

# Transport for the North Audit and Governance Committee – Item 7

**Subject:** How Franchise Assets are managed by the RNP

**Author:** Dathan Tedesco

**Sponsor:** Gary Bogan

**Meeting Date:** 22 November 2019

## **1. Purpose of the Report:**

- 1.1 At the Audit and Governance Committee meeting on 10 July, members requested that a report be brought to a future Committee, setting out how “Primary Franchise Assets” are managed by the Rail North Partnership (RNP).
- 1.2 The Committee is asked to note the contents of this report.

## **2. Consideration:**

- 2.1 The Secretary of State (SoS) (or RNP in the case of the Northern and TransPennine Express franchise) can reasonably designate any franchise assets (a defined term meaning any and all assets connected with running passenger rail services under the auspices of the train operating company/franchisee) to be a Primary Franchise Asset (PFA).
- 2.2 PFAs are assets which are considered to be essential, or at least of particular value, to the operation of rail passenger services. They are generally designated to ensure that the incumbent operator does not take the assets away with them at the end of a franchise, endangering the delivery of essential services, or impeding these, or otherwise causing the SoS/RNP additional and unwarranted costs in replacing them. Instead, they remain in situ, available for continued use subject to any other considerations e.g. from contract counterparties. The franchise contains a mechanism for their transfer from an operator to its successor at franchise end.
- 2.3 Once designation has taken place, the assets form part of the franchise agreement and falls under its management, including regular compliance checks, in accordance with the provisions of any contract and DfT best practice.
- 2.4 Franchise contract management for TPE and Northern is undertaken by the RNP, according to DfT practices but in partnership with TfN according

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to the provisions of the Rail North Partnership Agreement. Through this, TfN has a mechanism for direct engagement in the franchise management piece for Northern and TransPennine Express, the two northern operators.

- 2.5 PFAs will ideally be transferred at nil cost (either because they were provided as a free good or their asset value is fully depreciated) so as not to incur costs for SoS/RNP or successor operator, but it might be that the operator which installed/paid for them can argue that they incurred costs and or have a residual value for which they should be compensated. This is known as the agreed transfer value in franchise parlance.
- 2.6 RNP can agree/negotiate PFAs with the incumbent franchisee (incorporating e.g. a depreciation profile), which is preferable to unilateral designation as the latter can invoke a disputes procedure. Therefore, it is important to see the process of PFA designation not as an instruction from the SoS/RNP but as a commercial negotiation between it and the operator/franchisee.
- 2.7 There are certain exclusions which apply – things which cannot be designated PFAs. These include employment contracts, certain other agreements (such as the Ticketing and Settlement Agreement) and rolling stock leases. In addition, wider laws and regulations, such the duty not to “over-compensate” an operator, or State Aid controls, may in exception introduce complications.
- 2.8 In all cases of PFA designation, the RNP Management Team consults DfT contract management best practice and takes (and observes) legal advice from DfT Passenger Services.

### **3. Conclusion:**

- 3.1 The Side Letter Agreement in relation to ITSO on Rail between TfN and TPE/Northern requires the Franchisee’s to ensure that specified assets are designated as PFA’s and Key Contracts as appropriate in their respective Franchise Agreements. RNP will confirm with TfN that these specified items are all included in consequential amendments to Franchise Agreements; this will safeguard the assets and ensure that they are maintained, protected, preserved and available for use throughout the life of current Franchises, and available to be transferred at the end of the Franchise Period to successor operators.

## List of Background Documents:

Paper from 10 July meeting:  
Item 7 - Integrated Smart Travel – Phase 1 Asset Monitoring

## Required Considerations:

### Equalities:

Age	Yes	No
Disability	Yes	No
Gender Reassignment	Yes	No
Pregnancy and Maternity	Yes	No
Race	Yes	No
Religion or Belief	Yes	No
Sex	Yes	No
Sexual Orientation	Yes	No

Consideration	Comment	Responsible Officer	Director
	There are no equality considerations as a result of this report.	Dathan Tedesco	Gary Bogan

### Environment and Sustainability

Yes	No
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Consideration	Comment	Responsible Officer	Director
	There are no new environmental considerations as a result of this report.	Dathan Tedesco	Gary Bogan

### Legal

Yes	No
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Consideration	Comment	Responsible Officer	Director
	The legal considerations are included in the report. There are no new legal implications as a result of this report.	Deborah Dimock	Julie Openshaw

### Finance

Yes	No
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Consideration	Comment	Responsible Officer	Director
	The financial implications are included in the report. There are no new financial implications as a result of this report.	Gareth Sutton	Iain Craven

### Resource

Yes	No
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Consideration	Comment	Responsible Officer	Director
	There are no new resource implications as a result of this report.	Simon Hipwell	Dawn Madin

### Risk

Yes	No
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Consideration	Comment	Responsible Officer	Director
	There are no new risks as a result of this report.	Haddy Njie	Iain Craven

### Consultation

Yes	No
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Consideration	Comment	Responsible Officer	Director
	This report does not propose a new policy or strategy and no new consultation is required.	Deborah Dimock	Julie Openshaw