Rail fares and ticketing

By Louise Butcher

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Summary

This paper explains the rail fares framework, including who sets fares, what constitutes a ‘regulated’ fare and how regulated fare levels are calculated. It also looks at the question of why fares go up. It also explores changes to ticketing – including smart and flexible ticketing, rail cards and penalty fares.

Around 45 per cent of fares are subject to regulation (by the Secretary of State in England, Welsh Minister in Wales and Scottish Ministers in Scotland). Regulated fares are set by a formula based on the RPI figure for the previous July, and for many years with a degree of flexibility (called the ‘fares basket’ or ‘flex’). All other fares are set commercially by train operators.

The regulated fare increase in England for 2017 is 1.9% (based on an RPI +/-0 formula); the total fare increase was 2.3%. This disguises variations across different routes.

Almost without exception, when the annual fare increases are announced every year passenger groups express concerns that significant increases could ‘price people off the railways’ and put a strain on those who use the railways to commute to work, particularly into and out of London. However, it has been the policy of successive governments to rebalance the funding of the railways between passengers and taxpayers: reducing the relative contribution of the latter. A consequence of this is higher fares. The train companies themselves are keen to rebut claims that they are ‘profiteering’ off higher fares, noting that fares income is spent on upgrades and investment projects and, in some cases, is passed on to the Government as part of the financial package for the franchise.

In terms of ticketing, successive governments, working with the industry, have made efforts to simplify the fares structure, though some passenger groups feel that it is still too complicated. In recent years, technological improvements combined in some cases with devolved decision making has led to the introduction of ‘smart’ ticketing across parts of the rail network, though there is concern about a lack of integration between these systems. The Government has also sought to promote ‘flexible’ ticketing, such as part-time season tickets and other innovations, but progress has been slow.

A statistical overview of rail fare changes since privatisation can be found in HC Library briefing paper Public Transport Fares (CBP7470), 18 January 2016.

Information on other rail-related matters can be found on the Railways Topical Page of the Parliament website.
1. Rail fares framework

1.1 Who sets rail fares?

There are two sorts of rail fares: regulated and unregulated. The former are set by the franchising authority (in England and for cross-border services the Secretary of State for Transport, and Welsh and Scottish Ministers in Wales and Scotland respectively) and the latter on a commercial basis by the train operating companies (TOCs). Around 45% of fares are subject to regulation.

The franchising authority\(^1\) has a duty under section 28 of the Railways Act 1993, as amended, to ensure that, where it appears necessary, fares or certain classes of fare are ‘reasonable’:

Subject to the other provisions of this Act, if it appears to the [appropriate franchising authority] that the interests of persons who use, or who are likely to use, franchised services so require, [it] shall ensure that the franchise agreement in question contains any such provision as [it] may consider necessary for the purpose of securing that any fares, or any fares of a class or description, which are to be charged are, in [its] opinion, reasonable in all the circumstances of the case.

The 1993 Act, the Transport Act 2000, and the Railways Act 2005 give the franchising authority the power to regulate fares through the franchise agreements with the TOCs where this is in the interests of passengers. Although the 1993 Act does not define ‘reasonable’, the principal market in which such regulation has been deemed necessary is the commuter market around London and certain other cities, where commuters have few practical alternatives to rail. Fares regulation has therefore been applied through franchise agreements to limit increases in these fares. Fares regulation has also been applied outside urban areas, to weekly season, long-distance ‘Saver’, and shorter distance standard return fares.

Unregulated fares are determined commercially by the TOCs. Changes to fares can be made during a franchise agreement as long as the financial effect on the franchisee is neutral.

To preserve the benefits of a co-ordinated national network, TOCs are obliged as a condition of their franchise agreements to be a party to and comply with approved arrangements for through-tickets, conditions of carriage and telephone enquiries. The arrangements approved for the purposes of this condition are the industry-wide and Department-controlled Ticketing and Settlement Agreement (TSA), National Rail Conditions of Carriage and the National Rail Enquiry Scheme (NRES).

The TSA places an obligation upon TOCs to offer “inter-available” fares (i.e. fares that can be used on the services of any train company) on all routes.

The graphic below demonstrates how each £1 of fares income is spent:\(^2\)

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1 formerly the Strategic Rail Authority (SRA) and, before that, the Franchising Director
2 Rail Delivery Group, Every pound of income... [accessed via National Rail website, 19 January 2017]
1.2 What is a ‘regulated’ fare?

In 2003 the Strategic Rail Authority (SRA)\textsuperscript{3} conducted a major fares review. The outcome of that review was that after 1 January 2004 regulated fares would fall into two categories, known as ‘protected fares’ and ‘commuter fares’:

- **Protected fares** include saver returns, standard returns and weekly season tickets; and
- **Commuter fares** include season tickets to, from and within the London Travelcard zones; standard singles and returns for journeys wholly within the London Travelcard zones; and standard singles and standard returns to any station in the Travelcard zones from a defined London suburban area, roughly 35-50 miles from London.\textsuperscript{4}

All other fares would be unregulated and TOCs would be free to determine these fares according to market forces. Unregulated fares include:

- all first class fares;
- ‘advance purchase’ fares;
- tickets (other than Travelcards) which include through-travel to London destinations served by other public transport;
- tickets which include a non-rail element (e.g. leisure park admission);
- saver tickets, for journeys where there was no saver fare in 2003; and
- weekly season tickets, for journeys where there was no weekly season fare in 2003.

\textsuperscript{3} set up by the Labour Government in 2001, abolished in 2005
\textsuperscript{4} SRA, *Fares review conclusions*, June 2003, appendix C
Although a particular fare may be unregulated, in certain cases the regulated fare acts as a ceiling – for example, an unregulated Supersaver fare cannot logically exceed the price of the regulated and less restrictive Saver fare.

1.3 What is a ‘peak’ fare?

There is no very clearly defined definition of what constitutes the ‘peak’ – either in the morning or the evening. The rail regulator uses the following definition:

Off-peak tickets (previously Saver and Cheap Day Returns) are cheaper fares for traveling during periods when train services are generally less busy. They can be bought at any time, right up until the time of departure but they carry restrictions on the time or day of travel. In addition, where there are two Off-Peak fares, the cheaper fares are called Super Off-Peak (previously Super Saver tickets).5

In recent years what constitutes the ‘peak’ in the morning and evening has stretched on some services and, as indicated above, a new category of fare called ‘super off peak’ has been introduced, running from later in the morning.

In 2010 Which? Produced a report listing the variety of ‘evening peaks’ which existed at that time.6 The broad range is illustrated in the graphic below:

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5 ORR, *Fares and ticketing – information and complexity*, June 2012, para 2.5, p9
6 Which?, *Train tickets’ peak rate stretches after 11am: Passengers confused by different peak travel times*, 26 August 2010; the followed the decisions by some TOCs in the 2010 fares round to switch a number of off-peak (and usually cheaper) services to peak services (see, e.g. “Rain firms cash in with peak fare changes”, *The Daily Telegraph*, 10 May 2010)
The ORR reported in 2012 that:

… the restrictions attached to Off-Peak fares vary between train companies (and sometimes also between routes operated by the same train company), most significantly in terms of the time at which they are valid.

This is because, where fares are regulated, train companies can define the peak times for their services within a certain window. This window might be any time from the start of the morning service through to 10.30, with an additional afternoon/evening peak in some cases between 15.00 and 19.00.

Within these windows, or where fares are unregulated, train companies are free to set the peak on a commercial basis. For example, one train company might decide to set its peak times between 6.30 and 9.30, with no afternoon/evening peak, while another might set its peak times between 7.00 and 9.00, with an afternoon/evening peak between 16.00 and 18.30.7

ORR surveyed rail passengers at that time and found that while most had a ‘broad understanding’ of the concept of peak and off-peak services, specific time restrictions were less well known, and this was compounded by a lack of understanding of whether restrictions were based on the times trains departed a particular station or arrived at their terminus, and whether an afternoon or evening peak applied. Only 26% of all those interviewed were confident what the off-peak times were.8

1.4 How are regulated fare levels decided?

Inflation
Regulated fares increases are linked to the RPI figure for July of the previous year (e.g. fares beginning in January 2017 were based on the RPI for July 2016). The train companies announce the increases for the coming year every November/December.

The inflation link dates back to 1996.

Until 2004 the Franchising Director and then the Strategic Rail Authority (SRA) regulated fares by imposing a ‘cap’ on increases over the price that was charged in June 1995. From 1 January 1996, increases in capped fares were not permitted to be more than the RPI (RPI+0) from the 1995 base price. For the five years from 1 January 1999, the price cap was RPI-1.

Further, before 2004 there was an additional regime for the ten London commuter operators, linking fares and train service performance, called the Fares Incentive Adjustment Payment regime (FIAP). Under FIAP, the basic RPI-1 policy was varied by up to + or – 2% depending on whether the operator’s train service performance improved or worsened in the 12 months up to July before the January fares change date, when compared with performance in the 12 months before that.9

7 op cit., *Fares and ticketing – information and complexity*, paras 2.17-19, p10
8 ibid., paras 2.27-28, p11
9 op cit., *Fares review conclusions*, p18
Over the years there have been calls for the Government to move away from RPI as the relevant measure for calculating rail fare increases. Most recently, in August 2016, Stephen Joseph, Chief Executive of the Campaign for Better Transport, said:

… the Government needs to stop using RPI to calculate ticket prices once and for all. The Office for National Statistics stopped using it in 2013 because it consistently over-estimates inflation and now it’s time to apply the same rule to rail fares. Using the consumer price index to set rail fare increases would have little impact on railway revenues, but it would save passengers money and bring fares into line with things like public sector pensions.10

**Fares basket**

The ‘fares basket’ is essentially a way of applying a limit or ‘cap’ to a weighted average of the relevant fares for each TOC.

What this means in practice is that the RPI +/- ‘cap’ applies to the total value of a fares basket, there can be increases in *individual* fares that are greater (or less) than the permitted increase in the basket as a whole.

In turn, this variation on individual fares within the fares basket cap has been limited by Government. For most years after 2004 this was set at 5% - it was abolished for 2010 then reintroduced for 2011 before being reduced to 2% in 2014 and then abolished entirely.

Between 2004 and 2016 the price caps and fares baskets in England were as follows:

<table>
<thead>
<tr>
<th>From 1 January</th>
<th>Cap</th>
<th>Fares basket</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td>RPI+1</td>
<td>RPI+/-5</td>
</tr>
<tr>
<td>2005</td>
<td>RPI+1</td>
<td>RPI+/-5</td>
</tr>
<tr>
<td>2006</td>
<td>RPI+1</td>
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<td>2007</td>
<td>RPI+1</td>
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<tr>
<td>2009</td>
<td>RPI+1</td>
<td>RPI+/-5</td>
</tr>
<tr>
<td>2010</td>
<td>RPI+1</td>
<td>X</td>
</tr>
<tr>
<td>2011</td>
<td>RPI+1</td>
<td>RPI+/-5</td>
</tr>
<tr>
<td>2012</td>
<td>RPI+1</td>
<td>RPI+/-5</td>
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<td>2013</td>
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<td>2014</td>
<td>RPI</td>
<td>RPI+/-2</td>
</tr>
<tr>
<td>2015</td>
<td>RPI</td>
<td>X</td>
</tr>
<tr>
<td>2016</td>
<td>RPI</td>
<td>X</td>
</tr>
</tbody>
</table>

Note: there are separate arrangements across some of these years for individual franchises.

### 1.5 Why do fares keep going up?

The key driver of higher fares over the past eight years or so has been a policy decision by consecutive governments to shift the burden of funding the railways from the taxpayer to the passenger.

This began in 2004 when the regulated fare cap was changed from RPI-1 to RPI+1.11 In its 2007 rail White Paper the Labour Government explained that “historically there has been considerable (and often year-on-year) variation in levels of subsidy, from 50 per cent of rail funding in

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10 CBT press notice, “Campaigners call for RPI to be scrapped as measure for fare increases as fares rise 1.9 per cent”, 16 August 2016

11 op cit., *Fares review conclusions*, appendix C
1992/93 to just 15 per cent in 1995/96, reflecting the sales of assets as part of the privatisation process”. However, after privatisation there was a consistent increase in the proportion of rail costs funded by the taxpayer, and a pattern of 25–35 per cent subsidy in the second half of the 1990s became 40–50 per cent after 2000. By 2005/06 taxpayers were paying a higher proportion than fare payers. The White Paper stated that “this is clearly not sustainable” and said that between 2009 and 2014 ‘cost efficiencies’ would “allow the subsidy requirement to return closer to historic levels”:

It has been the taxpayer who for the past several years has funded expenditure increases … As Network Rail brings costs back under control, it is right that the demands on taxpayers should also ease.

The balance of the investment programme is met from debt funding. Since the costs of servicing this debt will accrue over the entire asset life of the enhancement, there is an element of ‘beneficiary pays’ to this approach. It would not be appropriate to expect today’s taxpayers and fare payers to bear the entirety of the up-front costs of new trains and new infrastructure which will benefit future generations […]

The increasing ability of the rail industry to operate without a high level of dependency on the taxpayer is welcome. However, it is important to note that very few railways in the world operate wholly without subsidy. It is unlikely that Britain’s railway will be an exception to this rule.

In its 2012 command paper the Coalition Government stated its intention to bring down taxpayer and fare payer funding for the railway: “we will reduce and then put an end to above-inflation rises in average regulated fares, as well as relieving pressure on taxpayer funding”. Information published by the regulator in March 2016 showed that passengers have contributed an increasing proportion of the rail industry’s income relative to taxpayers over the past four years – up from 55.6% in 2010-11 to 65% in 2014-15.

Further, as noted above, some train companies at specific times for specific purposes have been allowed to increase their fares by more than the overall RPI cap. For example, Northern Rail had an agreement with West Yorkshire PTE allowing it to increase regulated fares by RPI+8 from 2007, with a fares basket of 3%; and Southeastern was permitted to increase regulated fares by RPI+3 between 2007 and 2010, with a fares basket of 1%. Conversely, the Competition and Markets Authority (CMA) recently stepped in and capped unregulated fares on three routes which form part of the Northern rail franchise (Leeds to

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12 DfT, Delivering a Sustainable Railway, Cm 7176, July 2007, p126
13 ibid., p126
14 ibid., pp127-9
15 DfT, Reforming our Railways: Putting the Customer First, Cm 8313, March 2012, p12
17 in SET’s case to pay for domestic services on HS1: ORR, Fares [archived 1 September 2014]; and HC Deb 1 May 2012, c1376W
Sheffield, Wakefield to Sheffield and Chester to Manchester). This was related to concerns about a substantial lessening of competition. A final reason as to why fares are high and continue to go up is the inherent cost of running and improving the railway. Some argue that there are higher costs associated with the ‘fractured’ structure of the rail industry in Britain and that a better integrated system (usually in the public sector) would bring the overall costs down and allow for fare reductions. This is explored in more detail in section 5 of HC Library briefing paper *Transport 2015* (CBP7177), 14 May 2015.

### 1.6 Fares policy in England since privatisation

In 1995 the Franchising Director published a policy note explaining the criteria on which he intended to set regulated fare levels. This included the proposal to link regulated fares to service quality. He argued that the regulated fares market was “fairly insensitive to changes in service quality” and that there should be a “strong financial incentive to deliver a high quality service”. To this end, he would “link the level of permitted increases to tariff baskets to franchisees’ punctuality and reliability”. Franchisees would also be able to apply to the Director to increase fares at a faster rate than would otherwise be permitted in order to fund specific investments.

Five years later, the SRA issued a consultation on its proposals to fundamentally overhaul the fares system. This resulted, in June 2003, in a number of changes to the fares regime, specifically:

- a change in the annual rate of increase for regulated fares to RPI+1 for three years;
- the removal of the ineffective link between fares and performance from January 2004;
- simplification of the mechanism used to regulate fares from January 2004; and
- a pledge to review the problems with the regulation of Saver fares (off-peak fares for leisure travel of about 50 miles and over) by 2006.

The SRA argued that together these measures met “the original imperatives driving the fares review” and that the change to RPI+1 “helps to redress the balance between taxpayer and passenger in meeting the industry’s rising costs. Most respondents to the consultation agreed that RPI-1% was unsustainable”. The automatic link between fares and performance would be abolished on the grounds that it had “not worked well … Long time lags between performance and fare changes have led to confusion. And – as an incentive for better

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18 CMA press notice, “CMA looks to cap fares on three rail routes”, 2 November 2016
19 the Franchising Director at this time was Roger Salmon; the Director was head of the Office of Passenger Rail Franchising (OPRAF)
22 op cit., *Fares review conclusions*, Appendix C; in a statement to the House the then Secretary of State pledged that saver fares would continue until 2006 unless it was possible to introduce a better regime earlier, see: *HC Deb 19 June 2003, cc519-21*
23 ibid., p2
performance – the policy is redundant because train operators are already held to account under their franchise agreements”.24

As indicated above, in July 2007 the Labour Government published its rail White Paper. In addition to proposing a ‘rebalancing’ of railway funding between the passenger and the taxpayer, it argued for the RPI+1 regulated fares cap on the grounds that to raise it would “increase revenue, but at the cost of an additional financial burden on passengers”, while lowering it would “reduce the funds available to increase rail capacity, or present taxpayers with a further and very significant subsidy requirement”.25 However, it also said that wanted to “ensure that the fares system is simplified to make the railway easier to use and to improve the confidence of passengers in the system”. [see section 2.1, below].

The Coalition Government’s review of rail fares and ticketing was published in October 2013. This committed the Government to a number of changes in terms of flexibility and smart cards (see section 2, below) and, as indicated above, said that it would reduce the fares basket from 5% to 2%.26 In January 2015 the Government confirmed the abolition of the fares basket and announced that train operators had also been asked to improve the information passengers receive when buying a ticket, i.e. be made aware if a cheaper ticket is available.27

24 ibid., p5
25 op cit., Delivering a Sustainable Railway, p96
26 DfT, Rail Fares and Ticketing: Next Steps, October 2013, p14
2. Changes to ticketing

2.1 Tackling complexity

As indicated above, in July 2007 the Labour Government announced its intention to simplify the rail fares structure. This followed a critical report from the Transport Select Committee. In a May 2006 report the Committee had criticised the complexity of unregulated fares:

The range of ticket types, names and prices has increased greatly since privatisation, and many witnesses agreed that there is an almost impenetrable jungle of different fares, restrictions and price levels. Passenger Focus explained that “so complex is the fare structure that the current National Fares Manual (No. 91) valid from September 2005, lists over 70 fare types, governed by 760 validity conditions, on 102 A4-sized pages.” The Railway Consultancy pinpointed the two key areas of unnecessary complication in the current system as firstly, “the use of differing names for the same product” by different companies, and secondly, “the use of differing (e.g. time-of-travel) conditions applied to equivalent products”.28

Consequently, the Committee called on the Government to:

… set about creating a coherent policy for the railways which … incorporates better regulation of fares and conditions of travel. The system of fares, conditions, and restrictions must be simplified, unified, and made easy for passengers to understand. Ticket names, conditions and restrictions should not vary from one operator to another but should be consistent across the network.29

The July 2007 White Paper announced that the names of fare types would be made common across the network, regardless of operator. This would “make it easier for passengers to decide which fare is the right one for the journey, to get a sense of price, and to work out whether or not there is a cheaper option available”: ‘Anytime’ would always be most expensive, ‘Off Peak’ cheaper, and ‘Super Off Peak’ the cheapest.30 The Government also said it would ask the rail industry to back a new ‘price promise’, in effect that if passengers were pointed to one deal when there was a better deal on offer, they would be refunded the difference, and that operators would be asked to give passengers ‘fair credit’ where they accidentally boarded the wrong train for their ticket type.31

The new fares structure was introduced in two parts: in May and September 2008.32

The Transport Committee revisited the issue in a July 2009 report. It concluded that despite the 2008 changes, “fares are still complex, and even passengers who understand the system often have to spend considerable amounts of time finding the best deals, often only

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28 Transport Committee, How fair are the fares? Train fares and ticketing (sixth report of session 2005-06), HC 700, 19 May 2006, para 28
29 ibid., summary, p4
30 op cit., Delivering a Sustainable Railway, p97
31 ibid., p97
available on the internet” and that “information on, and access to, the complete range of fares must be available and easily accessible to all passengers”. 33

In his May 2011 report on rail value for money, Sir Roy McNulty acknowledged that fares were still complex and recommended that the Government undertake a ‘full review’ of fares policy and the fares structure in order to address:

... the overall complexity, anomalies, regional imbalances, season ticket pricing and all other relevant factors as these are affected by regulation. The overall aim would not be to see fares rise overall, but to move towards a system which is seen to be less complex and more equitable, and that provides information which passengers can understand and have confidence in. 34

The Government broadly accepted these proposals and stated that its long-term aspiration was to bring the cost of rail travel down and in so doing to reduce fares, though it did not believe that this could be achieved until the beginning of Control Period 6 (i.e. 2019). 35 This was followed with the publication of a fares and ticketing review for consultation. As indicated above, the review was published in October 2013. While recognising that some passengers found the existing system confusing, the Government said that “there is a strong case for continuing to support this mixed approach” on the grounds that it:

... makes possible cheaper deals for those who are most price-sensitive (such as leisure passengers) while allowing train operators to charge a premium for those who want a fully flexible product (for example, some business passengers). This allows us to fulfil our duty to taxpayers as well as passengers by making better use of capacity and by making the railway less costly to run.

This approach also allows train operators to price commercially where we believe it is appropriate to do so, and encourages competition between operators which can drive fares down. 36

It concluded that it did not believe that “simplification for simplification’s sake would benefit passengers as less choice is likely to mean fewer really cheap deals for those who otherwise may not choose to travel by rail at all and less effective use of capacity, which could increase costs for passenger and taxpayers overall”. 37

**Getting ‘the best fare’**

This has been a recurring theme for a number of years but recently there has been renewed emphasis by the Government the regulator on ensuring that passengers can get the best fare and that when they do not they are reimbursed in a straightforward way.

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35 HC Deb 19 May 2011, cc520-21; and DfT, *Reforming our railways: Putting the customer first*, Cm 8313, 8 March 2012, p17, para 2.7

36 op cit., *Rail Fares and Ticketing: Next Steps*, p28

37 ibid., p29
In December 2016 the DfT, in collaboration with the Office of Rail and Road, Rail Delivery Group, Which? and Transport Focus published an action plan for information on rail fares and ticketing. It sets out a set of actions to make improvements for passengers before the end of 2017. They are:

- To use less jargon on Ticket Vending Machines (TVMs), websites and tickets, and include easily available information to explain terminology;
- For train operators to make information available to inform customers when Advance tickets for long distance operators are running low to ensure that customers do not miss out on the best price if there are only a few left;
- To tell customers when purchasing a ticket if they could get a cheaper ticket by changing the time of travel;
- To give online customers a plain English explanation of the ticket they have chosen before making final payment;
- To enable customers to purchase cheaper Advance tickets on the day of travel from longer distance operators;
- The industry to run a small number of pilots, which can be quickly put in place, to test some key strategic principles that could form the basis of fares reform;
- To provide better and more targeted information to website and app developers to enable them to develop new products and services for consumers;
- To take steps to open up the ticket retail market, enabling third party retailers to play a greater role, and removing barriers to entry for new market entrants. This should lead to increased competition, and better outcomes for consumers;
- To give customers access to a clear and understandable choice of tickets when buying from vending machines, including information on relevant cheaper options that could be bought by waiting a short time or travelling on a different service;
- To review train operator websites against existing industry code of practice to ensure that they are fully compliant in meeting the required standards for customers;
- RDG to monitor train operator websites and promote best practice;
- To give customers access to all relevant terms and conditions in a simple to understand format when choosing and buying ticket;
- To provide that where a customer holding a valid Railcard forgets it at the time of travel, they will on the first occasion be able to claim back any additional expense, including the cost of any extra fare and any penalty fare issued; and
- To work with the Disabled Persons Transport Advisory Committee (DPTAC) to assess what can be done to improve the experience for disabled and vulnerable passengers and build awareness of passenger rights, acting on research from Transport Focus, ORR and DfT, including through the franchising process.38

Further to this, in February 2017 RDG announced a trial to begin in May, to ensure passengers are offered the cheapest possible fares. It will initially benefit people travelling between Scotland and south-west

38 DfT, Action plan for information on rail fares and ticketing, 13 December 2016, pp4-8
England. CrossCountry Trains, the main operator taking part in the trials, may eventually offer savings on other routes as well.\textsuperscript{39}

Separately, in February 2017 the ORR published the outcome of a mystery shopper exercise, which found that 1 in 5 mystery shoppers selected a more expensive ticket than necessary or were at risk of a penalty fare when using a ticket machine. As a result the ORR called on train operators to introduce a price guarantee, refunding passengers who find that they could have bought a cheaper ticket. It argued that:

This is necessary to build trust and demonstrate they are responding to passengers’ needs. It’s essential train companies learn lessons from the research and adopt good practice. This includes providing clear information on the range of tickets available and their restrictions and validities, such as peak or off peak.\textsuperscript{40}

\section*{2.2 Flexible fares & part-time season tickets}

The October 2013 fares and ticketing review proposed several schemes to make ticketing more flexible. Specifically:

\textbf{Long-distance pricing}: all longer-distance tickets for off-peak travel could be regulated on a ‘single leg basis’ to end the situation where an off-peak single can be as little as 10p cheaper than the corresponding off-peak return. This would allow passengers to combine a peak with an off-peak ticket, or a full-price “buy on the day” with a discounted Advance ticket. The Government said that this was currently unaffordable to roll out for the whole network but that it would launch a pilot on a major intercity route or routes to “measure how passengers respond in practice, to inform an assessment of the affordability and sustainability of adopting this approach network-wide”.\textsuperscript{41} Nothing further has happened with this scheme.

\textbf{Advance tickets on day of sale}: CrossCountry was granted approval for an 18 month trial to make of Advance tickets available for purchase up to 10 minutes before departure from their station via CrossCountry’s smartphone app and up to 15 minutes before departure via their website and telesales retail channels. It said that Government would “closely monitor this trial before deciding whether to allow this on a permanent basis, and … work closely with Passenger Focus to understand the impact on passengers of the trial”.\textsuperscript{42} In March 2015 Transport Focus published a report showing that passengers were very favourable towards the scheme, though there were some concerns. CrossCountry has been given permission to sell these tickets permanently, and the Department for Transport has said that it would

\textsuperscript{39} “Cross-country commuters to save ‘hundreds of pounds’”, BBC News, 1 February 2017
\textsuperscript{40} ORR press notice, “Rail Regulator calls for ticket machine price guarantee”, 10 February 2017
\textsuperscript{41} ibid., p29
\textsuperscript{42} ibid., p31
consider requests from other train operators wishing to introduce them.43

Flexible/part-time season tickets: the Government said it would set up a trial to understand the most appropriate ways to achieve flexible ticketing. This could mean “receiving a discount on season tickets for travelling three days rather than five, or for travelling earlier or later, avoiding the busiest trains, or there could even be an incentive for not travelling on certain days of the week”. It would test the various approaches to flexible ticketing to give the Government “a better understanding of passengers’ behaviour and preferences, the types of ticket products which work best, as well as their cost to inform any future wider decisions” and that it would “use our South East Flexible Ticketing (SEFT) programme to pilot the new flexible ticket types that reward shoulder-peak and part-time travel”.44

The South East Flexible Ticketing (SEFT) programme is a precursor to flexible ticketing more generally. It is debatable as to whether this has always been clear. It contains aspects of smartcard technology which are described in the following section. As far as flexibility is concerned, progress has been limited.

In January 2015 trade magazine Local Transport Today reported that DfT had:

… dropped plans to trial flexible rail ticketing on a London commuter route. The idea was to offer tickets that suited changing patterns of work, for instance carnet tickets giving better value than season tickets for passengers who don’t commute daily. Announcing the scrapping of the pilot, the Department has asked all rail companies in the South East to outline their plans for flexible ticketing and any perceived barriers to successful implementation.45

In July 2015 Transport Minister Andrew Jones said that a competition was held in December 2014 for a trial to gather evidence on flexible rail ticketing. Positive expressions of interest were received from seven operators in the SEFT area, and DfT would “work with them so they could introduce flexible ticketing products as soon as possible following the roll out of smart ticketing in 2016 and 2017”.46

Later that month the Minister gave more details on the commitments made by Thameslink, Southern & Great Northern (TSGN) and C2C:

Govia Thameslink Railway (GTR) is obliged to introduce carnet-based season tickets based on ITSO certified smart media throughout the franchise on or before 30 September 2015. By the same date, GTR is also obliged to commence a demand management pilot that will reward season ticket holders travelling at quieter times of the day. The latter may include flexible season tickets, season tickets which give passengers a cash rebate for not travelling on peak services or other types of ticket. 2c is obliged, by 31 May 2016, to introduce carnets sold in multiples of 10

43 Transport Focus, Buying Advance tickets on the day of travel: what do passengers think? Summary report, 9 March 2015, p7
44 op cit., Rail Fares and Ticketing: Next Steps, pp18 & 21
45 “DfT drops flexible ticketing trial”, Local Transport Today, LTT 663, 9 January 2015
46 HC WPO 4940, 6 July 2015
journeys, based on ITSO certified smart media. By the same date, c2c is also obliged to make flexi-season products available, offering a financial reward which will be greater than the off-peak fare discount to passengers choosing not to travel during the morning and evening peak periods. These obligations require the Secretary of State’s approval and are published in the register of rail passenger franchise agreements on the Department’s website.47

In November 2015 The Guardian reported that the cost of flexible ticketing had increased by 78% from £45 million to £80 million in two years; that no part-time season tickets had been introduced to date, with the exception of a small trial of 65 Southern Railway (TSGN) passengers; and that more flexible season tickets would have to wait until after the rollout of smart ticketing, potentially not until after 2017. This was based on analysis by the Campaign for Better Transport.48

In March 2016 the then Rail Minister, Claire Perry, said that the Government had committed £132 million to introducing flexible and part time ticketing products during the 2015 Parliament. She also confirmed that spending on SEFT would be £80 million.49

2.3 Smartcards and contactless payment

Consecutive governments have long promoted the benefits of using smart cards to pay for rail (and other public transport) travel. Though the current Government continues to do so, it may well be that mobile ticketing, contactless payment and other forms of technology will overtake smartcards like Oyster before too long. Indeed, in January 2016 Transport for London (TfL) said that more than a quarter of the capital’s ‘pay as you go’ transport customers were using contactless payment:

- More than 300 million journeys have been made using this technology since its launch in 2012, with more than a million journeys now made each day using Contactless
- Nearly 25,000 new cards are used on the network every day, with 27% of all pay as you go journeys on Tube and rail services now made using Contactless
- Customers are now also using other methods of payment, such as mobile device ticketing technology. Around 3.5% of all contactless journeys are now made using mobile technology, with around an extra 7,000 devices now seen on average every week
- Since July 2015, more than 3.2 million journeys have been made using mobile devices on London’s transport network. This is predicted to further increase throughout 2016 as more devices come onto the market and more people adopt them and other Contactless technologies such as

47 HC WPO 5776, 13 July 2015
48 “Rail fares: introduction of more affordable season tickets in doubt”, The Guardian, 1 November 2015; and CBT, RAIL FAIL: Research shows Government breaking its promises on ticketing, 9 October 2015
49 HC Deb 10 March 2016, c541
watches and wristbands with Near Field Communication (NFC) capabilities.\textsuperscript{50}

It was also reported in February 2016 that the north of England is not planning a smartcard system similar to Oyster.\textsuperscript{51} David Brown, chief executive of Transport for the North (TfN) said that the £150 million pledged to the north by the Government for a “smart ticketing and information system that should allow travellers in the north of England to use contactless debit cards, phones or watches to travel across the region on different modes of transport” was “not an Oyster card”. He said:

> What people want is certainty about what you are going to pay in a day. You’d want some sort of account which said ‘thanks for travelling across the north, you’re going to get a discount’, and not worrying if you have got on the right train or bus, or wondering ‘have I bought the right ticket?’\textsuperscript{52}

In its July 2007 White Paper the Labour Government announced that it had embarked on a seven-year programme with the rail industry to

- introduce ITSO smartcards on rail in major cities
- integrate the new ITSO ticketing with TfL’s Oyster product in London;
- roll-out ITSO smartcards more widely across the network; and
- enable passengers to purchase tickets that can be sent to mobiles, or printed out remotely, for long distance routes.\textsuperscript{53}

In its 2013 fares and ticking review the Coalition Government said that it wanted to use technology “to make it as easy as possible for passengers to pay for rail travel, and to drive down the cost of providing ticketing services” and to “use smart technology to introduce new ticket types which better meet today’s patterns of work and travel, and encourage more efficient use of the transport network”.\textsuperscript{54} The review also confirmed the Government’s intention to mandate continued use of the ITSO specification and require that all new readers must be capable of recognising both ITSO smartcards and contactless bank cards.\textsuperscript{55}

In 2016 new smart card schemes and strategies were launched across England, and existing schemes expanded. For example, Greater Manchester, set out its ambitions for smart ticketing, including the possibility of working with Transport for London to deliver contactless bank card ticketing, and published figures showing the proliferation of

\textsuperscript{50} TfL press notice, “More than a quarter of London ‘pay as you go’ customers now travel using contactless payments”, 29 January 2016

\textsuperscript{51} Oyster, the smart ticketing system for London, has been in existence for almost 20 years: the system was procured by London Regional Transport (now TfL) under a PFI - TfL terminated the contract early and signed another contract with a different provider, see: “New tickets, please”, The Economist, 14 August 2008 and TfL press notice, “£30m saved as new Oyster contract begins”, 17 August 2010; powers were given to TfL to do this via the London Regional Transport Act 1996, see: HC Deb 13 March 1996, c1003

\textsuperscript{52} “Northern England transport planners reject ‘Noyster cards!’”, The Guardian, 8 February 2016

\textsuperscript{53} op cit., Delivering a Sustainable Railway, p100

\textsuperscript{54} op cit., Rail Fares and Ticketing: Next Steps, p58

\textsuperscript{55} ibid., p60
smart cards on the network.56 Chiltern announced a trial of an automatic at-faregate payment service, using passengers’ smartphones and SouthEastern announced a new smart card which could store up to five tickets at any one time, though unlike the Oyster card for example, it would not hold funds or credit.57

Most recently, on 7 February 2017 RDG set out its blueprint for the ‘age of the digital train’, which includes Bluetooth and biometric ticketing to potentially replace the traditional ‘tangerine’ ticket in the future.58

South East Flexible Ticketing (SEFT) programme
As indicated above, one of the key ways the Government aims to deliver on these proposals is via the South East Flexible Ticketing (SEFT) programme. SEFT is planned to cost approximately £80 million, as indicated in section 2.2, above, this is almost double initial estimates. As at 26 February £39.11 million had been spent on the SEFT programme to develop a central back office for the rail industry and towards the costs to train operators of new infrastructure and upgrades.59

SEFT is intended to enable “smart cards [to] operate seamlessly between different train companies across the region … When SEFT is complete, 250,000 season ticket holders across the south east will be able to swap paper tickets for smart tickets, accounting for 202 million journeys per year”.60

SEFT underwent a review in the first half of 2014 to ‘ensure that its approach and scope were designed to deliver the best possible outcomes for passengers and taxpayers’. In October 2015 the minister told the House that five train operators, serving 73% of all rail season ticket holders in the South East, had signed up to (SEFT): Thameslink, Southern & Great Northern (TSGN) and C2C were early adopters, to be followed by South West Trains and Greater Anglia in January 2016 and Southeastern before the end of 2016.61

In November 2015 the Transport Minister in the Lords said that a review of initial proposals to make smart tickets available across the south-east with a target date of end December 2015 had:

… led to a refocused and enhanced programme with a wider geographic scope and an improved technological approach. As part of this, a new [SEFT] central back office, providing critical IT infrastructure and data processing capability, has already

57 “Chiltern Railways looks beyond pre-payment with phone app”, The Transport Network, 6 September 2016; and “Southeastern’s rolling out smart cards for commuters”, City A.M., 14 November 2016
58 RDG press notice, “Rail companies set out blueprint for age of the digital train”, 7 February 2017
59 HC WPQ 28078, 26 February 2016
60 DfT press notice, “Smart ticketing to transform travel for Southeastern passengers”, 28 July 2015
61 HC WPQ 12942, 30 October 2015
undergone testing and, working with industry to establish how best to offer smart ticketing to passengers in the south-east... 62

In a January 2016 speech the Rail Minister, Claire Perry, said that SEFT had “helped smart ticketing technology to mature and industry expertise to grow. But above all, it has helped us reach the point at which future innovation can be led by the private sector. By companies who know their customers’ needs and have the ambition to meet those needs, and an ambition to run their businesses with more innovation and efficiency” 63

In December 2016 the Minister said that to date the Government had spent £47.7 million on SEFT since 2010-11. 64

62 HL WPQ 3014, 9 November 2015
64 Railways: Tickets: Written question – 55979, 7 December 2016
3. Rail cards

Section 28(3) of the Railways Act 1993, as amended, requires that all TOCs participate in certain approved discount card schemes for young and student travellers, disabled passengers and those aged over 60. All TOCs are obliged to participate in such schemes under the terms of their franchise agreements. All other rail cards, including the Network Card, are commercial schemes.

The mandatory schemes are:

- **Young Persons (16-25) Railcard** (for young people aged between 16 and 25 and students in full-time education);
- **Senior Railcard** (for those over the age of 60); and
- **Disabled Persons Railcard** (for those with severe disabilities).

The TOCs all send a representative to the scheme council, which is responsible for the administration of all the national cards, both mandatory and voluntary. The council in turn elects a scheme management group to undertake the majority of the work. The council agrees the conditions of the schemes and they then have to be approved by the Secretary of State. Subject to certain minor variations, the schemes are standard in form. All participants in the schemes are required to sell, honour and otherwise operate the relevant railcards.

Card revenue in respect of discount card sales is allocated to carriers pro rata to their share of revenue from fares bought with the relevant card. All participating carriers are subject to minimum marketing requirements which oblige them to ensure that discount cards are sold and promoted at sites such as designated stations and, in respect of certain discount cards, by RDG-licensed travel agents. Each participant’s share of the marketing budget (fixed by the scheme council) and other costs incurred in connection with the operation of each scheme is set according to its share of revenue in the preceding year arising from the sale of fares to holders of the relevant discount card. There are special provisions for setting and reviewing initial marketing contributions from new entrants.

To ensure that scheme costs, voting rights and revenue are calculated and allocated fairly, a participant is required to allow all other participants in the same scheme access to information on the aggregate sales of discount cards and the tickets purchased with the cards. In 2006 RDG estimated that almost 70 per cent of industry revenue was accounted for from travel using one of these railcards.65

TOCs are also required to participate in any local authority’s concessionary fare scheme providing there is no loss to the train operator.

The voluntary schemes are:

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65 op cit., How fair are the fares? Train fares and ticketing, Ev 80; these comments by RDG’s predecessor ATOC
• Family & Friends and HM Forces railcards (which existed under British Rail);
• the Network Card (which covers the south-eastern region of England and is confined to passenger operators serving that area);\textsuperscript{66}
• GroupSave (which was launched in July 1999 to target car-size parties who do not usually use the train); and
• the relatively new Two Together railcard, for two named people travelling together aged 16 or over. The voluntary discount card schemes operate on similar principles to the mandatory card schemes, and the national schemes are governed by the same scheme council. Unlike the mandatory card schemes, however, no decisions need to be referred to the Secretary of State for their prior approval.

The idea of a ‘national’ railcard has been floated over the years, but no government has ever proposed one, largely on economic grounds.\textsuperscript{67} That said, the advent of smart ticketing (see above) could by default create a ‘national’ railcard by enabling someone to use their phone or the contactless debit or credit card across the whole network.

\textsuperscript{66} it has a separate scheme council composed of the TOCs operating in the south east; it was introduced in 1986 by the then Network SouthEast division of British Rail to stimulate demand for off-peak travel, it was not made mandatory at privatisation but the TOCs in the south east continue to offer it

\textsuperscript{67} e.g. op cit., Fares review conclusions, para 7.3 and How fair are the fares? Train fares and ticketing, Ev 137
4. Penalty fares

No TOC is obliged to introduce a penalty fare scheme but any that does must first submit the scheme to the Secretary of State for approval. A penalty fare is a supplementary fare, it is not a fine.68 The majority of TOCs have penalty fare schemes.69 Those that do not, use the National Rail Conditions of Carriage, Condition 7 of which specifies that if you travel on a train without a valid ticket you are liable to pay the full single or return fare for the journey you have made or wish to make and you are not entitled to any discounts or special terms which would otherwise apply. Condition 7 is waived if for any reason you were unable to buy a ticket for your journey or if it was indicated that a ticket could be purchased on a train.

The relevant legislation applying to penalty fares is section 130 of the Railways Act 1993, as amended.70 This gives the Secretary of State and Scottish Ministers the power to make regulations with regards to penalty fares. These can include things like who can be charged a penalty fare, who can make the charge, where and how much they can be.

The Railways (Penalty Fares) Regulations 1994 (SI 1994/576), as amended, made under section 130, provide for operators to recover unpaid penalty fares as a civil debt. They also state that passengers may be charged a penalty fare or prosecuted for a given offence, but not both; and that it is an offence for a passenger to refuse to give his or her name and address if an authorised collector asks them to do so. The regulations also allow the regulator to make further rules about penalty fares. The rules currently in force were published in 2002.71

There are a number of connected offences:

- Under section 5 of the Regulation of Railways Act 1889, as amended, it is an offence to fail to provide proof of one’s right to travel or to give one’s name and address to a relevant person (maximum penalty £500 fine). It also gives relevant people the right to detain anyone who does not comply with the above.
- Under section 5 it is also an offence to travel or attempt to travel on a railway without having previously paid the fare, and with intent to avoid payment thereof; or having paid the fare for a certain distance, ‘knowingly and wilfully’ proceeds by train beyond that distance without previously paying the additional fare for the additional distance, and with intent to avoid payment thereof; or having failed to pay the fare, gives in reply to a request by an officer of a railway company a false name or address. The maximum penalty is a £1,000 fine or 51 weeks’ imprisonment.

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68  HL Deb 25 January 2000, c1415
69  in 2005 there were 12 TOCs with such schemes, see: Regulatory Impact Assessment to the Railways (Penalty Fares) (Amendment) Regulations 2005, April 2005, section 4
70  the British Rail (Penalty Fares) Act 1989 established the original penalty fares regime
71  SRA, Penalty Fares Rules, May 2002; previously the Penalty Fares Rules 1997
Under section 46 of and Schedule 9 to the Railways Act 2005, as amended, it is an offence to breach the Railway Byelaws.72 The maximum penalty is a £1,000 fine. Byelaws 17 and 18 states that no person shall enter a compulsory ticket area on the railway or any train for the purpose of travelling on the railway unless they have with them a valid ticket and that they must hand over their ticket for inspection and verification of validity when asked to do so by an authorised person. It provides for certain exceptions.

Regulation 5 of the 1994 Regulations states that the amount of any penalty fare which may be charged under Regulation 4 (‘charge to a penalty fare’) is £20.00 or “twice the amount of the full single fare applicable in the case, whichever is the greater”.73 In practice, this means the full single fare to the next station at which the train calls.

Passengers who have been given a penalty fare can appeal against the decision through one of two appeals bodies: the Independent Revenue Collection and Support (IRCAS) or the Independent Penalty Fares Appeals Service (IPFAS). These bodies make the final decision on individual appeal cases based on their DfT-approved codes of practice.74

In February 2015 the Government published a consultation paper on changes to the appeals process. It proposed five changes: to introduce a ‘stop the clock’ provision when dealing with penalty fare appeals; a requirement for all appeals bodies to be independent of transport operators and owning groups; a third stage appeals process; strengthening DfT oversight on the penalty fares appeals process; and the removal of the threat of criminal sanctions from reminder letters.75

The Government announced the outcome to the consultation in December 2016, including its intention to take forward the following changes:

- “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

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72 The current byelaws were made by the SRA and confirmed by the Secretary of State on 22 June 2005
73 Last amended in 2005, see: Railways (Penalty Fares) (Amendment) Regulations 2005 (S.I 2005/1095); and: DfT, Amendment of Railways (Penalty Fares) Regulations 1994, August 2004; before it left office in May 2010 the Labour Government consulted on further changes, but nothing came of it, see: DfT, National Rail penalty fares rules policy and change change consultation process, 4 November 2009
74 IAS - Approved - Code of Practice for Appeals; and IPFAS Penalty Fare Appeals [both accessed 3 March 2016]
75 DfT, Consultation: Changes to the Rail Penalty Fares appeals process, 3 February 2015, p8
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.76

These changes will require secondary legislation. This has yet to be brought forward.

The Minister also said that fare evasion costs the railways £240 million every year.77 This followed reports in September 2016 that up to a third of passengers were failing to buy tickets and that up to one in 14 passengers failed to buy a valid ticket on some suburban routes in London.78

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76 DfT, Summary of responses and government response to changes to the rail penalty fares appeals process consultation, 10 December 2016, pp5-6
77 DfT press notice, “DfT reforms penalty fares to better protect rail passengers”, 10 December 2016
78 “A third of rail passengers are dodging their fares”, The Times, 24 September 2016
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