

Transport Committee

House of Commons London SW1A 0AA

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Paul Maynard MP
Parliamentary Under Secretary of State
Department for Transport
Great Minster House
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23 August 2016

Dear Paul,

As you know, I was appalled that the senior officials who appeared alongside you at our evidence session on 20 July were unable to answer our questions in relation to Govia Thameslink Railway's (GTR) performance against its contractual benchmarks; the effects of the February 2016 Remedial Plan and the current revised Southern Railway and Gatwick Express timetables on those benchmarks, particularly in relation to cancellations; and whether the Department had at any stage invoked *force majeure* in relation to GTR's performance.

Committee staff subsequently wrote to the Department, asking the following questions:

1. What was the effect of the Remedial Plan on GTR's contractual performance benchmarks, and would GTR now be in breach/default were it not for the revisions to the benchmarks agreed in the Remedial Plan?
2. What are GTR's contractual performance benchmarks now, and what has been their performance against those benchmarks since the Remedial Plan?
3. What effect does the temporary revised timetable have on GTR's contractual performance benchmarks i.e. is performance measured against the revised or the original timetable?
4. Has the Department applied *force majeure* at any stage of the contract and, if so, on what grounds was *force majeure* applied and what effect did it have on GTR's performance benchmarks?

The response from the Department, received on 26 July, was unacceptably opaque and failed to answer any of these questions adequately.

In particular:

- there was no attempt at all to answer the second part of question 1: whether GTR would now be in breach/default were it not for the benchmark revisions contained in the Remedial Plan;
- the answer to question 2—that it is “too early to determine performance against benchmarks”—is evasive and lacks credibility, given that the revised benchmarks have been in place since February. I note that Schedule 7.1 of GTR's franchise agreement requires it to report on performance against contractual benchmarks *at the end of each* [four-week] *Reporting Period*;

- the answer to question 3—that performance continues to be measured against the original, permanent timetable, rather than the revised, temporary timetable, but that GTR “may be able to claim *force majeure* where extraordinary circumstances prevent it from operating the published timetable”—is opaque and raises a number of further questions in relation to the definition of potential *force majeure* events; and
- the response confirms that GTR has made claims for *force majeure*; that the Department is “in the process of analysing those claims”; but that it is “too early to say what effect the *force majeure* claims, if accepted, will have on GTR’s performance benchmarks.” Again, this raises more questions than it answers.

In general, the response is deeply concerning. It gives the impression that the Department’s monitoring of GTR’s franchise agreement is weak, and its lack of transparency undermines proper scrutiny. We therefore ask that you supply the following information:

1. Specific data on GTR’s performance against the contractual benchmarks set out in schedule 7.1, Part 2.1 of the franchise agreement in each Reporting Period since the commencement of the franchise (given that GTR appears to be *contractually required* to report all such data at the end of each Reporting Period, we would expect a full and frank justification for any omissions);
2. The date/s on which GTR applied for *force majeure* in relation to its performance against contractual benchmarks; the basis on which the claim/s have been made; a detailed description of the Department’s processes for assessing the claims; when the Department expects to come to a decision on the claims; and the potential effects on GTR’s contractual performance benchmarks.

We would be grateful to receive your reply no later than the date of our next Committee meeting, on Monday 5 September. The Department’s initial response to our follow up questions, this letter, and your reply will be published on the Committee’s webpages.

I look forward to receiving your urgent reply in view of the continuing unacceptable situation for many passengers.

Yours sincerely,



Louise Ellman MP
Chair of the Transport Committee