

## Application to the Office of Rail Regulation for a passenger track access contract under section 17 of the Railways Act 1993

### 1. Introduction

This form should be used to apply to the Office of Rail Regulation (ORR) for directions under section 17 of the Railways Act 1993 for a new track access contract. Section 17 is the means by which those seeking the right to use a railway facility (including Network Rail's network) apply for compulsory third party access if they have failed (for whatever reason) to reach agreement with the facility owner.

Where an applicant wishes to submit an application direct to ORR and have ORR conduct the industry consultation on its application, this form should be completed fully before submission to ORR. Alternatively, where an applicant wishes either to request Network Rail (for applications where it is the facility owner) to conduct a pre-application consultation or to conduct a pre-application consultation itself, this form should be completed up to section 7.4 before carrying out a pre-application consultation. The remainder should be completed after the consultation, before applying to ORR for directions under section 17.

The form sets out our standard information requirements for considering such applications. It cross-refers throughout to our criteria and procedures (C&Ps)<sup>1</sup> and, where appropriate, to the Industry code of practice for track access application consultations (the Code of Practice)<sup>1</sup>. The C&Ps explain the process and timing for our consideration of access applications and discuss the issues we will need to consider. Applicants should use the published model passenger track access contract as their starting point when drafting the contract they would like<sup>2</sup>. Applicants are strongly encouraged to read the C&Ps and the Code of Practice before making an application.

It is very important that the application is made in good time and prospective applicants are strongly advised to read (and if necessary take advice on) the procedures which are laid out in the Railways Act 1993 and the C&Ps in this respect. We will be happy to discuss prospective applications.

A copy of this form, and of ORR's model track access contract, can be accessed electronically and downloaded via the ORR website ([www.rail-reg.gov.uk](http://www.rail-reg.gov.uk)).

### 2. The application

#### 2.1 Title of proposed contract:

Track Access Contract between Grand Northern Railway Co. Ltd. and Network Rail

#### 2.2 Contact details (Company and named individual for queries):

Company: Grand Northern Railway Company Limited  
Contact individual: Ian Yeowart  
Job title: Managing Director  
Address: River House  
17 Museum Street  
YORK YO1 7DJ  
Telephone number: 01904 461375  
Fax number: 01904 466066  
E-mail address: [iy@grandunionrail.co.uk](mailto:iy@grandunionrail.co.uk) [iy@grandcentralrail.com](mailto:iy@grandcentralrail.com)

<sup>1</sup> *Criteria and procedures for the approval of passenger track access contracts: fourth edition*, Office of Rail Regulation, May 2006, and *Industry code of practice for track access application consultations*, both available at <http://www.rail-reg.gov.uk/server/show/nav.202>.

<sup>2</sup> This is available at <http://www.rail-reg.gov.uk/server/show/nav.202>.

**2.3 Licence and Railway Safety Case/Certificate:** please state whether the applicant intends to operate the services itself or have them operated on its behalf

Please state whether the proposed operator of the services (a) holds a valid train operating licence under section 8 of the Railways Act 1993 or an exemption under section 7, and (b) has an accepted Railway Safety case under the Railways (Safety Case) Regulations 2000 **or** a Safety Certificate under the Railways and Other Guided Transport Systems (Safety) Regulations 2006. If the answer to (a) or (b) is no, please state the point which the proposed operator has reached in obtaining a licence or exemption and Railway Safety Case/Certificate (as the case may be)

The services will either be operated directly - for which a valid Train Operator License will be sought and for which a Railway Safety Case is being finalised – or services will be operated by Grand Central, holder of a valid Train Operating License and Safety Certificate.

### 3. The proposed contract

**3.1 Executive summary:** please provide an executive summary of the proposed contract. This should cover the services, the commercial terms, and the applicant's reasons for seeking the contract in the terms proposed. The summary in this section should also explain (here or by cross-reference to the answers in the sections below): **3.21**

- where there is an existing agreement in respect of the services in question, any differences between the existing agreement and the proposed contract (e.g. calling patterns, frequency, routes, rolling-stock, commercial terms etc); **3.74**
- any aspects in which the proposed contract contains bespoke provisions departing from the published model track access contract and the charging, performance and restrictions of use regimes established through ORR's periodic review (or subsequent interim reviews) of access charges; and **2.50-2.56**  
**6.2-6.3**
- any material safety risks that have been identified arising from the proposed contract and the arrangements for their control and mitigation (by reference to the provisions of the operator's Railway Safety Case/Certificate and, so far as is possible, the Railway Safety Case/Certificate of the facility owner) **4.9-4.11**

This will be a new contract. Grand Northern is proposing to operate 6 daily return services on the route on weekdays and 4 daily return services at weekends.

The following stopping pattern is proposed:

- Bradford Interchange
- Halifax
- Brighouse
- Wakefield Kirkgate
- Pontefract (Tanshelf or Monkhill)
- Doncaster
- London Kings Cross

Grand Northern propose to operate the services using Class 180 DMU in 5 car formation.

Some of the stations on the route are not long enough to accommodate 5 cars and a method statement for operating long trains at short platforms has been prepared and will be part of the

safe working arrangements.

The proposed contract is in line with the ORR's template Track Access Contract and is expected to contain a small number of bespoke provisions in line with the Grand Central Track Access Contract. For example this is to address areas of no historical performance data and the creation of a performance regime.

**3.2 Terms not agreed with the facility owner:** please set out here those specific areas of the proposed contract which the applicant has **not** been able to agree with the facility owner, the reasons for the failure to agree and the reasons for seeking these provisions **2.24 3.72-3.74**

Grand Northern and Network Rail Have not discussed the proposed contract, but it is prepared in line with the agreed contract between Grand Central and Network Rail for Grand Central's Sunderland services.

Schedule 2 & Schedule 5

Network Rail have not yet completed the development of the 2008 timetable. Grand Northern (through Grand Union and Grand Central) has been working with Network Rail on development of this timetable for over 18 months, and paths are emerging in line with Grand Central's view on capacity which was presented to the ORR in support of the initial application for these paths made in a Section 17 application on 24 February 2005.

**3.3 Departure from ORR's model passenger track access contract:** please set out here, with reasons, any areas where the drafting of the proposed contract omits, amends or adds to ORR's published template passenger track access contract (as appropriate, cross-referencing to the answers below). Wherever the proposed contract contains a new process (e.g. a self-modification provision) ORR will wish to see a flowchart illustrating that the process is robust, internally consistent and leaves no loose ends **2.50-2.56 6.2-6.3**

The contract will remove drafting that solely relates to franchised passenger operators. In Schedule 5 there will be a bespoke provision in the event of the introduction of a standard pattern timetable on the ECML.

**3.4 Duration of contract:** please state the commencement date sought for the proposed contract, and provide justification for the proposed duration (in particular, giving reference to ORR's policy on long-term access contracts<sup>3</sup> where contracts would be for longer than five years) **4.74-4.79**

Grand Northern will be seeking a contract of 10 year duration from 14 December 2008 to underpin the development of the service in the early years and the investment and commitment in rolling stock.

<sup>3</sup> *Long-term access contracts: final conclusions*, Office of Rail Regulation, June 2005 available at <http://www.rail-reg.gov.uk/upload/pdf/240.pdf>

#### 4. The expression of access rights and the consumption of capacity

**4.1 Benefits:** please set out what specific benefits will result from the proposed contract. In particular, **4.30-4.36** please describe any new rights sought or significant changes in the pattern of services, their benefits to passengers and their impact on existing operators

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These services will operate under the provisions for open access and will not receive subsidy to underpin the financial viability of the operation.

These services will serve large communities that are currently remote from direct rail links to the Capital, as the current one a day service is routed via Leeds. Road links between towns and cities in the Calder Valley, Wakefield and Leeds are severely constrained by the volume of traffic that uses the motorways and major road networks, resulting in long planned journey times for distances that appear reasonably short when looking at a map.

Bradford Interchange is the main station in the City, which has a population of over 480,000. The creation of regular direct services to London offering journeys via Halifax as opposed to Leeds will enable the City to emerge from Leeds shadow and regain its individual identity. Improved links will also be provided between the City, Halifax, Wakefield and Doncaster. West Yorkshire Passenger Transport Executive (WYPTe) also has developing plans for re-generation of the station at Bradford Interchange which would see canopy and platform improvements as well as upgrading of the ticket office and travel centre. The station is currently undergoing re-modelling work on the approaches, with a re-signalling scheme due later in 2008.

Halifax, like Bradford, has long been overlooked, and the lack of good, quality rail links has a detrimental effect on local business. Serving as a connectional point for stations further down the Calder Valley such as Sowerby Bridge and Hebden Bridge, the improving journey opportunities will benefit populations further afield than just the immediate catchment.

Brighouse, built around 8 years ago, has the capacity to become a suitable 'parkway' station for many travellers. Whilst it currently has a rail service it does not fully exploit its potential, seeing patronage fall as a result. Being adjacent to Junction 25 of the M62, and only 3 miles from Huddersfield, the opportunity to route traffic away from the motorway is too great to overlook.

Wakefield Kirkgate is in need of improvement, and WYPTe is at an advanced stage with plans for station redevelopment. The introduction of direct services to London will be a major benefit to that scheme.

The '5 towns', of Pontefract, Featherstone, Castleford, Normanton and Knottingley, have a population of 120,000, and services routed via Pontefract offer not only direct journeys to the Capital, but also much improved connectivity between the area and West and South Yorkshire. With the close proximity of the M62 and A1(M) motorways, Pontefract will be easily accessible from a wider catchment area than the immediate vicinity.

Doncaster, with its redeveloped Interchange provides a pivotal point for passengers in South Yorkshire, and these proposed services will provide new direct journey opportunities and price competition on London services.

Grand Central's initial submission to the ORR for this service group was made on 24 February 2005 alongside the application to operate services between Sunderland and Kings Cross. This service group was fully evaluated by the ORR but uncertainty on available capacity meant ORR would only approve some of the applications at that time. ORR stated in the Decision Document Section 7 item 7.10

*'The factors that have influenced the decision not to grant rights to Grand Central for services to Bradford include: limited capacity for additional new services – the performance risks of splitting and joining at Doncaster – lower net economic benefits than the services to Sunderland and Leeds'*

Capacity has now been found for the additional services requested in 2005 for GNER's Leeds aspirations, Hull Trains (plus further path) and Grand Central's 4<sup>th</sup> Sunderland path. Only Grand Central's Bradford paths had not been offered but capacity is available. Grand Northern's proposed Bradford services would not split and join at Doncaster, and the economic benefits of the service were the same as for Hull Trains services (as evaluated by ARUP for ORR).

The recent RUS development for the ECML is now close to acceptance, and Grand Central/Union/Northern has played an active part and accepts that any new services will be subject to operating within a 'standard pattern' timetable when developed.

**4.2 Congested infrastructure:** please state whether the part(s) of the network to which this application relates have been declared congested by the facility owner, under regulations 23-25 of the Railways Infrastructure (Access and Management) Regulations 2005<sup>4</sup> **4.84-4.85**

The infrastructure is not declared congested.

**4.3 Adequacy:** please set out to what extent and by what process (if any) the applicant has satisfied itself that there is sufficient network capacity for the services in the proposed contract, and the implications for overall network performance and the facility owner's maintenance and renewal activities **4.17-4.38**

In 2005 Grand Central along with its consultants Vossloh (now Funkwerk) offered evidence to support the availability of additional capacity on the ECML in contradiction to Network Rail's view. Since that time Network Rail has 'sold' 6 weekday paths to Grand Central, 10 paths to GNER (now NatEx) and 4 paths to Hull Trains. In addition 2 other paths have been validated for Grand Central (subject to a Section 22a submission), 2 more have been identified, and up to 10 paths are under development for Bradford.

With the RUS now close to acceptance, the probable creation of the 'standard hour' timetable and the move towards a '7 day railway' are all designed to improve availability for services, and accessibility for maintenance and renewals.

**4.4 Flexing rights:** please provide a general description of the extent of the facility owner's flexing rights in the proposed contract, the rationale for the extent of flex provided, including changes from that in any existing agreement in respect of the services in question, and the extent to which the provisions have been agreed with the facility owner **2.44-2.49 4.51**

Grand Northern would be seeking rights similar to those contained within the Grand Central Track Access Contract. With a service roughly every 3-4 hours Grand Northern is prepared to flex as far as is practicable to achieve its outcome of a quantum of 12 weekday services, 8 at weekends.

**4.5 Protected rights and obligations:** please describe the extent to which the proposed contract contains any protected rights and/or protected obligations (i.e. protection from subsequent amendment of the Network Code under Condition C8), and explain the justification for the form and extent of protection sought by reference to ORR's criteria **4.69-4.70**

No protected rights are included.

<sup>4</sup> These regulations are available at <http://www.opsi.gov.uk/si/si2005/20053049.htm>

**4.6 Journey time protection:** please describe the extent to which the proposed contract affords journey time protection to any services (by establishing maximum journey times, fastest key journey times or maximum key journey times), and explain the justification for the form and extent of protection sought by reference to ORR's criteria **4.52-4.66**

Grand Northern would be seeking terms that ensure Maximum Journey Times on services do not exceed 200 minutes (230 minutes on Sundays).

This protection is sought to ensure Grand Northern can remain competitive on journey times.

**4.7 Other limitations on flexibility:** please describe the extent to which the proposed contract contains any other restrictive obligations on the facility owner (e.g. regular service intervals, clockface departures etc), and explain the justification for any such provisions by reference to ORR's criteria **4.39-4.48**

No other limitations on flexibility are sought.

**4.8 Specified equipment:** where the proposed contract contains changes to specified equipment (rolling stock), please give full details, including timescales, and the extent to which the vehicle and route acceptance procedure in the Network Code (Part F) has been completed **4.49-4.50**

The equipment to be used is Class 180 DMU in 5 car formation.

**4.9 Moderation of competition:** where applicable, please describe the extent to which the proposed contract seeks contractual protection from the introduction of competing services on specific flows, and explain the justification for such protection by reference to ORR's policy on moderation of competition **4.71-4.73**

Grand Northern does not seek protection from competition.

**4.10 Franchise obligations:** please explain the extent to which the services in the proposed contract are necessary to fulfil obligations under a franchise or concession agreement **4.3-4.4**

There are no franchise obligations.

**4.11 Public funding:** please state whether (and if so to what extent) the services in the proposed contract are subject to financial support from central or local government (other than the Department for Transport or Transport Scotland), including Passenger Transport Executives, and provide a point of contact at that body **3.32 4.23 4.35-4.38**

There is no public funding for the proposed service.

**4.12 Passenger Focus:** please state whether (and if so to what extent) the services in the proposed contract have been discussed with Passenger Focus, and provide copies of any relevant correspondence **3.32 4.48**

From 2005 discussions and presentations took place with the Rail Passenger Committee for the North East who supported the service proposals for both Bradford and Sunderland. In responding to the ORR 'minded' decision on Grand Central's previous application, Passenger Focus stated:

*'Passenger Focus' ideal outcome would be for both GNER and Grand Central applications to be granted. We welcome the statement by ORR that it looks to the ECML RUS to provide the flexibility needed to enable this...'*

GNER's services are now fully operational as part of the new ECML franchise, and the RUS work is complete.

**4.13 Route utilisation strategies (RUSs):** if applicable, please also state which RUSs (including the Freight RUS) are considered relevant to this application and whether the proposed rights are consistent with that RUS. If the proposed rights are not consistent, please state the reasons for this. **2.29 4.5-4.8**

This application is relevant and consistent with the output of the ECML RUS and the 'work in progress' on the Yorkshire and Humber RUS

## 5. Incentives

**5.1 Charges and performance:** please set out, and explain the reasons for, any instances where the proposed contract departs from the charging and/or performance regimes established by ORR's periodic review (or subsequent interim reviews) as reflected in ORR's model passenger track access contract, including the financial implications (e.g. establishment of an access charge supplement or rebate) **5.1-5.43**

No departures to the contract, except those areas which are not applicable to Open Access operators, are expected.

The final shape of the performance regime will be in line with the output from the Grand Central Track Access Contract subject to creation of suitable performance data.

**5.2 Train operator performance:** please describe any planned initiatives associated with the operation of the services in the proposed contract aimed at improving the applicant train operator's own performance **4.30**  
**5.1**

Due to the length of time in a determination on the initial Grand Central application in 2005, Grand Central had to completely re-build and re-engineer a small fleet of HSTs in order to commence the operation of Sunderland services, and has suffered with initial problems of reliability which are being rigorously addressed by the management team. The use of Class 180s, was also considered but there was no guarantee of their coming off lease. Class 222 discussions were quite advanced but the stock went into the MML franchise, and Network Rail has still not completed the work on Class 67 for 125mph operation on the ECML.

For Bradford Class 180 DMU will be used, recently released from the Great Western Main Line. Whilst these trains currently have a reputation for unreliability, the return of each unit will see it undergo a thorough examination and mechanical overhaul by Alstom which will include a series of reliability modifications. More detail on that work will be provided later to ORR.

**5.3 Facility owner performance:** please describe any planned initiatives associated with the operation of the services in the proposed amendment aimed at improving the facility owner's own performance. **4.30**  
**5.1**

Remodelling and re-signalling are underway or planned for the approaches to Bradford Interchange, and Network Rail continue to highlight and address issues of cable theft which have a marked effect on performance.

**5.4 Restrictions of use:** please describe and explain the reasons for any instances where the proposed contract departs from the restrictions of use (possessions) compensation regime established by ORR's periodic review of access charges and his subsequent interim review of the possessions incentives regime **5.44-5.51**

The contract will not contain a Schedule 4 in line with Grand Central's contract.

## 6. Enhancement

**6.1 Enhancement details:** where the proposed contract provides for the delivery of any network enhancements, or the services in the proposed contract are predicated on any planned network enhancements, please give full details of the relevant enhancement schemes, including a summary of outputs from the scheme, timescales and the extent to which the network change procedure in the Network Code (Part G) has been completed (where appropriate, by reference to submissions made under ORR's enhancement reporting framework) **4.82-4.83**

No network enhancements are proposed in the contract.

**6.2 Enhancement charges:** please confirm that the arrangements for the funding of any network enhancements are consistent with ORR's Policy Framework for Investments<sup>5</sup>, and summarise the level and duration of payments, and the assumed rate of return (see chapter 3 of the Conclusions document)

5.7  
5.12-5.14

No network enhancements are proposed in the contract.

## 7. Other

**7.1 Associated applications to ORR:** please state whether this application is being made in parallel with, or relates to, any other current or proposed applications to ORR (e.g. in respect of track, station or light maintenance depot access contracts or agreements)

3.17

Applications for access to stations and maintenance depots have still to be concluded.

**7.2 Supporting information:** please state here any further justification or relevant information in support of the application, including a list and explanation of any other material being submitted (and supply copies with the application)

3.30

A copy of the proposed contract and updated supporting financial information will be forwarded under separate cover.

**7.3 Side letters and collateral agreements:** please confirm here that the whole of the proposed contract between the parties has been submitted with this application and that there are no side letters or other documents which purport to qualify or otherwise affect the proposed access contract

6.12-6.16  
6.21

The whole of the proposed contract, excluding finalised timetables will be submitted.

**7.4 Confidentiality exclusions:** where applicable, please explain clearly what elements of the application have been excluded, on the grounds of confidentiality, from the version of the proposed amendment sent to consultees for the pre-application consultation process (if undertaken). Alternatively, where an application has not been subject to pre-application consultation, the applicant should state what elements of the application and proposed amendment they would wish ORR to exclude from publication.

3.23-3.27

In excluding, or seeking the exclusion of, any information, the applicant should have regard to the grounds of confidentiality specified in section 71(2) of the Railways Act 1993, and provide a full justification for each instance by reference to those statutory grounds. Further guidance is provided in the Code of Practice. Subject to its decision on such exclusions, it is ORR's intention to publish this application and the proposed contract on the ORR website. (NB under the process established by Schedule 4 of the Railways Act 1993, ORR is obliged to send a copy of the application **in full** to the facility owner)

*Code of Practice:*  
20-23

No exclusions of this application are sought. Additional supporting financial information is restricted and commercially confidential.

<sup>5</sup> *Policy Framework for Investments: Conclusions*, Office of Rail Regulation, October 2005, available at <http://www.rail-reg.gov.uk/upload/pdf/255.pdf>

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**Note: Where a pre-application consultation is to be undertaken in line with the Code of Practice, the remainder of this application should not be completed until after that consultation has been completed**

## 8. Pre-application consultation

**8.1:** Has a pre-application consultation been carried out in line with the Code of Practice? If yes, please:

- state whether Network Rail or you (the applicant) conducted the consultation;
- list all train operators, franchising authorities and other parties that were consulted, stating which parties, if any, made representations (other than nil returns) and attach their responses and any associated documentation to this form; and
- state the period allowed for the consultation and, if this was less than 28 days, please explain the reasons for this.

**Code of Practice:  
17-18,  
34-39**

If a pre-application consultation has not been carried out, please explain what informal discussions have been held with those third parties who might be affected by this application and the nature of any concerns raised.

No pre-application consultation has or will be undertaken. The operation of this service was fully considered and consulted upon by ORR over a 56 week period in 2005/6 which included an industry hearing.

**8.2 Resolved issues:** please detail any issues raised in response to the consultation that have been resolved to the satisfaction of the consultee. You may wish to refer to responses attached to this form.

**Code of Practice:  
43-44**

**8.3 Unresolved issues:** please detail any issues raised in response to the consultation that have not been resolved to the satisfaction of the consultee, including any correspondence with that consultee. You may wish to refer to responses attached to this form. Please explain why you do not think these issues should preclude ORR's approval of the application.

**Code of Practice:  
45**

**8.4:** Please explain any aspects of the application that have changed as a result of the consultation and why they have changed.

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**8.5:** Please list here any further information being provided to ORR to support the application that was not made available to consultees in any pre-application consultation held as part of this application and listed in section 7.2. If the applicants wish ORR to consider excluding this information from subsequent publication they should justify why the information is of a confidential nature, following the guidance provided in section 7.4 above.

### 9. Certification

*Warning: Under section 146 of the Railways Act 1993, any person who, in giving any information or making any application under or for the purposes of any provision of the Railways Act 1993 (including section 17), makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, is guilty of an offence and so liable to criminal prosecution* **3.31**

I certify that the information provided in this form is true and complete to the best of my knowledge

Signed ..... Date 18 April 2008.....

Name (in caps) IAN YEOWART..... Job title MANAGING DIRECTOR..

For (company) GRAND NORTHERN RAILWAY COMPANY.....

## 10. Submission

### 10.1 What to send:

Please supply, in hard copy, the signed top copy of this application form, one copy of the proposed draft contract, with copies of any documents incorporated by reference (other than established standard industry codes or other instruments) and any other attachments, supporting documents or information.

3.30

Please also supply the application, the proposed contract and, insofar as it is possible, any other supporting information, in electronic form, by e-mail or on disc, **in plain Microsoft Word format** (i.e. excluding any macros, auto-para or page numbering, or other auto-formatting).

3.28-3.29

### 10.2 Where to send it:

Manager, Track Access Team  
Directorate of Access, Planning and Performance  
Office of Rail Regulation  
One Kemble Street  
London  
WC2B 4AN

ORR Form Passenger S17 January 2008