
Meeting: Transport for the North Board
Subject: Governance
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Sponsor: Martin Tugwell – Chief Executive
Meeting Date: 30 June 2022

1. Purpose of the Report:

- 1.1 To enable Board to make the necessary appointments and approve its Calendar of Meetings at this its Annual Meeting.
- 1.2 To make amendments to the Constitution including the Terms of Reference of the General Purposes Committee (“GPC”) acknowledging that its function includes making recommendations to Board on the appointment of TfN’s Statutory Officers.
- 1.3 To invite Board to approve the proposed use of the GPC to consider a review of the governance arrangements and structures in the Constitution, including the governance around disciplinary processes for Statutory Officers and the roles of the Vice Chairs of TfN Board.

2. Recommendations:

- 2.1
 1. That the Chair of TfN Partnership Board for the forthcoming year be appointed;
 2. That the Chair of TfN Board for the forthcoming year be appointed;
 3. That nominations be received for the Majority Vice Chair for the forthcoming year and that the Majority Vice Chair be appointed;
 4. That nominations be received for the Minority Vice Chair for the forthcoming year and the Minority Vice Chair be appointed;
 5. That the Board approves the membership of the Board and of Committees for the forthcoming year as set out in Appendix 1 and appoints Councillor Jonathan Owen to the vacancy on Audit and Governance Committee;
 6. That the Calendar of Meetings set out in Appendix 2 be approved (noting that these may be subject to change where necessary after consultation with the relevant Committee Chairs);
 7. That the Board approves the Constitutional amendments to the Partnership Board Terms of Reference and the General Purposes Committee’s Terms of Reference set out in Appendix 3;
 8. That Board approves an increase of the number of elected members on Audit and Governance Committee from 5 to 6, and that the new vacancy be filled;
 9. That the Board notes that the General Purposes Committee will be invited to undertake a detailed review of the Constitution including the role of Independent Persons for the purposes of any disciplinary proceedings involving any of the Statutory Officers, and the role of the Vice Chairs, and will present recommendations to Board for approval in due course;
 10. That the new Shadow authorities in North Yorkshire, Cumberland and Westmorland and Furness be invited to each nominate one of their Shadow Members to act an observer who will be invited to the public items at Board meetings during the shadow municipal year.

3. Main Issues:

Appointment of the Chair and Vice Chairs

- 3.1 Under paragraph 4 of the Schedule to the Sub-national Transport Body (Transport for the North) Regulations 2018, TfN is to establish a Partnership Board and to appoint a person to chair it.
- 3.2 Under Regulation 1(12), the Chair of the Partnership Board becomes appointed as a co-opted Member of the TfN Board.
- 3.3 Under the provisions of paragraph 23 of its Constitution, Transport for the North is required to appoint a Board Chair, and may appoint Vice Chairs in each year.

Lord McLoughlin was appointed by Board as Chair of Board and Partnership Board from 26 January 2022. Performance objectives were set out and are being monitored by the Chief Executive. The Constitution nonetheless requires the Chair of TfN Board and Partnership Board to be formally re-appointed at each annual meeting.

- 3.4 The Constitution empowers TfN to approve the appointment of one or more Vice Chairs each year. By convention one of the Vice Chairs is appointed from among the majority party and the other is appointed from among the minority parties. If there is more than one nomination for an office there will be an election by a named vote in which the votes cast will be weighted and calculated on the basis of population. The person elected will be the one who has the support of Members who between them hold more than 50% of the weighted votes of those present and entitled to vote.

Membership of the Board and Committees

- 3.5 Following the local elections in May 2022 and the Annual Meetings of the Constituent Authorities there have been changes to the membership of the Transport for the North Board and its Committees. The current membership of Transport for the North's Board, the Rail North Committee, the General Purposes Committee, the Audit and Governance Committee and the Scrutiny Committee as notified to Transport for the North is set out in the table at Appendix 1 and is recommended for the Board's approval.
- 3.6 Where there are any gaps in the table, these are because nominations are still awaited, and Members are invited to confirm their Authority's outstanding nominations accordingly. Councillor Jonathan Owen of East Riding Council has submitted his nomination to the vacant elected member seat on Audit and Governance Committee, and it is recommended that the Board agree to his appointment.
- 3.7 On 1 April 2023, local government in Cumbria will change, with Cumbria County Council and the existing six borough city and district councils being replaced with two new unitary councils, namely Cumberland Council, and Westmorland and Furness Council. Elections to the shadow authorities which will prepare for the "go live" date of April 2023 took place on 5 May and in due course, Members from these new councils will replace the current Cumbria County Council Members on TfN Board and Committees.
- 3.8 In North Yorkshire, the existing North Yorkshire County Council will also be replaced by a new unitary North Yorkshire Council, which will take on the functions of the existing county council and the existing borough and district councils within its area. Elections to the shadow authority took place on 5 May. Whilst the area of North Yorkshire will remain the same, the functions of the new authority will encompass all unitary functions from April 2023 and the Members comprising the

new authority may be different to those who remain with the current authorities during the next year.

- 3.9 To aid a smooth transition, it is recommended that all three shadow authorities be invited to each nominate a Member who will be invited as an observer to the public items considered by TfN Board, to enable them to become familiar with the work of TfN and develop a role in its future work and development. Given the legal and practical constraints around confidential items, it would not be appropriate to allow all observers access to private reports and debate held in private session.

General Purposes Committee and Amendments to the Constitution

- 3.10 On 24 November 2021 Board was recommended to remove the temporary waiver of the rule in the Terms of Reference of the Partnership Board (Appendix 5 of the Constitution) which had temporarily allowed a non-independent member to Chair Partnership Board pending the recruitment of Lord McLoughlin. Unfortunately, whilst Members did not object, the minutes of the meeting did not fully reflect this; accordingly, it is now recommended that the waiver be formally removed, and for the Constitution to again reflect the requirement for Partnership Board to be chaired by an independent chair.
- 3.11 As reported to Board on 30 March 2022, the GPC held a consultation call with the Chief Executive on 23 February 2022. The Board subsequently accepted the recommendations arising from that call at its meeting held on 30 March. This covered membership and Terms of Reference of the GPC and on a review of the Scrutiny function review.
- 3.12 The switch from Co-Client to Co-Sponsor in respect of TfN's role in relation to Northern Powerhouse Rail, coupled with the development of Great British Railways mean that ongoing review of the Constitution becomes even more important to ensure that it remains up to date and fit for purpose. It is recommended that GPC meets at a suitable juncture to consider detailed proposals in order for these to be presented back to Board for approval.
- 3.13 Now is also an appropriate time to return to an issue discussed in the initial GPC consultation call, namely how TfN should put in place arrangements to undertake the necessary process in the event of disciplinary proceedings being necessary against any of the Statutory Officers, i.e. the Chief Executive, Finance Director (S151 Officer) and/or Monitoring Officer. In considering this aspect, it is also timely to consider TfN's governance process in the appointment of its Statutory Officers.
- 3.14 The Local Authorities (Standing Orders) (England) Regulations 2001 ("the Regulations") contains provisions relating to dismissal of Statutory Officers and obliges public bodies including TfN to incorporate into Standing Orders provisions to the effect as contained in its Schedule 3.
- 3.15 In short, these prohibit the authority from dismissing the Chief Executive, Section 151 Officer or Monitoring Officer unless the requisite procedure has been complied with. That procedure compels the authority to invite "Relevant Independent Persons" to be considered for appointment to a Panel, with a view to appointing at least two such persons to such a Panel. "Relevant Independent Person" in this context means any independent person who has been appointed by the authority under Section 28(7) of the Localism Act 2011, or if there are fewer than two (which is the case with TfN, as explained below) such Independent Persons as have been appointed by another authority or authorities as it considers appropriate are to be used. Such Independent Persons were initially appointed to be consultees where complaints under Member Codes of Conduct were being considered; their role was later extended to include involvement in the process when disciplinary proceedings against Statutory Officers are being considered.

- 3.16 A hierarchy is provided as to the order in which the Independent Persons are to be preferred for selection. Two is the minimum requirement but there is power to appoint more than two if desired. The Panel must be appointed at least 20 working days before a relevant meeting, and before the taking of a vote to dismiss (which would be a decision made by Board), Board would be obliged to take into account any advice, views or recommendations of the Panel, the conclusions of any investigation into the proposed dismissal and any representations from the relevant officer.
- 3.17 TfN does not itself have any such Independent Persons, because it has no Member Code of Conduct of its own – its Members are subject to the Codes of Conduct in place in their own Authorities and if a conduct complaint was made it would be dealt with by their own Authority to which they have been elected. For TfN’s Statutory Officer disciplinary processes, they would have to be sourced from TfN’s Constituent Authorities, and a detailed structure setting out how they would be selected would need to be put in place. In passing, it should be noted that the Independent Members TfN appoints to support the work of the Audit and Governance Committee do not fall within the definition of “Independent Person” in this context.
- 3.18 Now that the GPC has been established, and because of the detailed requirements under the Regulations for the identification, selection and involvement of Independent Persons, it would be good practice to develop a more detailed written process to provide for this eventuality should it ever arise. Given the complexity and need to consider potential options and the legal requirements at length, it is recommended that GPC consider this matter, and Board is asked to endorse this approach.
- 3.19 Regarding the appointment of Statutory Officers, namely the Chief Executive, Director of Finance (“Section 151 Officer”) and the Monitoring Officer, many authorities have an ad hoc committee comprised of Members to take part in the selection process. The most recent requirement to make such an appointment was the appointment of the Chief Executive during early 2021. On that occasion, an ad hoc Appointment Committee was set up in January 2021. Moving forward, the function of the selection of Statutory Officers is one which the GPC could undertake.
- 3.20 It is recommended that the Terms of Reference of the GPC be added to, to include this function, as set out in Appendix 3. If the GPC wishes to make recommendations to Board to set up a smaller sub-committee of itself for this purpose, it can also consider a detailed report to consider that.
- 3.21 Following the Covid-19 pandemic, with different ways of working having emerged nationally, albeit the legal requirement for decision making meetings remains for in-person which are open to the public, it is sensible for Board to review the measures in place to ensure the most robust possible likelihood of achieving a quorum at every public meeting.
- 3.22 With this in mind, it is recommended that the current 5 elected member seats on Audit & Governance Committee be increased to 6 seats, and nominations for the new vacancy are invited. Members are reminded that Substitute Board members as well as main Board members can be nominated. Officers will also explore the possibility of aligning meetings so that in appropriate circumstances more than one in-person meeting would be held on the same date at the same venue. Members will be consulted on progress in due course.

4. Corporate Considerations

Financial Implications

4.1 The financial implications associated with the appointment of the Chair of the board is incorporated in the 2022/23 budget. There are not considered to be any other financial implications.

Resource Implications

4.2 The resourcing implications are as set-out in the report

Legal Implications

4.3 Legal implications are included within the report. Scrutiny Committee has not been consulted on the content of this report as all decisions are for Board to make.

Risk Management and Key Issues

4.4 There are no risk implications as a result of this report.

Environmental Implications

4.5 There are no environmental implications as a result of this report.

Equality and Diversity

4.6 A full impact assessment has not been carried out as it is not required for this report.

Consultations

4.7 A consultation has not been carried out because it is not necessary for this report.

5. Background Papers

5.1 There are no background papers to this report.

6. Appendices

6.1 Appendix 1 – Membership of Board and Committees

6.2 Appendix 2 – Calendar of Meetings

6.3 Appendix 3 – Revised Terms of Reference for General Purposes Committee

Glossary of terms, abbreviations and acronyms used (*if applicable*)

TfN – Transport for the North

The Regulations - The Local Authorities (Standing Orders) (England) Regulations 2001/3384