



# Revenue Enforcement and Prosecutions Policy



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## 1. Introduction

Transport for London (TfL) is committed to a fair and proactive approach in preventing and reducing the level of fare evasion on its services and offences of work-related violence against its employees in the course of their duties.

TfL may prosecute perpetrators of such offences and may share details of convicted offenders with other transport companies for effective enforcement against persistent offenders. TfL 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 TfL's enforcement and prosecution powers and its commitment to have regard to relevant legislation, regulations and guidelines.

TfL 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, providing guidance to Prosecutors in reaching the decision to prosecute or to dispose of matters by alternative means. Individual prosecuting departments may also develop and apply appropriate enforcement and prosecution strategies in accordance with the general principles of this policy.

This policy applies to all TfL services. The principles of this policy will also form the basis of revenue enforcement policies operated by concessionaires.

## 2. General Principles

- 2.1 Fare evasion on London Underground is contrary to the Regulation of Railways Act 1889 and the Transport for London Byelaws (TfL Railway Byelaws).
- 2.2 Fare evasion on London Buses is contrary to the Public Passenger Vehicles Act 1981 and the Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) Regulations 1990
- 2.3 The Fraud Act 2006 may be applied to deal with serious and systematic fare evasion or revenue fraud on Transport for London services.
- 2.4 Assault against TfL group employees is an offence contrary to the Criminal Justice Act 1988 and the Offences against the Person Act 1861.



- 2.5 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”*.
- 2.6 Penalty Fares may also be issued in appropriate cases and in accordance with the Greater London Authority Act 1999 and other relevant legislations in force.
- 2.7 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 TfL Investigators and Prosecutors will approach each case.
- 2.8 TfL Prosecutors 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.
- 2.9 TfL Prosecutors 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.
- 2.10 TfL Prosecutors 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.
- 2.11 TfL is bound by the provisions of the Human Rights Act 1998 and Prosecutors must have regard to the principles of the European Convention on Human Rights in accordance with the Act.
- 2.12 TfL 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.

### **3. Types of Offences**

- 3.1 TfL will prosecute the following offences:



- a) Fare evasion in contravention of the Regulations of Railways Act 1889
- b) Contraventions of the TfL Railway Byelaws
- c) Fare evasion in contravention of the Public Passengers Vehicles Act 1981 and the Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) Regulations 1990.
- d) Assaults and threats of assault, perpetrated against TfL employees in the course of their duties.
- e) Public order offences in contravention of the Public Order Act 1986 and other public order offences perpetrated against TfL employees.
- f) Criminal damage, graffiti and other types of property mutilation perpetrated against TfL property, not prosecuted by the police.
- g) Forgery and counterfeiting of TfL 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.
- h) Penalty fares under the Greater London Authority Act 1999 where the offender has failed to pay a penalty fare due with the intent to avoid payment thereof.
- i) TfL may also seek Anti-Social Behaviour Orders (ASBOs) against any person whose behaviour is found to have caused or is likely to cause any TfL employees or passengers using TfL services or on TfL premises, harassment, alarm or distress.

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

## 4. Who will prosecute?

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

- a) Approved Prosecutors within TfL and London Underground or other services either operated directly or by concessionaires.
- b) Other approved TfL Investigators/Prosecutors acting alone or jointly with the Police
- c) The TfL in-house Legal team

**4.2 This policy is restricted to those prosecutions that are conducted by TfL and plays no part in the process of prosecution applied by the Crown Prosecution Service.**



## 5. Young Offenders

5.1 TfL will not normally prosecute any person under the age of 18 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, TfL may prosecute or in appropriate cases refer such an offence to the Police.

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

- a) Assaults on staff or other Public Order offences
- b) Criminal damage to TfL property
- c) Forgery and counterfeiting of TfL travel tickets and passes
- d) Illegal production or sale of TfL 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.

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

5.3 Where TfL has established proper restorative process liaisons with local Youth Offending Teams (YOT) centres, youth offenders may be diverted accordingly. TfL will participate in the YOT scheme aimed at preventing future youth offences. Repeat young offenders will be prosecuted in accordance with this policy and the Home Office Final Warning Scheme.

5.4 Young passengers in receipt of free travel from TfL 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. For full details of the Behaviour Code and consequences of breach, please refer to the TfL website at [www.tfl.gov.uk](http://www.tfl.gov.uk)



## 6. Decision to prosecute

6.1 It is recognised that the decision to prosecute a person suspected of an offence is an important and serious one. TfL 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.

## 6.2 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 as the case may be.
- e) Reliability of Prosecution Witnesses

If TfL 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 issue Penalty Fares or dispose of the matter by way of a Warning.

## 6.3 Public Interest and Interest of Justice

Even where the evidential test has been satisfied, the prosecution of an alleged offence must be in the 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

7.1 TfL 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.



7.2 TfL may seek ASBOs 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.

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

7.4 In other cases, TfL prosecutors 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 TfL land or transport service and has or is likely to cause any TfL employee or passenger harassment, alarm or distress

## 8. Prosecution Criteria

8.1 TfL will have regard to the following factors in favour of prosecution:

- a) The offender has a previous conviction for a relevant offence or where the offender has committed a similar offence on any of Transport for London or Train Operating Company services.
- b) The offender has previously been issued a Penalty Fare on any of Transport for London or Train Operating Company services.
- c) The offender has previously been issued with a Formal Warning by Transport for London
- d) The offender has committed any of the offences of a serious nature as set out in paragraph 5.1 of this policy.
- e) The offence occurred in an area or on a service known to occasion high revenue loss to TfL.
- f) The offender has failed to pay for the service or failed to have sufficient Oyster card credit before boarding a relevant service<sup>1</sup>
- g) The offender has unlawfully used or transferred a Freedom pass, Staff Pass or other concessionary passes or travel documents issued to named holders.

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<sup>1</sup> Relevant service refers to a service provided directly by Transport for London or Concessionaires





## 8.2 TfL will have regard to the following factors against prosecution

- a) Insufficiency of evidence.
- b) Where it appears that there has been a genuine mistake of fact<sup>2</sup> by the alleged offender.
- c) Age of the offender.
- d) Where the offender's mental health condition may have contributed to the commission of the offence.
- 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.

## 8.3 TfL will have regard to the following factors in the decision to discontinue proceedings:

- a) New and compelling evidence not previously available to TfL.
- 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 TfL'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 (e) above, the relevant Prosecutions Manager may set the terms and conditions for such withdrawal.

## 8.4 Under no circumstances should a case be withdrawn for the purposes of seeking compensation from the defendant, except in proceedings for

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2 Note: It is not an acceptable mistake to believe erroneously that your Oyster card contains sufficient credit, or a failure/omission to validate an Oyster card, or to use another person's pass/ticket which is non-transferable when on any TfL services.

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compensation for damages or recovery of costs, through the county courts in relation to staff assault cases.

- 8.5 However nothing shall prevent the Prosecutions Manager 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 can only be taken by the relevant Prosecutions Manager.

TfL may also in appropriate cases dispose of a matter by way of a Warning Letter in accordance with section 10 of this policy, or by referring a youth offender to the YOT. Where a case is disposed of other than by prosecution, TfL may seek to recover any administrative costs incurred in processing the case file.

## 9. Verification Letters

- 9.1 TfL Revenue 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.
- 9.2 Any explanation/comments given by the alleged offender will be taken into account in arriving at the decision to prosecute.

## 10. Warning Letters

Where the offence involves fare evasion TfL may decide to issue an offender with a Warning Letter<sup>3</sup> in lieu of prosecution, where it is deemed appropriate and 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 TfL with exceptional mitigation against prosecution or in the opinion of the Prosecutions Manager 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.

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<sup>3</sup> Note: Depending on the circumstances of each case, TfL reserves the right to proceed to prosecution without issuing a Warning Letter.



## 11. Investigations

- 11.1 TfL Revenue 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.
- 11.2 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.
- 11.3 In administering the caution to a suspect, the TfL 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.

## 12. Disclosure

- 12.1 TfL Prosecutors will have regard to the Criminal Procedure and Investigations Act 1996 and the associated Code of Practice in the disclosure of prosecution materials.
- 12.2 TfL 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.
- 12.3 TfL recognises 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, TfL will endeavour in all cases to adopt a consistent approach to disclosure by disclosing prosecution materials in advance of any hearing.

## 13. Policy Owner

- 13.1 This policy is sponsored and owned by the TfL Director of Enforcement & On-Street Operations
- 13.2 This policy will reside with the following TfL officials who will be responsible for responding to all policy related queries in the first instance:
- a) Enforcement Manager – Enforcement & On-Street Operations TfL
  - b) Crime and Disorder Partnership Manager – Enforcement & On-Street Operations TfL



## 14. Policy Review

14.1 This policy will be reviewed periodically to reflect any changes in the law, regulations, Byelaws or any TfL policies in force at the time. Any amendments will be reflected in the policy and published as appropriate.

14.2 TfL will publish a copy of this policy on its official website and will provide a copy on request in appropriate cases.