Guidance on rail retailing: draft for consultation (HTML)

Introduction

The rail industry offers passengers a wide range of tickets, products and services, with various ways of choosing and buying them. For passengers to fully benefit from the choices available to them, they must be able to quickly and easily assess their options, plan their journeys with confidence, complete the purchase and receive the best value for money for what they buy. Access to relevant, accurate, complete and timely information at the retail stage is a legal requirement and a fundamental component of informed passenger decision-making. This enables passengers to select the most appropriate ticket for their journey, to understand how they can use that ticket, and what rights and restrictions might apply to it.

The primary purpose of this guidance is to assist rail retailers in meeting their consumer law obligations regarding the provision of information to passengers, and promote best practice in connection with the sale and use of rail tickets, products and services. For the purposes of this document, 'retailers' encompasses both train operators and third-party retailers.

Passengers may also find this document useful in helping them understand what information they should be provided with when buying rail products and the service they should expect to receive.

The Guidance has been developed in the context of the current range of rail tickets, products and services and how these are currently sold, such as at ticket offices, ticketing vending machines (TVMs), websites and apps. However, the principles set out in the Guidance should be equally applicable to information about new and emerging products and means of selling. The Guidance will be kept under review and updated as necessary.

Relevant consumer law and enforcement

This Guidance is designed to assist rail retailers in understanding some key consumer law obligations when selling rail tickets, products and services. ORR is a designated enforcer of consumer law under Part 3 of the Digital Markets, Competition and Consumers Act 2024 and has the power to enforce infringements under a number of different enactments. The scope of this Guidance is limited to the requirements of consumer law that ORR can enforce. For present purposes, the key legislation includes:

1. The Digital Markets, Competition and Consumers Act 2024 ('**DMCCA**'), which prohibits unfair commercial practices. The DMCCA applies to commercial practices **before, during and after** a contract is made. It contains a general prohibition against unfair commercial practices, prohibitions against misleading and aggressive commercial practices, and the omission of material information from an invitation to purchase. Further information about the DMCCA can be found in guidance published by the Competition and Markets Authority.
2. The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 ('**CCR13**'), which cover the provision of pre-contract information and the rights of consumers buying at a 'distance' or 'off premises'.
3. Parts of the Consumer Rights (Payment Surcharges) Regulations 2012 ('**CRR12**') which prohibit payment processing fees being charged.
4. Parts of the Consumer Rights Act 2015 ('**CRA15**'), which provides rights for consumers in respect of unfair contract terms and protects their rights when purchasing goods, services and digital content.
5. Rail Passengers' Rights and Obligations Regulations 2010 ('**PROR10**') which make provision for the effective implementation, in Great Britain, of Regulation (EC) No. 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (as amended by the Rail Passengers' Rights and Obligations (Amendment) (EU Exit) Regulations 2018). These set expected minimum levels of service including, for example, in relation to travel information and the availability of tickets, through tickets and reservations.

ORR can take retailers to Court who engage in, or are likely to engage in, a commercial practice which constitutes an infringement under the relevant legislation. ORR can apply to Court for an interim or final enforcement order seeking either undertakings that behaviours will be corrected

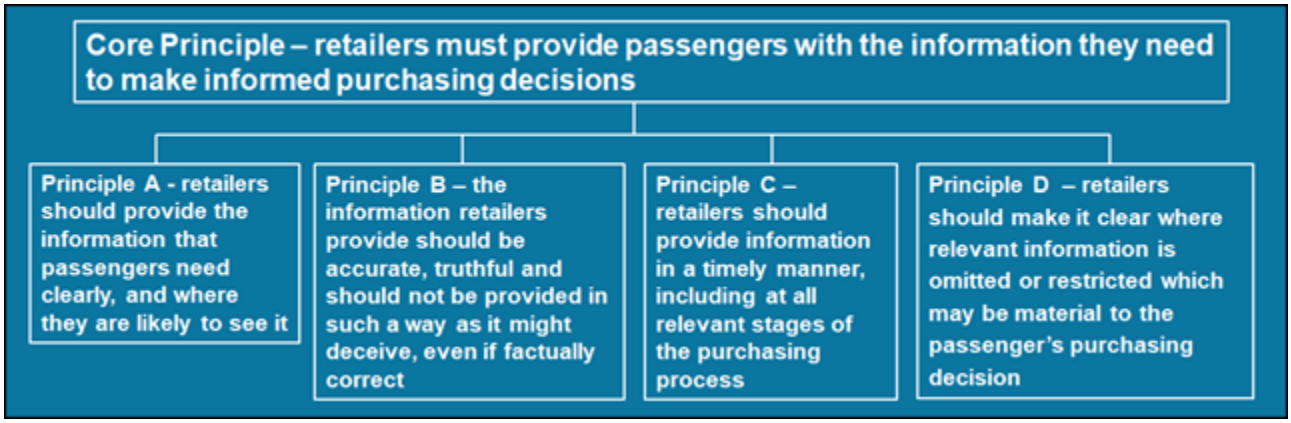
or fines of up to 10% of the trader's turnover or up to £300,000 (whichever is higher).

Retailers should establish their independent understanding of their consumer law obligations and how they can achieve compliance with them. This Guidance should not be taken as formal legal advice. For completeness, we remind retailers that they must also be aware of their obligations under other relevant legislation not enforced by ORR.

Structure of the Guidance

This Guidance has been designed around principles that reflect the requirements of the stated consumer law by setting out the information that may be relevant to rail passengers:

Figure 1: Diagram summarising the principles



Core Principle

Retailers must provide passengers with the information they need to make informed purchasing decisions

The purpose of the Core Principle is to ensure that passengers are provided with information that is likely to be material to them when **choosing or buying** a rail ticket, product or service. Consumers must be supplied with the information that the average consumer needs to make an informed transactional decision.

The information that individual passengers need may vary depending on the type of ticket, product or service they are buying, the purpose of their journey, or the individual requirements of the passenger.

Retailers must ensure that passengers are provided with all the information they may need to enable them to choose and buy the most appropriate ticket for their journey.

Regarding the sale and supply of rail tickets, products and services, this includes information about the main characteristics of the product and information such as (but not limited to) that listed in the table below.

N.B. where we refer to 'tickets' in the table, this may also apply to other products and services such as railcards, WiFi, etc.

Information type	Detail
Timetable	Including departure and arrival times; journey duration; and any delays/cancellations and/or alternative transport arrangements (such as rail replacement services or extended journey times) that may affect the journey.
Total price	Including ticket price; admin/booking fees; delivery/fulfilment charges; and any other unavoidable charges.
Validities and restrictions	Including the route(s) on which the ticket is valid, the train company or companies with which it is valid, and the time(s) of travel at which the ticket is valid.
Key terms and	Including those set out in the National Rail Conditions of Travel, and

Information type	Detail
conditions	ticket and/or railcard specific terms and conditions, such as flexibility, routeing, discounts, fulfilment, etc.
Compensation and refund rights and arrangements	Including information about the arrangements for compensation when trains are delayed – when these are applicable and how to claim, as well as the circumstances in which a refund is available, how to claim and whether a refund claim incurs an admin fee (and how much).
Ability to break a journey	If the ticket allows the passenger to break their journey, then this should be explained, along with any restrictions.
Accessibility of trains and stations	Passengers need information to ascertain if trains and stations which they may wish to travel to, from or on are accessible to them.
Assistance available to passengers with disabilities	Information for passengers who need assistance to travel, including about the Passenger Assist scheme and any other assistance should be provided, along with information about how to access any such assistance.

Information type	Detail
Availability of on-train services	Where a train service offers services such as Wi-Fi or catering, details of these services should be available.
Arrangements for travelling with luggage or other articles	Where there are arrangements or restrictions relating to taking luggage, animals, cycles or other articles on a train, this information should be available.
Class of travel	Information for passengers about the availability of, or any restrictions on, first class accommodation.

Principle A

Retailers should provide the information that passengers need clearly, and where they are likely to see it

Retailers must provide the information that passengers need, which is likely to include the information set out in the Core Principle, in a way that is clear and likely to be seen, so that passengers can consider this as part of their decision-making process.

Principle B

The information retailers provide should be accurate, truthful and should not be provided in such a way as it might deceive, even if factually correct

Retailers should take steps to ensure that the information they provide is accurate and truthful. This principle includes the obligation not to mislead passengers, which we consider in a railway context means presenting or explaining information in a way that does not deceive passengers or create confusion, or lead the passenger to have a different understanding than that which is correct and verifiable. Retailers must not omit or hide material information, or provide it in an unclear or factually inaccurate manner. This would include information which, although true, is presented in a misleading way.

Principle C

Retailers should provide information in a timely manner, including at all relevant stages of the purchasing process

Retailers must provide material information that passengers need in a timely manner, including at each stage of the purchasing process, to allow the consumer to take this information into account as part of their purchasing decision. This must include the total price of the product. For further detail and explanation on inclusive total pricing see the CMA's guidance on Unfair commercial practices: price transparency CMA209.

Principle D

Retailers should make it clear where relevant information is omitted or restricted which may be material to the passenger's purchasing decision

Retailers must make passengers aware of any limitations to the range of fares that they may be offered at a particular point of sale and, if this is limited, they must tell them where they can access other relevant fares. Similarly, if the sales channel is restricted in the completeness of the ticket, product or service information it is able to present to the passenger (for example, due to space constraints), the passenger should be signposted to where they can find all the information

they may need.

Case Studies

The following table includes some examples of how the principles above could apply in a rail retailing context:

Number	Case study examples
1	**Incomplete information.** Failure to provide information about the existence of a rail replacement service and the potential impact on the journey. Where a rail replacement service is in operation, but the rail retailer fails to bring this to the attention of the passenger before purchase, then this might be considered a misleading omission. The existence of the rail replacement service is, from a passenger's point of view, material information, which could reasonably be expected to affect their purchasing decision. Depending on their circumstances, a passenger may need to allow more time for their journey, or they might wish to travel on another day, by another route or by another mode. This is most likely to arise in relation to bus services during planned disruption where the ticket retailer is more likely to have prior knowledge of the disruption and subsequent changes to the service, but it could also arise following unplanned disruption. Information that might legitimately affect a passenger's purchasing decision, should, where reasonably practicable, be provided to them in a timely way (by whatever means is appropriate) to enable them to take it into account.

Number	Case study examples
2	**Incomplete information.** Failure to provide information to a passenger about the existence of key restrictions attached to their ticket: for example, a passenger purchases an off-peak return ticket online. The retailer's website mentions that the ticket is "subject to restrictions" but does not specify what those restrictions are. The passenger assumes they can return on any train in the afternoon/evening. Upon arriving at the station at 3pm, they are informed that the ticket is only valid on trains departing after 7pm. Faced with a long wait or the need to buy a new ticket, the passenger feels misled. In this case, the retailer's failure to detail the time restriction—or to clearly signpost where that information could be found—may be considered a **material omission**. The restriction was significant and directly impacted the passenger's travel plans. The information that is required will depend on the circumstances including, for example, where and how the product is offered for sale, including any limitations of the communication medium used (such as space or time) that make it impractical to provide the necessary information. In such circumstances, if other means have been used by the retailer to convey this information, these will be relevant to assessing whether a material omission has been made.
3	**Misleading promotional statements**. While train operators are free to set prices according to demand, phrases such as "Book early to get the cheapest tickets" or "The earlier you book, the cheaper your ticket" may be considered misleading if cheaper tickets might in fact become available at a

Number	Case study examples
	later stage. If there is a possibility that cheaper tickets might become available close to the date of travel or throughout a certain period of time, then this should be made clear to consumers. Retailers are advised to exercise particular care in the language used within advertising or promotional materials, to ensure clarity and transparency, to avoid the risk of misleading or unfair practices.
4	**Misleading omission.** It should be made clear to the passenger if a cheaper or more appropriate ticket, product or service is available, via the same or an alternative sales channel. For example, TVMs often do not offer the full range of ticket types available online or at staffed ticket offices, such as: Advance fares or discounted / promotional fares. Where this is the case, it must be made clear to passengers if there are other relevant tickets and where they can be bought. Some pay-as-you-go (PAYG) options are only available via one ticket form e.g. contactless. In instances where PAYG is cheaper than paper tickets this should be made clear to the passenger.
5	**Misleading promotional statements.** The list of practices which are in all circumstances considered unfair is set out in Schedule 20 of the DMCCA. This includes making an invitation to purchase products at a specified price without disclosing the existence of any reasonable grounds the retailer may have for believing that they will not be able to offer them in reasonable

Number	Case study examples
	quantities. For example, a train operator is promoting a temporary or discounted fare across its network, but only 20 tickets are available at that price. Supply should be sufficient to meet the likely level of demand, with the retailer considering the potential reach and wording chosen for the relevant advertising. If only limited numbers of tickets are available, then this should be made clear.
6	**Information to inform journey planning**. Before purchasing tickets, passengers need information to ascertain if trains and stations which they may wish to travel to, from or on are accessible to them at the times they wish to travel. For example, a passenger who has a mobility impairment wishes to travel from a station that does not provide step-free access to some platforms. During the ticket purchasing process it is not made clear to the passenger that there is limited step-free access to the platform from which their intended train departs. Where the ticket retailer fails to provide this information to the passenger before purchase (or direct them to where they can find more information), then this might be considered a misleading omission, as such information may be material to the passenger's decision to buy the ticket.
7	**Transparency of fees.** Where there is a mandatory fee for purchasing a rail ticket, product or service online: • it must be included in the price at each stage of the purchasing

Number	Case study examples
	process. For rail ticket purchases, and purchases of other rail products, this must be included in the upfront price that is first displayed to the consumer; and • it must be clear to the consumer throughout the booking process that a fee is being charged and how much the fee is. Where there is a ticket fulfilment option (e.g. postage) available for a fee: • an option with a fee must not be pre-selected; and • where an option with a fee is selected by the consumer, the fee should be immediately included in the total price displayed to the consumer. Information provision for consumers: There should be readily available, transparent and accurate information online for consumers to read in advance of engaging with the booking process about: • mandatory booking fees associated with ticket purchases. This should explain when fees apply, state the level of any fixed fees, and explain how variable fees are determined (for example whether fees vary with ticket price, timing of purchase, or any difference in fees between website and app purchases); • ticket delivery options and any fees associated with each option; and • eligibility for refunds and ticket amendments, and any associated costs. When charging a mandatory fee, retailers must include it in the total price and when providing a breakdown of the price:

Number	Case study examples
	• give the fee equal prominence on the webpage as the train fare or any other fees; and • present it in a reasonable font size so it can easily be identified and read by the consumer. In making information about fees readily available, retailers must: • ensure information on fees is not set out within lengthy terms and conditions; • ensure information on fees is written in plain English and in a form that is easy to understand; and • ensure an online link to a page that deals with fees, is easily available.