



**ATOC/GN028**  
**Issue 1**  
**August 2015**

## **ATOC Guidance Note – Prosecution Policy**

### **Synopsis**

This Guidance Note provides advice on how railway undertakings will manage information received or controlled by the prosecution departments in relation to prosecutions and investigations.

Authorised by

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Chair, ATOC Operations Council

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## Part A

### Issue Record

This Guidance Note will be updated when necessary by distribution of a complete replacement.

<b>Issue</b>	<b>Date</b>	<b>Comments</b>
One	August 2015	Original version

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### Responsibilities

Copies of this Guidance Note should be distributed by RDGP&S IG members to persons responsible for prosecutions policy and associated operational procedures.

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### Explanatory note

ATOC produces ATOC Guidance Notes for the information of its members. ATOC is not a regulatory body and compliance with ATOC Guidance Notes is not mandatory.

ATOC Guidance Notes are intended to reflect good practice. ATOC members are recommended to evaluate the guidance against their own arrangements in a structured and systematic way. Some parts of the guidance may not be appropriate to their operations. It is recommended that this process of evaluation and any subsequent decision to adopt (or not to adopt) elements of the guidance should be documented.

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### Guidance Note status

This document is not intended to create legally binding obligations between railway undertakings and should be binding in honour only.

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### Supply

Copies of this Guidance Note may be obtained from the ATOC members' web site.

## **Part B**

### **1. Introduction**

Railway undertakings are dedicated to reducing fare evasion, ticketless travel and low level crime and disorder on all their trains and stations. A range of strategies and tactics are in place to maximise effectiveness and make the railways safe and secure.

### **2. Purpose**

This Guidance Note outlines how railway undertakings will manage information received or controlled by the prosecution department in relation to prosecutions and investigations. It will complement other processes, working practices and instructions that exist for the reduction of fare evasion, ticketless travel and low level crime and disorder.

### **3. Definitions**

Definitions used within this Guidance Note are:

**BTP** - British Transport Police  
**CPS** - Crown Prosecution Service

### **4. Reducing low level offences**

Railway undertakings shall give due consideration to reducing fare evasion, ticketless travel and low level crime and disorder by:

- gaining and maintaining Railway Safety Accreditation Scheme status;
- operating a penalty fares scheme on stations and trains (where this is possible);<sup>1</sup>
- building on existing relationships at an operational, tactical and strategic level with the BTP and other police agencies;
- dealing with offences via Private Prosecutions Departments; and
- operating eyewitness command and control.

### **5. Allegations**

Private Prosecutions Departments deal with cases where persons are alleged to have committed offences under:

- Regulation of Railways Act 1889
- Railway Byelaws

any of the above being a “**case**”.

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<sup>1</sup> It is not possible under current legislation for all operators to have such a scheme. ATOC in response to a DfT consultation proposes a framework that would allow access to penalty fares to all TOCs in England and Wales. This will require legislative change and Ministerial support.

## **6. Case disposals**

### **6.1 Disposal methods**

Where a case is put to the Private Prosecutions Department, the following disposal methods are available:

- No further action.
- Out of court settlement (1<sup>st</sup> offence).
- Out of court settlement – financial compensation.
- Other disposal as agreed e.g. Community Sentences.
- Prosecution in a Magistrates Court.
- Prosecution in Crown Court.
- Referral to British Transport Police.
- Referral to other body such as Rail Staff Travel Ltd (RSTL).

### **6.2 Treatment of cases**

It is the prime objective of the Private Prosecutions Departments to educate passengers that they must comply with the rules and law laid down in relation to behaviours expected on trains and stations. Railway undertakings and Private Investigators are not obliged to comply with Stage 1 (Evidential) and Stage 2 (Public Interest) of the Full Test Code as outlined in the CPS Code for Crown Prosecutors, however they agree to follow the general principles.

### **6.3 CPS Code for Crown Prosecutors: Two Stage Test**

Stage 1 – Evidential

- Is there sufficient evidence against the defendant to raise a realistic prospect of conviction?
- Is there any defence offered that may affect the prospect of conviction?
- Is the evidence reliable and able to be used in court?
- Is it likely that the Magistrate will convict when properly directed in accordance of the law?

Stage 2 – Public Interest

- Is it in the public interest to bring the case to court?
- It is the decision of the Prosecutor if the public interest is best served by offering the opportunity to be dealt with by way of an out of court settlement.

### **6.4 Assessing public interest**

To assist in assessing the public interest in a case, additional case considerations shall be taken into account

- How serious is the offence?
- To what extent was the offence premeditated or planned?
- Are there any previous convictions?

- Are there personal circumstances such as significant mental or physical health problems?
- What is the harm and cost to the railway undertaking as the victim?
- What is the harm and cost to another victim, e.g. a passenger or staff member?
- Is the defendant over 18?
- Is prosecution a proportionate response to the cost of the prosecution when weighed against any likely penalty?
- What is the impact of the case to railway undertakings by way of reputation and press reaction?
- Other guidelines and policy that may impact on the treatment of a case.

The Private Prosecutor should ensure due weighting has been given to all relevant case and general considerations (as not all considerations will be relevant, or of equal importance if they are relevant, given the facts in each individual case) and a decision should be made. The general considerations are as follows:

- There is a public interest in preventing the expenditure of limited BTP resources on the investigation of fare evasion.
- There is a public interest in the speedy and efficient resolution of fare evasion disputes without recourse to the courts.
- There is a corresponding public interest in empowering railway undertakings to negotiate such resolutions.
- The availability of the out of court settlement regime encourages candour on the part of passengers when negotiating a resolution.
- There is a public interest in the finality of such resolutions.

#### **6.5 Cases where an out of court settlement may not be appropriate**

- Cases referred to the Prosecutions Department by way of non-payment of a penalty fare or unpaid fares notice, as these cases would have been subject to at least 3 reminder letters for payment before referral for prosecution.
- Cases referred to the Prosecutions Department as a result of '3 strikes', as they are a consequence of repeated penalty fares violation.
- Cases referred to the Prosecutions Department as a result of false details, non-payment or other penalty fare non-compliance found.
- Disposal of cases concerning fare evasions and an additional offence or other non-fare evasion offence should not be considered for any disposal, but prosecution and possible referral to the BTP.

#### **6.6 Case referral to BTP**

Cases to be considered for referral to the BTP include but are not limited to:

- Cases where the disclosure of the offence to the employer of the alleged offender, (or a regulatory body), may be deemed to be necessary due to an urgent pressing social need. An **urgent pressing social need** is not defined but will involve the safeguarding or protection from harm of an individual, a group of individuals or society at large, particularly vulnerable adults and children.
- Any case likely to be settled at a value of more than £3000.

- Any case where, in the reasonable opinion of the Prosecutor, the behaviour is such that it may possibly be an offence under the Fraud Act 2006 (such as when there is evidence of premeditation, or persistence, or repeat offending, or large loss).
- Any ticket forgery or printing where it is not obviously a low level non-complex alteration committed by an individual on a single occurrence.
- Any case where tickets have been altered or defaced where it is not obviously a low level non-complex alteration committed by an individual on a single occurrence and where, in the reasonable opinion of the Prosecutor, the behaviour is such that it may possibly be an offence under the Forgery and Counterfeiting Act 1981.
- Any case which may require further investigation as more serious offences are suspected.
- Any case which has aggravating or mitigating factors as advised by the BTP and outlined in Appendix A.
- Any case deemed by the Prosecutions Team, at their absolute discretion, as more suitable to be considered for referral to the BTP.

The BTP will advise the railway undertaking whether they will either deal with the case or refer it back to the railway undertaking for processing. If the BTP deal with the case and a recognised disposal results, the railway undertaking reserves the right to take additional civil action.

## **6.7 Financial disposals governance**

Cases may be disposed with by way of a financial payment if one or more of the following criteria are met:

- It is a first offence and there is one journey.
- The case failed Evidential Stage of the Full Test Code (Stage 1).
- The case failed the Public Interest Stage of the Full Test Code (Stage 2).
- The case is classed under any closing code that prevents prosecution.
- Cases which have been referred to the BTP and referred back to the railway undertaking.

Any case that is dealt with by way of financial disposal must be highlighted and agreed at the appropriate level, as set out in Table 1 below or at an appropriate corresponding level within any railway undertaking.

**Table 1 – Financial Disposals Delegations of Authority**

<b>Case Details</b>	<b>Financial Settlement</b>	<b>Authority Level</b>	<b>Information of the decision to be provided to</b>
First offence for single journey offence	Less than £1000	Senior Prosecution Manager	Commercial Manager
First offence for single journey offence	More than £1000 but less than £3000	Commercial Manager	Director
First offence for multiple journeys	Less than £1000	Senior Prosecution Manager	Commercial Manager
First offence for multiple journeys	More than £1000 but less than £3000	Commercial Manager	Director
First offence for multiple journeys	More than £3000	Director	Group Legal

Case failing stage 1, stage 2 or closed by any code that prevents prosecution	Less than £1000	Senior Prosecution Manager	Commercial Manager
Case failing stage 1, stage 2 or closed by any code that prevents prosecution	More than £1000 but less than £3000	Commercial Manager	Director
Case failing stage 1, stage 2 or closed by any code that prevents prosecution	More than £3000	Director	Group Legal
Subsequent offence case meriting individual consideration	Any	Senior Prosecutions Manager to propose to Commercial Manager	Commercial Manager to propose to Director

The terms of the financial disposal should expressly state an agreement that, if the railway undertaking receives a request from the BTP or CPS to pass them any details (including the name, address, background of the individual) in relation to the case, we have their consent to do so as well as that the financial disposal concludes matters between the individual and railway undertaking, however it does not limit the right of any other relevant authority such as the BTP to prosecute directly. The wording to be included on correspondence will state that “Nothing in this proposed settlement will preclude any other party such as the police or other regulatory body taking action should they wish to”.

## **7. Legal advice**

Where the Prosecutions Department is given legal advice from an internal or external Solicitor or Barrister in respect of a case and where to follow such advice would result in a deviation from this policy, then such deviation is expressly permitted.

## **8. Confidentiality of cases**

The Data Protection Act is to be observed when dealing with such cases. As such, no persons involved in the settlement of a case (a “closed case”) shall distribute or permit to be distributed, any information in respect of the closed case for any reason other than administration of its settlement.

**APPENDIX A – Aggravating and Mitigating Factors**

**GENERAL FACTORS FOR ALL OFFENCES**

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Conviction is likely to result in significant sentence.  
Weapon used or violence threatened during commission of offence.  
Offence against public servant (e.g. police, nurse, council employee, etc.).  
Offender abused a position of trust - e.g. banker, baby-sitter, shop assistant.  
Offender was ringleader / organiser.  
Evidence of premeditation.  
Offender was part of an organised team or offence was committed by a group.  
Victim was vulnerable, deliberately put in considerable fear or suffered personal attack, damage, disturbance or domestic violence.  
Offence motivated by discrimination against victim's racial or ethnic origin, religious beliefs, gender, political views or sexual preference.  
There are grounds for believing the offence is likely to be repeated or continued - e.g. by a history of recurring conduct.  
Evidence of exploitation.  
The offence, though minor, is prevalent in the local area - as identified in the local crime audit, specified in the youth justice plan or specifically agreed with CPS to warrant more serious response.  
Offence committed with intent to commit a sexual offence.

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Conviction is likely to result in unusually small or nominal penalty.  
Prosecution is likely to have bad effect on victim's physical or mental health.  
Offender supplied information which reduced risk, loss or harm to others.  
Offender was influenced by others more criminally sophisticated.  
Genuine mistake or misunderstanding.  
Vulnerability of the offender.  
Provocation from victim or victim's group and offender reacted impulsively.  
The offence is minor and offender has put right harm or loss caused, has expressed regret, offered reparation or compensation.  
Offender is or was at time of offence suffering from significant mental or physical ill-health and offence is not likely to be repeated.  
The offence is so old that the relevance of any response is minimised, i.e. there has been a long delay between the offence occurring and the point of decision making - Unless the offence is serious, the offender contributed to the delay, the offence only recently came to light or the complexity of the offence has contributed to long investigation.