

Transport for the North Board

Subject: Governance Report

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Meeting Date: Wednesday 24 March 2021

1. Purpose of the Report:

- 1.1 The purpose of this report is for Members to consider the following matters:
- a) Renewal of the appointments of the Independent Members of Audit and Governance Committee;
 - b) A review of the General Purposes Committee, and
 - c) A review of the current position in relation to Virtual Meetings.

2. Executive Summary:

- 2.1 The initial 3-year term of appointment of the three Independent Members of the Audit and Governance Committee is about to end and it is recommended that this be renewed with a further recommendation that the number of Independent Members be increased to four to enable existing members to be replaced more gradually so that existing expertise is retained until new members have gained experience of Transport for the North.
- 2.2 On 7 January Cllr Gittins requested that a review of the General Purposes Committee be carried out. Paragraph 3.7 of the 14 January Board report on appointment of the Chief Executive noted that Board may wish to review the GPC's role at a future meeting.
- 2.3 During the Covid 19 pandemic Transport for the North has been able to hold its Board and Committee meetings virtually under emergency provisions. These are due to expire on 7 May 2021 and Transport for the North needs to review how it will conduct its meetings in future.

3.0 Renewal of the Appointment of Independent Members to the Audit and Governance Committee

- 3.1 When Transport for the North adopted its Constitution it agreed to appoint three Independent Members to the Audit and Governance

Committee. These members were recruited by public advertisement and were selected on the basis of their skills and experience.

- 3.2 Initially the appointment was made for three years from 2018 until 31 March 2021 and so the position now needs to be reviewed.
- 3.3 The period since Transport for the North's Inaugural Meeting in 2018 has been a period during which Transport for the North's systems and processes have been developing and embedding and the Audit and Governance Committee has been establishing itself. The Independent Members on the Committee have now gained significant experience in how Transport for the North operates and for Transport for the North to lose these members now would adversely impact the operational efficiency of the Audit and Governance Committee. It is proposed that the appointments of the current Independent Members should be each renewed for a further 3-year period and an open recruitment exercise (similar to that which was undertaken for the existing members) should be undertaken for a fourth Independent Member, also for a 3-year term from appointment, who would sit alongside the current Independent Members to gain experience so that in time the Committee can move away from the current situation of the expiry of the term of all members occurring at the same time.
- 3.4 The current Independent Members have been consulted and are agreeable to their appointments being extended as outlined.
- 3.5 The Constitution will need to be amended to allow for four Independent Members to be appointed to the Audit and Governance Committee.

4.0 Review of the General Purposes Committee

- 4.1 This item has been brought forward at the request of Cllr Louise Gittins who has requested a review of the General Purposes Committee. This Committee was set up within the Constitution as part of the review of the Constitution which was carried out during 2018/19 but no nominations have been made to it, and it has not yet met.
- 4.2 The purpose behind the creation of the General Purposes Committee was expressed as follows in the report considered by Board in June 2019:
"The Constitution provides for the establishment of the Rail North Committee to deal with any issues arising in relation to rail franchise management issues. The issues which have arisen since the May 2018 timetable change have demonstrated the importance of a smaller Committee of elected Members with detailed oversight able to give direction in relation to operational matters. It is therefore proposed that a similar Committee of Constituent Authority Members (the General Purposes Committee) should be established to deal with any issues which may arise in relation to any of the other work

programmes which require more detailed Member oversight and political direction."

- 4.3 The membership of the General Purposes Committee as established in the Constitution mirrors that of the Rail North Committee with the Committee being made up of 10 Members who are TfN Board or Substitute Board Members who each represent a Regional Group within the Transport for the North geographical area.
- 4.4 The voting rights would be the weighted votes based on population and Members representing a Regional Group would be entitled to cast the weighted votes of the other Members in the Regional Group.
- 4.5 The Terms of Reference for the Committee are that *"The General Purposes Committee shall determine any matter which is not reserved to the Transport for the North Board, nor delegated to the Rail North Committee and which is not decided by the Chief Executive under his delegated authority."*
- 4.6 The intention was that the Terms of Reference were drawn wide enough to encompass any decision which might need to be taken other than those which must be taken by the Board such as an amendment of the Budget, the Constitution or the Strategic Transport Plan, or decisions within the remit of the Rail North Committee.
- 4.7 The membership of the Committee was never appointed and subsequently concerns were raised by the Executive Board as to whether appointment on the basis of Regional Groups was an appropriate mechanism for representation on the Committee; calling a meeting of the Committee has been held in abeyance.
- 4.8 As part of the Northern Transport Charter discussions it was identified that there would need to be changes to the governance arrangements of TfN if it were to take on greater responsibility for investment decision making and it was proposed in those circumstances that an Investment Committee would need to be set up to make decisions on schemes as they moved through the various stages of the development process, with key decision points retained at TfN Board.
- 4.9 The current recruitment of a new Chief Executive and the appointment of an ad hoc Appointments Panel has also highlighted the need for Transport for the North to consider whether it needs to establish a smaller decision making body to take decisions on procedural or more routine matters in circumstances where a full Board Meeting may not be the best use of Board Members time but it is not appropriate for a decision to be taken by the Chief Executive. Most Local Authorities will for example have a standing Appointments Committee to advise on the appointment of and employment issues relating to the statutory officers. If virtual meetings are allowed to continue beyond May 2021, (see paragraph 5 below), there is also the option of programming a

shorter virtual TfN Board in the months between the currently scheduled bi-monthly cycle.

- 4.10 The concerns raised by the Executive Board about the suitability of appointment to the General Purposes Committee on the basis of Regional Groups has raised the question of what is the most appropriate way to appoint Members to Committees of TfN which ensures representation of all geographical areas and representation of both urban and rural communities.
- 4.11 In preparation for this report the issue was raised with the Executive Board. The Monitoring Officer has consulted the legal officers of all the Constituent Authorities and the responses received are set out in Appendix 1. The responses received reflected the concern expressed by Executive Board about representation through Regional Groups and relative voting rights.
- 4.12 Since there are clearly differences of opinion across Transport for the North as to the decision-making structures that will be needed by the organisation going forward it is proposed that this matter should be referred to a Members Working Group for discussion and a report be brought back to a future meeting. As part of the consideration, a consultation exercise will be carried out to gain the views of Board Members on the function and membership of future decision-making structures for Transport for the North.

5.0 Virtual Meetings

- 5.1 The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 made provision for remote or virtual attendance at all Transport for the North Board and Committee meetings to be held on or before 7 May 2021.
- 5.2 Since March 2020 TfN has of necessity operated remotely and all Board and Committee Meetings have been held virtually. Like many organisations TfN has experienced many benefits from remote meetings with Members and officers making considerable time and cost savings from not having to travel to meetings. Public attendance at virtual meetings has also increased significantly from very low attendance before lockdown to several hundred members of the public watching the TfN Board meeting live. Across Local Government similar benefits have been experienced and a request has been made to the government for legislation permitting virtual meetings to be made permanent. An application has also been made to the courts for a declaration that remote attendance at meetings is legitimate under existing legislation.

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- 5.3 At the time of writing this report, there has been no new legislation to continue the holding of virtual meetings and the application to the courts has not been heard. This means that unless there is any change to the current legal position TfN is likely to need to make arrangements to revert to personal attendance by Members at all Committee and Board Meetings from the 7th May 2021. However, this may be reviewed if there is any change in the legal position and members will be kept promptly informed.
- 5.4 There may be practical issues for some Members and staff to attend any such meeting in person, including protecting their health and wellbeing, especially for those not vaccinated. We will continue to review this practical position alongside the legal position set out above.

6. Recommendations:

- 6.1 The Board agrees to:
- a) Extend the appointment of the Independent Members of the Audit and Governance Committee for further 3 years;
 - b) To increase the number of Independent Members of the Audit and Governance Committee to 4 and make the appropriate Constitutional amendments;
 - c) To recruit a new Independent Member of the Committee with a 3-year term.
- 6.2 The Board receives the report on the General Purposes Committee and in accordance with Part 4 of the report agrees to the consultation exercise with Board Members on future decision making structures and to set up a Members' Working Group to review the arrangements for the Committee with a view to recommendations being reported to a future Board meeting for approval.
- 6.3 The Board notes the position in relation to virtual Board and Committee meetings and requests that the position be kept under review and a further report be brought to a future meeting should the legal position change.

7. Appendices:

- 7.1 Schedule of Consultation responses

List of Background Documents:

The Constitution

Required Considerations
Equalities:

Age	No
Disability	No
Gender Reassignment	No
Pregnancy and Maternity	No
Race	No
Religion or Belief	No
Marriage and Civil Partnership	No
Sex	No
Sexual Orientation	No

Consideration	Comment	Responsible Officer	Director
Equalities	A full Impact assessment has not been carried out because the report does not propose any new strategy or service provision	Deborah Dimock	Julie Openshaw

Environment and Sustainability

Yes	No
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Consideration	Comment	Responsible Officer	Director
Sustainability / Environment – including considerations regarding Active Travel and Wellbeing	A full impact assessment has not been carried out because the report does not propose any new strategy or service provision	Deborah Dimock	Julie Openshaw

Legal

Yes

Consideration	Comment	Responsible Officer	Director
Legal	There are no new legal implications as a result of this report	Deborah Dimock	Julie Openshaw

Finance

No

Consideration	Comment	Responsible Officer	Director
Finance	TfN Finance Team has confirmed there are no new financial implications.	Paul Kelly	Iain Craven

Resource

No

Consideration	Comment	Responsible Officer	Director
Resource	TfN HR Team has confirmed there are no new resource implications.	Stephen Hipwell	Dawn Madin

Risk

No

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

Consultation

Yes

Consideration	Comment	Responsible Officer	Director
Consultation	No consultation has been carried since no new policies are being proposed.	Deborah Dimock	Julie Openshaw

APPENDIX 1
Schedule of Consultation Responses

<p>NEXUS</p>	<p>Thank you for copying me into your email discussing the General Purposes Committee. I am responding on behalf of the representatives of both the North of Tyne Combined Authority and the North East Combined Authority, and I have copied in colleagues from both CAs to this reply.</p> <p>We continue to be strong supporters of Transport for the North, and we value the opportunity that it provides to bring together political and business leaders from across the North to discuss shared priorities and objectives for connectivity to grow the North’s economy.</p> <p>Our joint view is that over the longer-term, there should be a review of all of the arrangements for decision-making in Transport for the North, in particular the Board and the Partnership Board and how they inter-relate. Whilst we have an open mind as to what any future arrangements should look like, we note that:</p> <ul style="list-style-type: none"> • The current Board structure and consequent approach is somewhat unwieldy, with decision-making shared across a very wide array of members • The relationship between the Board and the Partnership Board is a somewhat unclear; we believe that a clearer separation between the two may be helpful • It may be helpful to further distinguish between matters of high level strategic importance, and more operational or delivery-focused issues <p>Given that such a review is likely to take some time, we would support the establishment of the General Purposes Committee as a stop-gap measure to deal with matters of an operational</p>
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	<p>nature. This is in the expectation that it meets virtually using video-conferencing facilities; if there was a need for this committee to meet physically in-person we would be concerned about the time commitment required (particularly travel time given the geographic location of our area) for our members on top of the existing requirements of TfN Board, Partnership Board and Rail North Committee. We would be willing to accept the principal of one nomination (and one alternate) to cover our two Combined Authority areas, whether by means of a Regional Group or another mechanism.</p> <p>We do not have a strong view in relation to a future Appointments Committee, other than to note that if the General Purposes Committee is established then it might be appropriate for it to carry out this role.</p> <p>I hope that this is helpful, please feel free to contact me if you have any follow-up questions.</p>
Cumbria County Council	<p>We have consulted with the relevant member of the authority and he is comfortable with the idea of regional representation on the General Purposes Committee but would suggest that voting should be by reference to mileage of track (in line with the Rail North Approach) and not population.</p>
Lancashire County Council	<p>Thank you for your email of 21 January about The General Purposes Committee of TfN. You may recall that Lancashire County Council has previously not supported the establishment of the Committee when this was raised last year.</p> <p>Our concern is twofold:</p> <ul style="list-style-type: none"> • The proposal from TfN was for one member to represent Lancashire, Cumbria, Blackpool and Blackburn. This could mean that we

	<p>were under represented when decisions go to the Committee. Given the wide scope of issues that could be considered by the Committee, this is a concern.</p> <ul style="list-style-type: none"> • Our other concern relates to the need for the Committee. We question why the other meetings (eg Board) could not deal with matters. TfN doesn't have a wide range of functions like a local authority, and we would question the need for a 'general' committee, particularly given the membership deficit. <p>Please feel free to contact me if you require clarification.</p>
TFGM	<p>Noting that the General Purposes Committee (GPC) was introduced into the TfN Constitution as part of the review of the Constitution in 2019, I just have a few observations.</p> <p>I note that the Terms of Reference for the GPC, as set out at para 22.1 of the TfN Constitution, are to 'determine any matter which is not reserved to the TfN Board nor delegated to the Rail North Committee and which is not decided by the Chief Executive under this delegated authority'. In the light of this, please could you clarify the following:</p> <ol style="list-style-type: none"> 1. taking into account the three 'decision-making areas' that are reserved to other forums or individuals, are you please able to provide examples of the kind of decisions that might be taken by the GPC? I ask this partly because of the wide-ranging power delegated to the Chief Executive under para 18.8(e) of the Constitution (to take any action required as a matter of urgency in the interests of TfN), and noting that rail franchise matters are to be dealt with by the Rail North Committee; and 2. if (as you mention below) the intent is for the GPC to make urgent decisions outside of

the three-monthly board cycle, please could you highlight in the Constitution where the frequency of GPC meetings is set out (and how the decision to be made by the GPC would be distinct from the wide-ranging power of the Chief Executive (as highlighted above))? If the frequency of the meetings is not specified, is it therefore intended please that meetings of the GPC can be convened as often as considered necessary (provided that the quorum requirements are met)?

In specific response to your question about the mechanism of referring to 'Regional Groups', I note that where there is not a consensus when making a decision, Greater Manchester would have 16% of the weighted vote on GPC voting. This compares to 22% of the weighted vote on matters concerning the Rail North Committee. Can I clarify please why Greater Manchester's weighted vote share is lower, in the case of the GPC?

Finally, are you able to clarify please whether the specific individuals who would act as the member or substitute member of the TfN Board, would be the same individuals in the case of the GPC (para 21.4 of the TfN Constitution seems to confirm this, but I am merely seeking confirmation that my interpretation is correct)?