

## Petitioner submission of 19 August 2022

### PE1930/E: Ensure customers are always given information on cheapest possible fare in new Scotrail contract

In response to Transport Scotland's comments regarding Scottish Rail Holdings and the consumer duty, I would note elements of consumer law and consumer protection which are devolved, with advertising governed by a mainly voluntary but significant codes of practice via the Advertising Standards Authority (ASA). My request for ScotRail to be covered is not so much around the point of sale and the legal underpinning of a contract of sale, but the wider scope of the duty and the thought process to protect consumer interests before the point of sale. For example, in how advertising policy or fare policy is developed.

I have received responses to Freedom of Information Requests (FOIs) from ScotRail, which suggest they haven't followed rules on clarity of the number of advance fares for sale as part of their £5 inter-city promotion.

I have always been interested in how ScotRail apply their "from £5" promotional offers in the context of [ASA marketing code 3.22](#) (i.e. the seller should ensure a significant proportion of items for sale are discounted at the maximum saving, and that these claims represent the true overall picture of the price promotion).

Therefore, when ScotRail became a public body subject to FOI legislation, I submitted a request for the number of tickets on sale for £5. Over the course of my correspondence with ScotRail, and consideration of the data they provided, it became clear to me that a significant proportion of tickets were not being made available for £5. Furthermore, in the final FOI reply ScotRail outlined that the information requested was not held in a format which is easily extractable to answer my question. The revenue management system only holds daily information on the availability for every reservable train - the origin, destination and price point for every possible future travel date (which will differ throughout the full 12-week booking window). ScotRail's answer was that there was an extremely large and complex dataset that is not set up in such a way that allows for data to be easily extracted to respond to this query. This suggests the evidence wasn't ever available in a format

to back up the pricing claim, clearly and easily for the advertising in question.

I have raised this issue with the ASA, who have indicated they have provided ScotRail with advice that this promotion was likely to have breached advertising codes, and that ScotRail should take steps to make their advertising clearer in the future, particularly in relation to the number of £5 on offer.

For me, this points to a culture and practice within ScotRail of not considering or fully applying the advertising codes when advertising fares to passengers. I remain hopeful that this will change now ScotRail are a public body, and believe this would be helped with the consumer duty obligation applying to them. In my view, doing so would ensure that legal, decent and honest advertising would always be at the forefront of any consideration of future fare promotions, enabling claims to be verified and supporting passenger confidence in price claims.

Should the consumer duty be applied, I believe, ScotRail would be reminded to actively consider the impact of their decisions on customers, particularly their more vulnerable customers. This might include:

- consideration of proposals to only sell tickets via digital means;
- avoiding the need for a public outcry before introducing telephone sales (as has happened previously); and
- consideration of face-to-face ticket sales for this, or any other, promotion (e.g. [Club50](#) where older people save less when booking by non-digital means – only 10% compared to a 20% saving when booking online).

The Scottish Government have said that Consumer Scotland Bill will establish the consumer duty on relevant public authorities in Scotland to ensure that they safeguard the consumer interest in policy making. In doing so, they recognised that consumers will not have undue primacy - public health outcomes or environmental concerns may still take precedence, for example - but efforts should still be made to minimise negative impacts on consumers where there are competing policy interests.

By imposing the duty, they anticipate that:

- Considering and safeguarding the consumer interest will form part of the policy-making process from an early stage.

- There will be an increase in meaningful consultation with consumers and consumer groups during policy development.
- Reviews of consumer impacts of policies will be carried out after implementation to ensure that consumers are not being unreasonably or unintentionally impacted by the real-world consequences of the policy.

In my view, it would seem appropriate on this basis for ScotRail to be subject to the duty alongside the equality duty and other duties as a new public body.

Surely having a national railway with a duty to actively consider, with an open mind, whether there are opportunities to better promote consumer interests would be a good thing? Consumer rights should not be seen as a quick tick box exercise, but one where serious consideration of consumer impacts takes place as early as possible in any decision-making process. My question is why wouldn't the Scottish Government want to include ScotRail in the Consumer Duty?