



XCTL-115 Prosecutions Policy

Synopsis

This document outlines the policy and procedure for prosecutions within CrossCountry.

Authorisation

Reviewed by.....
Peter Archibald
Senior Customer Service Manager

Authorised by.....
Jeremy Higgins
Customer Service Director

Published by
Safety Team
CrossCountry
5th Floor, Cannon House
18 Priory Queensway
Birmingham B4 6BS

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A Administration

Issue & Revisions This document is issued as part of CrossCountry Procedures Directory, which provides a central directory of instructions & guidance across the company.

Issue 1	May 2013	New SMS document
Issue 2	October 2014	Review of Document
Issue 3	November 2016	Development of the Revenue and Support Team Introduction of Consumer Rights Act 2016 Introduction of National Rail Conditions of Travel 2016

This document will be reviewed at a frequency no greater than two yearly.

References References can be found in Appendix A.

Implementation The requirements of this Procedure are mandatory and apply from the date of issue.

Definitions Definitions used in this document can be found in Appendix B.

B Requirements

1. Purpose and Scope

CrossCountry is committed to a fair and proactive approach in preventing and reducing the level of fare evasion on its services and offences of workplace violence against its employees in the course of their duties.

CrossCountry may prosecute perpetrators of such offences and may share details of convicted offenders with other transport companies for effective enforcement against persistent offenders. CrossCountry may also publish the names of convicted offenders to serve as deterrent to others.

This policy outlines the approach to be followed in the consideration and discharge of CrossCountry's enforcement and prosecution powers and its commitment to have regard to relevant legislation, regulations and guidelines.

CrossCountry recognises that the decision to prosecute is a serious one and will ensure all relevant mitigating factors are taken into consideration before any such decision is taken. The system of prosecution of offences set out in this policy seeks to be robust, effective, consistent, and, above all, fair.

This policy may be supported by procedural documents held within individual prosecuting departments or agencies, providing guidance to Prosecutors in reaching the decision to prosecute or to dispose of matters by alternative means. Individual prosecuting departments or agents may also develop and apply appropriate enforcement and prosecution strategies in accordance with the general principles of this policy.

This policy applies to all CrossCountry activities, its passengers and any alleged offender reported on behalf of another train operating company. The principles of this policy will also form the basis of revenue enforcement policies operated by concessionaires.

2. People

The people covered by this policy are:

- The Head of Business Support
- Senior and Customer Service Managers
- Train Managers & Senior Conductors
- Revenue and Support Team (including Revenue & Support Specialists and Revenue Protection Inspectors)
- Training Team
- All Prosecutors or Agents acting on Behalf of CrossCountry

The **Senior Customer Service Manager** is responsible for managing and overseeing all prosecutions and debt recovery processes within CrossCountry as well as decision making and management of ongoing cases in partnership with our prosecuting agents.

The **Customer Service Manager** is responsible for the Train Managers and Senior Conductors on board the train and is responsible for the direct management of Revenue & Support Team ensuring the correct policies and procedures are adhered to by the On Board staff and manage appropriate actions to rectify deficiencies.

Our **Prosecution Agents** are responsible for processing and enforcing the recovery of fares owed to CrossCountry, they must follow the guidelines set out in this and their own policies. The Head of Business Support will audit the process being used and ensure they are following the agreed policies and codes of practice to ensure we adhere to our firm but fair approach.

C Policy

1. General Principles

Fare evasion on CrossCountry in contravention of the Regulation of Railways Act 1889, and the National Railways Byelaws (2005).

The Fraud Act 2006 may be applied to deal with serious and systematic fare evasion or revenue fraud on CrossCountry services.

Assault against CrossCountry group employees is an offence contrary to the Criminal Justice Act 1988 and the Offences against the Person Act 1861.

In addition to the statutory definition, assault can also include *"any incident in which persons are abused, threatened or assaulted in circumstances relating to their work and which constitutes an explicit or implicit threat to their safety and general wellbeing."*

Each case is unique and will be considered on its own facts and merits. There are however, general principles that apply to the way in which CrossCountry Investigators and Prosecutors and their agents will approach each case.

CrossCountry Prosecutors or agents must be fair and objective in the conduct of their duties. They must not let personal views about ethnic origin, gender, religion, political beliefs, sexual orientation or age of suspected offenders play any part whatsoever in the consideration of any matter, nor must they be affected by improper or undue influence.

CrossCountry Prosecutors or agents will endeavour to ensure the right perpetrator is identified and prosecuted for the offence. In so doing, prosecutors must always act in accordance with the principles set out in this policy and local procedural manuals and not solely for the purposes of obtaining a conviction.

CrossCountry Prosecutors or agents have a duty to review, advise in and prosecute cases where the decision to prosecute has been made. They must seek to rely on relevant and admissible evidence having regard to matters of disclosure, in accordance with the provisions of the Criminal Procedure and Investigations Act 1996 and the Attorney General's Guidelines on disclosure of evidential materials.

CrossCountry is bound by the provisions of the Human Rights Act 1998 and Prosecutors or agents must have regard to the principles of the European Convention on Human Rights in accordance with the Act.

CrossCountry will comply with the Data Protection Act 1998 in relation to all aspects of investigations and prosecutions. This includes the collection of personal data and its retention, disclosure and other processing. In particular it is to be noted that personal data will not be disclosed to third parties except in accordance with the provisions of the Act and / or the Freedom of Information (Scotland) Act 2002.

2. Types of Offences

2.1 CrossCountry may prosecute the following offences:

- a) Fare evasion in contravention of the Regulations of Railways Act 1889.
- b) Contraventions of the National Railways Byelaws 2005.
- c) Assaults and threats of assault, perpetrated against CrossCountry employees in the course of their duties.
- d) Public order offences in contravention of the Public Order Act 1986 and other public order offences perpetrated against CrossCountry employees which breach of the National Railways Byelaws 2005.
- e) Criminal damage, graffiti and other types of property mutilation perpetrated against CrossCountry property, not prosecuted by the police.
- f) Forgery and counterfeiting of travel tickets and passes contrary to the Forgery and Counterfeiting Act 1981 and other systematic or serious revenue related offences contrary to the Fraud Act 2006.
- g) Unpaid Fares Notices and Travel Irregularity Reports issued by CrossCountry employees as part of their duties where the offender has failed to pay the fare due in the specified time scales with the intent to avoid payment thereof.

CrossCountry may also seek Anti-Social Behaviour Orders (ASBO's) against any person whose behaviour is found to have caused or is likely to cause any CrossCountry employees or passengers using services or on CrossCountry premises, harassment, alarm or distress.

The above list is not exhaustive and CrossCountry may prosecute other offences relevant or incidental to fare evasion, fraud, criminal damage, or assault on employees, outside of the list of offences set out in this policy.

3. Who Will Prosecute?

Offences listed in paragraph 2.1 above will normally be prosecuted by:

- a) Approved CrossCountry Prosecution Agents.
- b) Cases passed to The Crown Prosecution Service by our agents or the police.

This policy is restricted to those prosecutions that are conducted by CrossCountry and plays no part in the process of prosecution applied by the Crown Prosecution Service, but does take heed of the crowns considerations for all cases.

4. Young Offenders

CrossCountry will not normally prosecute any person under the age of 17 ½ years old on the day of the relevant offence. This is in line with the Home Office guidelines of diverting youths away where possible, from the criminal justice system.

However where the offence is of a serious nature, CrossCountry may prosecute or in appropriate cases refer such an offence to the BTP.

CrossCountry considers the following offences to be of a serious nature:

- a) Assaults on staff or other Public Order offences.
- b) Criminal damage to CrossCountry property.
- c) Forgery and counterfeiting of CrossCountry travel tickets and passes.
- d) Illegal production or sale of CrossCountry travel tickets and passes.
- e) Repeat offences of any nature or offences committed after a previous warning.
- f) Breach of an Anti-Social Behaviour Order.
- g) Any other offence(s) where it is in the public interest to prosecute.

CrossCountry and its agents will consider all offences objectively in deciding whether or not to prosecute. Youth offenders will be prosecuted in accordance with the CrossCountry prosecution criteria contained in this policy after taking all surrounding factors into consideration including necessary Home Office guidelines.

The Head of Business Support, Senior Customer Service Manager and CrossCountry Prosecutor will make this decision with consideration to the Evidential test in law as well as other relevant legislation to the case and advise from other authorised persons such as the Managing Director.

Repeat young offenders will be prosecuted in accordance with this policy and the Home Office Final Warning Scheme.

Passengers, Staff and Contractors in receipt of free travel from CrossCountry will be subject to the agreed Behaviour Code associated with the free travel scheme. A breach of the Behaviour Code could lead to enforcement action taken against the holder of the free travel pass ranging from temporary to a permanent withdrawal of the card depending on severity.

5. Non Prosecution matters

There are many reports that are submitted that are not subject to prosecution or debt recovery, these are identified in the following categories:

- a) Commercial Issues
- b) Internal Investigations
- c) Rail Staff Travel matters
- d) Customer Relations matters

Cases resolved through our Customer Relations Management system (CRM) as one of the reasons listed above will not normally be forwarded for prosecution or debt recovery.

6. Decision to Prosecute

It is recognised that the decision to prosecute a person suspected of an offence is an important and serious one. CrossCountry will therefore only prosecute if:

- a) The evidence shows that there is a realistic prospect of conviction; and
- b) It would be in the public interest and in the interest of justice to prosecute.

The Evidential Test

In deciding whether there is a realistic prospect of conviction, the Prosecutors will have regard to the following:

- a) Relevance and Admissibility of available evidence.
- b) Reliability of evidence relating to the identity of the alleged offender.
- c) Reliability of evidence of any observation of the alleged offender.
- d) Reliability of any admissions and confessions including comments as recorded in Inspectors' notebooks or in the Travel Irregularity Reports form (TIR) as the case may be.
- e) Reliability of Prosecution Witnesses.

If CrossCountry or its agents considers that there is insufficient evidence upon which to base a prosecution, no prosecution will be brought. Consideration may however be given to other responses, such as to consider an administrative disposal or settle the matter by way of a warning letter. The Head of Business Support, Senior Customer Service Manager and CrossCountry Prosecutor will make this decision with consideration to the Evidential test in law as well as other relevant legislation to the case and advise from other authorised persons such as the Managing Director.

Public Interest and Interest of Justice

Even where the evidential test has been satisfied, the prosecution of an alleged offence must be in public interest and in the interests of justice, i.e. must be seen to be appropriate, fair and properly brought. There can be no definitive guidance as to when it may not be in public interest or in the interest of justice to prosecute an alleged offence, as each case will turn on its own individual factor.

7. Anti-Social Behaviour Orders (ASBO)

CrossCountry may decide to seek an ASBO against any person in accordance with the Crime and Disorder Act 1998 as amended by the Crime and Disorder Act 1998 (Relevant Authorities and Relevant Persons) Order 2006 and / or Antisocial Behaviour (Scotland) Act 2004.

CrossCountry may seek an ASBO where perpetrators have acted in an anti-social manner on or in relation to any land or vehicles used in connection with, or for the purposes of, the provision of any relevant transport service.

For the purposes of the Crime and Disorder Act 1998 (Relevant Authorities and Relevant Persons) Order 2006, relevant transport service includes a bus service, replacement transport or train service provided by CrossCountry or any of its subsidiaries or by any person pursuant to an agreement with CrossCountry.

In other cases, CrossCountry prosecutors or prosecuting agents may request a District Judge to consider issuing a post-conviction ASBO following the conviction of any offender for a relevant offence where in the opinion of the prosecutor the behaviour associated with the offence occurred on a CrossCountry service and has or is likely to cause any CrossCountry employee or passenger harassment, alarm or distress.

8. Prosecution Criteria

1. CrossCountry will have regard to the following factors in favour of prosecution:
 - a) Previous conviction for a relevant offence or where the offender has committed a similar offence on any of CrossCountry services.
 - b) Refusal to heed an earlier warning about a similar conduct.
 - c) Offender has committed any of the offences of a serious nature as set out in paragraph 4 of this policy.
 - d) The offence occurred in an area or on a service known to occasion high revenue loss to CrossCountry.
 - e) The offender has failed to pay for the service or failed to have sufficient smart card credit before boarding a relevant service¹
 - f) The offender has unlawfully used or transferred a Freedom pass, Staff Pass or other concessionary passes or travel documents issued to named holders.

2. CrossCountry will have regard to the following factors against prosecution:
 - a) Insufficiency of evidence,
 - b) Where it appears that there has been a genuine mistake by the alleged offender. Note: It is not an acceptable mistake to believe erroneously that your card contains a valid ticket, or a failure/omission to validate a smart card, when on any CrossCountry services.
 - c) Age of the offender.
 - d) Where there may be issues concerning the mental health of the alleged offender.
 - e) Where, owing to circumstances beyond the offender's control, commission of the offence was unavoidable.
 - f) Where there is no realistic prospect of conviction.

3. CrossCountry will have regard to the following factors in the decision to discontinue proceedings:
 - a) New and compelling evidence not previously available to CrossCountry or its Agents.
 - b) Insufficient evidence to proceed with the prosecution.
 - c) Where the continuance of proceedings is likely to lead to an abuse of the process of the courts.
 - d) Where continued proceedings are likely to be deemed malicious or in fact likely to be prejudicial to CrossCountry's interest.
 - e) Where the Prosecutions Manager takes the decision to discontinue proceedings against the offender, due to exceptional circumstances.
 - f) Where the withdrawal is due to above, the relevant Prosecutions Manager may set the terms and conditions for such withdrawal.

¹ Relevant service refers to a service provided by directly by CrossCountry or other Train Operating Company or Concessionaires

Under no circumstances should a case be withdrawn for the purposes of seeking compensation from the defendant, except in proceedings for compensation for damages or recovery of costs, through the county courts in relation to staff assault cases.

However nothing shall prevent the Senior Customer Service Manager, Head of Business Support or the Prosecution Agents from withdrawing a case against any person where there are exceptional reasons to do so. What constitutes exceptional reasons will be determined on the facts of individual cases and the decision to discontinue a case will normally be taken by the Head of Business Support or the Prosecution Agents.

CrossCountry may also in appropriate cases dispose of a matter by way of a Warning Letter in accordance with section 9 of this policy, or by referring a youth offender to the YOT. Where a case is disposed of other than by prosecution, CrossCountry or its Agents may seek to recover any administrative costs incurred in processing the case file.

9. Verification Letters

CrossCountry authorised Prosecutors will send a Verification Letter to all those suspected of fare evasion. The Verification Letter invites the alleged offender to give an explanation for the alleged offence or to provide any comments about the alleged incident.

Failure to reply a Verification Letter may result in a decision to prosecute.

Any explanation/comments given by the alleged offender will be taken into account and reviewed before arriving at the decision to prosecute.

10. Warning Letters

Where the offence involves potential fare evasion CrossCountry may decide to issue an offender with a Warning Letter in lieu of prosecution, where the following conditions are met:

- a) The offender admits the irregular travel and;
- b) The risk of re-offending is considered minimal and;
- c) The offender has provided CrossCountry with exceptional mitigation against prosecution or in the opinion of the Head of Business Support or the Prosecution Agents it is not in the public interest to prosecute and;
- d) The offender agrees to pay the administrative costs incurred in the processing of the case file.

Note: Depending on the circumstances of each case, CrossCountry reserve the right to proceed to prosecution without issuing a Warning Letter.

11. Administrative Disposal of cases

On occasion the fairest means to settle a case is to apply an administrative disposal to the matter. This is done by mutual agreement of CrossCountry and its agents via the Head of Business Support. For an administrative disposal to be considered the following criteria should be met:

- a) There is sufficient evidence to pursue a prosecution
- b) There is no evidence to suggest intention to avoid the fare
- c) This is the offenders first offence and no other records are held on file
- d) The matter does not meet the criteria for a Serious offence in section 4

An offer of administrative disposal should be made up of the following criteria:

- a) The single fare for the journeys made
- b) Any reasonable administration costs incurred
- c) Any sum must be paid in full within 21 days

The offer of an administrative disposal does not stop the defendant from having the case heard in court and if the administrative disposal is not settled within the 21 days the case will proceed as normal to prosecution.

12. Investigations

CrossCountry Revenue Protection Inspectors will "caution" any suspect in accordance with the Police and Criminal Evidence Act 1984 (PACE), where questions put to the suspect are likely to result in admissions or confessions prejudicial to the suspect's case.

Please note that questions relating to a suspect's identity, address and journey details are unlikely to trigger a caution within the meaning of PACE.

In administering the caution to a suspect, the CrossCountry Revenue Inspector will read out the caution and ask if the suspect understands. If the answer is 'no' the Inspector will then explain the caution as simply as possible and then ask again if the suspect understands. Any reply to the caution must be recorded in the Inspector's notebook or any other recording medium used for this purpose.

13. Disclosure

CrossCountry and its authorised prosecutors will have regard to the Criminal Procedure and Investigations Act 1996 and the associated Code of Practice in the disclosure of prosecution materials.

CrossCountry and its authorised Prosecutors will endeavour to retain and preserve evidence that may be relevant to a prosecution, whether or not that evidence is to form part of the prosecution case.

CrossCountry and its Authorised Prosecutors recognise that the rules of disclosure in Magistrates Court are less formal in comparison to disclosure rules in the Crown Court. However in the interest of justice, CrossCountry and its Authorised Prosecutors will endeavour in all cases to adopt a consistent approach to disclosure by disclosing prosecution materials in advance of any hearing.

D Procedure

1. Overview

CrossCountry operate a firm but fair approach to revenue protection and we empower our frontline staff to make reasonable decisions based on the evidence presented to them on the day.

Discretion is one of the best tools of a frontline member of staff and CrossCountry looks to resolve matters at the earliest opportunity to protect the interests of the fare paying customer, the business and the industry. A frontline member of staff has the ability to decide the best course of action to take based on the evidence at the time and this message is supported through the Briefing cycle.

All front line members of staff have the following options available to them:

- a) Upgrade the passenger to the nearest valid ticket is available.
- b) Sell the passenger a new valid ticket without discount if applicable.
- c) Issue an Unpaid fares notice giving the passenger 21 days to either pay the fare due or appeal the notice.
- d) Issue a zero fare and report the matter via the Travel Irregularity system.

In addition to the normal frontline staff, CrossCountry also deploy a national Revenue and Support Team who are competent in the Police & Criminal Evidence Act 1984 (PACE) and have additional training set out in the Management of Revenue and Support Specialists XCTL-254 and Management of Revenue Protection Inspectors XCTL-226. Along with their other duties this team will investigate a case and question a suspect inline with PACE and the codes of practice A to E. The Revenue and Support team will have the training and ability to submit reports in the MG11 format if applicable based on the evidence collected in the case.

2. Process

Once a report or unpaid fares notice has been submitted they will follow two different processes until they have been paid, resolved, appealed or recovered via our prosecutors.

The two processes are designed to give an open and transparent view of each case so the matter can be resolved fairly.

Unpaid Fares

All unpaid fares notices once issued must be submitted via the Customer Service Manager to our Agents every Friday. Our Agents at the Independent Revenue Collection and Appeals Service (IRCAS) will process the notices upon arrival and wait for the 21 days, from date of issue, to elapse before contacting the passenger for payment.

If a passenger pays the notice within the 21 days then no further action will be taken and the case is closed.

Every passenger issued a UPFN has the right to appeal the notice to IRCAS, every appeal will be reviewed against the National Rail Conditions of Travel, the railway byelaws 2005 and also our own guidelines agreed with our supplier.

If an appeal is successful then the case will be closed and no further action taken, however if the appeal is not successful the passenger is required to pay the full fare due as indicated on the notice.

If a notice has not been paid or appealed at the end of the 21 days from date of issue, a reminder letter is sent to the passenger requesting payment of the fare due plus an administration fee within 14 days. If this is paid, then no further action is taken.

If the reminder letter is not responded to then a final reminder is sent warning that if the full amount plus the increased administration fee is not paid within 14 days then the case may be forwarded to debt recovery or prosecution.

If the full amount is paid at this stage, then no further action is taken and the case is closed.

If the final reminder is not responded to, then the case, once post 50 days of the date of issue, is forwarded to our prosecution agents for debt recovery or prosecution.

These cases upon receipt at our prosecution agents are then reviewed and Verification letters sent out giving the passenger the opportunity to respond.

If there is no response then the UPFN cases are converted to a Witness statement and the case is processed for prosecution to recover the fares due.

TIR / MG11 Reports

All reports submitted by CrossCountry frontline staff are sent as soon as practicably possible to the Head of Business Support for processing.

Upon receipt of the reports they are quality checked and read in detail to understand the nature of the report and the category that they will fall into for processing.

These are:

- a) No Further Action
- b) Commercial Issue
- c) Internal Issue
- d) Customer Relations
- e) Rail Staff Travel
- f) Prosecution / Debt Recovery

Depending on the content and nature of the reports then the process is slightly different.

- a) No further action cases are logged and closed down
- b) Commercial cases are logged, resolved and forwarded to the commercial department to rectify the issues
- c) Internal issues are logged, resolved and forwarded to the appropriate line manager for investigation
- d) Customer relations matters are logged, resolved and forwarded to the Customer Relations department for processing
- e) Rail staff travel matters are logged and reviewed, depending on the nature of the case they may be returned to the issuing office, TOC or RSTL for investigation. These cases are then marked as resolved in regards to CrossCountry involvement.
- f) All cases for debt recovery or prosecution are logged, reviewed and the nature of the offence identified, these are then sent to our prosecuting agents for processing.

Once a report has been categorised and logged the appropriate letter will be forwarded to the passenger outlining what is happening next.

On occasion some reports require more information before we can process them effectively and this is done by requesting the additional information from the passenger.

If a passenger does not respond within 14 days then the matter will be reviewed and processed accordingly.

Appendix A: References

1. XCTL-226 Management of Revenue Protection Inspectors
2. XCTL-254 Management of Revenue and Support Specialists
3. The Regulation of Railways Act 1889
4. The National Rail Conditions of Travel
5. The National Railway Byelaws 2005
6. The Police & Criminal Evidence Act 1984
7. The PACE codes of Practice A to E 1999
8. Assessment Criteria UPFN Disputes – Independent Appeal Service (IAS)
9. Consumer Rights Act 2016
10. Fraud Act 2006

Appendix B: Prosecutions Flowchart

