

Deputy Director Rail Commercial Contracts
Department for Transport
76 Marsham Street
LONDON
SW1P 4DR

Dear Mr

Notice of intention to impose a penalty pursuant to section 57A of the Railways Act 1993 - Chiltern Railway Company Limited

Thank you for your letter of the 7th April 2011 on behalf of the Secretary of State.

London TravelWatch has considered the proposed notice in the light of what we believe that passengers would expect to flow from any actual or potential breach of any franchise agreement, and any ramifications from that.

Our deliberations were based on:-

1. Consideration of whether any detriment to passengers occurred as a result of the breach in franchise.
2. If such a breach did occur did the operator make good this offence or put in place measures to rectify the situation over an agreed period of time.
3. The appropriateness of any penalty imposed on the operator: how and whether this penalty would be in the passenger interest.

Reflecting on the facts as they have been presented to us, we make the following observations in the passenger interest:-

1. Chiltern Railways admitted that they did not complete two infrastructure projects on time, but in both cases passengers only suffered very minor loss, because other facilities were still available for them to use.
2. Chiltern Railways admitted that they did change their timetable without getting proper authority to change their Public Service Requirement (PSR), but because another operator (admittedly Wrexham, Shropshire and Marylebone (WSMR) an open access one) then provided an alternative service, there was no disadvantage to passengers.
3. By changing the timetable it was said to give WSMR a commercial advantage, potentially when the Chiltern franchise was refranchised. This was because of the potential reallocation of revenues between operators on the Leamington Spa and Banbury to London flows. However, this would have a largely theoretical effect – as revenues are allocated on a mathematical formula, and in practice the change would

have made no difference to passenger behaviour.

4. The Department admits that Chiltern in making this change seemed to be solely concerned with protecting the passenger interest, and assumed that the Department would likewise also be so concerned.
5. Even if Chiltern effectively subcontracted a PSR obligation to another operator, the service was still being provided.
6. The Department says that Chiltern might have behaved differently if WSMR had not been part of the same operating group. We would suggest that in a similar situation with operators being owned by different companies we would still expect them to be able to work together to do the best thing for the passenger – on the East Coast line in engineering possessions that has been happening recently e.g. Grand Central and First Hull Trains combining at Doncaster to run to London rather than occupying separate paths.

From this we conclude that in terms of the passenger interest, there was minimal actual loss to passengers caused by what we would see as a technical breach of the franchise commitment. Chiltern Railways has admitted that these breaches. However, given this admission and the fact that measures were taken to rectify the situation immediately notification was made of the breach, the scale and effect of any penalty needs to be taken in to consideration.

London TravelWatch believes that given the substantial commitments contained within the existing franchise, that the method of the proposed penalty on the company would have a seriously detrimental effect on the long term passenger interest, if carried through. Given that the intention is to penalise the company it would be a perverse outcome if the result of this was to result in reduced benefits and a worsening of services for passengers.

Therefore, London TravelWatch believes that a better solution would be to follow the previous precedent of enforcement action against other franchises (Stagecoach South West Trains and Arriva Trains Northern) where the penalty was measure in terms of additional passenger benefits not included in the original franchise to a set monetised value. In both of these latter cases, where there was clear passenger disbenefit from their failure to adhere to the franchise agreement the penalty imposed could be demonstrated to be necessary to ensure compliance with the franchise requirements

A penalty based on enhanced passenger benefit would be in accordance with the Department's current enforcement policy and would fulfil the requirements of the Railways Act 1993 sections 55 (paragraphs 4 and 5) which sets out the enforcement powers of the franchising authority such that:-

- The order is requisite for the purpose of securing compliance with the requirements of the franchise.
- The franchisee is contravening and is likely to contravene the requirements of the franchise

Paragraph 5 also sets out when it is not appropriate for the franchising authority to make such a penalty order, and these conditions are as follows:-

- That the relevant operator has agreed to take, and is taking all such steps as it appears to the appropriate officer to be appropriate for the relevant operator to take

for the purpose of securing or facilitating compliance with the requirements of the franchise

- That the contraventions were, or apprehended contraventions are of a trivial nature.

As outlined above in each case where a contravention of the franchise agreement occurred Chiltern Railways have already taken measures to rectify the situation, such that it is now in compliance with its franchise obligations, as far as we are able to determine.

If such a penalty were imposed on Chiltern Railways (subject to the order being compliant with the Railways Act 1993), then it would be appropriate to consider the following measures (in the London TravelWatch area) which would be of passenger benefit (and also potentially produce benefit to the taxpayer in the form of additional revenue generation, and possible reduction in subsidy requirement in the long term):-

- Provision of additional Oyster readers at the side entrances to Wembley Stadium station, and providing additional signage to the level access / step free access routes to and from the station
- Provision of ticket vending machines at Sudbury Hill Harrow and Sudbury and Harrow Road stations (including Oyster top up capability)
- Provision of Oyster top up facilities at all ticket vending machines in the Greater London area
- Replacement of the current waiting shelters at Sudbury Hill Harrow.
- Refurbishment of the frontage, entrance area and subway at Sudbury & Harrow Road
- Bringing forward of plans to provide step free access at other stations on the route
- Extension of Oyster Pay As You Go capability to High Wycombe in line with the current limit of the metro service offering
- Provision of additional services or stops at stations currently underserved by the existing services, such as providing a Saturday service at Sudbury Hill Harrow.

We have received a number of representations from rail user groups covering the Chiltern franchise in our area, and their views are that the fine is disproportionate to the technical breaches of the franchise agreement, and that if a punishment should be seen to be necessary it should be in form of an agreement to passenger improvements not currently within the current franchise agreement.

If you have any queries in relation to this letter please do not hesitate to contact me.

Yours sincerely

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