

North Yorkshire County Council

Transport, Economy & Environment Overview and Scrutiny Committee

8 July 2015

Rail North and Franchise Update

Report of the Corporate Director – Business and Environmental Services

1.0 Purpose of Report

- 1.1 To provide members with an update on Rail North and the Franchise competitions for TransPennine Express and Northern.

2.0 Background

- 2.1 In spring 2012 the Government proposed devolving decision making for managing local passengers rail services in England, which for the North of England meant the Northern franchise and TransPennine franchise services.

NYCC responded supporting the principle of devolving rail powers to the North through a new devolved body but with caveats to ensure:-

- that democracy and representation were part of the governance processes,
- there was a clear understanding of the funding arrangements and associated risks,
- a baseline level of train services similar to present, including safeguarding express key inter urban services and,
- that the DfT remained the operator of last resort.

- 2.2 In November 2014 the Executive received a report (attached as appendix 1) providing an update on Rail North and Franchising. They recommended that NYCC should join the Association of Rail North Partner Authorities and Rail North Ltd (RNL), and nominate a director to sit on the Board of Rail North Ltd.

3.0 Progress to Date

- 3.1 One of the envisaged 30 northern Local Transport Authorities has declined to become a part of either the Association or RNL. Of the remaining 29 all bar City of York have formally joined the Association and RNL. York have indicated an intention to join however were not able to do so prior to the local elections in May 2015.

4.0 Governance Arrangements

- 4.1 The formal governance arrangements are now in place and replace the shadow arrangements that have been operating since late 2012. These comprise a Leaders Committee (the Association), Rail North Ltd Board (11 Directors including North Yorkshire) and an Officer Steering Group (11 Officers in parallel to the Board).
- 4.2 Meetings: the Association will meet at least twice per year; the Board will meet at least 4 times per year (but probably more frequently in these early stages) and the Steering Group of officers will meet monthly.
- 4.3 Partnership Agreement: the partnership between the Department for Transport and RNL was established in principle through a Memorandum of Understanding signed

by the Secretary of State and the Chair of Rail North in 2014. This has now been formalised into a Partnership Agreement which is a legally binding Agreement that sets out provisions, processes and responsibilities which define how the Partnership will operate, and established the two key components of the partnership – the Strategic Board and the Management Team. The Agreement was approved for RNL at the Association's Leaders Committee meeting in February 2015.

- 4.4 A diagrammatic representation of these arrangements is attached as Appendix 2.
- 4.5 Members Agreement: The Partnership Agreement places certain responsibilities on Rail North and the Members Agreement sets out how the member authorities of Rail North will operate and bear those responsibilities. It is intended to form a legally binding relationship and in a similar way to the Partnership Agreement it sets out provisions, processes, roles and responsibilities of RNL.
- 4.6 Rail North Consultation Protocol: this sets out how engagement with constituent members is maintained and how input to consultation and decision making will be achieved. It reflects the emerging Members Agreement and provides clarification on the roles and responsibilities of the various bodies that comprise RNL and points of access into Rail North. A draft of this is attached at Appendix 3.

5.0 TransPennine Express and Northern Franchises

- 5.1 The Invitations to Tender (ITT) for the above franchises were issued on 27 February 2015 with closing dates of 25 May and 26 June 2015 respectively and both will come into effect in April 2016.
- 5.2 The ITT's set out the minimum specification in respect of Train Service Requirement, Station investment, Performance measures, Rolling Stock and Quality regime. Members will be aware that the ITT's were 'transformational' in that the specifications represented significant enhancement from what currently is operated, particularly for the Northern franchise.
- 5.3 It was particularly pleasing to see a commitment to the replacement of the old Pacer trains, increased frequency on the Harrogate line, Yorkshire Coast, Esk Valley, Hull - Selby - York and services through Skipton, additional Sunday services and earlier starting and later ending service patterns.
- 5.4 The shortlisted bidders are not required to bid for the minimum as specified, they are able to specify a higher level of service and with this in mind NYCC have met with all of the bidders on more than one occasion. Meeting the bidders with ourselves and the Local Enterprise Partnership (LEP) we were able to articulate our 'asks' and provide intelligence in relation to the local economy and known housing growth areas, both of which support better and more frequent train services.
- 5.5 Next Steps: the TPE bids have been submitted and a team of DfT and RNL officers are currently evaluating and scoring the bids prior to recommending the award to ministers. The Northern bid has just closed and the team will be moving onto the evaluation of these bids. The notification of the successful bidders will be in late Autumn 2015.

6.0 Transport for the North

- 6.1 Northern Transport Strategy – a Northern Powerhouse: Draft published 20 March 2015, it's aims are:-
- to transform Northern growth;
 - rebalance the country's economy;
 - establish the North as a global powerhouse.

6.2 Objectives include:

- Transform city to city rail connectivity
- Ensure sufficient capacity and quality of rail
- Deliver full HS2 “Y” network asap
- Develop a Multi-modal freight strategy
- Deliver Integrated and Smart ticketing
- Improve performance of the Strategic Roads Network
- Improve commuter services.

6.3 Although governance arrangements are yet to be determined there will be a linkage with Rail North. Initially (and currently) it is established as a Partnership of the 6 northern cities of Newcastle, Hull, Sheffield, Leeds, Manchester and Liverpool, together with DfT, Network Rail and Highways England, and the City Region Local Enterprise Partnerships. There is a wider reference group of the remaining Non-City northern local transport authorities, and North Yorkshire County Council has been encouraged to set out our key Strategic Transport requirements. These will be considered in the coming months and will inform the revised Northern Powerhouse to be published in Spring 2016.

6.4 Transport for the North / Rail North: the relationship between these two pan Northern bodies needs to be clarified and articulated, but in essence it can be viewed as TfN is setting out a high level transformational investment prospective for the North of England. RNL on the other hand has a specific job to do that is to manage two transformational franchises, develop delivery of local train services and continue to mature to achieve full devolution.

7.0 Financial Implications

7.1 In its early years, Rail North Ltd will be wholly funded from member subscriptions and contribution from DfT and the existing Rail Admin Grant. Any change to this will require the approval of the Association.

7.2 For North Yorkshire the subscription is £1,152 per annum.

8.0 Legal Implications

8.1 There are no new legal implications arising from this update.

9.0 Equalities Impact Assessment

9.1 The Council has a statutory duty to discharge obligations in relation to the Equality Act 2010. In so doing it has considered the equalities implications for people with protected characteristics arising from this report.

9.2 The report is an update on progress following an earlier decision of the Executive. Officers believe there are no further equalities impacts arising from this report.

10.0 Recommendation

10.1 To note the contents of the update.

DAVID BOWE

Corporate Director – Business and Environmental Services

Report Author: John Laking

Background Documents: None

ITEM 6

North Yorkshire County Council

Executive

18 November 2014

Rail Devolution to the North

1.0 Purpose of Report

- 1.1 To provide the Executive with an update on progress to Rail Devolution to the North.
- 1.2 To consider formally joining the Association of Rail North Partner Organisations and Rail North Limited.

2.0 Rail Decentralisation

2.1 Background

2.2 In Spring 2012 the Government proposed devolving decision making for managing local passengers rail services in England, which for the North of England meant the Northern franchise and TransPennine franchise services.

2.3 NYCC responded supporting the principle of devolving rail powers to the North through a new devolved body but with caveats to ensure:-

- that democracy and representation were part of the governance processes,
- there was a clear understanding of the funding arrangements and associated risks,
- a baseline level of train services similar to present, including safeguarding express key inter urban services and
- that the DfT remained the operator of last resort.

2.4 The five Northern City Combined Authorities (CA's) working with the Local Transport Authorities, developed a proposition and business case for Rail Devolution for the North of England and this was presented to the Secretary of State for Transport in September 2013. In November 2013, the Secretary of State responded that although he supported the principle of devolution, he wished to see a lower risk, more evolutionary approach with the establishment of a partnership structure between DfT and Rail North (the body representing all the north of England transport authorities).

2.5 These principles were agreed at a meeting between the Secretary of State and the 30 Northern Local Transport Authority Leaders on 24 January 2014, together with the following shared objectives that will underpin the partnership

- Growing the railway to maximise the benefits of infrastructure investment and linking this to railway efficiencies;
- Having a platform for determining investment priorities within the Partnership;
- Risk and reward sharing between members of the partnership, including the potential for revenue or profit-sharing mechanisms that could allow reinvestment into rail services; and,
- A partnership structure that allows the balance of risk to change over time.

3.0 Progress to Date

3.1 Rail North, in so far as it has had an identity, has been working in two areas: defining governance arrangements for the partnership of North of England local authorities and working in collaboration with DfT to develop the franchise specification for the Northern and TransPennine Express franchises. These two areas of work are now at a point where decisions are required, and these are set out below.

4.0 Governance Arrangements

4.1 The proposed structure, legal identity and formal relationships for the 30 north of England Local Transport Authorities have now been determined. These governance arrangements have the following key features:

- An association of Local Transport Authorities (LTA's) known as the Association of Rail North Partner Authorities ("the Association"), with a member from each of the of 30 LTAs in the North (attached as Appendix 1), and governed by a Leaders' Committee;
- Rail North Limited (RNL), a Special Purpose Vehicle being a company limited by guarantee whose membership is open to all members of the Association and whose directors are appointed by geographical sub-groups determined by the Association; and
- A partnership between RNL and DfT to be formally structured through a Memorandum of Understanding and a binding Partnership Agreement.

4.2 The Association of Rail North Partner Authorities has been established and Rail North Ltd has been set up and incorporated with Liverpool CA, Greater Manchester CA and West Yorkshire CA being the founder Authorities Sheffield joined in October and it is anticipated that the remaining authorities will take a decision on participation in the coming months

4.3 Each Local Transport Authority is being invited to enter into these arrangements, becoming members of both bodies and nominate the Leader and a Deputy to sit on the Leaders Committee of the Association.

- 4.4 The Directors of RNL will agree a Members Agreement, which is currently being developed.
- 4.5 It is proposed that Rail North Limited will enter into a partnership with the DfT to manage the new Northern and TransPennine Express franchises which will be introduced in February 2016 and set out a pathway to full devolution. A Partnership Principles document has been agreed between DfT and Rail North and a Memorandum of Understanding has been signed. The MOU is not intended to be legally binding but will be underpinned by a Partnership Agreement which will be legally binding and is currently being drafted.
- 4.6 The formal governance arrangements proposed above are seen as the most appropriate mechanism to maintain momentum in the current negotiation with the DfT in the franchise procurement, and also in the future partnership arrangements, but should also provide strong governance and decision making as well as political oversight to the decisions made by Rail North Directors and Officers.

5.0 Cost and Risk

- 5.1 There are three distinct phases for the progression of Rail North, and the cost and risk will vary depending on the Phase and the detail in the Partnership Agreement and Members Agreement.
- 5.2 Phase one is the period between now and the commencement of the new franchises in February 2016. There is minimal risk and low cost in this phase, where there is a commitment that the cost for participation will be a share of the establishment and administration costs of the legal bodies. This is anticipated to be £36k pa and North Yorkshire's proportion would be 3.2% of that ie £1,152.
- 5.3 Phase two is the period following the commencement of the Franchise and during which RNL manages the franchises in partnership with DfT. The quantum of cost and risk is not known at this time as it will be determined by the detail in the Franchise Agreement and in the detail of the Members and Partnership Agreements.
- 5.4 It is felt that the cost in this phase could be low as there is an expectation that the executive cost for Rail North will come from existing resources and not from Member contribution. If this is the case then the cost would be North Yorkshire share of the establishment and administration costs of the legal bodies as in 5.2 above.
- 5.5 Risk relates to the potential that a franchise operator fails or is unable to continue to comply with their obligation under the franchise and in the extent to which revenue is guaranteed as set out in the invitation to tender (ITT). In relation to the former our position has been that the DfT must remain the operator of last resort and therefore this risk will be with central government. In relation to the latter, this will be quantifiable once the ITT is issued, and could

range from revenue risk being with the franchisee, or the franchisor, or a shared basis of risk.

- 5.6 Should Phase two extend to the time of the development of the next franchise (2022 – 2024/5) then the cost of the consultation, franchise specification and procurement could be substantial and we should ensure that these costs are met from future DfT resources.
- 5.7 Phase Three is the enduring state of the Partnership and will commence at the point of full devolution. It is unclear at this stage when this phase might be reached but the stated aspiration of RNL is that this will be achieved during the lifetime of the coming franchise ie between 2016 to 2024/25.
- 5.8 The cost and risk of this phase is not determined and will not be known until a Devolution Agreement and Devolved Funding arrangements have been agreed with the DfT.

6.0 Franchise Specification

- 6.1 RNL issued a joint consultation with the DfT in June 2014 for the refranchising of Northern and Transpennine franchises, to which NYCC have provided a response to DfT. Since that time, Rail North and DfT have been working jointly and collaboratively to develop a specification for the Invitation to Tender (ITT) due to be issued in December 2014.
- 6.2 The specification includes train service requirement, stations specification, fares and ticketing and rolling stock and these are being brought together in an option specification.
- 6.3 An early draft of the options specification, containing a 'do minimum', a 'growth package and a 'transformational package' was presented to the Leaders committee on 23 September 2013. The Leaders Committee agreed to press DfT and the Treasury for the transformational package which will provide for a significant improvement in terms of quality and services over the current franchise.
- 6.4 A further version of the options was brought to a subsequent Leaders Committee on 21 October 2014 and members again reiterated their view that the transformational package was needed for the North. A final version of the options specification will be brought to a full Leaders Meeting on 10 November, prior to signing off by ministers and the Secretary of State for transport and issuing in the ITT to shortlisted bidders.
- 6.5 It should be noted that work carried out by Rail North and the evidence we have been able to assemble to support the need for a growing railway in the North has been recognised as helpful in shaping the final ITT and is testament to the added value of local knowledge and experience in developing local service requirements.
- 6.6 In this regard it serves to provide justification for the proposition of Rail North.

7.0 Legal Implications

- 7.1 The development of RNL is now at a point where decisions are being made that will shape how devolution will be delivered, the governance structures that are adopted and the executive powers of the company. All 30 Local Transport Authorities need to consider formal arrangements regarding the relationship with RNL now and in the future.
- 7.2 The Assistant Chief Executive Legal and Democratic Services, having reviewed the Constitution, the Articles of Association and the Memorandum of Understanding, advises as follows:-
- 7.2.1 NYCC has power to participate in the Association under section 143 of the Local Government Act 1972.
- 7.2.2 NYCC has power to be a member of the corporate body Rail North Limited under Section 1 of the Localism Act 2011 (General Power of Competence).
- 7.2.3 The legal bodies proposed carry little cost or risk to the council and therefore there are no significant legal implications for the Executive to approve the recommendation.
- 7.2.4 A Director of a corporate body carries responsibilities and liabilities (see Appendix 2). The personal liability of the nominated Elected Member needs to be considered by NYCC and suitable indemnity established through either the County Council or RNL.
- 7.3 Whilst the principles of the partnership with the DfT have been agreed, the detail of the Partnership Agreement between DfT and RNL is currently under development. This Agreement will be legally binding and will define future costs and risks for RNL; it is recommended that this is considered through a further report to a future Executive meeting.
- 7.4 For the corporate RNL body, the Members Agreement is currently under development. The Members Agreement will be a legally binding and will define future sharing of cost and risk amongst the 30 Local Transport Authorities; it is recommended that this is considered through a further report to a future Executive meeting.

8.0 Equalities

- 8.1 The Council has a statutory duty to discharge obligations in relation to the Equality Act 2010. The Act introduced the term 'protected characteristics' which are gender, disability, race, age, sexual orientation, gender reassignment, religion or belief, pregnancy and maternity and marriage or civil partnership. It has been concluded that there are no adverse impacts from this decision and a record of the decision that an EIA is not required is attached to this report at **Appendix 3**.

9.0 Financial Implications

- 9.1 A share of the cost of the administration costs of the Association and Rail North Ltd – 3.2% of £36,000 i.e. £1,152 at this stage.
- 9.2 Continued officer and legal time in scrutinising the emerging Partnership Agreement and Members Agreement.

10.0 Conclusion

- 10.1 It is important that North Yorkshire continues to engage in a proactive way to ensure our interests are protected and aspirations furthered. There is little risk to participation on the bodies that are proposed and that will enable us to continue to input into the more critical binding Partnership and Members Agreements.

11.0 Recommendation

- 11.1 It is recommended that the Executive agrees to:
- (a) join the Association of Rail North Partner Authorities;
 - (b) nominate a member and deputy to the Leaders Committee of the association;
 - (c) join Rail North Ltd and authorise the nominated member to become a director of Rail North Ltd, should the Association so determine;
 - (d) receive a further report on the implications for North Yorkshire from the Partnership Agreement and Members Agreement.

Background Papers:-

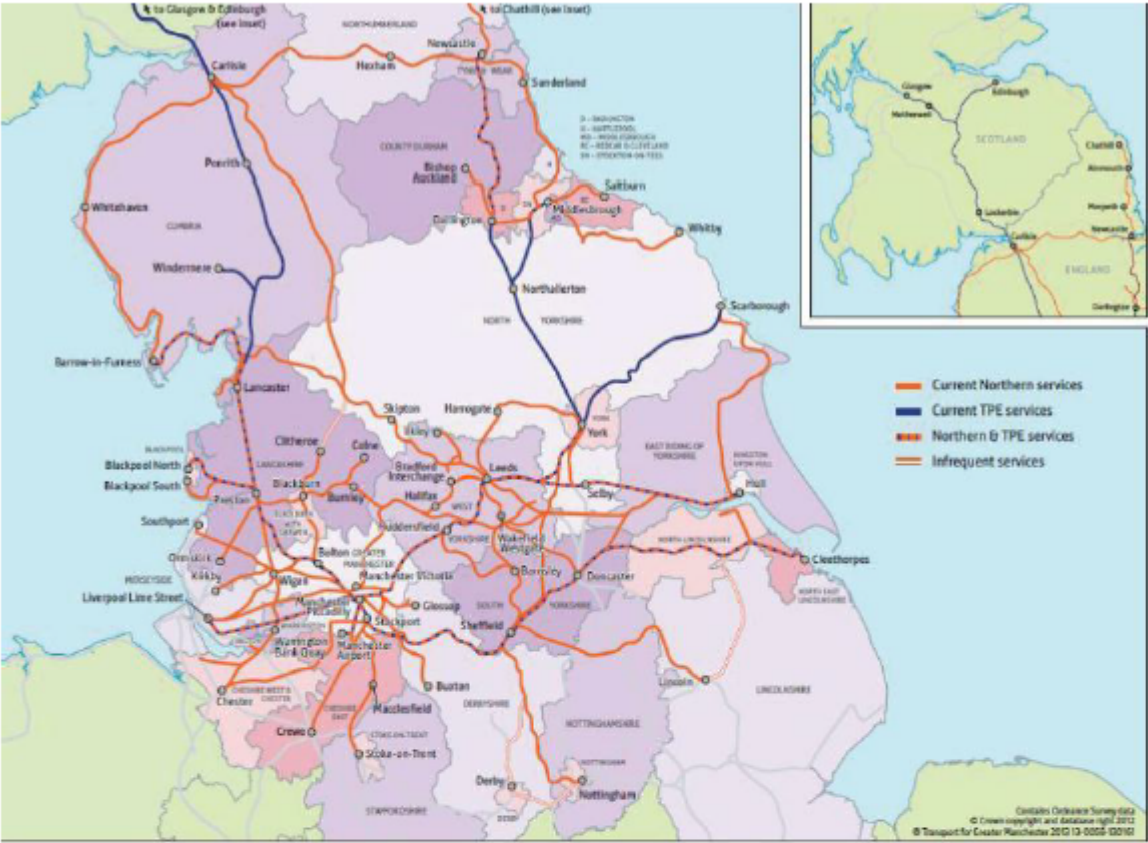
Rail North – Rail North Proposition and map

Appendix 1: Partner Authority approval status

AUTHORITY	2014 PASSENGER MILES %	STATUS
BLACKBURN WITH DARWEN	0.6%	Report to Exec Board in October
BLACKPOOL	1.5%	Papers to Exec Board in Dec/ Jan
CHESHIRE EAST	2.1%	Authority to sign-up confirmed in September
CHESHIRE WEST AND CHESTER	1.1%	Authority to sign-up confirmed in September
CUMBRIA	4.0%	Report to Exec in November
DARLINGTON	1.5%	Authority to sign-up underway
CITY OF DERBY	1.0%	Under consideration
DERBYSHIRE	1.4%	Under consideration
EAST RIDING OF YORKSHIRE	0.9%	Commenced preparation of papers
GREATER MANCHESTER CA	22.3%	Signed-up in September
HARTLEPOOL	0.3%	Authority to sign-up underway
CITY OF KINGSTON UPON HULL	1.3%	Commenced preparation of papers
LANCASHIRE	5.5%	Authority to sign-up confirmed in October
LINCOLNSHIRE	0.7%	Commenced preparation of papers
LIVERPOOL CITY REGION CA	5.9%	Signed-up in September
MIDDLESBROUGH	0.7%	Authority to sign-up underway
NORTH EAST CA	6.5%	Authority to sign-up confirmed in September
NORTH EAST LINCOLNSHIRE	0.6%	Under consideration
NORTH LINCOLNSHIRE	0.4%	Commenced preparation of papers
NORTH YORKSHIRE	3.2%	Report to Exec in November
CITY OF NOTTINGHAM	1.5%	Commenced preparation of papers
NOTTINGHAMSHIRE	0.3%	Commenced preparation of papers
REDCAR AND CLEVELAND	0.3%	Authority to sign-up underway
SHEFFIELD CITY REGION CA	7.8%	Authority to sign-up confirmed-up in October
STAFFORDSHIRE	0.1%	Report to Exec in October
STOCKTON-ON-TEES	0.5%	Authority to sign-up confirmed in October
CITY OF STOKE-ON-TRENT	0.8%	Report to Exec in October
WARRINGTON	1.2%	Authority to sign-up confirmed in September
WEST YORKSHIRE CA	20.9%	Signed-up in September
CITY OF YORK	5.4%	Report to Exec in October/ November

NYCC –18 November 2014 - Executive - Rail Devolution/7

Map of Northern and TransPennine Rail Services



NYCC –18 November 2014 - Executive - Rail Devolution/8

Appendix 2: Summary of the principal duties and responsibilities of a company Director

Responsibilities include:

The board of directors of a company is primarily responsible for:

- determining the company's strategic objectives and policies;
- monitoring progress towards achieving the objectives and policies;
- appointing senior management;
- accounting for the company's activities to relevant parties, e.g. shareholders.

The managing director/chief executive is responsible for the performance of the company, as dictated by the board's overall strategy. He or she reports to the chairman or board of directors.

Appointment

On appointment a new director will be asked to provide certain personal information (i.e. full name, address, date of birth, nationality, country of residence, former names and business occupation) to be included in the relevant form which he/she will be required to sign to signify consent to act as a director.

Additionally, the director will give a general notice of any interests in contracts involving the company.

Powers

The directors are generally responsible for the management of the company and they may exercise all the powers of the company. However, the extent of their authority may be constrained by the Companies Act 2006 and the articles of association. For example, articles of association often include provisions and restrictions on borrowing by the company. Generally, the directors must act collectively as a board to bind the company. However, the articles usually entitle the board to delegate powers to individual directors as considered appropriate. In practice individual directors will normally carry out many of the company's activities.

Statutory Duties

Directors need to be aware that they are personally subject to statutory duties in their capacity as directors of a company. In addition the company as a separate legal entity is subject to statutory controls and the directors are responsible for ensuring that the company complies with such statutory controls.

The Companies Act 2006 codified certain common law and equitable duties of directors for the first time. The Act sets out seven general duties of directors which are:-

- to act within powers in accordance with the company's constitution and to use those powers
- only for the purposes for which they were conferred
- to promote the success of the company for the benefit of its members
- to exercise independent judgement
- to exercise reasonable care, skill and diligence
- to avoid conflicts of interest
- not to accept benefits from third parties
- to declare an interest in a proposed transaction or arrangement

These statutory duties cannot be seen in isolation because in addition a director will be subject to a wide range of regulation and legislation including the Insolvency Act 1986, the

Company Directors' Disqualification Act 1986, the Health and Safety at Work etc Act 1974 and the Corporate Manslaughter and Corporate Homicide Act 2007.

Directors may be liable to penalties if the company fails to carry out its statutory duties. However, they may have a defence if they had reasonable grounds to believe that a competent person had been given the duty to see that the statutory provisions were complied with.

One of the main statutory responsibilities falling on directors is the preparation of the accounts and the report of the directors. It is the responsibility of the directors to ensure that the company maintains full and accurate accounting records. This includes the preparation of a balance sheet and a profit and loss account for each financial period of the company, and the presentation of these to shareholders and, subject to various exemptions, the filing of the accounts and report of the directors with the Registrar of Companies.

Liabilities & Indemnity

Directors may incur personal liability, both civil and criminal, for their acts or omissions in directing the company.

It is not practical to list every matter for which directors can be held to be liable. However, directors should be aware of the effects of the Company Directors' Disqualification Act 1986, which could lead to the disqualification from acting as a director of a company for a period of between two and fifteen years, and the Insolvency Act 1986 which gives rise to the possibility of directors being made personally liable for the company's debts, the Health and Safety at Work etc Act 1974, and the Corporate Manslaughter and Corporate Homicide Act 2007, which potentially provide for custodial sentences for Directors for the most serious cases.

Below are set out details of the most significant pieces of legislation that impose duties and liabilities on company directors. It should be noted that Members and Officers of Local Authorities, including the Combined Authority, have a statutory indemnity from personal liability when carrying out the business of the authority for which they work. It is also open for an authority to contractually extend the remit of this indemnity, within maximum prescribed limits, within the terms and conditions of employment. Local Authorities, including the Combined Authority, usually have in place a policy of "D&O" (directors and officers) insurance which will provide cover for personal liability that might attach to members and officers carrying out authority business.

These indemnities do not necessarily cover members and officers in every scenario, such as where there was an act of gross negligence or a criminal offence had been committed. Breaches of an authority's code of conduct or the terms and conditions of employment may also negate the indemnity afforded to the individual by the authority, depending on the circumstances.

Company Directors' Disqualification Act 1986

The circumstances in which an application may be made for the disqualification of a director are as follows:

- the director has been guilty of three or more defaults in complying with companies legislation regarding the filing of documents with the Registrar of Companies during the preceding five years;
- he or she is, or was, a director of a company that has at any time become insolvent and that his/her conduct as a director of that company makes him/her unfit to be concerned in the management of a company;

- the director is found to be guilty of wrongful or fraudulent trading as defined in the Insolvency Act 1986 (see below).

Insolvency Act 1986 Wrongful Trading

If a company has gone into insolvent liquidation and before that liquidation took place a director knew, or ought to have known, that there was no reasonable prospect that the company could avoid the liquidation, then the court may declare that the director make a personal contribution to the company's assets.

However, the director will not be made personally liable in circumstances where he/she can show that he/she took every step prior to the liquidation to minimise the potential loss to the company's creditors.

Fraudulent Trading

Under this heading the court may also require a director to make a contribution to the company's assets if, in the course of the winding up of a company, a director was knowingly a party to the carrying on of the company's business with the intent to defraud the creditors.

Health and Safety at Work etc Act 1974

Health and safety law places duties on organisations and employers, and directors can be personally liable when these duties are breached: members of the board have both collective and individual responsibility for health and safety. Larger public and private sector organisations need to have formal procedures for auditing and reporting health and safety performance.

If a health and safety offence is committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the organisation, then that person (as well as the organisation) can be prosecuted under section 37 of the Health and Safety at Work etc. Act 1974.

Those found guilty are liable for fines and, in some cases, imprisonment. In addition, the Company Directors Disqualification Act 1986, section 2(1), empowers the court to disqualify an individual convicted of an offence in connection with the management of a company. This includes health and safety offences. This power is exercised at the discretion of the court; it requires no additional investigation or evidence.

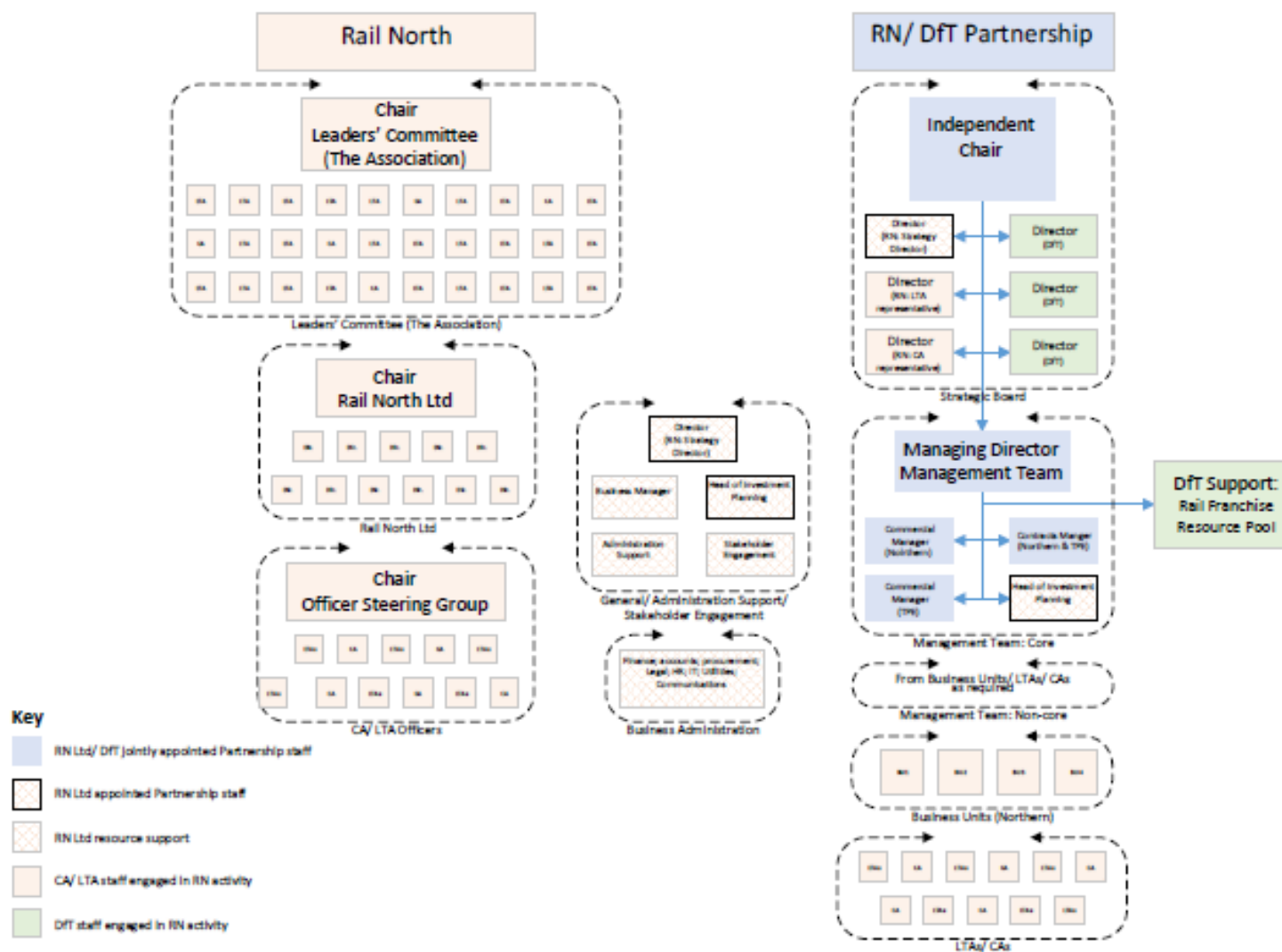
Individual directors are also potentially liable for other related offences, such as the common law offence of gross negligence manslaughter. Under the common law, gross negligence manslaughter is proved when individual officers of a company (directors or business owners) by their own grossly negligent behaviour cause death. This offence is punishable by a maximum of life imprisonment.

Corporate Manslaughter and Corporate Homicide Act 2007

Under this Act, an offence will be committed where failings by an organisation's senior management are a substantial element in any gross breach of the duty of care owed to the organisation's employees or members of the public, which results in death. The maximum penalty is an unlimited fine and the court can additionally make a publicity order requiring the organisation to publish details of its conviction and fine.

Record of decision that Equality Impact Assessment is not required (November 2014)	
Directorate and service area	Business & Environmental Services, Integrated Passenger Transport
Name and contact of officer(s) taking decision that EIA not required Richard Owens Richard.owens@northyorks.gov.uk	
(a) What are you proposing to do? Agree to join the Association of Rail North Partner Authorities; and nominate representatives from the council. (b) join Rail North Ltd and authorise the nominated member to become a director of Rail North Ltd, should the Association so determine	
Why are you proposing this? To ensure that the council is in a position to positively influence the development of rail services in North Yorkshire.	
Does the proposal involve a significant commitment or removal of resources? No	
Will this proposal change anything for customers or staff? What will change? No/nothing	
Will the proposal make things worse for people with protected characteristics (age, disability, sex, disability, gender reassignment, religion or belief, pregnancy or maternity, marriage or civil partnership)? (Customers, staff etc). How do you know? Do you have any evidence to support your assessment? No. The decision is to join an association to represent the councils views.	
If there might be a negative impact on people with protected characteristics can this impact be reduced? How? N/A	
Could the proposal have a significant negative impact on some people with protected characteristics or a less severe negative impact on a lot of people with protected characteristics? If "Yes" more detailed analysis should be undertaken and an EIA completed. No	

Does the proposal relate to an area where there are known inequalities (e.g. disabled people's access to public transport)? While the decision is related to the provision of rail services there is no direct relationship with access to public transport		
Could the proposal have a greater negative impact on people in rural areas? No		
Could the proposal have a worse impact on people with less money? No		
Will the proposal have a significant effect on how other organisations operate (e.g. partners, funding criteria, etc). Do any of these organisations support people with protected characteristics? No		
Do the answers to the previous questions make it reasonable to conclude that there will be no or very limited adverse impacts on people with protected characteristics?	Yes	
Will there be no or limited adverse impacts on people in rural areas?	Yes	
Will there be no or limited adverse impacts on people with low incomes?	Yes	
Further analysis and full EIA Required		No
Decision not to undertake EIA approved by (Assistant Director or equivalent)		
Date:	5 November 2014	



Draft Rail North Consultation Protocol v 1.0

Purpose

This document sets out the basis under which Rail North will engage with its Members. It provides a summary of the provisions of the Rail North Members Agreement and the DfT/ Rail North Partnership Agreement together with the means by which they shall be implemented.

The protocol shall be a working document and will be revised and refined as Rail North develops and matures.

Key Principles

- The Rail North Business Plan is the main vehicle by which Rail North will manage its resources and plans. Member Authorities will have an opportunity to comment on a draft Business Plan before it is considered by the Rail North Ltd Board.
- Member Authorities will have an opportunity to comment on a draft Rail North policy and strategy documents before they are considered by the Rail North Ltd Board
- Member Authorities will have access to franchise performance information within the boundaries of commercial confidentiality
- Member Authorities will be consulted on franchise changes which have a direct impact on customers
- Rail North input into national policy and programmes will be overseen by the Rail North Officer Steering Group
- Involvement in Rail North will not prevent Member Authorities from making representations on their own behalf

Roles and Responsibilities

The Rail North Association - where each Member Authority is represented by a Councillor. The Association will meet at least twice per year. The Association will make key decisions about the form and structure of Rail North and will approve the annual Rail North Business Plan.

The Rail North Ltd Board – comprising 11 Association members as Directors of the Ltd company and are nominated by the Association on a regional basis. The Board is responsible for the delivery of the Rail North Business Plan, developing the Long Term Rail Strategy and other Rail North policies and directing the Rail North Strategic Board members. The Board will make recommendations to the Association.

The Rail North Officer Steering Group – comprising 11 senior officers nominated on a regional basis. The Group will make recommendations to the Board and will oversee the development and implementation of the Rail North Business Plan and Policies. The Officer Steering Group Member will receive copies of the Board agenda and papers to assist in briefing their respective Director.

The DfT/ Rail North Partnership Strategic Board – the Strategic Board will oversee the delivery of the two franchises acting on behalf of the Secretary of State. It comprises three Rail North members and three DfT members and is chaired by an Independent Chair. The Strategic Board will be the point of approval for franchise changes whether promoted by the franchisee, DfT or Rail North.

The Rail North Strategic Board Members – the Rail North members on the DfT/ Rail North Partnership Strategic Board will represent the interests of Rail North in the management and

development of the franchises. The Strategic Board Members will be selected by the Board and will comprise a senior officer from one of the Combined Authorities/ PTEs and one from one of the Local Transport Authorities in Rail North. The third Strategic Board Member will be a paid employee of Rail North; the Rail North Director.

The Rail North Director – in addition to representing Rail North at the DfT/ Rail North Partnership Strategic Board, the Rail North Director shall be responsible for ensuring the delivery of Rail North governance and management processes including engagement with member authorities.

The DfT/ Rail North Partnership Management Team- a small team of DfT and Rail North staff will carry out the day to day client side management of the franchises and will be the point of contact between the Partnership and the Franchisees negotiating on franchise change. The Management Team will be led by a Partnership Management Director.

Regional Business Units – the DfT/ Rail North Partnership Strategic Board may delegate some aspects of franchise management to Regional Business Units who will undertake local liaison with the franchisees.

Regional Groups - the Rail North Articles of Association establishes Regional Groups each with a representative on the Rail North Ltd Board. Where appropriate, these groupings will be used to gather a collective response to consultations. The regional groups are as follows;

- Cheshire;
- East Midlands;
- Greater Manchester;
- Humberside;
- Liverpool;
- North East;
- North West;
- North Yorkshire;
- Sheffield;
- Tees Valley;
- West Yorkshire

Each Regional Group shall identify a “Designated Representative” who will be a contact person on behalf of the Group to co-ordinate consultation feedback. This may be different to the Group representative on the Officer Steering Group.

The regional groups may seek to work together at officer level in “Quadrants” identifying a lead officer who would co-ordinate participation between member authorities.

Regional Business Units may adopt the officer functions of one or more Regional Groups.

Member Authorities - the Members’ Agreement identifies individual authorities having an interest in a matter for consultation as “Interested Members”. The key roles in Member Authorities are as follows;

Association Member - under the Rail North Articles, each member authority will nominate a Councillor who will represent the Authority on the Association

Lead Contact – each member association will identify a Lead Contact. This will be an officer to whom all correspondence and invoices will be sent. The Lead Contact will receive copies of the Association agenda and papers to assist in briefing their respective Member.

Technical Officer – in addition to the Lead Contact, member authorities may also nominate an officer who would be included in communications regarding rail franchising, operations and policy

Briefing and Consulting Members Of The Association and Board

The following principles shall apply in the process of briefing Councillors who are members of the Rail Ltd Board and/ or Association in advance of formal meetings and informally outside the meeting cycle

- The Lead Contact in each Authority shall be responsible for briefing their respective Association Member
- The Rail North Officer Steering Group member shall be responsible for briefing their Board Member representing their local Regional Group
- The Rail North Director shall agree the agendas of the meetings of the Association and the Rail North Ltd Board with the respective Chairs of these meetings providing the Chair with the necessary briefing.
- Rail North will endeavour to issue papers to Members at least 5 working days in advance

Rail North Business Plan

The Rail North Business Plan will establish the funding, budget, priorities and workplan for the year ahead. It will be the basis under which the Long Term Rail Strategy and other Rail North policies are implemented.

The RN Business Plan will also support the organisational development of Rail North including the development of proposals for further franchise devolution.

It is anticipated that an informal process of consulting Member Authorities will proceed in the development of proposals for major changes to the funding, governance and scope of Rail North.

Member authorities will be formally consulted on a draft Rail North Business Plan 10 working days before it is issued for consideration by the Rail North Ltd Board. Comments from Member Authorities will be advised to the Board who, if satisfied with the Plan, will recommend it to the Association.

Franchise Performance Information

The DfT/ Rail North Partnership will make data and reports available to Member Authorities on a "self service" basis using a cloud based on line service.

Member Authorities should consult with the DfT/ Rail North Partnership Team prior to the publication of this information in the public domain or release under Freedom of Information provisions. Guidelines will be prepared to assist Member Authorities in this regard.

The information provided in this form will not include commercially confidential information regarding costs and revenues. Member Authorities seeking information in this regard will need to request it specifically from the DfT/ Rail North Partnership.

Member Authorities should raise queries or concerns about franchise performance with the DfT/ Rail North Partnership Team in the first instance. Where performance problems are sustained or are giving longer term concerns about the delivery, Members may refer the matter to a Rail North Strategic Board Member for escalation.

Consultation On Train Operator Initiated Franchise Change

The Franchise Agreements establish formal processes for the franchisee to request changes to their franchise obligations. Such changes vary in size, scope and value. Timescales may be determined by wider rail industry processes, commercial pressures or urgency.

The following general principles will apply;

- Where a change affecting the entire franchise which is considered to have a direct impact on customers (such as fares and ticketing matters, rolling stock changes) all Member Authorities will be consulted.
- Where a change has a direct impact on service delivery in a locality (such as a change to Train Service Requirement, booking office opening etc) all Member Authorities in the affected Regional Group will be consulted.
- The DfT/ Rail North Partnership Team will consult with the Rail North Strategic Board Members to determine whether consultation with Member Authorities is appropriate and the form, content and timescales of such consultation.

Franchisees will periodically amend timetables within the Train Service Requirements. Formal consultation will not occur under these arrangements however the revised timetables will ordinarily be made available for member Authorities to access via the online portal at least four weeks prior to the change.

Consultation On DfT or Rail North Initiated Franchise Change

The principle of direct customer impact will apply to franchise changes which are initiated by DfT.

Formal requests by Rail North for franchise change will be approved by the Rail North Ltd Board prior to submission to the DfT/ Rail North Partnership Strategic Board. The Strategic Board members will determine an appropriate consultation process prior to recommendation to the Rail North Ltd Board.

Some Rail North initiated franchise changes will arise directly from schemes promoted by Rail North Member Authorities. Rail North will ensure all affected Member Authorities are consulted on these proposals.

Scheme Development and Promotion

Where a Rail North Member Authority is developing or promoting a scheme leading to a prospective franchise change, the onus shall be on the Member Authority to liaise with all other affected Member Authorities and to endeavour to present a mutually acceptable proposal.

Rail North Input To National Policies, Investment Programmes

Rail North will represent the region in discussions with DfT, Network Rail and regulatory bodies at an industry wide national level. This work will be overseen by the Rail North Officer Steering Group reporting to the Rail North Association and Board as appropriate.

Where making input into Investment Programmes, Rail North will endeavour to obtain and represent the views of any Members Authorities affected by schemes within the programme.

Formal Rail Industry Consultations

The Rail North Ltd Board shall provide a response to formal consultations on behalf of the region and may delegate specific consultations to the Rail North Officer Steering Group where it considers appropriate to do so due to the content or timescales of the matter in hand.

Member Authorities seeking to input into these consultations are able to do so through the regional representative on the Rail North Officer Steering Group.

Member Authorities are free to make their own representations to formal consultations.