

# Debt Recovery and Prosecutions

## 'Without Fear or Favour'



Subject: Fixed Penalty / Failure To Purchase

Date: January 2013

From: [REDACTED]

### 1. The Northern Fixed Penalty scheme

**Definition:** Fixed Penalty; *'an alternative to prosecution for offences of 'fare-evasion' that have no aggravating features'*

#### Introduction:

Operated by Northern Debt Recovery & Prosecutions Unit (DRPU) the Fixed Penalty scheme is an alternative to prosecution, not to be confused with Penalty Fares (Northern do not currently operate a Penalty Fare Scheme).

When a fare evasion incident is reported to the DRPU having considered the report and with the exclusion of any aggravating factors (i.e. verbal assaults, false details) we will offer an £80 Fixed Penalty as a means of disposal. I should make it clear that only the DRPU issue the Fixed Penalty.

The system has been tested in court on many occasions. The courts favour the initiative as they prevent them being clogged by comparatively low value cases, but more importantly; they demonstrate that we are giving the customer every opportunity to avoid a court appearance. Similarly it satisfies defence advocates as having an alternative means of disposal.

The £80 is a calculation of the average amount of time spent working on the case to that point, and is again considered fair. Should the matter proceed to court and proved there would be our normal costs application of £150 plus the fare and any fine the court imposes.

In short, the payment of the Fixed Penalty will mean that the offender will not be taken before a court for fare-evasion as long as the offender has no history with the DRPU and committed no additional 'Byelaw' offence during the act.

#### Background

Evidence supports the fact that there is an increasing reluctance on the part of some Magistrates' to impose a minimal penalty and in some cases dispose of the matter by way of conditional or absolute discharge depending on the strength of the defendant's mitigation. The Magistrates have a set of guidelines that they strictly adhere to; they must take into account;

- a) The age of the defendant
- b) Was the defendant offered an alternative method of disposal
- c) What will be the impact on the defendant if convicted?
- d) What is the likelihood of the defendant re-offending?

With the majority of revenue exercises being carried out at peak times the passenger reported for fare-evasion are;

- 1) Regular commuter
- 2) Predominantly white collar workers
- 3) Travels to and from their place of work
- 4) Holds a regular job.

Regular activity by the 'Revenue Delivery Teams' is resulting in the detection of large numbers of passengers who fit the above profile. With the majority of defendants pleading guilty we are generally successful in our costs application.

When taking an offender to court charged with fare-evasion there is a strong possibility that they will receive a fine. The maximum penalty for this offence is £1000 and or 3 months in prison. In reality the fine generally falls into a band of between £75 and £500, plus costs of £100 and the original fare [compensation]. This



# Debt Recovery and Prosecutions

## 'Without Fear or Favour'



offence [5.3(a) Regulation of Railways Act] is recordable and a conviction carries a criminal record for dishonesty. As the conviction is logged onto the Police National Computer the impact on our profiled passenger is dramatic and can result in the termination of their employment and in most cases they will have an obligation to declare the conviction to any future employer. Again we sense and witness the reluctance of Magistrates' to convict.

### **A word about the Northern Unpaid Fares Notice (UFN)**

We have a policy to offer passengers who are unable to pay their fare an Unpaid Fares Notice [UFN]. This robust system is an effective revenue protection tool and the majority of notices do not pose a problem to the DRPU. However there are those who we have to pursue. It is this minority that will become the focus of the Fixed Penalty.

Our current policy is that failure of the passenger to send payment of the outstanding fare results in a recovery letter being sent to the address given at the time of issue and recorded on the UFN. As we have had to write and request this outstanding payment an administration charge is levied. Failure to reply to this reasonable request results in the offer of a fixed penalty as an alternative to prosecution. It is made clear throughout our correspondence that failure to satisfy payments will result in legal action being taken to recover an outstanding fare through the court system.

### **Principle:**

Whilst as a private company we do not possess Police powers, we are constantly challenged following laying charges and in court by advocates, who remonstrate that if this [fare evasion] was a CPS matter it would be dealt with by way of Caution or by Fixed Penalty!

The introduction of the DRPU Fixed Penalty will end this conflict and offer offenders an opportunity to avoid an appearance in court.

Those who refuse to accept our offer of disposal by Fixed Penalty will proceed to court as normal and the Magistrates will be informed of the defendant's option and subsequent reluctance to accept our offer. If we consider point (b) mentioned above, [Was the defendant offered an alternative method of disposal] in the Magistrates' Guidelines the failure of the defendant to comply with our reasonable request will dramatically influence the decision of the Magistrates when sentencing.

### **Benefits:**

- the DRPU Fixed Penalty will help reduce the burden currently being placed on an overloaded court system
- It will demonstrate to HMCS (Her Majesty's Court Service) Northern's customer service approach in providing an alternative method of disposal
- It will demonstrate our approach to educating offenders and assisting with the rehabilitation of offenders
- It is another means in which to educate those who choose to disregard railway rules and regulations
- The Fixed Penalty has replaced a second request letter UFN process that precedes summons
- The DRPU Fixed Penalty has replaced a second letter in the Travel Incident Report (TIR) process that precedes summons in fare-evasion cases.

### **Summary:**

As can be appreciated a lot of thought has been given prior to the introduction of the Fixed Penalty process.

During my research into its concept I have taken appropriate professional legal advice. Having outlined the principle and explained the spirit of the Northern Fixed Penalty I have received the guidance and positive encouragement that has resulted in the realisation of this project. Finally as a further demonstration of DRPU customer service, it will be at the prosecutor's discretion to consider whether it is appropriate to reduce a matter to a Fixed Penalty when dealing with a matter even at the court attendance stage.



# Debt Recovery and Prosecutions

## 'Without Fear or Favour'



### 2. Northern Failure To Purchase (FTP)

The Failure To Purchase process is part of a strategy developed by Northern DRPU to help protect the revenue that is critical to our business and has been implemented by its Revenue Delivery Teams across the Northern Franchise. The basis of the FTP policy is that it is illegal to contravene the Railway Byelaws, in this case specifically Byelaw 18. All TOCs enforcing this Byelaw run into a flurry of customer complaints when they do. However most do it in one of two ways;

1. *simply refuse to sell discounted tickets from staffed stations*
2. *report each offender and then prosecute, citing Byelaw 18 as strict liability.*

Neither option is practical for Northern because conductors would not have time on the train to operate them. Therefore, we developed the FTP system. A great deal of thought went into its development and included advice from DRPU specialised legal advisors.

It was felt that for all of the legal aspects, the important thing for us was customer service, so we wanted a warning element in all that we did. We therefore put posters at all stations warning of our intention; secondly we handed out warning flyers to all who breached Byelaw 18 in the weeks before we went live. The main warning element is the FTP notice that the customer receives of course, because they simply have to pay the fare for the journey made to Northern DRPU, without any penalty.

The FTP must not be confused with the Penalty Fares regime.

The full FTP system is a Northern product and as such we own the intellectual property right of it. However we spoke and continue to speak to Passenger Focus and ATOC about this product and all of our procedures, they belong to us, but they are fair and impartial.

#### Carrying out a FTP operation

The FTP notices are only issued by Revenue Officers, and the most important factor is that at the time when the planned exercises are undertaken all ticket purchasing facilities are open and operating normally. The main objective of the exercise is to get customers to use the booking offices and purchase tickets prior to boarding. Consequently no operation will target a station that only has a TVM facility. FTP operations are intelligence led based on analysis of ticketless travel data identifying customers who failed to purchase.

In advance of an exercise, and at least one week before, Northern 'Buy Before You Ride' posters are displayed at the target station and leaflets made available for customers explaining our reasoning. Similarly leaflets are handed to customers arriving at the destination station that will be manned on the day of the exercise. In short customers are told what will be happening and where. On the day of the exercise the Operation Supervisor will contact the Booking Office to ensure that make them aware of the operation.

The Operation Supervisor will be notified of any break in service delivery or machine fault during the exercise so as to avoid the issuing of notices to anyone who did not have an opportunity to pay before boarding the service.

Also intelligence led is the provision of additional support for the target Booking Office. Revenue staff equipped with portable ticket issuing machines are deployed to assist with queue busting during planned peak operations.

I should also make it clear that the FTP notice will not be issued to customers who have restricted mobility or disabled.

So in short it is enforcement of Byelaw 18, the customer gets a warning that does not cost anything other than the price of the ticket. Should the customer ignore this warning, where it is more common amongst other TOCS to prosecute, we would first offer a fixed penalty before progressing to court.



Head of Debt Recovery & Prosecutions