

# Transport for the North Chief Executive Consultation Call

**Subject:** Governance Report

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**Sponsor:** Julie Openshaw, Head of Legal

**Meeting Date:** Wednesday 9 June 2021

## 1. Purpose of the Report:

- 1.1 For Members to consider arrangements for the appointment of a new Chair of the Transport for the North Board and of the Partnership Board following the resignation of John Cridland.
- 1.2 To advise Members of the Transport for the North Board on legal requirements for the holding of future Board and Committee Meetings
- 1.3 To provide an update to Members on the review of the General Purposes Committee and for Board.

## 2. Executive Summary

- 2.1 Having served TfN for nearly six years from its inception through statutory status to its current position of maturity, John Cridland has now announced his intention to retire from Transport for the North and so Transport for the North needs to make arrangements to replace him both as Chair of the TfN Board and as Chair of the Partnership Board. Transport for the North now needs to consider how it wishes to appoint its new Chair and whether it wishes to continue to have an Independent Chair who combines the position of Chair of the Board and of the Partnership or whether it wishes to appoint either or both of these positions from among the existing members of the Board.
- 2.2 Following the expiry of the special arrangements made to enable Local Authorities to hold meetings virtually during the pandemic Transport for the North now needs to consider how it will conduct its meetings going forward with the return of in person meetings. In particular the Board needs to consider the use of the Chief Executive's Consultation Calls to replace meetings where possible and desirable and amendments to the Constitution to enable Members not physically in the meeting to contribute to debate although not being present for quorum or voting purposes.

- 2.3 At the Transport for the North Board Meeting on the 24<sup>th</sup> March 2021 The Board decided to hold a review of the Terms of Reference of the General Purposes Committee and agreed to set up a Members Working Group to carry out the review and to report back to the Board. This report provides an update on the review.

### **3. Appointment of the Chair of the Board and Partnership Board**

- 3.1 The current Chair, John Cridland has served as the Chair of both the TfN Board and the TfN Partnership Board since the inaugural meeting of TfN in April 2018. Prior to that he was the Independent Chair of the Transport for the North Partnership Board having been appointed to this position in 2015. Having served TfN for nearly six years from its inception through statutory status to its current position of maturity he has now announced his intention to retire from Transport for the North and so Transport for the North needs to make arrangements to replace him both as Chair of the TfN Board and as Chair of the Partnership Board.
- 3.2 Regulation 2 of the Sub-national Transport Body (Transport for the North) Regulations 2018 (the TfN Regulations) provides for TfN to appoint a Chair each year from among the Members and Co-opted Members of the Board. Regulation 4 of the TfN Regulations requires TfN to establish a Partnership Board and provides for the TfN Board to appoint a person to chair the Partnership Board. The Regulations are silent as to whether the person appointed should be a member of TfN or the Partnership Board and therefore a person who is not already a member of the Board may be appointed as the Chair of the Partnership Board. The Regulations provide that whoever is appointed as Chair of the Partnership Board will become a co-opted member of the TfN Board without formal co-option be the Board and so would become eligible to be Chair of the TfN Board. In this case there is not requirement for a unanimous decision of all the voting members of TfN to agree to the co-option as is the case for any other co-option onto the Board.
- 3.3 The Prospectus submitted to Government before TfN was established as a statutory body referred to the Partnership Board being chaired by the person appointed by TfN "as the independent chair". However the requirement for an independent chair was not included in the TfN Regulations and so the Chair could be appointed from among the existing members of the Partnership Board if the Board so chose. It is also open to the Board to appoint someone with no existing connection to TfN.
- 3.4 The Transport for the North Constitution provides for the Chair of the Partnership Board to be an Independent Chair and provides that the person appointed shall not be or have previously within the last 5 years been an elected Member of any Local Authority within the Transport for the North area. If the Board now wish to appoint a Chair of the

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Partnership Board who does not meet this criteria it would need to amend the Constitution to allow for this. An amendment of the Constitution requires a super majority of more than 50% of the voting members who between them hold not less than 75% of the population weighted votes.

- 3.5. At its Inaugural Meeting the TfN Board appointed John Cridland, the existing independent Chair of the Partnership Board, as the Chair of the TfN Board as well as of the Partnership Board. However there is no requirement for both positions to be held by the same person and it would be possible for the positions of the Chair of the Partnership Board and of the TfN Board to be held by different people. The Chair of the Partnership Board if not already a member becomes a co-opted Member of the TfN Board but not its Chair unless separately appointed to that position.
- 3.6. The Chair of the TfN Board must be elected from among the members or co-opted members of the TfN Board.
- 3.7. The position of Chair of the Partnership Board has always been a contractual position for which remuneration is paid. TfN does not pay allowances to Members of the Board or its Committees other than to the Independent Members of the Audit and Governance Committee and if the Chair of the TfN Board were to be elected from among the existing members of the Board it is not anticipated that a Chair's allowance would be paid. The TfN Regulations make no provision for the payment of Members Allowances and the payments to Independent Members have been paid under the general ancillary powers provided by Section 102M of the Local Transport Act 2008.
- 3.8. The Board now needs to decide whether it wants to appoint a new Independent Chair to the TfN Partnership Board or whether it wants to appoint a Chair from among the existing members. If it wants to appoint an independent chair the Board will need to agree a recruitment procedure and the essential requirements for the post such as a local connection to the North and proven experience in transport issues. If the Board decide to appoint the new Chair of the Partnership Board from among the existing elected members on the Partnership Board the Board would first need to pass the necessary resolution to amend the provisions of Appendix 5 of the Constitution which require the Chair of the Partnership Board to be independent. There would be no recruitment procedure and the election will take place in the normal way. Nominations will be called for prior to the Annual Meeting on 27<sup>th</sup> July 2021 and in the event of more than one nomination the appointment shall take place by way of a vote decided on the basis of a simple majority of members who together hold more than 50% of the population weighted vote.
- 3.9. If an election were to take place from among the existing Members of the Board, there would be no need for Members nominated for appointment to declare an interest in the item of business or to refrain

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from voting on the matter. Chair of the Board or the Partnership Board is not classed as a disclosable pecuniary interest in the prescribed list of disclosable pecuniary interests set out in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 and it is not considered to affect the financial interests or wellbeing of a Member so as to be a personal interest that would need to be disclosed. There is no rule of law or local protocol which would debar a Member from taking part and voting in such an election even if they were one of the nominees for appointment.

- 3.10 It would also be open to TfN to invite a prominent individual to take the position of Chair of the Partnership Board without recruitment. An invitation to become Chair of the TfN Board would need unanimous support as a co-option unless the person invited was first appointed Chair of the Partnership Board whereupon they would automatically become a co-opted member of the TfN Board and eligible for appointment as Chair of the Board.
- 3.11 The Board will need to decide whether it wishes to continue the practice of the same person holding the position of Chair of the Partnership Board and Chair of the TfN Board. If not the appointment to position of Chair of the Board would also proceed as an election at the Annual Meeting with a call for nominations and the appointment being decided by members who together hold more than 50% the population weighted votes.

#### **4. Way Forward**

- 4.1 If Members indicate that they would wish to appoint an Independent Chair of the Partnership Board, officers will work with the Members Working Group and back proposals for the recruitment procedure to the Board at its meeting in July.
- 4.2 Members will also need to indicate whether they wish to appoint the same independent person as the Chair of the Board so that appropriate information can be provided in the recruitment exercise.
- 4.3 Members have already formed a Members Working Group comprising Cllr Louise Gittins, Cllr Susan Hinchcliffe and Peter Kennan to look at the question of the General Purposes Committee and it would be appropriate to widen the remit of this group to general governance issues and include the recruitment of an independent chair if that is required.
- 4.4 Following the recruitment exercise proposals for the appointment of the Chair of the Board would be reported to the Board at its meeting in September. In the meantime the role of Chair of the Board would need to be carried out by one of the two Vice Chairs and an interim Chair of the Partnership Board would need to be appointed by the Board. These appointments would need to be made at the July meeting of the Board.

- 4.5 If Members decide that they now wish to appoint the new Chair of the TfN Board and Chair of the Partnership Board from among existing members nominations will need to be made to the Monitoring Officer preferably five days before the Annual Meeting in July although nominations will be accepted up until the meeting and at the meeting.
- 4.6 In conclusion the options now available are as follows:
  - To appoint an Independent Chair of both the Partnership Board and to the TfN Board;
  - To appoint an Independent Chair of the Partnership Board and a Chair of the TfN Board from among the existing Members and Co-opted Members of the Board;
  - To appoint a Chair of the Partnership Board from among the members of the Partnership Board who are **not** elected Members of a Constituent Authority (e.g. a LEP member) and a Chair of the Board from among the existing Members and Co-opted Members of the Board;
  - To amend the Constitution and appoint a Chair to both the TfN Board and the Partnership Board from among the existing Members and co-opted Members of the TfN Board.

## **5. Future Meetings Arrangements**

- 5.1 As Members of the Board are aware, specific arrangements were made during the pandemic to allow Local Authorities to hold their formal decision-making meetings virtually with remote attendance via on-line applications such as Zoom or Microsoft Teams. These provisions were time limited to end on 7th May 2021. A number of Local Government organisations together brought proceedings in the High Court seeking a Declaration that the Local Government Act 1972 (which governs the holding of meetings) already allowed meetings to be held remotely. The High Court has now held that the wording of the Local Government Act 1972 requires formal meetings to be held at a place with members attending the meeting in person, and that meetings must be open to the public in a physical sense, with the public able to be physically present and local authorities having to provide facilities to enable this.
- 5.2 It should be noted that the requirement for in person meetings only applies to the Board, Rail North Committee, Audit & Governance Committee ,Scrutiny Committee and General Purposes Committee (if it was to be called).Meetings of the Partnership Board can continue to be held virtually since this is not a meeting to which the Local Government Act 1972 applies.

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- 5.3 Public Board and Committee meetings will however need to be arranged and managed in accordance with current restrictions and public health advice. This means that in practical terms, for the time being, authorities will need to control the numbers of people physically in the meeting room at any one time in order to comply with Covid-19 restrictions. All Members must be invited to attend a Board or Committee Meeting. There is no provision in the Constitution or in law that would enable only those Members needed for quorum to be invited. This means that the venues chosen to hold meetings will need to be able to safely accommodate up to 40 Board Members, 10 to 12 officers and a number of members of the public in a Covid-secure environment. The Government's road map to recovery from the pandemic indicates that statutory social distancing measures should be relaxed from 21 June 2021 and thereafter large-scale meetings in indoor venues should be able to resume without provision for a minimum of 2 metres distancing between attendees. However this position is still uncertain given the latest rise in infections caused by new variants of Covid 19.
- 5.4 During the pandemic all virtual meetings have been live streamed on TfN's website and this has resulted in a significant increase in public attendance at and interest in TfN Board and Committee meetings. Prior to the pandemic, only Board meetings were being filmed and live streamed. For the future, there is a very strong argument to continue to livestream all TfN Meetings whenever possible.
- 5.5 The holding of virtual meetings has significantly reduced the time commitment required by both Members and officers in physically attending meetings due to the lack of travelling time. It is likely that some Members will wish to continue to attend virtually. However the decision of the High Court has ruled out remote attendance as counting towards a quorum or enabling voting rights and there is no provision in the Constitution which would allow Members not present at a meeting to take part virtually. Members may wish to consider amendments to TfN's Constitution which would allow Board and Committee Members to participate in meetings virtually and to be able to contribute to the debate although not being present for the purposes of quorum and voting.
- 5.6 Transport for the North's Constitution reserves only a very few decisions to the Board:
1. Approving/amending the budget
  2. Approving/amending the Constitution
  3. Approving/amending the Transport Strategy
  4. Appointing the Chair and Vice Chairs of the Board
  5. Appointing the Statutory Officers
  6. Approving the staffing establishment
  7. Decisions reserved to the Board by statute (such as approving the Statement of Accounts and the Annual Governance Statement)

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- 5.7 Paragraph 18.8 (e) of the Constitution makes provision for any other urgent operational decision to be taken by the Chief Executive in consultation with the Members. This consultation does not constitute a formal Committee meeting and so may take place virtually and so a Chief Executive's Consultation meeting could continue to take place via Teams. A Consultation meeting could either take place in public and be live streamed for transparency or could take place in private since it would not be a formal meeting of the TfN Board.
- 5.8 From now on the provisions relating to formal meetings set out in the Local Government Act 1972 will apply to meetings of the Board, Rail North Committee, Audit and Governance Committee and the Scrutiny Committee and subject to the current consultation, also the General Purposes Committee. The Chief Executive's Consultation provisions may also be applied to decisions that would otherwise be taken by these Committees. Where no formal decision on a matter that is reserved to the Board is required, consideration will be given to the holding of Chief Executive's Consultation Meetings rather than formal Board or Committee Meetings.
- 5.9 Other meetings such as Partnership Board , Executive Board, OBT, SMT and all officer meetings and informal Member Working Groups may continue to be held virtually since the provisions of the Local Government Act 1972 do not apply to these meetings.

## **6. Future Board and Committee Meetings**

- 6.1 In view of current uncertainties and some social distancing measures still being in place, it is proposed that the Rail North Committee meeting to be held on the 23<sup>rd</sup> June 2021 , the Audit and Governance Committee meeting on 10 June 2021 and the Scrutiny Committee meeting on 7<sup>th</sup> July 2021 should all be replaced by Consultation Meetings and be held virtually: Whilst not operating as formal meetings, in order to demonstrate openness and transparency, these meetings will still be arranged in the same way as formal Committee meetings with the agenda and reports being published and available in advance of the meeting and the public sessions being live streamed but there will not be a physical meeting.

## **7. The Annual Meeting 27 July 2021**

- 7.1 The Annual Meeting has been scheduled for 27 July 2021 and will need to be held as an in-person meeting. The Agenda of the Annual Meeting includes the appointment of the Chair and Vice Chairs of the Board and the adoption of the Constitution for the coming year. These items of business cannot be conducted via a Consultation Call. Similarly, at the September Meeting the Board needs to formally approve the Annual Governance Statement and Statement of Accounts which cannot be done via a Consultation Call.

## **8. Arrangements for Meetings**

- 8.1 Consideration needs to be given to appropriate venues for meetings going forward. At this stage, though the Government has set out the possible position, we cannot yet be certain to what extent the social distancing rules will have been relaxed by 27 July 2021. TfN also needs to take its own view as to the extent it would want to retain social distancing even after national rules have been relaxed. The Chair has previously expressed a preference for non-local authority buildings and for a board room layout. It may not be possible to accommodate this whilst also maintaining social distancing. Arrangements have been made to hold the 27 July Board meeting at the Leeds Hilton Hotel. The hotel has made arrangements to ensure that its premises are Covid secure and can arrange for perspex shields between attendees if required. However the information provided indicates that the room available may not be large enough to accommodate the full Board, officers and members if social distancing measures are maintained.
- 8.2 Other Local Authorities within the TfN area will be making arrangements to move back to formal public meetings in their venues and it is appropriate for TfN to explore whether these are better able to accommodate TfN's formal Board Meetings in a Covid secure manner at least for the immediate future. In particular, initial enquiries are being made regarding the use of Preston and Manchester Town Halls which are both large venues which are well placed for access by rail. Enquires are also being made with Liverpool, and with Manchester hotels. It is likely to be simpler to hold meetings in Local Authority venues because all Authorities will be gearing up to hold their own public meetings in a Covid-secure way, and although capacity may be an issue, may be more likely to have either their own technology which TfN can also use, or compatible arrangements which would not require specialised setting up for each meeting, as is the case with hotels.

## **9. Review of the General Purposes Committee**

- 9.1 Following the decision of the Board to set up a Members Working Group, expressions of interest were invited from all Members of the Board and Cllr Louise Gittins, Cllr Susan Hinchcliffe and Peter Kennan have agreed to form the Members Working Group.
- 9.2 The Terms of Reference of the Members Working Group are:

*To carry out a review of the General Purposes Committee and the function and membership of future decision-making structures of Transport for the North and to make recommendations back to the Board.*

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- 9.3 In preparation for the March report to the Transport for the North Board the issue was raised with the Executive Board and the Monitoring Officer consulted the legal officers of all the Constituent Authorities . Those responses again raised concerns as to the suitability of the Regional Groups as the basis for membership of the General Purposes Committee.
  - 9.4 Following the March Board Meeting and in preparation for this meeting a consultation exercise has been conducted with all Members of Transport for the North Board, Scrutiny Committee and the Independent Members of the Audit and Governance Committee.
  - 9.5 There were 14 responses in total from Members and the Members Working Group will consider the consultation responses and make recommendations to the Board. Briefly from the consultation responses there would appear to be support for the concept of the General Purposes Committee or another small Committee with a similar remit. There is also support for the principle that all areas of the Transport for the North area should be represented and for the principle of membership according to regional groups. There was also support for the Committee to include Co-opted Members as well as Constituent Authority representatives. There is much less support for the remit of the General Purposes Committee to include the recruitment, appraisal and disciplinary action in relation to the Statutory Officers although there is some support for an Appointments and Disciplinary Committee.

## **10. Review of Arrangements for Future Meetings**

- 10.1 As reported above the special arrangements that allowed virtual meetings have now come to an end and from now on the Local Government Act 1972 requires formal meetings to be held at a venue with members attending the meeting in person.
- 10.2 At present the Transport for the North Constitution also requires Members to be present at meetings and does not allow for anyone not present in the meeting to join the meeting virtually or to speak at meetings. Going forward Transport for the North may wish to consider amendments to the Constitution which will allow Members to join the meeting virtually and to contribute to the debate although they would not be entitled to vote or be counted as present for quorum purposes.
- 10.3 Transport for the North will also need to consider more generally the arrangements it wishes to make for the holding of future meetings now that these will again have to be in person. It is suggested that the remit of the Members Working Group should be widened to include these other governance matters.

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- 10.4 In view of these additional governance issues which need to be addressed it is recommended that the remit of the General Purposes Committee Members Working Group be widened to include these additional governance issues and be re-named the Governance Members Working Group.

## **11. Recommendations**

### **11.1 Appointment of Chair**

1. That Members note the report and advise the Chief Executive whether they wish to recruit and appoint an independent Chair of the Partnership Board from outside the existing members of the Partnership Board.
2. That Members advise whether, if they wish to recruit an independent Chair of the Partnership Board, that person should also chair the TfN Board.
3. That if Members wish to recruit an independent person either to chair the Partnership Board or as the Chair both the Partnership Board and the TfN Board they authorise the Director of Business Capabilities to work with the Governance Members Working Party to draw up recruitment proposals
4. That Members note that a formal report on this matter will be taken to the TfN Board at its Meeting on 27<sup>th</sup> July 2021 for a decision.

### **11.2 Arrangements for Meetings**

1. That Members receive the information and approve further investigation into the options available for a return to in person attendance at Board and Committee Meetings
2. That Members consider the options available for different ways of working so as to maximise the use of virtual meetings where possible.
3. That Members request that the Members Working Group set up to look at the General Purposes Committee also look at new ways of working following the ending of the virtual meetings provisions and to report back to the Board on any proposed amendments to the Constitution.

### **11.3 Review of the General Purposes Committee**

1. That Members receive the information and agree to widen the remit of the Members Working Group to include other governance issues as mentioned in the report.

### **List of Background Documents:**

There are no background documents

### **Required Considerations**

#### **Equalities:**

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

<b>Consideration</b>	<b>Comment</b>	<b>Responsible Officer</b>	<b>Director</b>
Equalities	A full Impact assessment has not been carried out because it is not required for this report	Julie Openshaw	Dawn Madin

#### **Environment and Sustainability**

	No
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<b>Consideration</b>	<b>Comment</b>	<b>Responsible Officer</b>	<b>Director</b>
Sustainability / Environment	A full impact assessment has not been carried out because it is not required for this report.	Julie Openshaw	Dawn Madin

#### **Legal**

Yes	
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<b>Consideration</b>	<b>Comment</b>	<b>Responsible Officer</b>	<b>Director</b>
Legal	The legal implications have been considered and are included in the report.	Julie Openshaw	Dawn Madin

### Finance

	No
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<b>Consideration</b>	<b>Comment</b>	<b>Responsible Officer</b>	<b>Director</b>
Finance	There are no financial implications.	Julie Openshaw	Dawn Madin

### Resource

Yes	
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<b>Consideration</b>	<b>Comment</b>	<b>Responsible Officer</b>	<b>Director</b>
Resource	The resource implications have been considered and are included in the report.	Julie Openshaw	Dawn Madin

### Risk

	No
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<b>Consideration</b>	<b>Comment</b>	<b>Responsible Officer</b>	<b>Director</b>
Risk	There are no risks associated with the content of this report.	Julie Openshaw	Dawn Madin

### Consultation

Yes	No
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<b>Consideration</b>	<b>Comment</b>	<b>Responsible Officer</b>	<b>Director</b>
Consultation	A consultation has not been carried out because it is not necessary for this report.	Julie Openshaw	Dawn Madin