



Department
for Transport

Summary of responses and Government response to the consultation on changes to the Rail Penalty Fares appeals process

December 2016

The Department for Transport has actively considered the needs of blind and partially sighted people in accessing this document. The text will be made available in full on the Department's website. The text may be freely downloaded and translated by individuals or organisations for conversion into other accessible formats. If you have other needs in this regard please contact the Department.

Department for Transport
Great Minster House
33 Horseferry Road
London SW1P 4DR
Telephone 0300 330 3000
Website www.gov.uk/dft
General enquiries: <https://forms.dft.gov.uk>

© Crown copyright 2016

Copyright in the typographical arrangement rests with the Crown.

You may re-use this information (not including logos or third-party material) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence **OGL** or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or e-mail: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third-party copyright information you will need to obtain permission from the copyright holders concerned.

Contents

1. Foreword	4
2. Introduction	5
Executive Summary	5
3. Summary of Responses and Government Position	7
Introduction of 'Stop the clock'	7
Establishing the independence of appeals bodies	9
Establishing a third stage appeal	10
Strengthening DfT oversight	12
Removing the threat of criminal sanctions from reminder letters ..	15
Additional comments	16
4. Next steps	21

1. Foreword



Penalty fares protect paying passengers by acting as a deterrent on those in the minority who travel without a valid ticket. I am, however, aware that sometimes honest passengers can be caught out by a genuine mistake, which can result in a penalty fare being issued incorrectly causing undue stress. The current appeals process for penalty fares does not always help passengers when this happens. I am keen to ensure a better and more transparent process for passengers.

That is why this Government response outlines improvements to the appeals procedure, including making it independent from train operators and more transparent.

I believe by improving the penalty fares regime in this way we will provide better levels of protections to passengers and ensure that when an appeal is made, the process is transparent, clear and robust.

As the Secretary of State has stated, the Government wants to move to a smarter and more intuitive process of ticketing across the network. As this aim is delivered I hope to see that one of the benefits will be a long term reduction in penalty fares issued as ticketing becomes simpler.

Paul Maynard

2. Introduction

Executive Summary

- 1.1** The Department for Transport (DfT) conducted a public consultation on proposed changes to the Rail Penalty Fares appeals process¹ between 3 February and 27 April 2015. The consultation was published on gov.uk and publicised through social media.
- 1.2** The DfT also wrote to several organisations to bring their attention to the consultation. In total we received 47 responses, from a range of organisations such as London TravelWatch, Transport Focus, Train Operators and individual respondents.
- 1.3** We have now considered the responses to this consultation, and have a final package of proposals to improve the existing penalty fares regime. These changes will provide greater protection for passengers in relation to penalty fares appeals and provide greater clarity for passengers in relation to the penalty fares regime as a whole.
- 1.4** We will improve the existing regime through:
 - "Stopping the clock" on the 21 day deadline for payment when an appeal is received by an appeals body. Combined with simplifying the rules related to deadlines for payments and appeals, this will help passengers when they appeal a penalty fare.
 - Requiring all Penalty Fares appeals bodies to become independent of Train Operators and owning groups. This will create a clear separation between those that issue penalty fares and the organisations who consider and process appeals.
 - Improving the Penalty Fares appeals system by adding a third stage, where appeals will be considered by an independent appeals panel. Providing passengers with

¹ Department for Transport (2015) Changes to the Rail Penalty Fares appeals process, London <https://www.gov.uk/government/consultations/rail-penalty-fares-changes-to-appeals-process>

further safeguards if they feel they have been unfairly issued with a penalty fare.

- Train operators and appeals bodies will be required to provide data on penalty fares appeals. This will strengthen DfT oversight of penalty fares appeals bodies and operators who issue penalty fares.

1.5 The DfT will also continue to work with the industry with the aim of ensuring that staff and passengers have a sufficient level of understanding of the penalty fares regime and criminal penalties and that inappropriate threats of criminal sanctions are not made to passengers.

1.6 The responses to the consultation have been considered thoroughly by Government, and our final policy approach has been refined as a result. It has taken time to work through the approach to implementing these changes, which is why it has taken longer than usual to respond to this consultation. We are now planning to implement changes to the existing regime via a Statutory Instrument which will also amalgamate the existing rules and secondary legislation. We believe that bringing all the rules together in one place in this way will provide greater clarity for passengers.

3. Summary of Responses and Government Position

We asked seven questions across five issues related to Rail Penalty Fares appeals. For each question, we asked respondents to explain the reasoning for their position, and to consider in their response the potential impacts on passengers as well as potential additional costs to industry.

Introduction of 'Stop the clock'

- 2.1 The DfT proposed that appeals bodies would 'stop the clock' on the 21 day deadline for payment when an appeal was received by an appeals body from a penalty fares recipient. Once the appeal body issues the passenger with a letter notifying them of the outcome of their appeal, the 'clock' would resume. If the appeal was unsuccessful, the DfT proposed the passenger would be given an additional 7 days to make payment.

Question 1: Do you agree with the proposal to implement new rules on 'stopping the clock' during the penalty fares appeals process?

Summary of responses

- 2.2 Among the responses we received, there was unanimous agreement to the DfT's proposed approach.
- 2.3 A number of other proposals were put forward by respondents. These included suggestions that an additional 14 or 28 days should be given to unsuccessful appellants to pay as opposed to the 7 days suggested by the DfT in the consultation document. The DfT notes however that a Passenger Transport Executive and some Train operators already operate a 'stop the clock' process and allow 14 days for payment following an unsuccessful appeal.

- 2.4** Some respondents disagreed with the DfT's assessment of the additional costs from this approach, though this was countered by those who believed the benefits that this will bring to passengers will outweigh the costs and there would not be significant costs.
- 2.5** One respondent further suggested that penalty fares recipients could receive different deadlines for the appeal and the payment (for example, an appeal could be required within 21 days of issue and a payment within 28 days).

Government response

- 2.6** Having noted the comments by various respondents, the DfT intends to allow those who have made an appeal 14 days for payment if their appeal is unsuccessful. This is rather than the 7 days originally proposed in the consultation document. The DfT also intends to simplify the time limits for each stage of the appeals process.
- 2.7** In line with our proposals, a penalty fare recipient will be given 21 days to either make payment or appeal against a penalty fare. If they appeal within this time then the 21 day deadline is suspended. If the appeal is unsuccessful, the penalty fare recipient will be given 14 days to either make payment or appeal to the next level of the appeals process. If they appeal within 14 days then the 14 day payment deadline is again suspended. This 14 day deadline will apply at every stage of the appeals process and if the appeal is unsuccessful at the final appeal stage then the penalty fare recipient will be given a final 14 days to make payment. This approach will benefit passengers who will find the process more streamlined, while also improving protection.
- 2.8** We will work with industry to ensure that passengers have access to clear information setting out the timetable for each stage of the process.

Establishing the independence of appeals bodies

- 2.9** The DfT proposed to prohibit Train Operators from using appeals bodies that are financially or managerially associated in any way with operators or owning groups. This would create a clearer distinction for passengers between those who issue penalty fares and those who consider the appeals.
- 2.10** The consultation noted that this would have implications for the Independent Penalty Fares Appeals Service (IPFAS), which is currently owned by the Southeastern franchise operator and the Go-Ahead group, and that the Department would need to provide sufficient notice to arrange the separation of IPFAS.

Question 2: Do you agree with the proposal to establish the independence of all penalty fares appeals bodies?

- 2.11** Most respondents agreed with the proposal that appeals bodies should be fully independent.
- 2.12** Those who disagreed with the proposal commented that the creation of a new independent body could incur additional costs. As an alternative, they suggested that, as a way of demonstrating independence in the appeals process, a Train Operator should not engage an appeals body which was controlled by its parent. They suggested that this approach would be a cost effective measure.
- 2.13** Some responses asked for further detail on the proposed definition of independence, with some commenting on the need to define financial and managerial independence. Transport for London (TfL) commented that although they finance their appeals body, they maintain managerial independence of the body, thus, maintaining operational independence.
- 2.14** Finally, it is noted that the Rail Delivery Group (RDG)² comment that 'indisputable independence' is a key requirement for any proposed body that oversees appeals.

² Rail Delivery Group was formerly known as the Association of Train Operating Companies (ATOC).

Government response

- 2.15** Having considered the responses, the DfT plans to ensure that the new statutory instrument includes provisions to require that penalty fares appeals bodies should be independent of Train operators and owning companies.

Establishing a third stage appeal

- 2.16** The DfT proposed a requirement for a three stage appeals process to be implemented by operators. At present, there is no limit on the number of appeals a passenger is able to make per case. Under the proposed process, the first stage would involve the appeal being considered by a relevant independent appeals body; the second stage would be considered by a manager at the same appeals body who was not involved in the original assessment; and at a final third stage, the case would be considered by another independent appeals body who makes the final decision.
- 2.17** The DfT proposed that Train Operators and appeals bodies could work together to establish and fund the third stage in the appeals process (similar to Transport for London (TfL) using the Independent Appeals Panel (IAP) as their third stage appeal body).

Question 3: Do you agree with the implementation of a third stage appeal in the appeals process?

Question 4: How would the industry establish and fund a third stage appeal?

- 2.18** Among those who responded to the proposal to establish a third stage appeal, mostly either agreed, or partially agreed with the proposal. Some of those who partially agreed provided suggestions on the implementation of this approach, and to ensure the effectiveness of a three stage appeals process.
- 2.19** Those who disagreed were mainly Train Operators who did so on the grounds that the current appeals body they use has a two stage appeals process and, as they have an appeals process internally, they already

effectively have a three stage appeals process. These industry respondents felt that if they were required to follow a different process then this would lead to them incurring extra costs.

- 2.20** Issues were also raised around the likely effectiveness of the three stages. RDG commented that they were 'less sure' that the additional stage would be required and suggested a more formalised two stage appeals process would be preferable. RDG further suggested that the appeals body should be industry wide as this would be cost effective and consistent.
- 2.21** Transport Focus echoed this sentiment commenting that 'much would depend on how the three stages differed'. They made the point that a 'customer service approach', where a Train operator could apply 'suitable discretion/benefit of the doubt', would be beneficial with the independent appeals process providing a 'safety-net'. Additionally, one Train operator commented on the need to understand 'the correct format' for appeals bodies, with another Train operator, adding that the DfT needs to provide 'appropriate oversight ensuring that guidelines for appeals are consistently applied'.
- 2.22** In terms of the approach to implementing this third stage, a variety of proposals were put forward. These included suggestions that a national appeals body be created with separate levels of appeals to handle Penalty Fares. In addition, responses proposed that the third stage appeals process might be funded through an increase in the amount charged by way of a Penalty Fare, or that IAP (the body used by TfL for this purpose) could be used. Other responses were sceptical that this would add costs, due to the potential savings from wider simplification of the regime.
- 2.23** One other respondent, along with RDG, suggested Train Operators should work through the latter to appoint and pay for a single, industry-wide appeals body. The body could be a commercial organisation with the relevant expertise, but independent of train companies. RDG proposed charging an administration fee to passengers who make unsuccessful appeals to deter 'frivolous' appeals. They also proposed working

with the DfT and industry to further evaluate options for this third stage appeal before final decisions are made.

- 2.24** Other respondents commented that it would be appropriate for the Government to establish a three stage process so as to protect its genuine independence, while others suggested that the industry should fund this process.

Government response

- 2.25** The DfT notes that, on balance, there has been a positive response to the proposed implementation of a three stage appeals process. We intend to proceed with the creation of a third stage in the appeals process in order to ensure that passengers have clarity over the approach to pursuing their right of appeal.

- 2.26** In the consultation we proposed the implementation of a nationwide third stage appeals panel. However, it may be more cost-effective to allow an appeals body to make arrangements for having their own third stage appeals panel instead of the creation of a nationwide panel. We will work with passenger representatives and the industry to determine a cost effective solution that secures benefits for passengers. For example, this could be through a separate panel, or through exploring further what role Transport Focus could play. We will provide further detail on the approach to the third stage appeals process when bringing forward the legislation to implement penalty fares appeals reforms.

- 2.27** The key element of the third stage appeal will be independence from the previous stages of appeal, and from the industry as a whole, reflecting views from responses.

Strengthening DfT oversight

- 2.28** The DfT proposed that it would request specific penalty fare data to support periodic high level 'health checks' of the appeals system. It would be compulsory for Train Operators to provide this data. This data would be provided and audited at the Train operators' expense. A report would be produced for the DfT giving greater oversight of the penalty fares process. This data could

provide the DfT with high level oversight of key statistics and alert the DfT to problem areas so suitable action could be taken.

- 2.29** The DfT proposed that where there may be poor adherence to the penalty fares rules, Train Operators or appeals bodies could be required to provide an explanation. If the explanation was unsatisfactory, Train operators or appeals bodies could be notified of the issues they need to address with a deadline set for changes to be implemented. Sanctions may then be imposed if follow-up reviews show a continuing need for improvement

Question 5a: Do you agree with the proposal to strengthen DfT oversight on the penalty fares and appeals process?

Question 5b: How frequently should the audits take place?

Of those who commented, most agreed or partially agreed with the proposal. Those who did express a view of partial agreement were concerned about the cost of the audit.

- 2.30** In the consultation document, the DfT stated that 'the financial impact on Train operators [would be] minimal'. One owning group, however, commented that the costs would not be minimal and the financial impact of the proposal would need to be fully assessed and balanced against the benefits it would potentially bring. This view was echoed by a respondent who commented that they would support the proposal as long as the 'provisions of data do not become too onerous to provide'.
- 2.31** Others brought up the issue of contextualising the data, commenting that the inclusion of the reasons as to why appeals were upheld should be included as, not doing so, could compromise the integrity of the results. This was echoed by those who commented that the figures should be sufficiently detailed to provide specific information such as the numbers of penalty fares issued, how many were upheld, how many were subject to appeal, split down by train operating company.

Summary of responses- Q5b

- 2.32** There was a varied response. Several respondents commented that an annual audit was sufficient. RDG and one other respondent suggested an audit every two years with the latter suggesting that independent professional auditors would need to be used and the cost should be met using the receipts from Penalty Fares. Other respondents suggested quarterly audits to take place.
- 2.33** Among those who expressed a view, some suggested an annual audit take place, with others suggesting half-yearly or quarterly audits take place.

Government response

- 2.34** The DfT notes that it is within its existing power to request data on penalty fares and the appeal process from Train operators, and welcomes support for the proposed use of these powers. We plan to extend our powers to also cover requests for data from appeals bodies.
- 2.35** The DfT agrees with RDG and other respondents about contextualising the data to help provide accurate interpretation of the information and will work with the industry to consider how this can be reflected in the audited data provided.
- 2.36** Regarding the financial impact of the proposal, as it is stated in the consultation document, Train operators would be required to finance the audit and procure the services of independent suppliers to do so. This approach has proved successful in the past with the audits of performance statistics under the previous Passenger's Charter compensation regime.
- 2.37** The DfT welcomes the overwhelming positive response to the proposal to conduct an audit and strengthen DfT oversight of the penalty fares process.
- 2.38** The DfT notes that the majority of responses suggest an annual audit and we are inclined to proceed with the requirement for an annual audit.

Removing the threat of criminal sanctions from reminder letters

- 2.39 The DfT proposed to issue guidance on the pursuit of penalty fares payments regarding the language used in reminder letters from Train Operators. The DfT also proposed that Train operators clarify to passengers the type of sanction (criminal or civil) being pursued and why.
- 2.40 In addition, the DfT proposed that it would work with Train operators to ensure staff are suitably trained on the specific guidance, as well as other matters.
- 2.41 Finally, the proposal stated that if Train operators were found to ignore issued guidance, the DfT would withdraw their right to operate a penalty fares scheme.

Question 6: Do you agree with the proposal to remove inappropriate threats of criminal sanctions from penalty fare payment reminder letters?

- 2.42 The majority of organisations agreed, or partially agreed with the proposal. One disagreed, although it is noted they disagreed with 'removing the threat of criminal sanctions from reminder letters' and did not comment on 'inappropriate threats'. This respondent also stated that the 'removal of threats of criminal action could encourage people to ignore payment and therefore cause an upturn in the number of cases prosecuted'.
- 2.43 Whilst a majority of those who responded supported this proposal, some commented on the need for passengers to be aware that they could potentially face criminal prosecution under the Regulation of Railways Act 1889 if they failed to pay. Therefore, although most agreed that inappropriate threats were to be removed, many respondents commented that a warning as to the possibility of criminal sanctions needed to be made clear.

Government response

- 2.44 The DfT agrees that passengers need to be made aware of the possible ramifications of non-payment and

the criminal sanctions that are available for Train operators to pursue.

- 2.45** The DfT welcomes the overwhelming positive response it has received regarding this proposal, and we intend to work with the industry with the aim of ensuring that staff and passengers have a sufficient level of understanding of the penalty fares regime and criminal penalties, and that inappropriate threats of criminal sanctions are not made to passengers.

Additional comments

Question 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?

- 2.46** The responses to this question have been categorised into the following subjects

- Penalty Fare value
- Ticketing, availability and facilities
- Legal issues, compliance and governance
- Other comments

Penalty Fare value

Summary of responses

- 2.47** Several respondents suggested the DfT look to increase the prescribed Penalty Fare amounts. They further suggested by implementing the value of the Penalty Fare which TfL operates, that this would remove the inconsistencies within the London Travelcard Area, as well as deter fare evaders. Others commented on increasing or reforming the Penalty Fare value, suggesting different levels as to the appropriate amounts to be charged.

Government response

- 2.48** The DfT notes the responses from various organisations wishing to raise Penalty Fares. The amount of the Penalty Fare is out of scope for this consultation and, therefore, no change in the value of

the Penalty Fare is being proposed as a result of this consultation exercise. Should the DfT wish to propose a change in the future then it will consider what level of consultation is required at that time.

Ticketing, availability and facilities

Summary of responses

- 2.49** Some commented on a shortage of available ticketing facilities as being the ‘root cause’ for the issuing of Penalty Fares. One highlighted various problems that can occur with ticket machines, making the passenger unable to purchase a ticket and effectively forcing the individual to cancel their journey or to travel without a ticket on a train. In addition, it was commented that the industry needed to improve the availability of ticketing information, particularly around ticketing restrictions (Off-Peak, Peak etc.). Finally, it was also suggested to implement a ‘failed to carry season ticket and no supporting document’ notice, in addition to the Penalty Fare notice.
- 2.50** Other respondents commented on the issues around ticketing and the availability to purchase the appropriate ticket. Some raised a point about Railcards and the fines that are imposed on passengers who present a discounted ticket without the necessary accompanying documentation. It was also suggested that they be treated in a similar way to season ticket holders, insomuch that once they have provided evidence of their Railcard in accordance with the National Conditions of Carriage (NRCoC), the relevant operator has discretion to refund the Penalty Fare.

Government response

- 2.51** The DfT notes the issues raised around ticketing facilities and agrees and endorses the views that ticketing facilities and availability, as well as clear ticketing restriction information, should be made available for passengers wishing to purchase tickets for travel.

- 2.52** It is noted that some of these issues have, and are currently being, addressed. The rail industry has worked with the Office of Rail and Road (ORR) to develop a Code of Practice on retail information for rail tickets and services, which was put in place on 25 March 2015. The code gives guidance to train operating companies and third party retailers on, and promotes best practice in, meeting consumer law and industry standards associated with the provision of information to passengers in connection with the sale and use of rail products and services. The Code outlines that the information provided should be done so in a way that is clear, intelligible and unambiguous. Ticket vending machines are a priority with some operators already innovating in the best interest of passengers by displaying clearer information on screens.
- 2.53** The ORR has been monitoring progress and published a further Update and Next Steps in September 2015. The DfT continues to monitor and work with industry towards meeting these goals. The ORR have identified the key challenges with ticket vending machines focussing on, in particular, the use of jargon, filtering results, timing of Off-Peak sales, the provision of information about available products and provision of information on ticket restrictions and validities
- 2.54** The industry is committed to improvements and many train companies have actions identified, underway or already complete in order to give passengers clearer information and access to the most appropriate tickets.
- 2.55** The DfT also notes the suggestion in regard to having a new notice, in addition to the Penalty Fares notice and the issues around Railcards. These proposals are out of scope for the purposes of this consultation. With specific regard to the availability of ticket machines and ticket retailing availability, the DfT notes that a penalty fare is not permitted to be charged where there are no facilities in operation for the sale of the appropriate ticket at the station where a passenger boarded.

Legal issues, compliance and governance

Summary of responses

- 2.56** Transport Focus in their response commented that the current Railway Byelaws (which make it a criminal offence to travel without holding and being able to show on request a valid ticket) provide Train operators considerable leeway in how they deal with passengers, in that they have a choice of issuing a penalty fare, which would be a civil matter, or pursuing payment of the fare under a byelaw, which would be a criminal offence. This causes inconsistencies between how passengers are dealt with by train operators.
- 2.57** The concerns raised by Transport Focus were echoed by the ORR who urged the DfT to look at the complexities of the rules around ticketless travel, specifically those associated with the various ways in which passengers can be penalised for having an invalid ticket, including by way of criminal prosecution.
- 2.58** Others observed that the current Penalty Fares system treats Penalty Fares recipients as 'guilty until proved innocent'.
- 2.59** One of the appeals bodies and TfL commented that if they could be given permission to access the unedited Electoral Roll data, this would help to improve the accuracy of name and address data collected when Penalty Fares are issued. This would avoid inconvenience to members of the public whose details are confused with the intended recipients of the Penalty Fares.

Government response

- 2.60** The DfT notes the strong sentiment expressed regarding the regimes relating to ticketless travel. It is noted that any further changes to the scope of the civil and criminal penalties regimes which apply to passengers who travel without valid tickets are outside the remit of the current consultation.
- 2.61** There are no plans to give appeals bodies' access to unedited Electoral Roll data.

Other comments

Summary of responses

- 2.62** Some commented on the use of the term ‘fare evasion’ to describe issues around penalty fares. They commented that it was an emotive term and the word ‘penalty’ leads to worry and confusion on the part of the passenger, particularly when an honest mistake has been made. Other respondents stated that passengers should receive compensation from the Train operators when a penalty fare is overturned on appeal.

Government response

- 2.63** As stated in 2.45, we will work with the industry to ensure that all parties have an adequate understanding of the penalty fare regime.
- 2.64** It is noted that the process to receive compensation from a Train operator following a successful appeal is out of scope for the purposes of this consultation.

4. Next steps

- 3.1** Having considered the consultation responses, the DfT is minded to proceed with the proposals outlined above.
- 3.2** The DfT intends to lay a Statutory Instrument before parliament to implement changes to the existing penalty fares regime.