

ABC applies to Court for a judicial review of the Department for Transport's handling of the Southern Rail management contract – our grounds in detail:

First Ground: Force Majeure

Background: Southern Rail's breach of performance benchmarks has been well known for over a year. The Transport Select Committee has been crystal clear on the urgency for a decision, stating in October 2016 that "it is essential that the Department provide clarity about whether GTR is in default, as a matter of urgency" and recommending that this was made clear by mid-November 2016. Its report referred to the DfT's lack of transparency in the strongest possible terms, expressing "complete dissatisfaction", and going so far as to say "the Department's evasive and opaque answers to our questions hindered our inquiry and delayed publication of this Report."

Last week, the leading industry publication Rail Business Intelligence leaked a rumour that Govia Thameslink Railway is known to be in default of its contract, with performance falling below targets set in the remedial plan agreed with the DfT. The Department for Transport have so far refused to confirm or deny this claim, calling it only 'speculation'.

- First Ground: ABC challenges the lawfulness of the Defendant's approach to enforcement of the Southern Rail management contract, namely ongoing breaches of GTR's Cancellation and Peak Short Form Performance Benchmarks. We believe that his failure to determine and publicly announce within a reasonable time whether GTR is in breach of these franchise obligations is unlawful.

Second, Third and Fourth Grounds

Background: The difficulty for disabled passengers in using Southern Rail has been regularly reported to ABC throughout 2016; due to excessive overcrowding, cancellations, short formations and failures in providing assistance (even in cases of advance booking by

passengers). Changes made to the provision for 'turn up and go' travel were recently reported by the Guardian, which revealed that, where 33 stations used to provide guaranteed access, this has now been rolled back to formalise the requirement for 24-hour advance-booking at every station on the network. These changes go against the grain of the rail industry itself, which is heading steadily towards the target of making all vehicles fully accessible by 1 January 2020. A spokesperson for GTR recently said: "It would be correct to say that there is no cast-iron guarantee that passengers with accessibility requirements can spontaneously board a train in the assumption there would be a second member of staff on board every train."

- Second Ground: The Secretary of State for Transport has denied that he is subject to any duty under the Equality Act 2010. ABC believes that this is plainly wrong: the Secretary of State is a signatory to the franchise agreement and is able to enforce its terms; his own enforcement policy recognises that he has a "*duty to protect the public interest by securing compliance with franchise agreements*", which must apply equally to able-bodied and disabled passengers. The DfT's failure to hold GTR to its franchise obligations has caused extreme overcrowding for all passengers, and this particularly impacts the lives of the disabled, many of whom no longer have the confidence to use the train service. We believe that the Secretary of State has adopted an unlawful approach to enforcing the franchise agreement – he simply doesn't consider that he is under any *Equality Act 2010* duty when doing so. **For this reason, our Second Ground represents a precedent-setting case for the rail industry, and will determine for the first time whether the DfT is under such a duty when overseeing franchise agreements.**
- Third Ground: The failure of the Secretary of State to take action to enforce the GTR franchise agreement is resulting in an ongoing breach of his own duties under sections 19 and 29(6) of the *Equality Act 2010* and amounts to indirect discrimination against passengers with disabilities. This takes the Second Ground from an academic point into one of real practical effect – not only does the Secretary of State have duties under the *Equality Act 2010*, but he is breaching them and is causing discrimination.

- Fourth Ground: In determining whether and how to exercise his enforcement powers to secure GTR's performance of its obligations, the Secretary of State has failed to comply with his public sector equality duty ("PSED") pursuant to section 149 of the *Equality Act 2010*, namely to have due regard to the elimination of discrimination and the advancement of equality of opportunity.