Independent review of train operators' revenue protection practices

6. Recommendations

6.1 This chapter sets out our recommendations on the review overall, further to the findings and conclusions set out in chapters 3, 4 and 5.

6.2 Where appropriate we have included further detail to clarify any detailed elements that we consider the recommendations to include.

6.3 Separate to the recommendations, we have where relevant set out some potential issues or suggestions that government and industry may wish to take account of when they are considering how to implement the recommendations. These reflect issues we noted during the review and which are discussed in this report.

Recommendation 1: Make buying the right ticket simpler and easier

6.4 Passengers need clearer information about ticket types, ticket validity, usage restrictions, and peak/off-peak travel times at the point of sale.

6.5 Ticket rules and restrictions can be complex, poorly explained or not widely understood – leading to confusion and unintentional mistakes, and passengers being penalised for genuine errors. This in part is because of outdated retail systems that can make it hard for retailers to access and present clear information to passengers. This lack of transparency can raise concerns in the context of consumer law. However, we have seen examples of good practice that work

around some of these issues and which could be adopted more widely in the interim until these systems issues are remedied.

6.6 To address this, we propose the following actions:

- **Short / medium term:** Provide plain English explanations of ticket types, validity and restrictions (e.g. on timing, routes, railcard usage, etc.) at the point of purchase.
- **Medium / longer term:** Redesign ticketing systems and review policies to eliminate known points of confusion and to ensure that essential T&Cs are presented clearly at the point of sale (e.g. on restrictions relevant to the use of railcards).

6.7 As part of delivering on action (a), we think that the good practice referred to above could be adopted relatively quickly by other retailers.

Potential points for government and industry to consider when implementing this

6.8 Given the time constraints of our review, our work looking at passenger understanding of terminology was limited to testing a number of the most commonly used terms (as discussed in chapter 3).

6.9 To understand the full extent of the issues identified when addressing this recommendation, there may be merit in further research to inform the plain English wording to be used on tickets themselves, on retail channels during the ticket purchase process, and on booking confirmations where applicable, to aid passenger understanding of ticket validity.

6.10 In respect of action (b), while it will be for government and industry to consider how best to implement this, they may wish to consider the following:

- introducing railcard validation to confirm that passengers have valid railcards at the point of ticket purchase and their date of travel;
- whether, in light of the issues noted in chapter 3, there would be an overall net benefit if the adult rail ticket age were to be aligned with the legal adult age (18), removing the need for the 16-17 Saver Railcard and the related scope for confusion and misuse; and
- whether there is a case to rationalise the number of railcards (taking into account the overall costs and benefits, including the revenue that railcards raise and factors such as the potential to reduce passenger confusion and error).

Recommendation 2: Strengthen consistency in how passengers are treated when ticket issues arise

6.11 Passengers should be treated fairly and consistently when they are found without a valid ticket, with a focus on industry targeting intentional fare evasion as opposed to genuine mistakes and responding proportionately.

6.12 TOCs use a wide range of policies, approaches and legal powers that can lead to inconsistent treatment of passengers and sometimes unfair or disproportionate outcomes, where the scope for passengers to challenge this may be limited.

6.13 To address this, we propose the following actions:

- **Short / medium term:** Adopt consistent principles as part of a new governance framework for revenue protection, including use of an escalated approach to determining the appropriate response based on likely passenger intent.
- **Short / medium term:** Identify and adopt best practice in encouraging behavioural change, including through better passenger education and awareness of the importance of travelling with the correct ticket and the potential consequences of not doing so.
- **Medium / longer term:** Improve data sharing across the industry to support identification of persistent offenders, while protecting those who have made genuine mistakes. This data could also support identification of and action against other systematic fraudulent activity.

6.14 The consistent principles referred to under action (a) would need to work for all types of TOC, including open access TOCs and those run by or behalf of devolved governments.

Potential points for government and industry to consider when implementing this

6.15 While it will be for industry and government to consider how best to implement this recommendation, we envisage that action (a) would take account of the need:

- to clarify overall strategic policy expectations from government for the purpose and intent of revenue protection activity;
- to establish consistent arrangements for notices and reports other than penalty fares (e.g. UFNs, if considered necessary under the new governance framework), including a common

appeals process for these to support improved and consistent outcomes for passengers;
- to develop an escalatory approach to dealing with ticket irregularities;
- for appropriate and proportionate governance to ensure that principles are adhered to, while providing reasonable flexibility to enable TOCs to reflect commercial and operational circumstances; and
- for a more coordinated approach to training and evaluation for frontline revenue protection staff to ensure consistent high standards and application of policy (including potentially requiring accreditation). This could cover, among other things, revenue protection rules and processes, passenger engagement (including vulnerability), intent indicators and use of discretion.

Recommendation 3: Introduce greater consistency and fairness in the use of prosecutions

6.16 Prosecution decisions should consider fair, evidence-based criteria and only be taken when clearly justified and in the wider public interest.

6.17 Prosecution policies vary considerably across TOCs. This includes decisions on whether to bring charges against an individual (the test for prosecution); the choice of law and legal procedure; use of third-party agents; the approach to out of court settlements; and the use of digital tools that quicken and streamline the prosecution process. This means that passengers can face significantly different outcomes and treatment for similar issues depending on which TOC they travel with.

6.18 To address this, we propose the following actions:

- Short-term: Introduction of a consistent test for prosecution, including guidance on weighing public interest factors in favour of (or against) prosecution.
- Short-term: Development of best practice principles applying to the use of out of court settlements, including the basis of calculating the settlement fee.
- Longer-term: Undertake a wider review of revenue protection legislation to simplify, clarify and provide greater consistency across the rail sector, including the use of railway byelaws, where currently a passenger can be held legally responsible for travelling with an invalid ticket, even when a genuine mistake has occurred.

6.19 Actions (a) and (b) would be railway-specific and additional to any mandatory code of practice for private prosecutors which may result from the Ministry of Justice consultation on oversight and regulation of private prosecutors (as discussed in the executive summary). We think these actions could (and should) be delivered quickly.

Potential points for government and industry to consider when implementing this

6.20 Regarding action (c), we envisage that a review of legislation could usefully cover:

- the relative balance between TOCs' powers and the need to protect passengers, and specifically the use of strict liability offences to prosecute suspected fare evaders, and/or the available defences (including in relation to those passengers who have made a genuine mistake);
- a review of penalty fares legislation, including how unpaid penalty fares are to be recovered and how penalty fares are intended to interact with prosecution;
- consideration of whether penalty fares should be mandatory and the proportionality/ structure of the three-stage appeal process for penalty fares; and
- whether equivalent legal protections (e.g. around appeals processes) should – in addition to penalty fares – apply to all notices and reports issued as part of the new governance framework proposed in Recommendation 2.

6.21 Any such review would need to take into account rail reform as well as seeking consensus and input from the Scottish and Welsh governments.

Recommendation 4: Make information on revenue protection easy to access and understand

6.22 Passengers should be able to easily find and understand information about T&Cs, their rights, how penalties, prosecutions, out-of-court settlements, and appeals work, including through online information and in any letters or formal notices they may receive.

6.23 We propose the following action to support this:

- **Short-term:** Review and improve passenger-facing revenue protection information to ensure it is accessible, clear, and easy to understand. Where action is taken against a passenger, the process should be clearly set out, with access to further information and

any options for resolution where appropriate.

6.24 Further to our findings in chapter 4, we consider this recommendation should include the need to clarify the 'compelling reasons' in the 2018 Regulations for penalty fare appeals, both to improve passenger understanding and also to ensure clarity for the appeals bodies.

6.25 It also covers (further to chapter 3) the need to simplify and streamline the NRCoT and other ticket T&Cs. We are aware that RDG is currently consulting with stakeholders on changes to the NRCoT to (among other things) improve clarity for customers regarding ticket validity. Following this, it is planning a more comprehensive overhaul of certain aspects of the NRCoT. Where issues identified from our review remain to be addressed, the next stage of RDG's review of NRCoT could provide a good opportunity to do this.

Recommendation 5: Greater coordination, oversight and transparency of revenue protection activity

6.26 Revenue protection activity should ensure passengers are treated fairly, support the sharing of best practice in tackling revenue loss, and make effective use of data to drive efficiency and improvement in how this is done.

6.27 Processes and practices have proliferated over time. The legal framework is complex and poor implementation or inconsistent practices can impact both individual passengers and wider industry. There is no body with a role in oversight of this area and limited data to assure the public on how effectively the system is working.

6.28 To address this, we propose the following actions:

- Short-term: Establish an appropriate forum or body tasked with identifying and promoting best practice across all aspects of revenue protection policy and enforcement (underpinning recommendations 2, 3 and 4).
- Medium-term: Create a shared revenue protection dataset with consistent measures to support long-term oversight, improve transparency through publication of key metrics (including on appeals), and help the industry make the best use of its resources.

6.29 In relation to action (b) on the dataset, it would be for the industry to determine what this should cover. However, we envisage it including among other things:

- numbers and types of notices and reports issued;
- reported ticketing issues (including sources of confusion and loopholes);
- data on prosecutions; and
- success measures (as discussed in chapter 4).

6.30 In relation to supporting greater coordination, we consider this recommendation covers the need for better feedback processes to drive continuous improvement across all aspects of revenue protection.

6.31 In this regard, a key gap to be addressed is the link between retail and revenue protection, as identified in chapter 3. This will support the industry in continuously improving how tickets are sold to reduce the risk of passengers intentionally or inadvertently travelling with an invalid ticket.

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