



Department
for Transport

London North Eastern Railway Limited
East Coast House
25, Skeldergate, York, YO1 6DH

Attention: David Horne, Managing Director

Sent via email

Arthur Borkwood
Market Lead –Intercity East Coast

Passenger Services
Rail Services & Strategy Group
Great Minster House
33 Horseferry Road
London
SW1P 4DR

Tel: [REDACTED]
E-Mail: [REDACTED]
Website: www.gov.uk/dft
Date: [REDACTED]

Dear David,

SERVICES AGREEMENT (THE “SERVICES AGREEMENT”) DATED 24 JUNE 2018 ENTERED INTO BETWEEN THE SECRETARY OF STATE FOR TRANSPORT (“SECRETARY OF STATE”), DFT OLR HOLDINGS LIMITED (“DOHL”) AND LONDON NORTH EASTERN RAILWAY LIMITED (“LNER”)

Breach Notice: Consequences of Poor Performance – Benchmarks

1. Words and expressions defined in the Services Agreement have the same meaning when used herein unless the context otherwise implies.
2. Further to the Services Agreement Schedule 7.1 paragraph 18.3 I am writing to serve a Breach Notice in accordance with the provisions of clause 8 (Breach Notices).
3. The Secretary of State as represented by the Department for Transport is satisfied that LNER has contravened the Cancellation MAA Benchmark for the past seven Reporting Periods (P2305 to P2311 inclusive) as specified in Appendix 1 to Schedule 7.1 (Cancellation Benchmarks), where actual MAA performance is equal to or worse than the Cancellations Breach Performance Level.
4. For the last seven reporting periods the MAA level of cancellations has been above the Cancellations Breach Performance Level of 1.34% set for LNER. Following continued performance issues in recent periods, with increasing levels of cancellations in each of the last four periods, and discussions between LNER and Department around cancellations, the Department acknowledges that the level of cancellations may continue to breach the Cancellations Breach Performance Level for the foreseeable future.
5. The Secretary of State as represented by the Department for Transport is satisfied that LNER has been below target for the TOC on Self Minutes Delay MAA Benchmark for every reporting period this year without exceeding the TOC on Self Minutes Delay MAA Benchmark Breach Performance Level (P2301 to P2311 inclusive), as specified in Appendix 2 to Schedule 7.1 (TOC on Self Minutes Delay Benchmark), where actual MAA performance is equal to or worse than the TOC on Self Minutes Delay Target Performance Level.
6. For the last seven reporting periods the MAA level of TOC on Self Minutes Delay has increased and the period level of TOC on Self Minutes Delay in P2308 and P2310

exceeded breach levels. Following discussions between the Department and LNER around delays to LNER services, the Department acknowledges that the TOC on Self Minutes Delay performance may continue to be below target for the foreseeable future.

7. The Department and LNER have discussed recent performance levels over a number of periods and in a number of different forums. As a result of these discussions, we are aware that a number of external factors including industrial action, speed restrictions and fleet availability have had a significant detrimental impact on LNER's performance and are satisfied that these external factors are the main cause of LNER's recent poor performance. We also acknowledge that LNER are continuing to work with Network Rail to identify and implementation solutions that will improve performance.
8. In order to ensure that the causes of the breach are captured we formally request that LNER provide a report outlining the causes of the current high level of cancellations and TOC on self minutes delayed in recent periods, as per the latest email from [REDACTED] dated 13 February 2023. This report should include a disaggregated breakdown in percentage terms of the causes of cancellations and TOC on self minutes delayed and a supporting narrative to enable the Department to have full awareness of the level of impact these external factors are having on LNER's ability to operate their services. The report should also set out any actions LNER have agreed with Network Rail or other parties to improve the performance against the relevant metrics.
9. We request that LNER continue to submit the above disaggregated breakdown of the causes of cancellations and TOC on self minutes delayed for a number of periods, until specified by the Department, to enable us to continue to monitor the causes of performance issues.
10. Subject to the evidence provided in the requested report and ongoing monitoring continuing to indicate that external factors are the primary cause of LNER's recent poor performance, the Department will review the evidence provided and be minded to consider this matter closed and to discharge the breach notice. The Department will write to you again on this matter having reviewed the ongoing evidence in a number of rail periods time.
11. If you have any questions, please contact either myself or [REDACTED] Senior Commercial Manager [REDACTED]

Yours Sincerely,

Arthur Borkwood, Market Lead, Intercity East Coast Market, Passenger Services,
Department for Transport

CC:

Warrick Dent, Safety & Operations Director, London North Eastern Railway
[REDACTED] Joint Head of Performance Ec Partnership, London North Eastern Railway
[REDACTED] Head of Regulatory Compliance, London North Eastern Railway
[REDACTED] Franchise Partnership Manager, London North Eastern Railway
[REDACTED] Head of Service Delivery, London North Eastern Railway

[REDACTED] Redaction under FOIA 2000 exemption