
Meeting: Transport for the North Board
Subject: Review of the Constitution
Author: Julie Openshaw - Head of Legal
Sponsor: Martin Tugwell – Chief Executive
Meeting Date: Thursday 23 March 2023

1. Purpose of the Report:

1.1 For Board to consider the recommendations of General Purposes Committee.

2. Recommendations:

- 2.1 To note the amendments to be made under the existing delegated power of the Monitoring Officer as described in paragraph 3.6;
- 2.2 To agree that the areas identified in paragraphs 3.8 and 3.9 are key to development of the work of TfN and its Constitution in the future;
- 2.3 To approve the proposed extension to the delegated power of the Monitoring Officer set out in paragraph 3.10;
- 2.4 To approve the extension of the membership of Partnership Board to include one representative from the Directors of Public Health of TfN's Constituent Authorities and one representative of the Northern Chambers of Commerce;
- 2.5 To approve the approach to selection of Independent Persons as defined in the Localism Act 2011 in circumstances described in paragraphs 3.12 - 3.16, by approaching the Constituent Authorities in alphabetical order until two suitable Independent Persons can be sourced;
- 2.6 To approve for the reasons set out in paragraph 3.18 the addition into the Terms of Reference of the General Purposes Committee of the words:
"(iii) in circumstances where it is impractical for a meeting of full Board to be convened in order to designate the S151 Officer or the Monitoring Officer, following advice from the Monitoring Officer or in their absence the Deputy Monitoring Officer, and following consultation with the Independent Chairs and both the Vice Chairs of Board, designating an officer as the Section 151 Officer or the Monitoring Officer."; and
- 2.7 To approve a widening of the eligibility of the 6 seats for elected Members on Audit & Governance Committee to include any elected Member of any of the Constituent Authorities, whether or not they are also already a TfN Board member or Substitute member.

3. Background

- 3.1 The Sub-National Transport Body (Transport for the North Regulations 2018) Regulations established TfN from 1 April 2018 as a statutory body and public authority under powers contained in the Local Transport Act 2008 and provided it with, amongst other powers, the following five general functions:
- (a) to prepare a transport strategy for its area;
 - (b) to provide advice to the Secretary of State about the exercise of transport functions in relation to its area (whether exercisable by the Secretary of State or others);

- (c) to co-ordinate the carrying out of transport functions in relation to its area that are exercisable by different constituent authorities, with a view to improving the effectiveness and efficiency in the carrying out of those functions;
- (d) if TfN considers that a transport function in relation to its area would more effectively and efficiently be carried out by TfN, to make proposals to the Secretary of State for the transfer of that function to TfN; and
- (e) to make other proposals to the Secretary of State about the role and functions of TfN.

- 3.2 TfN adopted a Constitution based on the Regulations, the original proposal to Government for the establishment of TfN, and also derived some elements from the Constitution of Transport for Greater Manchester ("TfGM"). The Constitution expects that the Monitoring Officer will monitor and review the operation of the Constitution at least annually. It also states that TfN will review its scheme of delegation at intervals as recommended by the Monitoring Officer. A detailed review was undertaken six months after the original was approved, and throughout the period since TfN's inception Board has regularly considered and approved further necessary updates and amendments to the Constitution as required. The Constitution was last updated by Board in July 2022. Now that the GPC has been established, it is appropriate for it to review the Constitution and make recommendations to the Board. The GPC held a Consultation Call on 7 February 2023 for this purpose.
- 3.3 The concept of public bodies having and publishing a written Constitution, in which their processes and procedures are set out, was established by the Local Government Act 2000. Central Government guidance published at and around the time provided a more detailed framework for how these matters might be laid out and recommended other content. The Constitution has of course undergone significant development since then. The current law, in Section 9P of the Local Government Act 2000, requires the inclusion of a copy of the authority's Standing Orders for the time being, its Member Code of Conduct (if any), such other information as the Secretary of State may direct, and "such other information as the authority considers appropriate". Whilst TfN is unique as a statutory body, much of the layout and content is broadly similar to many other public bodies, though there are areas where it will be different and unique.
- 3.4 Whilst regular updating has done much to keep the Constitution relevant and fit for purpose, now is a suitable time for a more overarching review. Such a review allows the implications of recent changes to TfN as reflected in the recent reorganisation, as well as providing the opportunity to ensure the Constitution takes into account recent changes to constituent authorities. It is also appropriate to reflect on how TfN might evolve as part of the desire of Board to see greater devolution and consider what changes if any are required, both now and in the future. It is important to note that TfN's general functions and other powers remain unchanged. Whilst thoroughness in undertaking the review is important, with a "root and branch" approach being taken, officers have also kept in mind that where no or little change is merited because current arrangements work effectively, a reasonably "light touch" approach is appropriate. As the Constitution is and will remain a "living document," ongoing review and updating will be required from time to time.
- 3.5 TfN's Constitution makes provision for TfN Board, Partnership Board, and Scrutiny Committee, all of which are required under the Regulations. Additionally, it has an Audit & Governance Committee, Rail North Committee and General Purposes Committee. In general, it is proposed that TfN will continue on the basis of this as a governance model, other than where changes are proposed as part of this report. As noted above and based on this background, on 7 February 2023 a Consultation Call of the General Purposes Committee considered the matters set

out in this report. The recommendations to Board set out at section 2 above reflect the outcome of that call.

Main Issues

- 3.6 Clause 13.5.2 of the Constitution provides delegated authority to the Monitoring Officer (following consultation with the Chief Executive) to make minor amendments to the Constitution *"in order to give effect to changes to job or officer group titles, to reflect legislative changes and to improve layout or correct typographical errors."* To enable GPC and Board to concentrate on the more important review aspects, any required updates arising from the reorganisation of TfN falling within the delegated authority of the Monitoring Officer are proposed to be dealt with in this way. For sighting, they will be circulated to General Purposes Committee members prior to being affected.
- 3.7 As part of the review, the Senior Management Team, which consists of TfN managers below Director level, has been consulted. A number of ways in which TfN processes could be streamlined were suggested, along with a request for follow-up training to help support officers' understanding of governance processes, why they exist, and when and where they could be simplified. Whilst not relating to Constitutional issues requiring amendment, these points will be followed up separately.
- 3.8 General Purposes Committee considered how working relationships with partners could be strengthened and supported the role of the Board Vice Chairs being better defined to assist in this regard. Whilst there is currently no role profile for the Board Vice Chairs, the Chief Executive and Chair informally meet with them on a regular basis to seek advice and discuss issues of relevance to TfN. It is therefore proposed that a profile for the Board Vice Chairs is developed.
- 3.9 In addition, the General Purposes Committee considered and supported the following 5 areas of opportunity as being ones that TfN should explore and which could shape how the Constitution develops in the future:
1. Northern Powerhouse Rail/Integrated Rail Plan – subject to the Board endorsing the draft NPR Sponsor Agreement (on the agenda of this meeting) there is a need to include it in the Constitution (as, for example, the Highways North Board is included as an Appendix to the Constitution);
 2. Rail Reform – with the emergence of the concept of a 'single guiding mind' for the rail sector, there will be a need to consider how any such body would (if/when formed) be aligned to the TfN Board, building on the Rail North Partnership arrangements, including TfN's advocacy for 'double devolution.' This might include the way in which the Rail North Committee groupings are arranged, which is of particular importance with the recent dividing of the former Humber grouping into two, and the emergence of new authorities. The Business Plan for 2023/24 includes a commitment to develop a 'North proposition' for implementing rail reform. The implications for TfN's Constitution will be considered as part of that process;
 3. Centre of Excellence – as TfN develops its role as a regional Centre of Excellence there will be a need to consider what if any changes are required to facilitate TfN, within the powers devolved to it, providing services to members of TfN, capturing both services provided to LTAs as well as potentially services to DfT and any other Government department and/or other STBs;
 4. Indicative Regional Funding Allocation – as TfN moves forward with STP2, a key issue on its implementation will be consideration of the benefits of an indicative regional funding envelope within which the TfN Board provides its advice to the Secretary of State: under general function (e), TfN could consider making a proposition to the Secretary of State for a pilot initiative

which could be presented to the Board later in 2023 when seeking the Board's endorsement for the final version of STP2; and

5. Alignment with other areas of public sector policy – TfN's evidence base highlights the importance of aligning investment in energy systems and digital connectivity with what happens in the transport sector in order to achieve agreed outcomes for the North: there is therefore an opportunity to consider this, which again potentially involves a possible proposition under general function (e).

In supporting these 5 areas of opportunity the General Purposes Committee emphasised the importance of strengthening the business input, including the role of the Local Enterprise Partnerships, into TfN's work.

Monitoring Officer's delegated power

- 3.10 The Constitution currently does not set out specific detailed provisions around the Chair and Vice Chair arrangements for Rail North Committee and Audit & Governance Committee. Nonetheless, each committee clearly needs a Chair and would benefit from having a Vice Chair – in practice, the omission does not adversely affect TfN's practical ability to make such arrangements, but better practice would be to have specific Constitutional arrangements. In order to address such and similar matters efficiently, and to facilitate future minor updates without the need to revert to Board for authority, it is suggested that the Monitoring Officer's delegation be extended to state (new wording shown in bold and underlined):

- authority to make minor amendments to Transport for the North's Constitution, following consultation with the Chief Executive, *in order to give effect to changes to job or officer group titles, to reflect legislative changes and to improve layout, **to improve reference to existing legislation, improve operational processes provided no financial thresholds are increased**, or correct typographical errors.*

This delegation would remain subject to the Monitoring Officer consulting with the Chief Executive before exercising any such delegated authority. The circumstances in which operational processes might be improved could include in future amending the Contract Procedure Rules and Schedule of Authorisations, where financial thresholds were not increased. General Purposes Committee expressed its agreement to this extension and is recommending that Board approves the extended delegation accordingly.

Audit & Governance Committee

- 3.11 With particular regard to Audit & Governance Committee, the current membership is comprised of 6 elected member seats and 4 Independent Member seats (10 seats in total), with a quorum of 3, which must consist of at least 2 elected members and 1 Independent Member. In order to address some difficulty in obtaining a quorum at recent meetings, in 2022 Board expanded the number of elected member seats from 5 to 6. However, at present only 3 of those seats are filled and one of these members is due to step down from 31 March 2023; recent requests for Members to volunteer for these roles have met with little response. The Constitution currently provides that only Board members or their Substitutes are eligible to take up the elected members seats on Audit & Governance Committee, but this has been a matter of choice rather than a matter enforced by the Regulations. It is recognised that Board members and substitutes already have very significant demands upon their time including the time taken to undertake their other roles. In order to expand the pool of elected members available to serve on this Committee, it is suggested that eligibility for these 6 seats be widened to include any elected Member of any of the Constituent Authorities, whether or not they are also a TfN Board member or substitute

member. This would also potentially broaden the contributions which Members could bring to debate at Audit & Governance Committee meetings.

Selection methodology for “Relevant Independent Persons”

- 3.12 In June 2022, Board considered the issue of the methodology by which “Relevant Independent Persons” might be selected to serve upon the required Panel (under The Local Authorities (Standing Orders) (England) Regulations 2001) in the event that disciplinary proceedings against any statutory officer were ever contemplated. Board noted that GPC would consider this question before recommendations were brought back to it. It must be noted that in this capacity, an “Independent Person” is defined in Section 28(7) of the Localism Act 2011 and is quite different and separate from the meaning of an Independent Member appointed to support the work of the Audit & Governance Committee, referred to elsewhere in this report.
- 3.13 In short, the 2001 Regulations 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.
- 3.14 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.
- 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.
- 3.15 There is no definitive method of approaching such selection, but some options include:
1. Working round all the Constituent Authorities in a predetermined order, e.g., alphabetically or by size or number of IPs);
 2. A competencies and capacity-based approach whereby CAs are consulted to establish which IPs might be best suited and able to serve and issue targeted invitations to those and only those CAs; and
 3. It is concluded that no Constituent Authority is able or willing to respond to an invitation and the other categories in the legislation are worked down on the basis of a standing and remunerated position.

- 3.16 An initial consultation with Monitoring Officers of the Constituent Authorities requesting details of their appointed Independent Persons resulted in an incomplete response, with some providing details of their IPs' numbers, others asking questions about the role and likelihood of the time which might be taken, and some not responding. It is suggested that a more detailed questionnaire be developed and circulated to gather more information for future consideration, but that for the time being, and until any other approach is preferred, in the event that the need was to arise, TfN should adopt approach 1. above. Naturally, if the officer concerned was to raise any objection to any particular Independent Person selected, consideration would be given to this and it might be necessary to work further down the list of available and suitable Independent Persons.

Membership of Partnership Board

- 3.17 Conversations held with some TfN Members have suggested that debate at Partnership Board might be usefully widened if Partnership Board membership was extended to include one representative of the Northern Regional Assembly (collectively representing the views of the Northern Chambers of Commerce) and one representative of the Directors of Public Health from across the Constituent Authorities. A change to the Constitution of this nature would require a "super majority," i.e., support from Constituent Authority Members who together hold 75% of the weighted vote and a simple majority of the Members appointed by the Constituent Authorities. General Purposes Committee discussed this matter and recommended to Board that these additional representatives be approved.
- 3.18 The GPC also gave consideration as to whether the Partnership Board's debates would benefit from inclusion of representative(s) from industry associations. It was noted that the Partnership Board already has the ability to invite speakers to its meetings who are not formally Partnership Board members, enabling broader views and information to be presented and considered.

Appointment of Statutory Officers (except the Chief Executive)

- 3.19 The Constitution reserves a number of key functions to Board at Clause 17, including the appointment of the three Statutory Officers. With the appointment of the Finance Director/Section 151 Officer in 2022, an in-person meeting of Board was required for this decision, but practical travel difficulties presented issues with an in-person meeting. In that case, because the preferred candidate was already undertaking the role on an interim basis and had therefore already been designated it was possible to use an existing officer delegated power to give effect to the decision, but in future that might not prove to be the case. The likelihood of similar circumstances arising again is small, but it would make sense to consider it at this point. Full Board must, legally, appoint the Chief Executive/Head of Paid Service, but this is not legally the case for the other Statutory Officers, although as a matter of local choice Board has chosen to reserve all such appointments to itself. It is suggested that in exceptional circumstances, S151 Officer and Monitoring Officer appointments could be made by General Purposes Committee, in which case convening a quorate meeting would be less difficult than a quorate full Board meeting. General Purposes Committee considered and supported the suggestion that the words in italics below be added to the Terms of Reference of General Purposes Committee, and recommended accordingly:

(iii) in circumstances where it is impractical for a meeting of full Board to be convened in order to designate the S151 Officer or the Monitoring Officer, following advice from the Monitoring Officer or in their absence the Deputy Monitoring Officer, and following consultation with the Independent Chairs and both the Vice Chairs of Board, designating an officer as the Section 151 Officer or the Monitoring Officer.

4. Corporate Considerations

Financial Implications

4.1 The financial implications are included within the report.

Resource Implications

4.2 The resource implications are included within the report.

Legal Implications

4.3 The legal implications have been addressed within the report.

Risk Management and Key Issues

4.4 Risk management has been addressed within the report.

Environmental Implications

4.5 There are no environmental implications associated with this report.

Equality and Diversity

4.6 TfN is subject to the provisions of the Equality Act 2010 and the public sector equality duty; Constitutional provisions need to be compliant with the legislation.

Consultations

4.7 Senior Management Team has been consulted on the review and the response is covered within the report.

5. Background Papers

5.1 None

6. Appendices

6.1 None

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

- a) STP 2 – TfN’s Second Strategic Transport Plan
- b) RIA – Rail Industry Association
- c) GPC – General Purposes Committee