



Department
for Transport

From the Secretary of State
The Rt. Hon. Chris Grayling

Great Minster House
33 Horseferry Road
London
SW1P 4DR

8 August

Thank you for your letter of 20th July about the change to the timings of the tender process for the Wales & Borders franchise.

I would like to firstly assure you that we remain committed to devolving rail powers, as agreed in 2014. Like you, I want to see improved services for passengers in Wales. We will continue to support the Welsh Government to progress the procurement of the next Wales & Borders rail franchise and an infrastructure provider for the South Wales Metro.

I am, however, unable to accept your assertion about the cause of the change in timing and would suggest that it has been largely caused by cumulative delays in the process over the last few months. The general election was not the cause of this changed timing and therefore no compensation will be paid by the Department. My officials first informed yours on 26th May that they did not believe the 18th August date could be achieved which was considered a sufficient timeframe for your team to adjust the programme in a controlled way.

It is worth placing on record what remained to be done on the various workstreams that underpin the successful launch of the Invitation to Submit Final Tenders (ITSFT) on the date of your letter. At that point (and still at the date of this letter) we still:

- Had yet to receive a written document setting out how the proposed asset transfer of the Core Valley Lines (CVL) will work, which was most recently promised for 19th July. A partial proposal was finally received on 25th July but significant gaps remain and indeed we understand there are still items of disagreement between yourselves and Network Rail including on how risk is allocated;

- Had yet to agree Agency Agreement 2, which sets out the terms on which you are able to exercise Railways Acts powers on my behalf with regards to services and stations in England, both during the procurement and in life (and on which work only started last October when we were able to agree the combination of statutory (within Wales) and agency powers through which the franchise would be procured and managed by Welsh Ministers);
- Had yet to reach agreement on your franchise funding demands (see below);
- Had yet to receive the legal advice your officials say they have been given explaining why they are unable to make the payments in dispute;
- Had yet to agree a Funding and Outputs principles document (reflecting agreements reached on all relevant matters including the funding of England-only services and CVL transfer)
- Had yet to complete our review of the relevant parts of the tender documents and understand whether and how comments already offered have been incorporated by your officials;
- Had yet to finalise how Welsh Ministers will undertake their Section 30 (Operator of Last Resort) responsibilities having only received a written proposal from your officials on 19th July.

Once agreed and finalised, this will then be subject to appropriate governance within the Department, HMT and presumably within the Welsh Government. The scale of the challenge for us all is clear.

You are free to issue whatever documents you want to bidders. However, as Secretary of State, I reserve my right to require amendments to those documents until such time as I formally authorise that they are the final documents to be released. They can never be 'frozen' until issued in final form following my authorisation.

I also wish to make clear that my authorisation for this will only be forthcoming once we have reached agreement on the funding claim your officials have made - a claim which would commit my Department to finding an additional £1bn over the franchise term compared with today, and for which I see no basis. These issues therefore cannot be de-coupled.


In addition, until I consent to you specifying and procuring English services within a Wales & Borders ODPGA, your bidders are on risk in responding to any ITSFT. Similarly, the Welsh Government are at risk in issuing any procurement documentation before we reach agreement on the principles underpinning a Funding and Outputs Agreement.

In conclusion, I recognise your concerns regarding the timings of the tender process but I hope you will understand that I cannot cut corners on the level of information or assurance required to recover time that has been lost from

earlier in the process before allowing you to exercise Railways Act powers on my behalf. To do so would present significant risk to Network Rail, taxpayers and most importantly the passengers served by the Wales & Borders franchise.

I will ensure my officials will continue to do all they can to support the process and enable the necessary agreements to be concluded as quickly as possible to ensure we deliver a satisfactory arrangement for passengers.

I am copying this letter to the Secretary of State for Wales and the Chair of National Assembly for Wales' Economy, Infrastructure and Skills Committee.

With best wish


Rt Hon Chris Grayling MP

SECRETARY OF STATE FOR TRANSPORT