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6 August 2019

Dear [REDACTED]

### **Application of Penalty Fare Regulations 2018**

We are writing to express concern with how the Penalty Fare Regulations appear to have been applied, and may still be being applied, in regard to the calculation of penalty fares at point of issue.

In April 2018, the new regulations came into effect. There is guidance for these regulations but unfortunately, there are areas of ambiguity which could leave the passenger vulnerable to being overcharged for a penalty fare.

One area of the Penalty Fare Regulations causing particular concern is section 9 (6) (b) which states that 'the day and time of the journey the person is making, has made or intends to make' should be referenced when calculating the cost of a penalty fare.

However, investigations following complaints made to London TravelWatch and Transport Focus have revealed that penalty fares issued at twice the single fare have been calculated at the anytime walk-up fare. This has meant that the day and time of the journey has not been taken into account when the penalty was calculated. Both penalty fare appeal bodies have agreed that they too translated the regulations in the same way. In addition to being overcharged, some passengers may have faced prosecution or have been prosecuted for an unpaid penalty fare that has been incorrectly calculated.

Both London TravelWatch and Transport Focus have made further enquiries and the Rail Delivery Group (RDG) have confirmed that the time and day of travel should be taken into consideration when issuing a penalty fare. The RDG also asked their legal counsel to comment.

On 26 June 2019, RDG advised that all customers who could have potentially been overcharged on their penalty fares will need to be contacted and refunds issued where appropriate. They also advised that asking customers, who have overcharged, to appeal again would be a much more negative proposition, and likely to result in bad press or worse; legal action taken by passengers.

It is deeply troubling that since this legal advice from the RDG was given at the end of June 2019, no further steps have been taken to contact passengers to resolve the issue of overpayment. Indeed, correspondence with both the Department for Transport (DfT) and the RDG both seem to be relinquishing responsibility, indicating that the responsibility for resolving this matter lies with the other or directly with the individual rail operators.

A conservative estimate made by one of the appeals bodies put the number of penalty fares that would require checking in the thousands. Where miscalculation has occurred the passenger is, at the very least, entitled to a refund of the overpayment. There is also a case for arguing that the penalty should be cancelled because of the error in applying the regulation.

If the penalty fare schemes are to be considered fair and transparent it is essential that the DfT recognises the very real reputational risk and the seriousness of imposing incorrectly calculated financial penalties on the travelling public.

As this issue is already in the public domain and has appeared on various industry forums, London TravelWatch and Transport Focus urge the DfT to take the lead and give clear direction on how this matter can be urgently resolved, and also to make their own investigations to satisfy themselves that the regulation is being correctly applied going forwards.

This is an extremely significant issue and we would ask for a timetable for resolution.

Yours sincerely



Anthony Smith  
**Chief Executive**  
**Transport Focus**



Joanna Simons  
**Interim Chief Executive**  
**London TravelWatch**