
Secretariat memorandum
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FT35
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Department for Transport's National Rail penalty fares rules policy and charge change consultation : London TravelWatch's proposed response

1 Purpose of report

- 1.1 For members to agree the proposed London TravelWatch response to the Department for Transport's (DfT) consultation.

2 Recommendations

- 2.1 Members are asked to approve the response.

3 Background

- 3.1 The aims of the DfT's consultation are to make the rules and policy clearer to passengers and Train Operating Companies (TOCs) through the use of plain English, and to clarify issues which have sometimes caused confusion. Changes are also being made to the maximum amount of the penalty fare following a request by the Association of Train Operating Companies (ATOC).
- 3.2 Ten per cent of all London TravelWatch correspondence received relates to penalty fares. As a passenger body, we believe that it is important to argue for a penalty fare regime which is easy to understand and transparent as process.
- 3.3 Every passenger should have the opportunity to purchase an appropriate ticket for their journey before it begins, and to have information on validity of tickets and fares available at the point of sale.
- 3.4 This paper highlights what London TravelWatch wishes to see in any new penalty fare regime.

4 Equalities and inclusion implications

- 4.1 This report raises no specific equalities and inclusion implications.

5 Financial implications

5.1 This report raises no specific financial implications for London TravelWatch.

6 Legal powers

6.1 Section 252A of the Greater London Authority Act 1999 places a duty upon London TravelWatch (as the London Transport Users Committee) to keep under review matters affecting the interests of the public in relation to railway passenger and station services provided wholly or partly within the London railway area, and to make representations about them to such persons as it thinks appropriate.

Penalty Fares Review : a response from London TravelWatch.

1. Introduction

- 1.1 London TravelWatch welcomes the DfT's review of Penalty Fares rules and regulations, as we have been acutely aware that, despite the existence of independent appeal bodies, 10% of our correspondence relates to penalty fares.
- 1.2 For a number of years, the penalty fares rules have been in need of revision to reflect changes in ticketing technology and the availability of different types of fares, in particular, the development of smartcard technology and the increasing use of systems such as Oyster, which was not been easily compatible with the existing Penalty Fares rules and regulations. We believe that this review will address the issues raised by this transformation of the means by which passengers purchase and use tickets on the rail network.

2. General principles

- 2.1 London TravelWatch believes that all passengers should purchase an appropriate ticket for their journey before their journey commences or, if this is not possible due to lack of facilities, during their journey. We believe that this is in the interests of equity for all passengers, in that it ensures that there is an appropriate balance between the revenue generated by fare-paying passengers and any subsidy from the taxpayer.
- 2.2 In order to satisfy this it is essential that passengers should have every opportunity to purchase a ticket appropriate to their journey before their journey commences, and also to have clear information on the availability and validity of tickets and fares at the point of sale. The point of sale will include a wide variety of outlets such as booking offices, ticket vending machines, third party retailers, internet sites, telephone sales and on-train staff where other outlets are not available.
- 2.3 The Department's guidance on Penalty Fares says that they are most appropriate in urban and suburban environments. The DfT recently published research commissioned for the South Central franchise replacement on ticketless travel in the South London Metro area. The results of this were instructive as to why some passengers do not purchase tickets appropriate to their journey and would therefore be subject to a Penalty Fare.
- 2.4 The survey found that of the 8-12% of passengers who had a ticket irregularity, the majority did not have any ticket at all. Those who did have a ticket but which was not valid for any particular reason were a very small percentage of the total.
- 2.5 The conclusion that we draw from this survey (which covered a significant segment of London's railway network and therefore could be said to be representative on a wider basis) is that most passengers do have the correct ticket for their journey, but unless there are robust and enforceable controls (on both passengers and operators), then it is likely that there will be a significant proportion of passengers who will not purchase tickets if they believe that there is a possibility of them not being required to pay. A Penalty Fares scheme is a valuable tool in enabling the reduction of such activity.

- 2.6 Equally, some passengers purchase tickets but for some reason these are not valid for the journey that they make. The evidence suggests that in most instances these people did not deliberately set out to commit an act of fraud. In these cases we believe it is the responsibility of train operators to ensure that passengers have clear information and instructions on when, where and how tickets are valid before and during their journey, and to treat the case as an excess fare rather than issue a Penalty Fare Notice. A clear and simple ticketing and pricing structure will reduce the incidence of 'wrong ticket' purchasing and reduce enforcement costs.
- 2.7 London TravelWatch believes that franchise specifications issued by the DfT should include reference to the operation of Penalty Fares and the ticketing facilities that operators are expected to provide at each station. Operators currently have the choice as to whether to run such a scheme, but we believe that in the interests of consistency in London it is essential that all local services have such a scheme in operation. In the case of stations within the London Travelcard area we believe that, where possible, staffed booking offices should be provided as well as at least one Ticket Vending Machine, plus smartcard validation and vending facilities.
- 2.8 We consider that, despite recent attempts to simplify the fares structure, its complexity means that consumers will make mistakes. Where train operators fail to adequately explain their products, or where passengers are given incorrect advice, we do not consider that passengers should be penalised for making a genuine mistake. As such, we consider that the Penalty Fares Review needs to take account of Sections 4, 5 and 6 of The Consumer Protection from Unfair Trading Regulations 2008, in particular the provision of misleading information or the failure to provide sufficient information at point of sale for the average consumer to make an informed purchase. Examples include where notices at the station or information on the National Rail Enquiries or Transport for London (TfL) websites appear to suggest that a ticket is valid or where the wording on the ticket is vague or meaningless.

3. Passenger requirements for the operation of a Penalty Fares scheme

- 3.1 London TravelWatch recommends that train operators should provide a wide of range of means by which passengers can purchase tickets prior to commencing their rail journey. These should include :
- A staffed booking office
 - Ticket vending machines (TVMs)
 - Internet and telephone booking
 - Smartcard technology such as Oyster – including the ability to purchase and collect products within a reasonable time
 - Mobile phone tickets
- 3.2 Where no staffed booking office or TVM facilities are available, operators must make arrangements for staff to collect fares either on the train or at the destination station. It may be acceptable in some circumstances to use a system of permits to indicate that a passenger has genuinely boarded at a station without such other facilities, but we believe that in most cases particularly in urban areas such as within the Greater London Travelcard area the use of this type of scheme is not desirable. In most cases, providing a proper TVM

would be more cost effective and give passengers the ability to purchase tickets for the journey they actually require.

- 3.3 At booking offices, operators must ensure that staff are fully trained on the validity and availability of tickets and fares, and are able to communicate this information clearly and effectively to passengers. In cases where the passenger has clearly misunderstood or has been given incorrect information then the presumption should be that a Penalty Fare is in appropriate. London TravelWatch suggests that an excess fare should be the means of dealing with this situation, or there should be the discretion to waive any additional charge as a gesture of goodwill. Booking Offices should also be capable of adding value and tickets to smartcards such as Oyster.
- 3.4 TVMs must similarly be able to explain to passengers in a clear, concise and logical manner the availability of tickets from the machine. It must be legible and user friendly to all potential passengers. Ideally all TVMs would have the capability to issue tickets to all National Rail destinations, and to add value or tickets to smartcards such as Oyster. However, where the required ticket is not available from the TVM and no booking office is open (or, as in the case of London Underground Limited, is only able to issue a limited range of tickets) then mechanisms should be in place to allow the passenger to travel without incurring a Penalty Fare. Examples of these include extension tickets from Travelcard Boundary Zones and the non-availability of Railcard discounts from TVMs operated by London Underground Ltd. In cases where the passenger has clearly misunderstood information or has been given incorrect information, the prescription should be that a Penalty Fare is not appropriate. Instead, an excess fare should be the means of dealing with the situation, or there should be the discretion to waive any additional charge as a gesture of goodwill. Where a penalty fare is issued by a train operator passengers should be given the benefit of the doubt and any appeal should be upheld.
- 3.5 Where there is no booking office, or the booking office is closed, then a TVM and (where a scheme operates) a smartcard reader should be available (subject to the caveats of 3.4 above), and failing that, fares should be collected on board by the operator. If this is not possible for whatever reason, then the passenger should be allowed to purchase their ticket at any point where they would be required to leave the National Rail network i.e. at the end of their journey or at an interchange with another mode. In these cases a Penalty Fare would not be appropriate and any Penalty Fares issued for journeys made from this station should automatically be suspended.
- 3.6 It should be noted that, if in any of these cases the passenger asks for a ticket from an authorised Penalty Fare inspector under any of the circumstances listed under 3.2 to 3.5 (and 4.2 below), then it is likely that they have genuinely not attempted to commit an act of fraud and therefore should not be subject to a Penalty Fare, but allowed to purchase a ticket at the rate that they would have been entitled to at a booking office, and with any appropriate discounts.
- 3.7 London TravelWatch believes that the current arrangements for discretion (such as when dealing with children, foreign visitors etc.) when applying a Penalty Fare are generally about right. However, in relation to cases where Season Tickets are either mislaid or forgotten we believe that train operators should have a consistent industry-wide approach as to whether to apply a Penalty Fare or not. Revenue Protection staff should be able to check the details of all season ticket holders to see whether any claim by a passenger to hold a valid season

ticket is accurate. This should include any tickets issued by TfL which are valid on the route in question e.g. Oyster season tickets. We consider that in the first instance any passenger leaving their ticket at home should be issued with an Unpaid Fares Notice which should be withdrawn upon the presentation of proof of a valid ticket to any ticket office, rather than as in some cases being immediately issued with a Penalty Fares Notice.

- 3.8 The operation of a Penalty Fare scheme must be clearly communicated to passengers by means of posters and other information, both prior to travel at stations and on trains during the journey. Failure to do so should be regarded as grounds for appeal.

4. Smartcard and mobile phone ticketing

- 4.1 Increasingly, smartcards and mobile phones are becoming the most usual means of delivery for fares and tickets, instead of paper tickets. These means offer greater technological advantages to operators and reduce the risk of fraud, if used appropriately. The introduction of these devices should however not increase the risk to passengers of incurring a Penalty Fare compared to a paper ticket. This means that operators where smartcards are valid will have to provide, at all stations, the means of validating such smartcards and enable all staff to be able to verify the validity of the smartcard. This also applies to mobile phone ticketing. In addition, administrators of Penalty Fares appeals (such as IPFAS and IAS) must have access to the databases of smartcard and mobile phone ticketing to be able to establish the validity and efficacy of any smartcard or mobile phone ticket presented to them. It is not acceptable for passengers to be expected to have to supply such administrators with these details at their own inconvenience and expense.
- 4.2 In the event of a failure of the smartcard facility at a station, the presumption should be that the passenger was not attempting to defraud and therefore a penalty fare should not be applied in this case.
- 4.3 First Class

We recognise that a proportion of passengers will purchase First Class tickets in order to obtain to gain additional space or complimentary refreshments. We receive a number of complaints from such passengers that standard class ticket holders will often use these facilities without paying the appropriate fare or without permission.

However, we consider that there are circumstances where it is reasonable for passengers to make use of empty seats. In particular, some train operators have severe overcrowding problems and because of a lack of on-train staff, no-one is available to declassify the service or to give particular individuals permission to use the facility. We consider that where there is clear evidence of overcrowding on a regular basis, or overcrowding due to particular disruption on the day, train operators and drivers should automatically declassify First Class accommodation and make appropriate refund arrangements for any passengers with First Class tickets.

Where train operators regularly provide rolling stock which includes First Class accommodation but usually do not charge First Class fares, we consider that penalty fares should not be charged on those few services where First Class fares do apply. For example, the vast majority of services between London Blackfriars and Herne Hill are

Standard Class only services. However, for five services per day, First Class fares currently do apply.

5. Interchange arrangements

- 5.1 In previous iterations of the Penalty Fares Rules, it was stipulated that if no facility was available at the station at which they boarded, passengers should purchase tickets at the earliest opportunity, including at interchange stations. However, in recent years the practicality of this requirement, particularly in urban areas such as London, has become more difficult as a result of the introduction of more ticket gates at busy interchange stations (thus making passage to ticket offices more problematic in general). There is difficulty too in that in many cases there will be insufficient time between connecting trains for a passenger to be able to purchase the required tickets. In addition the rule was introduced at a time when many stations had poor or non-existent ticketing facilities, and ticket vending machine technology was limited in its capabilities. Since that time much has been achieved in terms of additional ticketing facilities installed and the introduction of more sophisticated ticket vending machines has meant that the need for passengers to purchase tickets mid journey has considerably reduced. Further provision of TVMs at stations currently without such facilities would reduce further the need for passengers to purchase tickets mid-journey.
- 5.2 London TravelWatch therefore believes that it is unreasonable to maintain this requirement under the new rules for the limited number of occasions where this situation is still likely to apply. Instead, the expectation should be simply that in these cases a penalty fare is not appropriate and that passengers should be allowed to purchase the correct ticket at any point on their journey.

6 Application of Penalty Fares

- 6.1 Notwithstanding all the situations and eventualities described above, there will be occasions when it is necessary to issue a Penalty Fare on a passenger, in which case the passenger must be given clear justification as to why a Penalty Fare is being imposed, and also the process that will follow.
- 6.2 Firstly, passengers should be advised that they should pay the Penalty Fare immediately, but that they may have their money reimbursed (less the cost of the ticket that they should have had) if they appeal successfully. If they choose not to pay the Penalty Fare immediately, or do not have the means to pay, they must be advised that additional administrative charges may be levied at a later date and of the extent of these if the Penalty Fare is not paid within the required period.
- 6.3 The means of payment of a Penalty Fare should include cash, cheque, credit and debit cards, and electronic transfer, according to the media used, such as face to face, by post, by telephone or by the internet. However, in the case of payment other than at the time of issuing of the Penalty Fare, the appeals body must be contactable by all of the following : by post, by non-premium rate telephone (at least in office hours 0800-1800) and by the internet (including email).

Upon submission of an appeal, the appeals body should respond to any appeal within 21 days giving a full explanation as to why any decision has been made. If a reference is made to the advice provided or behaviour of staff or to other issues relating to the train operator or station facility owner, the correspondence should be passed to the relevant party and the appellant advised of this and whether to expect a further response.

- 6.4 In cases where an appeal is made, it should be accepted that, on receipt of the initial appeal, no administrative charges will be applied by either the appeal body or any debt collection agency on behalf of the train operator if the appeal was received within the required period, until the appeal is resolved in the first instance. This is the system currently used by IAS but not IPFAS. Once an appeal has been determined then the 'clock of appeal deadlines should start again', and the appellant be required to pay the Penalty Fare or any outstanding fare in the remaining time. We recognise that there could be practical implications for the collection of fines or pursuing prosecutions if the clock is put on hold indefinitely because correspondence is still being exchanged. Therefore we would accept the principle that further correspondence from the appellant would not trigger a 'stopping of the clock'. However, if an appeals body requests further information in order to determine an appeal, such as a copy of the ticket, an appropriate period (e.g. 14 days) should be allowed and specified in order to enable any passenger to comply prior to any administrative fee being levied.
- 6.5 Any penalty fare notice should indicate at what stage an administrative fee will be levied and how much it will be : For example, similar to a parking ticket, they could state "You are required to pay a penalty of £x. A discounted amount of £x will be accepted in full and final settlement if received within 21 days of the issue of this penalty fares notice. If you believe that you should not have received this penalty fare notice, you may submit an appeal to the address below within 21 days. A failure to respond to this notice could make you liable to prosecution."
- 6.6 Appeals bodies should also consider disability issues in the operation of Penalty Fares, including reasonable adjustments for those with difficulties in putting appeals in writing. Disability (including mental illness) should also be a consideration of any appeal criteria.
- 6.7 Appeals bodies need to be transparent in their public activities. It is also recommended that they should be wholly independent of train operators and debt collection agencies to avoid any semblance of a conflict of interest.
- 6.8 Finally, if no payment is received in relation to a Penalty Fare then there should be a consistent and well publicised policy on the part of train operators to prosecute persistent and wilful fare evaders.

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