

**John Larkinson**  
**Chief Executive**

Patrick Verwer  
Managing Director  
Govia Thameslink Railway Limited  
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14 March 2019

Dear Patrick

**Contravention of condition 4 of GB Statement of National Regulatory Provisions: Passenger (SNRP)**

ORR wrote to Govia Thameslink Railway Limited (GTR) on 3 October 2018 to inform the company that we had launched an investigation into whether GTR did, or is doing, everything reasonably practicable to achieve compliance with its obligations set out in condition 4 of its SNRP.

In particular, our investigation has focused on GTR's provision of appropriate, accurate and timely information:

- to passengers and prospective passengers prior to the implementation of 20 May 2018 timetable; and
- to passengers during the subsequent disruption i.e. following the implementation of the 20 May 2018 timetable.

We have also considered:

- the steps GTR has taken or is taking to address the issues, make improvements and recover;
- whether there are any systemic issues; and/or

- whether there are any mitigating factors which should be considered in this case.

Our guidance to support compliance with condition 4 recognises that timetabling services and providing information to passengers are difficult, complex tasks. There is a balance to be struck between service delivery and the ability to provide appropriate, accurate and timely information for passengers during sustained periods of disruption. The licence condition is not intended to undermine the primary objective of providing the best available services for passengers.

Thank you for GTR's co-operation and information provided over the course of this investigation. ORR has considered evidence, including GTR's responses, material provided to us in our meetings and source information previously provided to us as part of the Timetable Inquiry.

This letter sets out the decisions made by the ORR Board on what regulatory action should be taken following the investigation.

In reaching these decisions, the ORR Board had regard to its duties under section 4 of the Railways Act 1993. ORR has also applied our competition primacy duty which obliges ORR to consider whether it would be more appropriate to proceed under the Competition Act 1998. In this case, ORR does not consider that the Competition Act 1998 is applicable.

Stephanie Tobyn, ORR Deputy Director, Railway Markets and Economics, wrote to GTR on 29 January 2019 setting out the findings of our investigation and asked for any representations from GTR.<sup>1</sup> The Board also considered GTR's response to ORR's letter and the supplementary information provided on 13 February 2019.

## Summary of Decisions

### **GTR's provision of appropriate, accurate and timely information to passengers and prospective passengers prior to the implementation of 20 May 2018 timetable.**

Based on the balance of the information assessed, ORR consider that GTR took reasonably practicable steps to provide appropriate, accurate and timely information to passengers prior to the timetable change on 20 May 2018.

### **GTR's provision of appropriate, accurate and timely information to passengers during the subsequent disruption i.e. following the implementation of the 20 May 2018 timetable.**

In summary, ORR considers that:

- (i) GTR's operational decision making was not supported by passenger information that was sufficiently aligned to the steps that it was taking to recover the service;

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<sup>1</sup> Both ORR's letter to GTR of 29 January 2019 and GTR's response letter of 13 February 2019 are published with these documents on our website.

- (ii) GTR's failure to clearly communicate known cancellations in a timely manner undermined the ability of prospective passengers to plan ahead and make informed journey decisions; and
- (iii) Operational decisions taken and implemented to support the recovery process did not take account of the need to provide passengers with appropriate, accurate and timely information to an acceptable extent and within an acceptable time period.

ORR Board is therefore satisfied that, taking account of all evidence, including our findings and GTR's representations, there is evidence that GTR contravened condition 4 of its SNRP in that it failed to deliver to the greatest extent reasonably practicable, having regard to all relevant circumstances, its obligation to provide appropriate, accurate and timely information to passengers to enable them to plan and make their journeys with a reasonable degree of assurance.

In coming to this conclusion, the ORR Board had regard to all the relevant circumstances including the failure of the May timetable and the funding available to GTR. The Board was not satisfied that there is an on-going contravention of condition 4.

### **Consideration of penalties**

Having identified a past breach, the Board then had to consider whether a penalty was appropriate. ORR's policy is clear that our primary objective in setting a penalty is to change the future behaviour of a licence holder so as to deter non-compliance with its obligations (both specifically and in general).

The Board took account of all the evidence, our policy, and our section 4 duties and determined that the imposition of a penalty would be appropriate in this case.

The Board considered a penalty is appropriate in relation to GTR's failure in the provision of appropriate, accurate and timely information to passengers because a penalty would reinforce and incentivise GTR to ensure that the provision of information to passengers is managed more effectively in the future and could also act as a future deterrent to other licence holders.

Having considered the type, extent and duration of information failures that impacted passengers, the level of harm and potential harm caused, the culpability of GTR and mitigating and aggravating factors, the Board proposes to impose an overall penalty sum of £5 million in respect of GTR's contravention of condition 4 as described in the accompanying notice.

The proposed level of the penalty is considered appropriate and proportionate in the context of a moderately serious breach as described in the accompanying notice.

## Section 57C Notice

In accordance with Section 57C of the Railways Act 1993, enclosed with this letter is ORR's formal notice that it proposes to impose a penalty sum. This notice sets out in more detail the factors informing the level of proposed penalty.

A consultation period of at least 21 days is required for this notice. A deadline of Friday 5 April 2019 is therefore set out in the notice.

ORR will take into consideration any representations or objections made and not withdrawn and will make a final decision on whether a penalty is appropriate, and if so, how much it should be, as soon as practicable following the end of the consultation period.

A more detailed assessment of the evidence ORR has used to reach these decisions has already been provided to GTR and the final investigation report, ORR's letter of 29 January and GTR's response letter of 13 February 2019 will also be published with this letter on ORR's website.

I am copying this letter to the David Brown, Go-Ahead Group Chief Executive, and to the Secretary of State for Transport, Polly Payne, Ruth Hannant and Tim Rees at the Department for Transport.

Yours sincerely



**John Larkinson**  
**Chief Executive**