

Consultation: Changes to the Rail Penalty Fares Appeals Process

This is a response from the Office of Rail Regulation (ORR) to the Department for Transport's consultation on proposed changes to the penalty fares regime.

The ORR is the independent safety and economic regulator for Britain's Railways. We regulate Network Rail and aim to promote continuous improvement in safety, performance and efficiency of the railways so that it better meets the needs of users, including passengers, and taxpayers. We enforce competition law in relation to the provision of services relating to the railways and also have powers to enforce some consumer law in the railway sector.

We recognise the importance of measures designed to protect tax payers and fare paying passengers from the consequences of fraudulent use of the railways. However, it is also important that the rules and processes associated with such measures are fair, transparent, impartial, and are applied consistently, and that passengers are not punished for making a genuine mistake, particularly where they have bought the wrong ticket or have used it incorrectly as a result of having been given inadequate ticketing information.

We are therefore broadly supportive of the changes proposed in your consultation document but have responded on your individual questions below. We would be happy to discuss the issues covered in our response, or other relevant issues, as the policy is progressed.

Q.1 Do you agree with the proposal to implement new rules on 'stopping the clock' during the penalty fares appeals process. Yes/No. Please provide your rationale having regards to impacts on passengers and additional cost to the industry.

Yes.

We do not think it is right that passengers should be required to pay a penalty, or an 'administration fee' triggered by late payment, before they have been informed of the outcome of their appeal.

In addition, administration fees and the basis on which they are calculated should be made clear to passengers at the outset. Any fee described as an 'administration ration fee' or similar should only reflect the direct costs concerned.

Q.2 Do you agree with the proposal to establish the independence of all penalty fares appeals bodies? Yes/No. Please provide your rationale having regards to impacts on passengers and additional costs to the industry.

Yes.

It is important that appeals bodies are, and are seen to be, impartial. While it is possible for appeals bodies to be owned and/or operated by train companies or their owner groups, and to operate impartially, we understand that it can lead to perceptions of bias and/or claims that the system is unfair, which can also contribute to negative views of the railways more generally.

If this measure is deemed necessary to achieve this objective then we are supportive of the change.

Q.3 Do you agree with the implementation of a third stage appeal in the appeals process? Yes/No. Please provide your rationale having regards to impacts on passengers and additional costs to the industry.

Yes.

We can see merit in having a distinct third appeal stage (although recognise that in some cases this might actually mean less opportunity for the passenger to appeal).

However, the importance, or indeed necessity, of such a stage is diminished if the appeal body is only checking, again, that the relevant rules or guidance has been followed.

We believe that a third stage appeal body could add more value if is set up to consider, whether the letter of the guidance has been followed or not, the fairness of the outcome, given the circumstances concerned.

Q.4 How would the industry establish and fund a third stage appeal? Please provide your rationale having regards to impacts on passengers and additional costs to the industry.

We have not considered this question.

Q.5a Do you agree with the proposal to strengthen DfT oversight on the penalty fares and the appeals process? Yes/No. Please provide your rationale having regards to impacts on passengers and additional costs to the industry.

Yes.

Transparency of the system is vitally important, not only to help understand how the system is working and to help address passengers' concerns around trust and fairness, but it can also act as an indicator in relation to other issues.



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For example, if there are a significant proportion of instances of penalty fares being issued in relation to tickets being misused (e.g. the passenger having a ticket but using it incorrectly, such as being on the wrong timed train) this might indicate that there is a problem with the quality of the ticket information being provided (in and of itself this would not constitute a problem but it might, taken with other indicators, point to an issue that required further investigation). Likewise if a significant proportion of penalty fares issued concerned tickets bought at ticket vending machines, or from certain retailers, then this could also be an indication of a potential systemic issue requiring further investigation.

The industry recently published a code of practice on retail information, the development of which the Department asked ORR to oversee as part of its fares and ticketing review conclusions.

As we establish the basis for monitoring train company performance across a range of their passenger facing obligations this type of information would be helpful to us in assessing the extent to which train companies are complying with their obligations and identifying any gaps.

So, in addition to collecting and publishing information (by TOC) on:

- The number of penalty fare notices issued;
- The numbers appealed; and
- The number of successful appeals

It would also be useful to have such other information (with definitions agreed across the industry where appropriate) as:

- The reason for the penalty fare being issued, e.g. no ticket or no valid ticket (and where no valid ticket, the reason why it was not valid);
- Where/from whom the ticket was purchased (including the retailer from whom it was purchased and the sales channel, e.g. website, ticket office, etc.);
- The ticket type concerned; and
- The reason for the penalty being overturned.

Q.5b How frequently should the audits take place? Please provide your rationale having regards to impacts on passengers and additional costs to the industry.

We think having this data collected and published on a quarterly basis should provide a robust basis for analysis without proving to be over burdensome on those who are required to provide it.



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Q.6 Do you agree with the proposals to remove inappropriate threats of criminal sanctions from penalty fare payment reminder letters? Yes/No. Please provide your rationale having regards to impacts on passengers and additional costs to the industry.

Yes.

We note with concern that some passengers have received letters of a threatening nature in connection with penalty fares reminders.

The Consumer Protection from Unfair Trading Regulations (CPRs), which ORR has the power to enforce, prohibit unfair, misleading and aggressive commercial practices.

Aggressive commercial practices include those which significantly impair (or are likely significantly to impair) the average consumer's freedom of choice or conduct in relation to the product concerned through the use of harassment, coercion or undue influence and causes (or is likely to cause) them to take a decision they would not have taken otherwise.

We agree with proposals to remove inappropriate threats of criminal sanctions from penalty fare payment reminder letters.

In the meantime, if we have evidence of the systematic use of such practices we will take enforcement action.

Q.7 Do you have any additional comments or suggestions that you believe the Government should consider when examining potential changes to the penalty fares system? Please provide your rationale having regards to impacts on passengers and additional costs to the industry.

As well as ensuring that dishonest passengers are punished appropriately, it is also important to ensure that honest passengers are treated fairly. This includes not punishing those who have made a genuine mistake, particularly when the information they have been given when buying their ticket, or about how to use their ticket, is inadequate.

As we have suggested in response to Q.5a, as well as clamping down on those who deliberately set out to defraud the system, the industry needs to ensure that it improves the quality and availability of ticket information, particularly that about key restrictions and at certain sales channel, such as ticket vending machines.

In addition, in its report "Ticket to Ride" and its recent update, Passenger (now Transport) Focus identified a number of issues associated with the various ways in



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which passengers can be penalised for having an invalid ticket, including by way of Unpaid Penalty Fare Notices and criminal prosecution, in addition to penalty fares schemes.

We would urge the Department to look at the issues raised by Passenger Focus across the piece, to provide greater transparency in general, as well as to ensure that passengers are being treated fairly and, in particular, that criminal powers are used appropriately.

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