What do you consider to be the equalities impacts of each of the proposals in Chapter 2 on individuals with protected characteristics? Are there any mitigations the government should consider? Please provide reasons and evidence where possible.*

Response to both 38 and 39: When considering how to accept and review information on mitigating circumstances, as well in providing written notifications on SJPs, care should be given to ensure communications use clear, easy to understand language. Given that legal language can be unfamiliar to most, this can be of use to all, but is especially relevant for those who speak English as a second language, as well as certain groups of disabled people.

### **Improving transparency**

*40. From your experience are there any groups with protected characteristics who may be particularly affected, either positively or negatively, by the proposals in Chapter 3 of this paper? Please include which groups/individuals and explain your reasons. We would welcome examples, case studies, research or other types of evidence that support your views.*

*41. What do you consider to be the equalities impacts of each of the proposals in Chapter 3 on individuals with protected characteristics? Are there any mitigations the government should consider? Please provide reasons and evidence where possible.*

Response to both 40 and 41: There may be merit in the proposal to include Equalities data as part the publication of prosecutions brought. However, care must be given to how this data is presented and used. The purpose of such data collection should be to identify systemic issues which may result in higher rates of prosecution and to enact solutions to ensure certain groups are not unduly penalised. For example, in rail has a move to digital ticketing meant that older people, or other groups with higher rates of digital exclusion, are now more likely to be prosecuted by the railway as they are not accommodated by methods of ticket sales? It may also be a useful tool to identify unconscious biases, areas where communication of conditions or regulations are insufficient or unclear, and to inform staff training. However, care must be given to ensure that such data is not presented in a way that implies naturally higher rates of criminality among certain groups.

### **For further information please contact:**

Sharon Hedges  
Sharon.hedges@transportfocus.org.uk