
**RAIL DEVOLUTION AND RAIL NORTH: INFLUENCING THE FUTURE
OF NORTHERN AND TRANS-PENNINE RAIL SERVICES**

**Responsible Cabinet Member – Councillor Bill Dixon, Leader
Councillor David Lyonette, Transport Portfolio**

**Responsible Director – Ada Burns, Chief Executive
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SUMMARY REPORT

Purpose of Report

1. This report proposes that Darlington participates in the arrangements for greater influence over rail services across the North of England and gives details of how northern authorities propose to influence future services.

Summary

2. Local passenger rail services in the North East are provided by two franchised rail operators, Northern Rail and TransPennine Express. These franchises are due to expire in February 2016 creating a unique opportunity for Authorities to take a positive role in shaping the future pattern of local rail services across Northern England, in collaboration with the Department for Transport (DfT).
3. The DfT issued consultation on rail devolution in 2012. Since then the 30 local transport authorities in the North of England, under the 'brand name' of Rail North, have been working to steer and influence the development of the new Northern and TransPennine Express franchises, commencing from their renewal in February 2016.
4. In November 2013, the Secretary of State responded to a proposal for full devolution stating 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.
5. The development of the DfT / Rail North partnership has been developed and is split into two distinct phases:

- (a) partnership working between DfT and Rail North in advance of the award of the 2016 franchises during the design and procurement processes.
 - (b) the development and creation of a formal integrated partnership structure, with substantial decision making authority, between Rail North and DfT, which it is intended should take on responsibilities for franchise management at the point at which the new franchise contracts come into force.
6. The Leader and Chief Executive have been involved, as nominees of the Tees Valley in the development of these proposals.
7. The governance structures have been developed for two bodies that would allow Authorities to influence the development of the franchises reflecting the economic needs of the North, and securing stronger local democratic control of local rail services.
 - (a) An association of local transport authorities (LTAs) to be known as the Association of Rail North Partner Authorities (“the Association”) to be governed by a Leaders’ Committee consisting of one member from each of the 30 LTAs in the North.
 - (b) Rail North Limited (RNL), a company limited by guarantee, whose membership is open to all members of the Association and whose Directors will be appointed by geographic sub-groups determined by the Association.
8. In addition, and driven by this region, there is a proposal for in effect a further tier of devolution, with the creation of a North East Business Unit (NEBU). NEBU would be a component of the Northern Franchise and will sit within the integrated structure for managing the franchises. It is being developed in recognition of the fact that local rail services within the North East are relatively discrete, and could benefit from being managed as a package, within the wider Rail North arrangements.
9. Devolution of a significant influence over local rail services to the authorities most directly impacted upon by the quality of the services is to be welcomed. For the Tees Valley, the delivery of the agreed rail priorities can in part be achieved through these two franchises – better connectivity and quality rail services across the Tees Valley – and so it is vitally important that the Councils are fully engaged in the process. There are risks, given the scale of the franchise geography and the greater “muscle” of the larger conurbations with DfT. For this reason the NEBU which builds strong links with the North East Combined Authority, and with North Yorkshire are important.

Recommendations

10. It is recommended that Cabinet:

- (a) Note the proposals and governance in relation to the formation of the following bodies:-
 - (i) The Association of Rail North Partner Authorities (“The Association”)
 - (ii) Rail North Limited (RNL)
- (b) Agree in principle that the Council participates and becomes a Member of both bodies.
- (c) Authorise the Assistant Chief Executive to make the appropriate arrangements to enable the Council to join the Association and to have admitted membership of the RNL, by entering into the RNL Members Agreement.
- (d) The Leader be formally appointed as this Council’s representative on the Association.
- (e) To authorise the appointment of the Leader to become a Director of the RNL, to represent the interests of the Tees Valley Local Authorities should such an appointment be agreed to by them.
- (f) Note that further reports will be presented to Cabinet as work on the NEBU progresses.
- (g) That the Council’s Constitution be amended accordingly to reflect the appointments to external bodies.

Reasons

- 11. To ensure Darlington Borough Council and the Tees Valley authorities maximise their potential to influence and positively shape the future pattern of local rail services across Northern England.

Ada Burns
Chief Executive

Ian Williams
Director of Economic Growth

Background Papers

No background papers were used in the preparation of this report.

S17 Crime and Disorder	This report has no implications for S17 Crime and Disorder.
Health and Well Being	There are no issues relating to health and well-being, which this report needs to address.
Carbon Impact	Rail North aspirations include improving the quality and quantity of rolling stock, which could have a positive impact
Diversity	Rail North aspirations include improving station facilities which could have a positive impact.
Wards Affected	None.
Groups Affected	None.
Budget and Policy Framework	This does not affect the Budget and Policy Framework.
Key Decision	This report is not a key decision.
Urgent Decision	This report is not an urgent decision.
One Darlington: Perfectly Placed	The objectives support the economic aspirations of Darlington and the North of England by striving to: <ol style="list-style-type: none"> 1. delivering more rail capacity and greater rail connectivity, 2. improving the quality of railways with a better offer to passengers to encourage more growth.
Efficiency	The objectives aim to deliver a more efficient railway to secure greater value for money from the support from the public purse.

MAIN REPORT

Background

Local Rail Services in the North East

10. Local passenger rail services in the North East are provided by two franchised rail operators, Northern Rail and TransPennine Express.
11. Northern Rail provides services across the whole of Northern England which includes all “local” services within the Tees Valley as well as links to the wider North East.
12. TransPennine Express offers one train per hour connecting Middlesbrough and Darlington with North West via Leeds and York.
13. These franchises are due to expire in February 2016. This imminent re-franchising creates a unique opportunity for Local Transport Authorities (hereafter LTAs) to take a positive role in shaping of the future pattern of local rail services across Northern England, in collaboration with the Department for Transport (DfT). This

would allow Local Transport Authorities (LTAs) to influence the development of the franchises in a way that better reflects the evidenced economic needs of the North, and to secure stronger local democratic control of local rail services.

Rail Devolution and the Long Term Rail Strategy

14. In response to a Department for Transport (DfT) consultation on rail decentralisation in 2012, the 30 local transport authorities in the North of England, under the 'brand name' of Rail North, submitted a proposal to the Secretary of State for the full devolution of services operated by the Northern and TransPennine Express franchises, commencing from their renewal in February 2016.
15. From the outset the Tees Valley and whole North East region have been actively engaged, within Rail North and with the Department for Transport, in making sure that the discrete and vitally important services within the North East secure full weight within the devolution proposition. As a consequence at Leader and Chief Executive level, we are involved in the development of the detailed propositions.
16. To underpin the proposition, Rail North commissioned, for the first time, the development of a Long Term Rail Strategy for the North of England. The North East Councils, through ANEC made comments and inputs to the Strategy. Whilst devolution primarily focuses on the Northern and TransPennine passenger rail franchises, the long term strategy covers all operators and freight.
17. A copy of the draft strategy can be found at www.railnorth.org/strategy. The strategy places economic growth at its heart and has the following priorities for enhancing rail across the north:
 - (a) Connectivity
 - (b) Capacity
 - (c) Coherence
 - (d) Cost effectiveness
18. 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.
19. It was agreed that this approach would be based on Rail North Proposals, which include the draft Long Term Rail Strategy for the North of England, the devolution proposition and business case submitted to the Secretary of State, and the structure for decision-making in the North set out in that devolution proposition.
20. These principles were agreed at a meeting between the Secretary of State and the Rail North Leaders on 24 January 2014.
21. The shared objectives that underpin the partnership were also agreed in January and include:

- (a) growing the railway to maximise the benefits of infrastructure investment and linking this to railway efficiencies;
 - (b) having a platform for determining investment priorities within the Partnership;
 - (c) 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,
 - (d) a partnership structure that allows the balance of risk to change over time.
22. The development of the DfT / Rail North partnership agreement is split into two distinct phases:
- (a) partnership working between DfT and Rail North in advance of the award of the 2016 franchises during the design and procurement processes. During this period, Rail North and DfT will work jointly and collaboratively, although the Secretary of State is ultimately responsible for final decisions and letting the contracts; and
 - (b) the development and creation of a formal integrated partnership structure, with substantial decision making authority, between Rail North and DfT, which it is intended should take on responsibilities for franchise management at the point at which the new franchise contracts come into force.
23. As part of the January 2014 agreement with the Secretary of State, the Rail North Leaders agreed to develop and formalise their decision making structures and in particular establish structures comprising a formal Leaders' Committee and a special purpose vehicle (probably a company limited by guarantee) called Rail North Ltd. These bodies would be the focus for overseeing local authority input into the design of the franchises, including the specification and commercial arrangements.
24. It was further agreed that the DfT and Rail North would jointly develop proposals for a single integrated partnership structure with substantial decision-making authority to manage the franchises.
25. In addition, the Leaders agreed to form a small sub-grouping, the 'Leaders Sub-Forum', to progress devolution work until the formal structures described above were established. It was agreed that this sub-forum should be constructed on a geographical basis, with a Leader representing Tees Valley being joined by ten other representatives from the other Northern sub-regions.
26. Representatives from the North East, led by Darlington and Newcastle, have pressed within these structures for recognition of the specific needs and opportunities for this region, where local rail services are relatively discrete.
27. As a consequence proposals to develop a North East Business Unit (NEBU) for are being worked up through ANEC and with partners in North Yorkshire and Cumbria. Officers continue to work closely with DfT and Rail North to seek the inclusion of the North East Business Unit within the specification for the new Northern franchise, which is expected to be published and issued to shortlisted bidders in

December 2014.

28. Nexus as Tyne and Wear Passenger Transport Executive are currently co-signatories to the Northern Franchise and has a certain level of influence over delivery in Tyne and Wear. The NEBU would operate within Nexus and work is also ongoing to determine the governance for the Business Unit, within the North East region.
29. The Rail North Partnership will cover two phases, franchise design and procurement with DfT in the lead and Rail North influencing the scope of options considered and the conclusions reached, and franchise management with an integrated partnership structure with responsibility for managing the franchises. NEBU sits within this integrated structure.

Rail North Governance Proposition and Arrangements

30. Following the January 2014 agreement, governance structures have been developed for two bodies:
 - (a) An association of local transport authorities (LTAs) to be known as the Association of Rail North Partner Authorities (“the Association”) to be governed by a Leaders’ Committee consisting of one member from each of the 30 LTAs in the North.
 - (b) Rail North Limited (RNL), a company limited by guarantee, whose membership is open to all members of the Association and whose Directors will be appointed by geographic sub-groups determined by the Association.
31. A detailed description of the governance arrangements is provided in **Appendix 1**. The proposed arrangements were endorsed by a Rail North Leaders’ Sub-Forum at the end of April 2014. Articles of Association have been considered by legal officers.
32. The Council is being invited to enter into these arrangements and agree to become a member of both the Association and RNL. Subject to such agreement, the Tees Valley Local Authorities will be represented at the Leaders Committee of the Association by an elected member. This is currently provided by Darlington Borough Council.
33. It is expected that the majority of Rail North’s decisions would be reached by consensus by the Board of RNL on a one member-one vote basis. In the event of a vote, voting rights would be weighted. The voting metrics for inclusion with the Association of Rail North Partner Authorities were agreed by the Leaders Forum on 23rd September 2014. The figures confirmed the North East’s combined influence stands at just under 10% with none of the sub regions having a veto.
34. It is desirable to ensure that all of the LTAs are involved in the governance arrangements as they evolve. The arrangements will need to be flexible as circumstances change and the precise nature of the partnership with DfT is agreed.

At the commencement of these arrangements there will be minimal direct risk and cost associated with membership and any changes to that position would need to be agreed in accordance with the governance rules.

35. However, mechanisms will be written into the member's agreement that would allow any authority to exit both RNL and the Association prior to 2016 should the on-going requirements of membership become unacceptable.

Development of a Partnership with the Department for Transport

36. In parallel, and in accordance with the agreements, Rail North Officers and DfT officials are currently engaged in detailed discussions in relation to the governance arrangements for the DfT/RNL partnership. It is intended that the partnership arrangements should cover two district roles:
- (a) Management of the 2016 Northern and Transpennine franchises with day to day management delegated to a joint executive team.
 - (b) Wider decision-making in relation to implementation of the principles and objectives of the partnership, particularly in respect of strategic planning and investment.

Franchise Specification

37. Whilst the procurement of both the Northern and TransPennine Express franchises will be led by the DfT with ultimate responsibility resting with the Secretary of State, Rail North is working closely with DfT on the specification and procurement of the new franchises, with key Rail North aspirations including:
- (a) delivering a more customer facing service;
 - (b) improving performance including a more consistent delivery of peak capacity;
 - (c) supporting the delivery of new services;
 - (d) improving the quality and quantity of rolling stock; and
 - (e) improving station facilities.
38. Both DfT and Rail North have a shared objective to support economic growth. However, the DfT is placing significant emphasis on the affordability of the relatively high levels of subsidy for Northern and TransPennine (across both franchises, public subsidy amounts to around 50% of the costs). They are of the view that significant efficiencies will be needed if the growth is to be affordable and have suggested that, where there are aspirations for improved quality and extra services, these would need to be offset by "trade-offs", which might comprise increased fares, reduced frequencies at low-footfall stations and reductions in the hours of opening at station ticket offices (although no outright line or station closures are contemplated).
39. Rail North authorities, have been meeting within the Leaders Sub Committee to respond to the emerging specification proposals. There are indications in statements made by the Prime Minister and Chancellor that the representations are gaining traction. Most recently the Leaders Forum were appraised of a package of

strategic options for the Franchise that put a greater focus on growth and enhancement than previously feared, although with remaining caveats around fare levels. Leaders strongly support the transformational package which would include additional services where economically positive, improved Sunday services, substantial removal of the use of diesel (Pacer) trains, a station investment service and a full service quality monitoring system.

40. Nevertheless there is a risk that Rail North partner authorities may be perceived to be jointly answerable should the specification not be aligned to aspirations, and it is important to note that the member Authorities have no greater status than consultees in the decision making process.
41. Should the Council not formally join Rail North, it would still be able to lobby DfT directly during the procurement phase in an attempt to secure its aspirations. However, it would be further-removed from the process and may lose influence as a result. It would also not become party to any partnership and may therefore lose the ability to influence the delivery and strategic direction of the franchises.
42. A shortlist of pre-qualified bidders was announced by DfT on 19th August. Abellio, Arriva and Govia have been shortlisted to bid for the Northern franchise, whereas First, Stagecoach and Keolis/Go-Ahead have been shortlisted for the TransPennine Express franchise. Each bidding organisation will be contacted at the appropriate time to discuss the Tees Valley's aspirations for the franchises.

Legal Implications

Association of Rail North Partner Authorities

43. If the Council is to become a member of the Association of Rail North Partner Authorities then it will be entitled to appoint a representative to the Leaders' Committee of the Association. The Leader's Committee governs the Association. It will also be permitted to appoint a substitute member to the Leaders' Committee. It has been agreed that this membership will be on a Tees Valley basis with current representation provided by Darlington Borough Council.
44. The purpose and objectives of the Association are:
 - (a) To promote and improve rail services in the Rail North Area
 - (b) To campaign for devolution of responsibility for passenger rail services currently operating as part of the Northern and TransPennine Express (TPE) Franchises from the Department for Transport to LTAs in the Rail North Area
 - (c) To improve political leadership and oversight of Rail North Limited (RNL).
45. The functions of the Association are:
 - (a) To develop, approve and oversee the implementation of a long-term rail strategy; and
 - (b) To establish geographical sub-groups for the purpose of appointing Directors to the RNL's Board.

46. One of the proposed geographical sub-groups is the “Tees Valley” which covers the Borough. The Leaders’ Committee will meet at least twice a year. Decisions of the Leaders’ Committee will if possible be reached by consensus. Where such agreement cannot be obtained there will be a simple show of hands unless a card vote is called for by the Chair of the Committee or at least 2 members of the Committee.
47. The Association will appoint a Secretary who will be responsible for providing administrative support to the Association and will be responsible for preparing a budget to cover the expenditure of the Association. The expenditure of the Association will be met by the Member Authorities.
48. The Council could terminate its membership of the Association by giving at least 12 months written notice. Only at the expiry of that period would the Council cease to be a member.

Rail North Limited (RNL)

49. By becoming a member of the Association of Rail North Partner Authorities the Council will be entitled to membership of RNL.
50. RNL will be a private company limited by guarantee. Its objects will be to:
 - (a) Promote and improve rail services in the Rail North Area;
 - (b) arrange for the carriage of passengers by railway between places in Great Britain;
 - (c) manage the performance of obligations under franchise agreements let by the Secretary of State in respect of carriage of passengers by railway; and
 - (d) support the delivery of the long term rail strategy of the Members.
51. RNL will have the powers set out in its Articles of Association that include the ability to buy, lease or otherwise acquire and deal with property, borrow and raise money, lend and advance money, enter into contracts and open and operate bank accounts.
52. Decisions taken by the Directors will be by way of a simple majority vote unless it relates to a matter that requires a unanimous vote.
53. Insofar as decisions taken by the members of RNL at general meetings are concerned, it is proposed that decisions will be by way of a “poll only” vote. The total number of votes capable of being cast by Members is 987.
54. There may be changes made to the proposed allocation of votes given to each member of RNL and Cabinet will be kept apprised of any changes that there may be in this regard.
55. The Council can terminate membership of RNL by giving 7 days written notice to the Company. There may be cost implications to the Council if it decides to

terminate its membership of the company. This particular issue is one of the areas requiring clarification and this should be provided following the Heads of Terms for the DFT/RNL Partnership discussion referred to in paragraph 4.2 above. There are no legal impediments to the Council becoming a member of the Association and in turn a member of the RNL if Cabinet considers it to be appropriate to do so.

Financial Implications

56. The aim is that NEBU will cost no more than current arrangements. Nexus already receives funding for its existing management role of the Northern Rail Limited contract. A similar arrangement and level of funding might be appropriate to support NEBU, supported by local resources when financial contributions are finalised this will be included in future reports.

Equalities Considerations

57. The Rail North Long Term Rail Strategy, if delivered, would improve connectivity and capacity on the North's railways, providing communities with improved access to employment, education, healthcare and leisure facilities. It would also improve the accessibility of the rail network, building a more inclusive public transport network.

Proposed Rail North Governance Arrangements

1. THE LEADERS' COMMITTEE ("LC")

1.1 Establishment

The LTAs covered by the Northern and TPE franchises will establish a local authority association formed under section 143 of the LGA 1972 ("LGA 1972"). It is expected that all relevant LTAs (currently 30) would be party to these arrangements. The Association (provisionally known as the Association of Rail North Partner Authorities) will be governed by a Leaders' Committee (LC). Each LTA will appoint one elected member to the LC. This member would normally be its Leader / Mayor / Chair or its Lead Member for Transport. There will be provision for LTAs also to appoint a substitute member. The LC will elect a Chair and one or more Vice-Chairs.

1.2 Voting Arrangements

It is expected that most major decisions would be reached by consensus. However, where votes are taken, a system of weighted voting would apply based on metrics relating to rail usage on Northern and TE services to and from each LTA's area. The rationale for this is that it reflects the respective stake of each LTA area in the franchising. The apportionment of votes will be reviewed probably every 5 years to take account of changes in rail usage. Provisional weighted voting shares are set out later in this . These were based on passenger revenue in 2011/12 and are currently being updated.

1.3 Frequency of Meeting and Urgency

The LC will meet twice a year, although there would be provision for additional meetings to be called if demanded by a specified (significant) number of member LTAs.

1.4 Functions

The Association through the LC will have the following functions:

- to promote and improve rail services in the Rail North area;
- to campaign for devolution of responsibility for the Northern and TPE franchises;
- to develop and approve, and oversee the implementation of, a long-term Rail Strategy;
- to establish geographical sub-groups as proved for below, whose functions would include the appointment of representatives on the RNL Board;
- to provide political leadership and oversight of RNL.

1.5 Sub Groups

The LC will establish a number of geographical sub-groups of LTAs whose composition will be decided by the LC and whose function would be to appoint a person to serve as a director of the Board of RNL. In determining the composition of the sub-groups, account will be taken of factors such as:

- local authority, LEP and LTB linkages;
- the geography of the rail network; and
- the need to ensure inclusivity and representation across the North.

The shadow LC has agreed initially to establish the following eleven sub groups:

- GMCA
- West Yorkshire (plus York)
- South Yorkshire
- Merseyside (including Halton)
- North East (Tyne and Wear, Durham and Northumberland)
- Lancashire and Cumbria (including Blackpool and Blackburn and Darwen)
- Tees Valley (Darlington, Hartlepool, Middlesbrough, Redcar and Cleveland and Stockton-on-Tees)
- North Yorkshire
- The Humber (East Riding, Hull, North Lincs, North East Lincs)
- Cheshire and the Potteries (Cheshire East, Chester West and Chester, Warrington, Stoke, Staffordshire)
- East Midlands (Derby, Derbyshire, Nottingham, Nottinghamshire, and Lincolnshire)

It is expected that decisions on appointments by geographical sub-groups would be reached by consensus. However where votes are taken the same system of weighted voting would apply as on the Leaders' Committee.

1.6 Administrative support and Funding

The LC will appoint the Chief Executive of one of the LTAs as Secretary to be responsible for providing administrative support. The minimal costs of the joint body will be apportioned between the partner TAs as agreed by them, probably on the basis of voting rights.

1.7 THE SPECIAL PURPOSE VEHICLE – RAIL NORTH LTD (RNL)

1.8 Establishment

Members of the Association will establish the SPV as a company limited by guarantee called Rail North Ltd (RNL). The SPV will be established pursuant to the well-being power under sections 99 and 102A of the Local Transport Act 2008

and the functional power of competence under sections 11 and 13 of the Localism Act 2011 in the case of CAs / ITAs and the general power of the competence under section 1 of the Localism Act in the case of county and unitary councils. The key decision-making bodies within the SPV will be the members of the company and the board of directors.

1.9 Board of Directors

Each of the geographical sub-groups established by the Leaders' Committee will appoint one member to the Board of RNL. Each sub-group will have the power also to appoint an alternative director. Voting on the board would be on the basis of one director, one vote although it is expected that most decisions would be taken by consensus. However, given the substantial variations in the proportions of rail usage between the various sub-groups approval of certain key matters (mainly relating to finance) would be reserved to the members of the company. The Board would be supported in managing RNL by a dedicated Executive Team of officers of the Rail North partner authorities and the PTEs.

1.10 Members of RNL and Reserved Matters

All the members of the Association are eligible to become members of RNL. The voting entitlement of each member will be based on the voting power each member based on rail usage as set out in the Appendix. Decision on the reserved matters will require the approval of members holding collectively at least 75% of the weighted voting entitlement. The reserved matters will include:

- Any change to the articles of the company
- Any partnership / shareholders' agreement between RNL and the DfT and other major commercial agreements
- Approval of RNL's annual and medium-term business plan
- Expenditure above certain limits
- Borrowing and the giving of financial guarantees

1.11 Funding

Members would make an annual payment to cover the running costs of the company to be apportioned in accordance with voting rights. Prior the commencement of the franchises in February 2016, this is likely to be a relatively nominal amount. Arrangements may need to be reviewed when the level of risk/expenditure to be borne by RNL under the partnership arrangement with DfT is established. However, in these circumstances, LTAs would have the opportunity to withdraw (or alter their status within RNL) before the franchise agreements are operative, if unwilling to accept risk or make increased payments.

1.12 Functions of RNL

The principal initial functions of RNL will include:

- To oversee local authority input into the design of the franchises including the specification and commercial arrangements
- To develop proposals with DfT for a single integrated partnership structure to assume responsibility for managing the franchises