

# Transport for the North Board Agenda

<b>Date of Meeting</b>	<b>Wednesday 20 March 2024</b>
<b>Time of Meeting</b>	<b>10.30 am</b>
<b>Venue</b>	<b>Brigante Suite, Hilton Leeds City, Neville Street, Leeds, LS1 4BX</b>

## Filming and broadcast of the meeting

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<b>Item No.</b>	<b>Agenda Item</b>	<b>Page</b>
<b>4.0</b>	<b>Avanti West Coast Performance</b> To consider the referral of the Rail North Committee to discuss and agree what actions are appropriate to secure improved performance. <b>Lead:</b> Steve Montgomery (First) and Darren Oldham	260 - 271
<b>11.0</b>	<b>Rail Reform Pre Bill Scrutiny</b> To consider and agree TfN's submission to the Transport Select Committee pre-legislative scrutiny of the draft Bill <b>Lead:</b> Alex Woodall	272 - 289

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<b>Meeting:</b>	Transport for the North Board
<b>Subject:</b>	Avanti West Coast Train Performance Improvement
<b>Author:</b>	Darren Oldham, Rail and Road Director
<b>Sponsor:</b>	Martin Tugwell, Chief Executive
<b>Meeting Date:</b>	Wednesday 20 March 2024

## 1. Purpose of the Report:

- 1.1 To provide the Board with the opportunity to consider and agree a response to concerns about the performance of Avanti West Coast.
- 1.2 This matter has been referred to the Board by the Rail North Committee following its meeting of 21 February 2024.

## 2. Recommendations:

- 2.1 The Board is recommended to consider the two options set out in paragraph 7.1.

## 3. Background

- 3.1 Avanti West Coast is the major long-distance operator for services to/from London and Scotland for centres in the west of the region. It serves Manchester, Liverpool, Crewe, Chester, Warrington, Preston and Carlisle.
- 3.2 Avanti's contract is managed by the Department for Transport and is not subject to the devolved arrangements that apply to Northern and TransPennine Express, but as they provide rail services within the TfN area, the Board can provide statutory advice to the Secretary of State. This is the same arrangement as for other long-distance operators such as LNER and CrossCountry.
- 3.3 Partners have been raising concerns about Avanti's performance through the Rail North Committee since summer 2022 when they introduced a temporary reduced timetable on the London-Manchester service group due to a shortage of available train drivers. Avanti was required to develop a recovery plan and was subject to two short-term contract extensions of 6 months.
- 3.4 In October 2023, the DfT judged that Avanti had made sufficient progress on addressing the issues and restoring services and awarded them a long-term contract. TfN was not consulted on the contract award or progress made. Avanti's contract, which started on 15 October 2023, has a maximum term of nine years but can be terminated at any point after three years with three months' notice. More information can be found here:  
[Avanti West Coast awarded long-term contract after significant improvements for passengers - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/avanti-west-coast-awarded-long-term-contract-after-significant-improvements-for-passengers)
- 3.5 Partners have continued to raise concerns about Avanti's performance subsequent to the contract award, with those concerns coming from right across the route network covered by Avanti and being raised by both residents and businesses. A common theme throughout has been the impact of problems on passengers and the way in which the operator responds to those problems.
- 3.6 Speaking before the Transport Select Committee on 28<sup>th</sup> February, the Rail Minister in comparing performance on the West Coast Main Line with that on the East Coast Main Line, noted the impact of differences in agreed working practices.

#### **4. Context**

4.1 The Terms of Reference for the Rail North Committee provides for:

*The Rail North Committee shall actively consider and advise the Transport for the North Board on strategic issues relating to rail transport including:*

- a) Priorities for services and infrastructure improvement*
- b) Rail devolution and reform matters.*

It is in this context that the Rail North Committee considered the concerns raised by partners in relation to Avanti's performance.

4.2 The Constitution sets out the general functions devolved to TfN by Parliament, and include:

*'to provide advice to the Secretary of State about the exercise of transport functions in relation to its area (whether exercisable by the Secretary of State or others)'*

It is in this context that the TfN Board should consider the matter referred to it by the Rail North Committee.

4.3 Avanti West Coast has confirmed their attendance at this meeting of the Board.

#### **5. Considerations to Date**

5.1 The Rail North Committee has actively engaged with Avanti West Coast in response to concerns raised by partners. The Managing Director of Avanti attended meetings on 14 November 2023 and 21 February 2024.

5.2 At the meeting, on 14 November, the Managing Director sought to reassure members that the reduction in services prior to Christmas 2023 were a necessary requirement to improve operational performance in the short term, a consequence of the operator having to deal with the consequence of historic issues around terms and conditions (for example the taking of annual leave). However, he also highlighted a broader challenge on driver numbers, noting the pressure that comes with an aging workforce.

The Committee acknowledged the extent to which the impact of infrastructure and weather events are often outside the control of Avanti, however, members expressed a view that the underlying resilience of operations appeared to be worse than other operators.

5.3 After this Rail North Committee meeting, its Chair wrote to the Managing Director of Avanti setting out the Committee's concerns regarding operational performance and the importance of realising significant improvement at pace.

5.4 In reporting the discussion at the November meeting back to this Board (14 December), the Chair of the Rail North Committee set out the deep frustration and anger amongst the business and wider community arising from the performance of Avanti West Coast.

Board Members from across the region echoed the views expressed by the Rail North Committee. After the December meeting, the TfN Board and RNC Chairs wrote a joint letter to the Secretary of State setting out the urgent need to subject the Avanti West Coast operation to a critical review by the Department.

5.5 At its meeting on 21 February, the Rail North Committee expressed continued frustration with the operational performance being delivered by Avanti. In their response the Managing Director once again set out the actions the operator is taking to improve performance, including actions to increase driver availability, whilst noting the ongoing challenges associated with Rest Day Working.

Following a robust discussion, the Committee concluded that it did not have confidence that the operator accepted the scale of the issue facing them nor that the measures in place would achieve the required improvement in performance. It was on this basis that the Committee referred the matter to the TfN Board.

#### *The 'Second Liverpool' Service*

- 5.6 The delivery of a 'second Liverpool' service per hour to/from Liverpool is a commitment that the Rail North Committee strongly supports. At the Committee's 14 November meeting, the Managing Director restated Avanti West Coast's commitment in this regard, advising that they hoped to start this service from June 2024.
- 5.7 At the Committee meeting on the 21 February, the Managing Director emphasised that the path to run the second Liverpool service is a 'contingent right'. Given the existing constraints and operational challenges when it comes to the West Coast Main Line, Members of the Committee sought clarity on whether the infrastructure can support the second Liverpool service.
- 5.8 The proposal for the second Liverpool service has been developed through the normal industry practices. Whilst the proposal is supported by Network Rail this is on the basis that it operates in diesel mode between Crewe and Liverpool, a consequence of restricted traction power supplies in the Crewe area. A power supply enhancement project is being developed and will require enhancement funding to be secured.

### **6.0 Measuring Performance**

- 6.1 The rail industry uses a range of performance metrics for monitoring purposes. The Public Performance Measure (PPM) combines cancellations and punctuality into one overall percentage score (measuring the proportion of trains that run and operate within ten minutes of booked time on a given day).
- 6.2 Avanti West Coast's overall PPM score in the last eight weeks, 6 January to 24 February 2024, was 68.6% (median). The best performing week was 75.2% PPM for week ending 2 February 2024 and the worst performing week was 53.2% PPM for week ending 27 January 2024.
- 6.3 The TfN executive proposes that in terms of assessing an improvement in Avanti's performance a reasonable approach would be to propose the following:
  - 1. That by end of period 2 for 2024/25 (ending 25 May 2024) to reach the level recorded in period 1 for 2023/24 (ending 30 April 2023) which was 80% PPM.

In addition to improved PPM, it is proposed that TfN will measure progress against two further outputs/behaviours:

- 2. A significant reduction in average minutes delay per train directly caused by Avanti West Coast (for example, a level of 0.6 average minutes delay per train was achieved in the 3 years prior to Covid)
- 3. A minimum of at least 48 hours' notice (to TfN and affected partner authorities) ahead of any short-term timetable change.

### **7. Options for Consideration**

- 7.1 It was clear from the discussion at the Rail North Committee that a continuation of the current situation is unacceptable to the North. In referring the matter to the TfN Board the Committee requested that two options be presented to the Board for its consideration. Given the current situation the two most relevant options available to the Board are:

### Option 1

For the Board to adopt a public improvement target for Avanti West Coast as outlined in paragraph 6.3 and to ask for the Rail North Committee to review progress in June 2024 and report to the June meeting of the TfN Board. The TfN Board may then, at that point consider the need for further measures.

### Option 2

For the Board to submit Statutory Advice to the Secretary of State for Transport that Avanti West Coast's contract should be terminated at the earliest possible opportunity (with the Operator of Last Resort taking on responsibility in the short term for the delivery of long-distance services on the West Coast Main Line)

## **8. Corporate Considerations:**

### ***Financial Implications***

- 8.1 There are no financial implications for Transport for the North as a result of this report. There would be implications for the DfT to consider if the arrangements with Avanti were amended or terminated.

### ***Resource Implications***

- 8.2 There are no direct resourcing implications as a result of this report.

### ***Legal Implications***

- 8.3 Any legal implications are included within the report. Contract management of the Avanti West Coast is undertaken by the DfT.

### ***Risk Management and Key Issues***

- 8.4 This paper does not require a risk assessment. A risk has been included on the Transport for the North Corporate Risk Register in relation to the future viability of rail services and Transport for the North's future role.

### ***Environmental Implications***

- 8.5 This report does not constitute or influence a plan or programme which sets the framework for future development consents of projects listed in the Environmental Impact Assessment (EIA) Directive and therefore does not stimulate the need for Strategic Environmental Assessment (SEA) or EIA. Any infrastructure proposals to improve the capacity and reliability of the system will be subject (where appropriate) to EIA Screening, conducted by Network Rail as part of the consenting process for those projects.
- 8.6 Passenger rail has an essential part to play in achieving our decarbonisation objectives within Transport for the North's Decarbonisation Strategy, particularly around reducing private car vehicle mileage.

### ***Equality and Diversity***

- 8.7 There are no specific equality and diversity issues.

### ***Consultations***

- 8.8 There are no specific consultations required as part of this report.

## **9. Background Papers:**

- 9.1 None.

## **10. Appendices:**

- 10.1 Appendix 1 – Correspondence from TfN to the Secretary of State  
Appendix 2 – Correspondence from the Secretary of State to TfN.

<b>Glossary of terms, abbreviations and acronyms used</b>	
a) DfT	Department for Transport
b) PPM	Public Performance Measure

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Date: 18 December 2023

**Rt Hon Mark Harper MP**

Secretary of State for Transport  
House of Commons  
London  
SW1A 0AA

*Sent by email*

**Lord McLoughlin**

Transport for the North Chair

**Mayor Andy Burnham**

Rail North Committee Chair

Transport for the North  
Level 6, Town Hall Extension  
Lloyd Street  
Manchester  
M2 5DB

Dear Secretary of State,

**Re: Avanti West Coast: Unacceptable Performance**

At its meeting held in Manchester on 14 December, the TfN Board was unanimous in condemning the current performance of Avanti West Coast as being totally unacceptable.

Whilst the Board understood that there will be occasions where performance is affected by external factors, it is clear that in the case of Avanti West Coast, there are more fundamental issues at play. The underlying operational resilience of Avanti West Coast appears to be fundamentally flawed in a way that the North has previously observed on the TransPennine Express contract. The growth in reactionary delays on the West Coast is further evidence of this lack of operational resilience.

The deterioration of performance is all the more unacceptable given that it has become the new norm on the West Coast in the period prior to Christmas. Poor performance on this scale is impacting on the economy of the North as well as the well-being of its residents who are dependent upon Avanti West Coast services.

The TfN Board was clear: there is an urgent and pressing need for the Avanti West Coast operation to be subjected to a critical review by the Department as a matter of priority. This review should be required to identify and secure immediate action that restores performance to an acceptable level: in this the Department should actively consider all available options.

The Board was equally clear that because the performance level is so unacceptable, it is essential to ensure that all seats on Avanti West Coast services are available for use at all times. In this context TfN advises that until such time as performance is restored to an acceptable level, all trains should run with First Class accommodation declassified: the cost of this being borne by the operator at no cost to the public purse.

We know that a key driver of the Government's reforms for the railway sector is improving the customer experience. It is clear to all, that the Avanti West Coast

operations is failing to meet a minimum acceptable standard and that this needs to addressed as a matter of urgency.

Yours sincerely,



Lord McLoughlin CH  
Chairman, Transport for the North



Mayor Andy Burnham  
Rail North Committee Chair



## Department for Transport

From the Secretary of State  
**The Rt Hon Mark Harper MP**

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Our Ref: MC/440241

Lord McLoughlin CH  
Transport for the North Chair

Mayor Andy Burnham  
Rail North Committee Chair

9 January 2024

Dear Lord McLoughlin and Mayor Burnham,

I am grateful for your letter of 18 December regarding the recent performance of Avanti West Coast (AWC).

As you are aware, my Department's decision to award a new National Rail Contract (NRC) to First Trenitalia (FTI) to continue providing West Coast train services as AWC, was contingent on the operator continuing to win back the confidence of passengers. In 2023, AWC made significant progress in recovering from the poor reliability and punctuality delivered in the latter half of 2022, reducing AWC caused cancellations to as low as 1.1 per cent in June and July, with customer satisfaction scores improved considerably. This is again evidenced clearly in the latest Office of Rail and Road publication for July to September where AWC ran 12.5 per cent more services than the same period in 2022 and was the most improved operator in terms of reliability, with an 8.1 percentage point improvement in its cancellation score.

I am conscious that in recent weeks reliability and punctuality have declined and need to improve. However, when assessing performance, it is important to note it is not always the fault of the operator. In the case of the West Coast, poor infrastructure reliability, adverse weather conditions, and continued industrial action have been far more significant drivers of recent disruption. In rail periods 8 and 9, covering 15 October to 9 December, the majority of delay minutes incurred are attributable to Network Rail (67 per cent in period 8 and 56 per cent in period 9), and other operators (12 per cent in period 8 and 16 per cent in period 9).

Like you, I want a resilient, modern, punctual, and economically sustainable railway that passengers and communities in the North can rely on. That is why the Government is investing to make reliability improvements in Network Rail as well as focusing on improving the performance of operators.

The Government is working with Network Rail and the industry to ensure that a robust and reliable train service is provided, and journeys are improved, on the West Coast Main Line (WCML) and across the whole country. To this end, the Government made available over £44 billion to Network Rail to support the operations, maintenance and renewal of the rail network in Control Period 7 (2024-2029).

Network Rail recently carried out work over the Christmas period to upgrade and maintain parts of the WCML to support a better, more reliable railway in 2024. Works included improving and maintaining track, overhead electrical wires, signaling equipment and bridges between Euston and Crewe, vital repairs to steelwork and drainage at Manchester Piccadilly station and maintenance work along the track at Oxenholme.

In addition, following the Network North announcement, work is underway to consider potential upgrades to Handsacre Junction and the WCML north of Birmingham, with funding set aside. This is to support the introduction of HS2 services and improve journeys between London, the West Midlands, Liverpool, Manchester, Scotland and other locations.

Whilst AWC has not been directly responsible for much of the disruption that has impacted passengers in recent weeks, the data shows that AWC was responsible for roughly a quarter of the delay minutes incurred<sup>1</sup>. This is too high, and we will hold AWC to account and continue to drive improvements. The Rail Minister is meeting with AWC's Managing Director today to challenge the operator on its operational resilience and review its plans for continued recovery in 2024.

As I set out in my letter to Mayor Burnham on 22 November, some of the challenges facing the industry are long-term, and only wholesale reform will deliver the solutions. Our ambitious rail reform agenda will bring together infrastructure, operational and whole industry finance decision making to take a whole system view for the benefit of customers and taxpayers. The draft Bill to establish Great British Railways (GBR) will undergo pre-legislative scrutiny in this Parliamentary session, giving all interested stakeholders the chance to scrutinise the Rail Reform Bill. This means once parliamentary time allows for its introduction, it will be able to swiftly pass into statute.

Industry wide traincrew shortages, linked to a continued lack of driver overtime and ongoing industrial action, also present a challenge to running services with the reliability passengers deserve. Some of the recent disruption is as a result of restrictive conditions that require the creation of work rosters to be undertaken with, and agreed by, trade unions.

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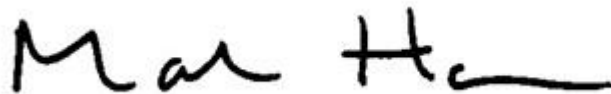
<sup>1</sup> 21.3% of delay minutes incurred in Rail Period 8 and 28.3% of delay minutes incurred in Rail Period 9

In recent negotiations AWC had sought to address some of its weekend staff availability challenges. However, agreement was not initially reached leaving a mismatch between the train service and the rosters staff could be assigned to. In such circumstances services are vulnerable to short notice cancellation and operators would normally rely on rest day working which is currently not an option for AWC.

AWC is undertaking unprecedented levels of annual recruitment, but difficulties in managing historic traincrew terms and conditions will continue to impact services until modernisation of working arrangements can be agreed. Annual leave quotas that are too high to ensure sufficient availability during periods of high leave demand, and agreements that prevent drivers working the same route more than once in the same shift are just examples of the kind of constraints which greatly reduce rostering efficiency. These same challenges face all our operators, including TransPennine whose performance I also continue to monitor closely.

My officials, the Rail Minister and I will continue to closely review AWC's progress to a sustained recovery, restoring services reliably on the West Coast and delivering the kind of service passengers rightly expect.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Mark Harper', with a stylized, cursive script.

**The Rt Hon Mark Harper MP**

**SECRETARY OF STATE FOR TRANSPORT**

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**Meeting:** Transport for the North Board  
**Subject:** Rail Reform Pre Bill Scrutiny  
**Author:** Alex Woodall, Rail Reform Advisor  
**Sponsor:** Darren Oldham, Rail and Road Director  
**Meeting Date:** Wednesday, 20 March 2024

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**1. Purpose of the Report**

- 1.1 To seek the Board's approval for Transport for the North's (TfN) proposed submission to the Transport Select Committee's call for written evidence on the draft Rail Reform Bill.

**2. Recommendations**

- 2.1 It is recommended that the Board approve the submission to the Transport Select Committee as set out in Appendix 1.

**3. Context**

- 3.1 The TfN Board has previously set out its support for the principle of rail reform, and the need to bring train and track together. In keeping with the principles embedded within the revised Strategic Transport Plan, rail reform must put the needs of the customer (both individual and freight users) at the heart of the rail system.
- 3.2 The operational model that is ultimately established to implement rail reform must embrace a culture that better reflects rail's role in meeting wider societal outcomes. Bringing the customer closer to the railway through devolved arrangements remains at the heart of improving outcomes.
- 3.3 The TfN executive continues to work with partners in developing the North's proposals as to what an appropriate operating model might look like for future consideration by the Board. This should build on the current levels of rail devolution that exist in the North and through which it has been possible to ensure the needs of the North's rail users are better reflected in operational and investment decision-making.
- 3.4 The focus for this discussion is the need for TfN to respond to the publication of the draft Rail Reform Bill and its pre-legislative scrutiny by the Transport Select Committee.

**4. Background**

- 4.1 Building on the Plan for Rail White Paper (published in May 2021), the government has published [the draft Rail Reform Bill](#), starting a process of 'pre-legislative' parliamentary scrutiny. This scrutiny will be led by the Transport Select Committee, who have issued a call for written evidence. The deadline for submissions is 27<sup>th</sup> March 2024.
- 4.2 It is highly unlikely that there will be sufficient parliamentary time to pass the Bill prior to a general election. However, there remains cross-party consensus on the need for reform and the pre-legislative scrutiny process provides the opportunity to set out the key issues that any reform process must address.
- 4.3 This paper provides an overview of TfN's response to the Select Committee's call for evidence, which focuses on three themes:

- Protecting TfN's existing role and responsibilities,
- Avoiding unintended consequences; and
- Advancing devolution.

## **5. The Integrated Rail Body/GBR**

### *5.1 What the Bill Proposes*

- 5.1.1 The draft Bill enables the creation of an 'integrated rail body' (IRB), which would hold responsibilities for rail franchising (currently held by the Secretary of State) and simultaneously hold infrastructure manager responsibilities (currently held by Network Rail).
- 5.1.2 It is proposed that Network Rail is designated as the IRB and transferred franchising responsibilities, at which point it will become Great British Railways (GBR). Whilst the rationale for this approach is understood, it increases the risk that the culture of GBR is overly shaped by that of Network Rail.
- 5.1.3 The Bill makes no reference to the role of statutory Sub-national Transport Bodies such as TfN or their responsibilities. These include the provisions set out in the Rail North Partnership Agreement which devolves joint responsibility for overseeing the Northern and TransPennine Express contracts (previously let as franchises), and which is overseen by those members of TeamTfN employed as the executive part of the Rail North Partnership. It is under the terms of the Rail North Partnership Agreement that the North-East and North-West Business Units have been established as a means of increasing the role of local partners in shaping rail services. The pre-legislative scrutiny process is a key opportunity for TfN to ensure that current levels of rail devolution in the North are not undermined by a new national organisation.

### *5.2 How will Great British Railways operate?*

- 5.2.1 While the Bill enables the establishment of GBR, it does not go into detail about GBR's proposed operating model. There are elements of the Bill which steer GBR towards a model of private sector contracting for rail services – but the details of how this would be carried out are not defined.
- 5.2.2 While TfN's submission to the Select Committee will focus on the specifics of the Bill, it is clear that GBR's future operating model will be hugely significant as to whether it realises the objective of the railway to perform better as a system with less fragmentation and greater accountability. As set out above, we will be engaging with TfN partners across the North with a view to enabling a considered discussion as to the North's preferred future operating model. Any future operating model will be consistent with TfN's commitment to 'double devolution', including working with Mayoral Combined Authorities, who may also have a direct relationship with GBR as part of devolution deals.

## **6. Key Considerations**

### *6.1 Protecting TfN's role as a Statutory partner of the Secretary of State*

- 6.1.1 Today, TfN exercises a number of devolved functions as a statutory Sub-national Transport Body, responsibilities which were established by [the Sub-national Transport Body \(Transport for the North\) Regulations 2018](#) ("the Regulations"). These Regulations are unaffected by the draft Bill.
- 6.1.2 Although TfN's statutory status is unaffected by it, the Bill proposes changes to the Secretary of State's role in the railway. TfN's constitution is explicit that it is a statutory partner to the Secretary of State in respect of the rail investment process. Specifically:



- (i) In developing and agreeing their strategic transport plan TfN will, as a statutory partner in the Secretary of State's investment processes, determine the North's objectives and work jointly with the Secretary of State to ensure they are incorporated in the Secretary of State's national prioritisation decisions.
  - (ii) Whilst the Secretary of State remains the final decision maker, decisions related to the North will have to take account of TfN's priorities.
  - (iii) Following the Secretary of State's final decisions, TfN will ensure, through formal bi-lateral arrangements with the Department for Transport that the North's priorities are understood and recognised in national decision making with respect to Network Rail investment.
- 6.1.3 Under the proposed Bill, the responsibilities for rail franchising will transfer from the Secretary of State to the Integrated Rail Body. The Bill, in many instances, substitutes the Secretary of State for the IRB in order to reflect the IRB's proposed central role in the railway.
- 6.1.4 However, it is important to be clear that TfN should retain its statutory partner role with the Secretary of State. The Secretary of State should remain the relevant counterpart for TfN's strategic advice in all circumstances, and where relevant ensure that the IRB is appropriately informed. It would be unacceptable for the IRB to be a substitute for the Secretary of State with respect to TfN's statutory partner role.
- 6.2 *Ensuring continuation of existing devolved arrangements*
- 6.2.1 A key part of rail devolution in the North has been the Rail North Partnership Agreement ("the Agreement"), and the associated establishment of the Rail North Partnership Board. This is a contractual arrangement, between the Secretary of State (in their function as lead franchising authority) and TfN (since it absorbed Rail North Ltd in 2018). The Agreement provides for TfN to oversee the delivery of rail services provided by the TPE and Northern contracts, in partnership with the Secretary of State. Implementation of the Agreement is overseen through a dedicated team (the Rail North Partnership) employed by TfN.
- 6.2.2 The Agreement sets out a range of 'TfN Matters' on which TfN partners benefit from enhanced consultation. For example, recently, it was through the Rail North Partnership that TfN and its partners had an extended period of consultation for the proposed ticket office closure plans. It also enables TfN to propose further devolution, where TfN may put forward proposals to enhance existing arrangements and adopt additional responsibilities with regard to the management of the franchises/contracts where this improves the efficiency and effectiveness of delivery.
- 6.2.3 TfN's co-management role through the Rail North Partnership is a contractual agreement between TfN and the Secretary of State. As the Secretary of State will no longer be a franchising authority and the IRB assumes this role, it is an essential requirement of TfN that it receives assurance that existing arrangements will be novated to provide a continued role for devolved input through TfN and its constituent authorities.
- 6.2.4 Furthermore, TfN's constitution also ensures that TfN has the right to be consulted over the grant of a rail franchise agreement for passenger services within, to and from the TfN area and the right to enter into arrangements with the Secretary of State relating to the management of rail franchise agreements. It is TfN's clear expectation that this right continues to be held with regard to the IRB's future role in arranging rail service contracts in the North.

### 6.3 *Avoiding Unintended Consequences through Ticketing Amendments*

- 6.3.1 The majority of existing work on fares, ticketing and retail undertaken by Great British Railways Transition Team (GBRTT) has no requirement for primary legislation.
- 6.3.2 However, the Bill reforms elements (section 134 on advanced ticketing schemes through to section 137) of the Transport Act 2000 on the creation of Advanced Ticketing Schemes. The Bill adds wording to the effect that the new IRB is the body through which local authorities need to engage with, should those schemes entitle the holder to travel on rail services.
- 6.3.3 These powers referred to in the Bill are also powers that TfN can exercise concurrently with Local Authorities under the Regulations agreed by Parliament. While to date TfN has never exercised those powers, it is important the Bill does not create muddled lines of accountability for such ticketing schemes. Where TfN establishes such a scheme, there should be no requirement for local authorities to also have to engage with the IRB. If not addressed this would inadvertently create a loop whereby individual bodies are required to consult with one another.

### 6.4 *Proposed Role of the Private Sector*

- 6.4.1 The draft Bill includes a number of measures to protect the private sector's role in the railway, particularly in the provision of railway services, including:
- The IRB must ensure that its business plan takes its proposed impact on businesses in the private sector into account.
  - There is a requirement on the IRB to prepare a report setting out what it has done during each financial year to increase the involvement of businesses in the private sector in the provision of railway services.
  - The Bill amends the rail regulator's duties to require the regulator to balance the promotion of competition with a consideration of the cost, to public funds, of providing passenger services.
- 6.4.2 Given the scale of investment required to deliver a transformed rail system in the North there will be significant benefit from being able to secure investment from the private sector. In this context, there should not be an arbitrary preference of the ownership of service provision (whether public or private). Instead, there should be a focus on ensuring the best value possible in securing the outcomes required from the railway in order to meet the North's ambitions. It is also important to note that these provisions may be considered as reporting obligations, rather than explicit policy directions.

### 6.5 *Advancing Devolution*

- 6.5.1 The current arrangements in the North already represent a significant devolution of powers. They allow the North to have a strong role in the specification and delivery of rail services, as well as require the Secretary of State to have due regard to statutory advice. They have also allowed – through the establishment of Regional Business Units in the North-East and North-West – an enhanced role in local rail services.
- 6.5.2 TfN supports the rail reform White Paper's commitment for closer collaboration with Great British Railways. However, neither the White Paper, nor the Bill reflects the role of statutory Sub-national Transport Bodies when considering future governance and operating models.
- 6.5.3 Given this context, there are two specific points that examination of the draft Bill must consider:
- a) The need to ensure that the IRB operating licence has an explicit requirement placed on the IRB to formally seek, and respond to advice from

a statutory Sub-national Transport Body (such a requirement would be consistent with the Transport Select Committee's recommendation in respect of the operating licence for National Highways)

- b) Similarly, the Office of Rail and Road (ORR) should be required to formally seek, and respond to, advice from a statutory Sub-national Transport Body when discharging its duties in relation to the rail system.

6.5.4 Whilst these points are made specifically in the context of the arrangements that exist in the North, it should be noted that a number of the other Sub-national Transport Bodies are actively working on proposals to secure statutory status. Accordingly, the proposed changes are relevant more widely to the operation of the rail system in England.

## **7. Corporate Considerations**

### ***Financial Implications***

7.1 There are no direct financial implications as a result of this report. Any financial implications of Rail Reform will be considered subsequently as part of the development of a proposed operating model.

### ***Resource Implications***

7.2 There are no resource implications as a result of this report. Any resource implications of Rail Reform will be considered subsequently as part of the development of a proposed operating model.

### ***Legal Implications***

7.3 Legal Services has been consulted in relation to the Rail Reform Bill and the proposed response to the Transport Select Committee. The legal implications of the draft bill for TfN have been included in the main body of the report.

### ***Risk Management and Key Issues***

7.4 There is a corporate risk in relation to TfN's future role in the rail industry. Responding to the draft Bill will be a mitigating action in relation to this risk.

### ***Environmental Implications***

7.5 There are no environmental implications as a result of this report. Rail is a fundamental part of TfN's strategic approach to decarbonising the transport network.

### ***Equality and Diversity***

7.6 There are no equality and diversity implications as a result of this report.

### ***Consultations***

7.7 Executive Board were consulted in the preparation of this paper and draft response.

## **8. Background Papers**

8.1 None.

## **9. Appendices**

9.1 Appendix 1: TfN's proposed submission to the Transport Select Committee

### **Glossary of terms, abbreviations and acronyms used**

a) IRB	Integrated Rail Body
b) GBR	Great British Railways
c) GBRTT	Great British Railways Transition Team

<b>Glossary of terms, abbreviations and acronyms used</b>
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d) <i>TPE</i> <i>TransPennine Express</i>
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# Submission of Transport for the North

## Transport Select Committee Call for Evidence on the Draft Rail Reform Bill March 2024

### 1. Introduction

#### *Statutory Sub-National Transport Body*

- 1.1. Transport for the North (TfN) is a statutory Sub-National Transport Body established by Government (pursuant to secondary legislation; namely [the Sub-national Transport Body \(Transport for the North\) Regulations 2018](#) ("the Regulations") made on 22nd January 2018) and whose functions include:

- a) To prepare a transport strategy for its area
- b) To provide advice to the Secretary of State about the exercise of transport functions in relation to its area (whether exercisable by the Secretary of State or others)
- c) To co-ordinate the carrying out of transport functions in relation to its area that are exercisable by different constituent authorities, with a view to improving the effectiveness and efficiency in the carrying out of those functions.

#### *Transport for the North Board*

- 1.2. The TfN Board (the Board) is the voice of the North of England for transport; it is formed of elected leaders, and business leaders from across the whole of the North of England. It collectively represents over 15 million people in the North.
- 1.3. Complementing the work of Metropolitan Combined Authorities (MCAs) and Local Transport Authorities (LTAs), and with powers devolved from central Government to the North, our statutory role as the Secretary of State's advisor is to advise Government in a way that ensures that funding and strategic decisions about transport in the North are informed by local knowledge, expertise and needs.
- 1.4. Alongside local political leaders, our Board also has representatives from the national delivery transport partners (Network Rail and National Highways) and works closely with our neighbours in Scotland, Wales and the Midlands.

#### *The Rail North Partnership*

- 1.5. TfN has devolved rail powers through the Rail North Partnership. There is a contractual agreement in place between the Secretary of State and TfN (initially Rail North Limited). This agreement ("the Rail North Partnership Agreement") provides for the devolution of rail responsibilities in the North of England and the oversight by TfN of the delivery of rail services provided by the TransPennine Trains and Northern Trains contracts, in partnership with the Secretary of State. Implementation of the Agreement

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is overseen through a dedicated team (the Rail North Partnership) employed by TfN.

- 1.6. Provision exists under the Rail North Partnership Agreement to establish sub-regional business units which allow for a stronger input from local partners in geographically defined areas. At present, two such business units have been established – one for the North-East, the other for the North-West. These enable stronger co-ordination of local rail services with other local transport services, whilst retaining the benefits of the pan-regional overview provided through the Rail North Partnership Agreement.

### *Statutory Partner on Rail Investment*

- 1.7. TfN acts as a statutory partner to the Secretary of State with respect to rail investment. This role ensures that decisions related to rail investment in the North have to take account of TfN's priorities, and that they are recognised with regard to Network Rail's decision-making.

## **2. General Comments**

- 2.1. TfN supports the need for rail reform and in particular the integration of track and train to deliver better outcomes for passengers and freight customers. As such, TfN welcomes the Bill as an important step to creating Great British Railways (GBR).
- 2.2. The reshaping of the railway's institutional architecture must respect and build upon the existing devolved arrangements at the pan-regional level in the North. TfN has the most advanced devolved arrangements of any statutory Sub-National Transport Body (STB) in England, which in combination with our experience of overseeing the delivery of train service contracts enables TfN to offer practical, real-world experience of how to realise the overarching ambition for GBR.
- 2.3. In this respect TfN's experience is potentially a template upon which to develop arrangements associated with other statutory STBs, of which there are at least two working towards propositions for statutory status. TfN's experience of 'double devolution' – which sees stronger involvement at both the pan-regional and MCA/LTA level – could form the basis of a working model that could be applied more widely across England.
- 2.4. TfN's role as a statutory partner to the Secretary of State in relation to the rail network, as set out in its constitution approved by Parliament, must be retained. By extension, there should be a requirement for GBR to actively seek and respond to advice from a statutory Sub-National Transport Body.
- 2.5. The continuation of the contractual arrangements between TfN and DfT which form the Rail North Partnership Agreement need to be maintained moving forward. TfN has established strong and effective collaborative arrangements that enable the North's input into how the Northern and TransPennine Trains contracts are managed. By extension, the complex nature of the rail system across the North makes it increasingly important

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to have TfN's input into the delivery of other service contracts and/or franchises.

- 2.6. It is therefore important that the Bill does not create unintended consequences through the blanket transfer of franchising powers from the Secretary of State to the Integrated Rail Body (IRB). TfN's existing arrangements reflect its statutory relationship as the Secretary of State's partner. TfN would expect its relationship, and role, in providing advice to the Secretary of State is maintained, in addition to there also being a requirement on the IRB to actively seek and engage with TfN.
- 2.7. Recognising the limited focus of the Bill it will be essential that subsequent development of proposals for the operating model for GBR is done in collaboration with TfN given our statutory and contractual roles. It is essential that the intention of devolving responsibility away from Westminster and empowering the rail system to deliver remains at the heart of the operating model.

### **3. Respecting and Maintaining TfN's Statutory Role**

- 3.1. TfN exercises a number of devolved functions as a statutory Sub-National Transport Body, responsibilities which were established by the Regulations. These Regulations are unaffected by the draft Bill.
- 3.2. Although TfN's statutory status is unaffected by it, the Bill proposes changes to the Secretary of State's role in the railway. TfN's constitution is explicit that it is a statutory partner to the Secretary of State in respect of the rail investment process. Specifically:
  - (i) In developing and agreeing their strategic transport plan TfN will, as a statutory partner in the Secretary of State's investment processes, determine the North's objectives and work jointly with the Secretary of State to ensure they are incorporated in the Secretary of State's national prioritisation decisions.
  - (ii) Whilst the Secretary of State remains the final decision maker, decisions related to the North will have to take account of TfN's priorities.
  - (iii) Following the Secretary of State's final decisions, TfN will ensure, through formal bi-lateral arrangements with the Department for Transport that the North's priorities are understood and recognised in national decision making with respect to Network Rail investment.
- 3.3. Under the proposed Bill, responsibility for rail franchising will transfer from the Secretary of State to the IRB. The Bill, in many instances, proposes to amend the overarching legislation to substitute the Secretary of State for the IRB, in order to reflect the IRB's proposed central role in the railway.
- 3.4. However, it is important to be clear that TfN should retain its statutory partner role with the Secretary of State. The Secretary of State should remain the relevant counterpart for TfN's strategic advice in all

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circumstances, and where relevant ensure that the IRB is appropriately informed. It would be unacceptable for the IRB to be a substitute for the Secretary of State in respect of receipt of TfN's statutory advice as defined in the Regulations.

### **4. Ensuring Continuation of Existing Devolved Arrangements**

- 4.1. A key part of rail devolution in the North has been the Rail North Partnership Agreement, enabling a stronger input from the region and its partners into the planning and delivery of rail services.
- 4.2. The Agreement is a contractual arrangement, between the Secretary of State (in their function as lead franchising authority) and TfN (since it absorbed Rail North Ltd in 2018).
- 4.3. The Agreement provides for TfN to oversee the delivery of rail services provided by the TPE and Northern contracts, in partnership with the Secretary of State. Implementation of the Rail North Partnership Agreement is overseen through a dedicated executive team (the Rail North Partnership) employed by TfN, reporting to both TfN and DfT.
- 4.4. The Agreement sets out a range of 'TfN Matters' on which TfN partners benefit from enhanced consultation. For example, it was through the Rail North Partnership that TfN and its partners had an extended period of consultation for the proposed ticket office closure plans: it also allowed TfN to consider the proposals in the round, rather than through just the remit set by Transport Focus.
- 4.5. The Agreement also enables TfN and its partners to put forward proposals to the Secretary of State to enhance existing devolution arrangements and propose additional responsibilities regarding the management of the franchises/contracts where this improves the efficiency and effectiveness of delivery to the benefit of the user.
- 4.6. TfN's co-management role through the Rail North Partnership Agreement is a contractual agreement between TfN and the Secretary of State. As the Secretary of State will no longer be a franchising authority and the IRB assumes this role, it is an essential requirement of TfN that it receives assurance that existing arrangements will be novated to provide a continued role for devolved input through TfN and its constituent authorities.
- 4.7. Furthermore, TfN's constitution also ensures that TfN has the right to be consulted over the grant of a rail franchise agreement for passenger services within, to and from the TfN area and the right to enter into arrangements with the Secretary of State relating to the management of rail franchise agreements. It is TfN's clear expectation that this right continues under the IRB's proposed role in arranging rail service contracts in the North.



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### **5. Avoiding Unintended Consequences through Ticketing Amendments**

- 5.1. The majority of existing work on fares, ticketing and retail undertaken by Great British Railways Transition Team (GBRTT) has no requirement for primary legislation.
- 5.2. However, the Bill reforms elements (section 134 on advanced ticketing schemes through to section 137) of the Transport Act 2000 on the creation of Advanced Ticketing Schemes. The Bill adds wording to the effect that the new IRB is the body through which local authorities need to engage with, should those schemes entitle the holder to travel on rail services.
- 5.3. These powers referred to in the Bill are also powers that TfN can exercise concurrently with Local Authorities under the Regulations agreed by Parliament. While to date TfN has never exercised those powers, it is important the Bill does not create muddled lines of accountability for such ticketing schemes. Where TfN establishes such a scheme, there should be no requirement for local authorities to also have to engage with the IRB. If not addressed this would inadvertently create a loop whereby individual bodies are required to consult with one another.

### **6. Advancing Devolution**

- 6.1. The current arrangements in the North already represent a significant devolution of powers. They allow the North to have a strong role in the specification and delivery of rail services, as well as requiring the Secretary of State to have due regard to TfN's statutory advice. They have also allowed – through the establishment of Regional Business Units in the North-East and North-West – an enhanced role in local rail services.
- 6.2. TfN will want to use the existing devolution arrangements in the North to further strengthen the role of its partners, consistent with the aim of national rail reform for an enhanced role for local partners. It is therefore essential that the Bill, and subsequent operating model, explicitly reflects the 'double devolution' that is already in existence in the North.
- 6.3. In addition, as part of the commitment to build on existing devolution for rail, there are two specific points that examination of the draft Bill must consider:
  - a) The need to ensure that the IRB operating licence has an explicit requirement placed on the IRB to formally seek, and respond to advice from a statutory Sub-national Transport Body (such a requirement would be consistent with the Transport Select Committee's recommendation in respect of the operating licence for National Highways)
  - b) Similarly, the Office of Rail and Road (ORR) should be required to formally seek, and respond to, advice from a statutory Sub-national Transport Body when discharging its duties in relation to the rail system.

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- 6.4. Whilst these points are made specifically in the context of the arrangements that exist in the North, it should be noted that a number of the other Sub-national Transport Bodies are actively working on proposals to secure statutory status. Accordingly, the proposed changes are relevant more widely to the operation of the rail system in England.

### **7. Summary**

- 7.1. While the transition from the railway's current institutional architecture to an integrated rail body is a welcome and positive step forward, it is important that it respects existing statutory duties and contractual arrangements.
- 7.2. Devolution arrangements in the North are set out in the appropriate regulations adopted by Parliament. TfN's role is vital to ensuring that GBR is set up to deliver the outcomes it seeks to achieve in the North, namely greater accountability, greater coordinated growth, more reliable services and greater efficiency.
- 7.3. The Transport Select Committee is asked to ensure that through its pre-legislative scrutiny TfN's existing roles and responsibilities are respected and maintained.
- 7.4. Detailed responses to the questions set by the Transport Select Committee that relevant to TfN are set out in the following pages.

## **Submission of Transport for the North**

### **1. The Integrated Rail Body**

**If enacted, would the draft Bill provide the necessary legislative foundations for an integrated rail body with franchising powers (Great British Railways), as envisioned in the Plan for Rail?**

- 1.1. Yes, the Bill would provide sufficient foundations for this.
- 1.2. However, the plan to designate Network Rail as the integrated rail body to create Great British Railways raises questions as to whether the culture of the organisation appropriate for a customer focused organisation.
- 1.3. While the rationale for this approach is understood, it is vital that there is a significant and sustained emphasis on transforming Network Rail behaviours from an engineering-led culture to a customer-led culture. This is essential to ensure the rail network is used to its fullest potential. It is therefore essential that the new IRB establishes a culture that is customer-focussed and can act as a guiding mind for the industry.

**Will the integrated rail body (IRB), as proposed in the draft Bill, achieve the Government's aim of a 'guiding mind', providing: (i) better accountability, (ii) more reliable services, (iii) greater efficiency, and (iv) coordinated growth, across both passenger and freight sectors?**

- 1.4. While the Bill will enable the establishment of a more effective structure in which to achieve these objectives, they are not guaranteed outcomes. The IRB's operating model will be the largest determining factor of whether it is successful in meeting these objectives – details around this are (currently) not well established.
- 1.5. The devolved responsibilities that TfN holds serve as a basis for achieving these objectives but the operating model will need to evolve to make the most of the benefits of integration that GBR can provide. To ensure that the future operating model is successful, it must:
  - deliver better outcomes for passengers and freight customers;
  - ensure greater local accountability; and
  - be geared towards growth.
- 1.6. Ultimately, the structure of the industry in the North will need to support delivery of the vision set out in TfN's Strategic Transport Plan (STP) of transformed economic performance, decarbonisation of surface transport and enhanced social inclusion and health. TfN is working with partners across the North to set out its aspirations of what this will look like.
- 1.7. The establishment of an IRB will not necessarily achieve the outcomes envisaged. It is important that the IRB is sufficiently steered towards the right objectives by being held accountable through 'double devolution' at both the pan-regional and city-region level. The existing arrangements in the North could reasonably provide the basis for developing an effective operating model.

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### **Would the provisions of the draft Bill establish an IRB with the independence and accountability to achieve its aims? If not, what amendments would be needed?**

- 1.8. While the IRB will be accountable to the Secretary of State, the Bill should also recognise the role of statutory Sub-National Transport Bodies (STBs) as the locus for pan-regional accountability.
- 1.9. Equipped with local expertise and singular focus on the North, TfN has been a highly effective driver of scrutiny and accountability of rail services and rail investment. This accountability takes place through well-established governance such as TfN's Rail North Committee and its Board and is backed by authoritative modelling, data, and analysis.
- 1.10. The IRB's accountability cannot be assured without a clear role for statutory STBs – such as TfN. An appropriate amendment to the Bill, would be that the IRB is required to formally seek and respond to advice of a statutory Sub-National Transport Bodies as a condition of its network licence.

### **Are the arrangements set out for the granting and amendment of the IRB's licence and the inclusion of specific conditions within that licence appropriate?**

- 1.11. No. The Bill as drafted fails to take account of the role of statutory STBs in the railway's future governance and operating arrangements.
- 1.12. A condition of the IRB's network licence must be that the IRB is required to formally seek and respond to advice from statutory STBs. Such a requirement would be consistent with the Transport Select Committee's recommendation in respect for National Highways.
- 1.13. As more Sub-National Transport Bodies seek statutory status, this is a point which is not just reflective of the desired arrangements for the North but increasingly across the whole of England.
- 1.14. The lack of recognition for Sub-National Transport Bodies aside, the requirement of the network licence to include specific conditions in relation to freight, accessibility, the environment, and social and economic benefit are welcome and consistent with TfN's own strategic objectives.

### **What will be the effect of the requirement on the IRB to prepare an annual report setting out what it has done to increase private sector involvement in the running of railway services?**

- 1.15. Given the scale of investment required to deliver a transformed rail system in the North, there will be a need to secure investment from the private sector. In TfN's view, there should not be an arbitrary preference for the ownership of service provision (whether public or private).
- 1.16. Instead, there should be a focus on ensuring the best value possible in securing the outcomes required from the railway to meet the North's

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ambitions as defined in terms of economic, social, and environmental outcomes.

- 1.17. It is also important to note that this requirement may be considered as reporting obligation, rather than explicit policy direction. It is likely that the operating model adopted by GBR will be a more significant determinant of private sector involvement rather than the proposed annual report.

### **What arrangements should be put in place for scrutiny of the IRB's business plan?**

- 1.18. Reflecting the Office of Rail and Road's (ORR) role today in scrutinising Network Rail plans and activities as part of the periodic review process, the ORR should lead on the scrutiny of the IRB's business plan. The ORR must assess the IRB's activities against its outputs agreed, ensuring that outputs agreed are affordable and deliverable.
- 1.19. In addition, TfN proposes that the Bill should be amended to require the IRB to formally seek and respond to advice from statutory STBs. The IRB should therefore be required to reflect any advice from a STB in its business plan. The ORR, in their capacity of holding the IRB to account, should also ensure that the IRB sufficiently reflects the deliberations of any statutory STB in their business plan.

### **Are there further elements of the Government's aims for the IRB that should be given a statutory footing?**

- 1.20. No comment.

## **2. Other provisions**

### **Are the interests of passengers and freight users sufficiently promoted by the provisions of the draft Bill?**

- 2.1. As mentioned previously, the customer interest in the railway must be advanced in the culture of GBR. The proposed network licence conditions to include specific conditions in relation to freight, accessibility, the environment and social and economic benefit are also useful in this regard.

### **Does the draft Bill make effective provision for the role of the Office of Rail and Road?**

- 2.2. The Bill as drafted misses the need for the Office of Rail and Road (ORR) to have consideration for the role of statutory STBs in the future governance of the railway – this is an important aspect of securing greater accountability.
- 2.3. ORR should be required to formally seek, and respond to, advice from a statutory STB when discharging its duties in relation to the rail system. This includes the duty of ensuring that the IRB sufficiently reflects the deliberations of any statutory STB in their business planning process.

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**What assessment should be made of the draft Bill's provision that the Scottish and Welsh governments may arrange for the IRB to exercise their devolved franchising powers?**

2.4. No comment.

**What will be the effect of the implementation in UK law of the Luxembourg Rail Protocol? Is the range of powers granted to the Secretary of State in clause 15 necessary to achieve the aims of the Protocol?**

2.5. No comment.

### **3. General**

**Are the delegated powers envisaged by the draft Bill necessary and sufficient to meet its aims?**

- 3.1. The delegated powers under Part A, Delegated Power 4 to make consequential amendments are essential to avoid unintended consequences of the Bill.
- 3.2. It is important that delegated powers are sufficiently strong to ensure a smooth transition to the IRB functioning as a guiding mind. One such example is that the Bill reforms elements (section 134 on advanced ticketing schemes through to section 137) of the Transport Act 2000 on the creation of Advanced Ticketing Schemes. The Bill adds wording to the effect that the new IRB is the body through which local authorities need to engage with, should those schemes entitle the holder to travel on rail services.
- 3.3. These powers referred to in the Bill are also powers that TfN can exercise concurrently with Local Authorities under the 2018 Regulations agreed by Parliament. While to date TfN has never exercised those powers, it is important that the Bill does not create muddled lines of accountability for such ticketing schemes.
- 3.4. Where TfN (working with its partners) establishes such a scheme, there should be no requirement for local authorities to also have to engage with the IRB. If this is not addressed in the draft Bill, it would inadvertently create a loop whereby individual bodies are required to consult with one another.
- 3.5. Delegated powers under Part C are essential for the smooth handover of any rail contract let under the Secretary of State to the IRB. These powers are essential for ensuring that there are continued devolved arrangements in the North.
- 3.6. TfN is keen to work with GBR and the Department for Transport in overseeing the transition from the current Rail North Partnership Agreement with the DfT to a new partnership with GBR.

**What lessons should be learned from previous legislative changes to the institutional architecture of the rail sector?**

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3.7. No comment.

**Are there further provisions within the draft Bill that the Committee should focus its scrutiny on?**

3.8. No comment.

**March 2024**

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