

# Transport for the North Scrutiny Committee Meeting – Item 3

**Subject:** Review of the Constitution  
**Author:** Deborah Dimock- Solicitor  
**Sponsor:** Sasha Wayne Head of Legal  
**Meeting Date:** 24<sup>th</sup> January 2019

## **1. Executive Summary:**

- 1.1 This report provides an update on the progress of the review of TfN's Constitution and proposes draft amendments to the Constitution.
- 1.3 As a first stage of the Review a questionnaire was sent out to all Members of the TfN Board (including Substitutes), the Scrutiny Committee (including Substitutes), the Audit and Governance Committee, and legal officers of the Constituent Authorities.
- 1.4 The responses to the Questionnaire have now been analysed and proposed amendments are being drafted. There are a number of amendments which are purely administrative or non-controversial. This report sets out proposals in relation to the more substantive amendments to be made.

## **2. Recommendation**

- 2.1 That Scrutiny Committee consider the proposed amendments set out in the Report.

## **3. Discussion:**

### **3.1 Responses to the Questionnaire**

- 3.2 At the time of writing this report twelve responses had been received to the Review Questionnaire, four from individual Members including LEP representatives, one from a statutory partner and seven from the Constituent Authorities. A consolidated questionnaire containing all the comments received is at Appendix 1.

### 3.3 **General Comments**

In response to the request for general comments on the Constitution comments include:

1. A request for TfN to consider voting rights for LEP Representatives on the TfN Board.
2. A suggestion that where Board Members who fail to attend 3 successive Board Meetings the matter should be referred back to their Constituent Authority.
3. The administration of Rail North Matters requires improvement.
4. The accountability of TfN to the Constituent Authorities needs to be strengthened.
5. The NDA entered into by members of the Rail North Partnership Board needs to be reviewed to enable them to report meaningfully to TfN and to the Rail North Committee.
6. The terms of Reference and membership of Officer Reference Groups for each work programme need to be included in the Constitution.

### 3.4 The replies received to individual questions are as follows:

1. **Co-option – consents – whether a standing consent to co-options could be given** – Majority in favour in principle subject to some caveats with only one objection.
2. **Co-option – procedure – whether written consent could be obtained before meetings** - All in favour subject to some caveats.
3. **Telephone attendance at meetings – whether attendance at some committee meetings could be by telephone and procedures for this-** Majority in favour with only one objection.
4. **Public speaking at meetings - whether there should be public speaking at some committee meetings and procedures for this-** The majority supported the current approach with no public speaking at Board Meetings but there were two responses indicating that public speaking should be allowed at the Board. Others considered that there needed to be some forum in which members of the public could address Members of the Board directly.
5. **Membership of the Audit and Governance Committee – to broaden membership to include elected members of the Constituent Authorities who are not Board Members –**

There was broad support for eligibility to be widened to include other Members of the Constituent Authorities not just Board Members, subject to certain caveats.

6. **Publicity for the Partnership Board papers and reports – to clarify privacy in relation to Partnership Board –** Although a majority supported the Partnership Board meeting in private there were a number of comments in opposition to this.
7. **The procedure for the appointment of Vice Chairs of the TfN Board – to look at inviting only one nomination from the Major and Minor parties-** Majority in favour of this with only one objection.
8. **Membership of the Rail North Committee – to look at broadening the membership of the Committee beyond TfN Board Members-** The majority supported the view that the Rail North Committee Members should be TfN Board Members or Substitute Members with only two objections to this.
9. **Quorum for the Rail North Committee – to agree the number of Members to be present** The consensus view was that a quorum is necessary and should be 50% of Members holding 50% of the weighted votes. There is also a suggestion that two of the larger LTAs should be present.
10. **Contracts under seal – to look at increasing the value above which contracts should be under seal –** A majority were in favour with only two objections.
11. **The Scheme of Delegations/Approvals – to remove inconsistencies and provide general delegations for day to day management functions** No comments.
12. **General –** No comments.

3.5 Most responses were made as a single response on behalf of the Constituent Authorities with only a few Members responding individually. The questionnaire has now been followed up by group meetings with the legal officers of the Constituent Authorities.

#### 4. Proposals for Amendments

4.1 On the basis of the responses so far, the following proposals can be made for amendments to the Constitution:

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- a) Introduction of a procedure for the CAs to give an annual consent for the co-option of new and replacement LEP representatives
  - b) Introduction of a procedure for CA's to provide their consent to co-option in writing.
  - c) Although by law telephone attendance at formal Committee Meetings cannot be allowed, provisions will be introduced to enable decisions to be taken without a formal Committee decision e.g. by Directors in consultation with Committee Members (which can be via telephone conference).
  - d) Clarification that the majority and minority parties will each be asked to nominate a Vice Chair of the TfN Board.
  - e) Clarification of quorum provisions for the Rail North Committee to be 50% of Members (6) who together hold 50% of the weighted votes.
  - f) Clarification that the Rail North Committee is a sub-committee of the TfN Board and that only TfN Board Members or their substitutes can be Members of the Committee.
  - g) Amendment of the sealing provisions.
  - h) Amendments to the Membership and Terms of Reference of the Audit and Governance Committee.

Other matters may need to be the subject of further consultation/discussion in the light of the comments received.

In particular the comments made in relation to the Officer Reference Groups need to be considered and responded to. The general consensus of responses and at the Legal Officers Group was that the Terms of Reference of the Officers Reference Groups should not be included in the Constitution as this would make them difficult to vary in the future and it was not appropriate for these officer groups to be formalised in that way. However, it was considered that the Membership and Terms of Reference of each of the Officer Reference Group should be referred to and agreed by the Executive Board.

The Constitution has also been amended to make provision for the establishment of the Newcastle upon Tyne, North Tyneside and Northumberland Combined Authority as a new Constituent Authority.

- 4.2 A Schedule of proposed amendments is attached at Appendix 2 setting out the proposed wording for the more important of the proposed amendments. A full tracked change version of the Amended Constitution will be circulated to the Constituent Authorities early in the New Year.

- 4.3 The Constitution Review will also need to take account of the findings of the Blake/Jones Review into the Rail North Partnership Board. This will allow any recommendations for constitutional changes to be fed into the review prior to any final recommendations for changes to the Constitution being proposed to OBT, Executive Board and the Constituent Authorities before being taken to the TfN Board for adoption. This may mean that the final report to the TfN Board is delayed beyond the Meeting on the 7<sup>th</sup> February 2019.

### Appendices:

Amalgamated Responses to the Questionnaire  
Schedule of Proposed Amendments

### List of Background Documents

#### TfN's Constitution

#### Required Considerations

*Please confirm using the yes/no options whether or not the following considerations are of relevance to this report.*

#### Equalities:

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

Consideration	Comment	Responsible Officer	Director
Equalities	A full Impact assessment has not been carried out	Deborah Dimock	Sasha Wayne

	because it is not relevant to this report.		
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### 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 relevant to this report.	Deborah Dimock	Sasha Wayne

### Legal

	No
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<b>Consideration</b>	<b>Comment</b>	<b>Responsible Officer</b>	<b>Director</b>
Legal	there are no legal implications other than those included in the report	Deborah Dimock	Sasha Wayne

### Finance

Yes	
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<b>Consideration</b>	<b>Comment</b>	<b>Responsible Officer</b>	<b>Director</b>

Finance	There are no new financial implications as a result of this report.	Deborah Dimock	Sasha Wayne
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### Resource

	No
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<b>Consideration</b>	<b>Comment</b>	<b>Responsible Officer</b>	<b>Director</b>
Resource	Transport for the North HR Team has confirmed there are no new resource implications as a result of this report.	Deborah Dimock	Sasha Wayne

### Risk

	No
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<b>Consideration</b>	<b>Comment</b>	<b>Responsible Officer</b>	<b>Director</b>
Risk	There are no new risks associated with this report	Deborah Dimock	Sasha Wayne

### Consultation

	No
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<b>Consideration</b>	<b>Comment</b>	<b>Responsible Officer</b>	<b>Director</b>
Consultation	A public consultation has not been carried out because it is not relevant to this report.	Deborah Dimock	Sasha Wayne

	There has been full consultation of TfN's Members and Constituent Authorities		
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# APPENDIX 1

## QUESTIONNAIRE

### SECTION A – MEMBERS INPUT

#### Issue

A review of the Constitution will be carried out to improve and refine the operations of TfN. The Constitution is aimed to allow the efficient and compliant operation of TfN. Much work with legal officers in drafting the Constitution has meant that it has worked well since adopting the Constitution on 5 April 2018. However, it was agreed that as a novel organisation, being England’s first Sub-National Transport Body, that six months after establishing TfN would be an appropriate time to review the practical implementation of the Constitution.

This part of the questionnaire invites members to provide comments in relation to the general functioning of the TfN Constitution.

Question
Please set out any areas of the Constitution which should be reviewed. Please give details below.
Comments:
1. Whilst the Constitution provides the foundation of good governance the outcomes it seeks to achieve cannot be realised if there are deficiencies the administration of the organisation. Our experience is that the administration of Rail North matters requires improvement.
2. TfN’s accountability to the Constituent Authorities and Co-Opted Members should be strengthened. Consideration should be given to the terms of reference of various forums, to reflect that as TfN takes on further responsibility (where, for example, the Secretary of State devolves further powers to TfN to manage rail franchises), the scrutiny of TfN’s activities will increase accordingly.
3. The non-disclosure agreements entered into by members of the Rail North Partnership Board need to be revised, in order to ensure that RNPB members can meaningfully report to TfN (and, in particular, the Rail North Committee) in relation to rail franchise matters. The DfT have dictated the form of NDA used previously, which is overly strict. It is suggested that TfN should engage with the DfT to highlight that the NDAs are not allowing RNPB members to disclose all relevant information to TfN. We can appreciate why

financial data might not be disclosable, but members of the RNPB should be permitted to disclose performance data to TfN, which can then be passed to the TfN Board and the Rail North Committee. The Constitution should reflect that analysis of such performance data should fall squarely within the scope of the functions and terms of reference of the TfN Board and the Rail North Committee.

if a member of the Board fails to attend 3 consecutive board meetings, should that Members, Executive be informed to give them the opportunity to change their nominee?

LEP Board Reps should have voting rights

Audit and Governance Committee

- The following items should be included in the 6 month review of the Constitution:
- Membership of the A&G Committee
- Core functions – approval of accounts and the process for completing this process.
- 22.4.3 – effectiveness of the relationship with auditors – current drafting is too wide as it is not possible for the committee to monitor all activity.
- Appendix 1 – the scale of the requirements are too wide. Has the governance regime built in a sufficient number of meetings for completion of the assurance tasks.
- 60.4.2 – supporting policies – have the Committee seen these.
- 60.4.9 – confirmation of the process for review/refreshing officers code of conduct.
- Rail North and the nature/extent of A&G’s responsibilities.

We maintained throughout the consultation in respect of the original constitution that was a significant requirement to incorporate the terms of the ORG and any other groups that engaged members and TFN into the constitution to the status of all these groups and their members was clear. Further that the remit and the matters to be considered were open and transparent and available for all to see.

We reiterate these comments and would like to see is part of the changes the way of ensuring that the above takes place.

We were concerned that the officer groups would not be as effective if they were not incorporated into the constitution. Officers are of the view that ORG is specifically constrained in its considerations to matters pertaining to Rail North.

These issues were raised during the course of the review and we believe officers are still making similar representation. There is a lack of Authority representation at NPR Programme Board and we need the ORG (or other Partner Officer) group to be engaged in all other Rail related matters on a standing basis recognised by the Constitution.

At present, we have been advised that groups are established as "projects" in response to specific matters such as TRU, LTRS, service development etc. but these are generally advisory groups (see ORG sub-groups) and frankly the organisation and arrangements for them are "hit and miss". There should be an Officer group, for example, for all Rail submissions to TfN Exec and Partnership Board (including NPR submissions) that doesn't exist today and so rail officers do not have a "programme" or "portfolio" oversight.

We would therefore have like the review to have gone further we also need to make representations in respect of the administration and submission of reports and papers? The timescales and protocols for reports is very poor with little or no assurance process. Why have we not now got to a steady state of submission deadlines and distribution?

At the time of review the original constitution we were provided with an assurance that we would receive papers in a timely fashion and also in indication of the internal standards to be employed, to my knowledge we have not received such information.

We have attached for your consideration our questionnaire responses but would also like the matters in this email to be considered with detailed responses being provided"

Prior to completing the above table members attention is drawn to Section B of this questionnaire where several areas have already become apparent over the past six months and proposals are included for how to address these. In summary these areas are:

1. Co-option consents – streamlining the consent process for co-option
2. Telephone attendance – to consider the provision for attendance at TfN Committee Meetings by telephone when attendance in person is not possible
3. Public Speaking - whether Members of the public are to be allowed to speak at Board and Committee meetings and if so what are the formal requirements for doing so
4. Audit and Governance Committee – to extend membership of the Committee to all members of the TfN Board, including co-opted Members

5. Partnership Board – to clarify that the Partnership Board will meet in private and that papers will not be required to be published in advance
6. Vice Chairs – to refine the procedure for the appointment of Vice Chairs of the TfN Members Board
7. Rail North Committee - to clarify membership of the Rail North Committee
8. Rail North Committee - to incorporate a quorum for Rail North Committee meetings
9. Officer Reference Groups – to refine the procedures for changing the terms of reference or Membership of an Officers Reference Groups
10. Contracts – to amend the execution requirements to assist with the day to day operation of TfN

## SECTION B – INITIAL PROPOSALS TO REFINE THE CONSTITUTION

In addition to a general review of the Constitution, the following matters have been initially identified as areas for review resulting from day to day procedural requirements and questions that have arisen over the last six months.

### 1. Co-option Consents

#### Issue

Co-option of Members onto TfN requires the consent of all Members and this can be administratively difficult to obtain if Members do not attend and are not represented at a meeting.

#### Proposal 1

The inclusion in the Constitution of an option for Members to give a standing consent for categories of co-option rather than to each individual co-option e.g. representatives of LEPs/Independent Members of Audit and Governance Committee/Members of Rail North Committee who are not Board Members. The consent could be withdrawn if there was an objection to any particular nominee but would generally stand.

#### Proposal 2

The inclusion in the Constitution of a formal process for obtaining consents to co-option from Members outside of the TfN Board Meeting, for instance collating consents using email correspondence.

Question	Yes	No
<b>Do you agree that Members should be able to give consent to the co-option of a category of co-opted Members rather than to each individual co-optee?</b>	7	2
<b>Comment</b> Consideration needs to be given to the practicality of co-option. Given the plethora of interested parties it is possible that a looser requirement to consent could lead to proliferation of co-opted Members. The outcomes from such arrangements should be carefully considered.		
Agree in principle, but would need to see detailed proposals and not clear how consent could be withdrawn to a particular nominee in such a process.		
If members don't agree the individual, then who does? The Executive of TfN? This <b>could</b> be open to abuse or accusations of abuse and whilst the co-opted members may not vote they could have a strong influence		

<p>We should be trying to make the operation of the Partnership Board as streamlined and un-bureaucratic as possible.</p>		
<p>All other representatives on the Board are specifically nominated. Co-opting categories could be confusing as TfN will have no certainty as to who will attend and whether the individual truly represents the views of that category. An alternative would be for all members present at meetings to give consent rather than requiring <u>all</u> members to consent. If they are more specific over the nomination, e.g. Chair of the LEP, then I don't have a problem with it.</p>		
<p>This should be limited to clear, pre-determined categories, as agreed by the TfN Board in advance. It should be specified how many representatives should be permitted to represent a particular category, and how many of those representatives should be permitted to attend the various TfN forums. For example, GM would like to see a representative from Transport Focus on the Rail North Committee (although it is not suggested that such a representative should have voting rights in that forum), to represent the interests of customers and provide feedback, which could then be fed down to the Rail North Partnership Board and the joint franchise management team.</p>		
<p>The CA's Monitoring Officer has no objection in principle to agreement being sought to category of co-opted members.</p> <p>However, the mechanism for exercising any discretion in relation to any specific appointments is not clear – would this be delegated to an Officer, and if so, within what parameters?</p> <p>In any event, if a member is to be given the opportunity to object to any individual appointment, wouldn't this be tantamount to adopting the alternative procedure for obtaining consents outside of the meeting, proposed below?</p>		
<p>We are concerned that the two proposals will not achieve the required changes. The "parent body" must always maintain a degree of visibility of the composition of its membership and that of its Committee. We therefore would recommend that instead of the approval of all the members of TFN it should actually be those who are present at the meeting at which it is reported. This could then remain as a unanimous requirement.</p> <p>We are uncertain why agreement is a category of member rather than an individual would be advantageous.</p>		

<p>Alternatively if it is determined that the current constitution is too cumbersome i.e. agreement in the meeting) and that approval of all members remains a requirement then this should be a permissible by email and then reported to a subsequent meeting.</p>		
<p><b>Do you agree that there should be a formal procedure for consent to be obtained outside of the meeting, for instance collating consents using email correspondence?</b></p>	8	
<p><b>Comment</b> Suggest that the procedure should involve sign off from the Chair.</p> <p>Agree this would streamline the process, but maintain the rigour of a consent process.</p> <p>But for specified issues only when 'urgency' is needed. The need for this was demonstrated by the recent rail issues.</p> <p>This would allow flexibility to respond to changes in jobholders quickly.</p> <p>I think consents outside of the meeting is sensible.</p> <p>This needs to be carefully worded. It would be preferable if all members could be required to provide written confirmation by email. This should be supported by a procedure for all such emails/records to be stored in a physical directory created for that purpose (much in the same way as statutory books would be maintained for a private sector company).</p> <p>This is the preferred approach in terms of clarity, assuming that TfN's Monitoring Officer considers that Schedule 1(13) of the TfN Regulations requires consent from each individual member, as opposed to a unanimous resolution by the TfN.</p>		

## **2. Provision for attendance at TfN Committee Meetings by telephone when attendance in person is not possible**

### Issue

Prior to TfN's inaugural meeting on 5<sup>th</sup> April 2018 Members were able to dial in to TfN meetings and to meetings of the Rail North Ltd Board. Now that TfN is established as a public body it is subject to provisions of the Local Government Act 1972. There is no provision in the Local Government Act 1972 that enables attendance of Members at formal Committee Meetings to be other than in

person. The Constitution therefore provides that attendance at meetings of the TfN Board and of Committees should be in person. There is however a provision in the Regulations for Substitute Members to be appointed who can attend in the place of the Member. The establishment of the TfN Board and the Scrutiny Committee is provided for in the Regulations and therefore it is not considered that there should be any relaxation of this provision. Similarly, it is not considered appropriate for attendance by telephone at the Partnership Board.

However, subject to further legal consideration, it may be possible to allow attendance by telephone at meetings of Committees such as the Audit and Governance Committee and Rail North Committee which are Committees established under the Constitution but not under the Regulations. These are also advisory in nature. Such telephone attendance would have to be exceptional and subject to procedural rules set out in the Constitution.

#### Proposal

That attendance by telephone may be allowed at Audit and Governance Committee and Rail North Committee subject to agreed procedures which are set out in the Constitution.

Question	Yes	No
<b>If it is legally acceptable, do you think Members should be able to dial-in to Audit and Governance Committee Meetings?</b>	9	2
Comment Only in exceptional circumstances and with sufficient notice given.		
It is obvious that the provision in the 1972 Act will require amendment in due course. Modern technology renders the requirement to be present unnecessary with no impediment to the democratic process. TfN should seek to be at the forefront of enabling and indeed promoting this change		
Yes, but with the Constitution setting out the expectation of attendance in person and with the ability for the Chair to suspend the provision if it becomes unworkable as there is a risk that if too many attendees dial in the meeting will not function well.		
It is difficult to comment until the legal position is known. If it is legally accepted, we would have no objection.		
Yes, although in person should be encouraged, need to reduce the need to travel to meetings as The North is a big area. Should also help boost attendance as members have busy diaries and from for example North Yorkshire a meeting and travel to / from Manchester can be a full day Need however to massively improve telephone conference facilities including video facilities.		

<p>Comment</p> <p>This would save considerable amounts of travelling time for Members from the North East.</p>		
<p>I don't favour the proposal. I think individuals need to attend in person so you have proper face to face dialogue. Often these groupings work as a consequence of relationships which develop. You cannot reach this level of development over the phone. If the use is to be exceptional it hardly seems worth it.</p>		
<p>Comment</p> <p>The CA's Monitoring Officer is unclear why the LGA 1972 provisions would not apply. In any event, attendance other than in person (particularly in the absence of audio-visual links available to the public) would impede transparency and may hinder full discussion of items at the meeting.</p>		
<p>This had been raised during the initial consultation on the constitution. We were specifically advised this could not occur either of TFN or its constituent committees.</p> <p>If a legal way to do so is available then this is an area that can be considered although this may be difficult with recording meetings. We were not aware that attendance is an issue specifically that would render alternative arrangements to be made.</p>		
<p>Comment</p> <p>This will help ensure the meeting is always has sufficient attendance to be decision making</p>		
<p><b>If it is legally acceptable do you think that Members should be able to dial in to Rail North Committee Meetings?</b></p>	8	1
<p><b>Comment</b></p> <p>Only in exceptional circumstances and with sufficient notice given.</p> <p>Yes, but with the Constitution setting out the expectation of attendance in person and with the ability for the Chair to suspend the provision if it becomes unworkable as there is a risk that if too many attendees dial in the meeting will not function well.</p> <p>If it is legally accepted, we would have no objection.</p>		

Yes, although in person should be encouraged, need to reduce the need to travel to meetings as The North is a big area. Should also help boost attendance as members have busy diaries and from for example North Yorkshire a meeting and travel to / from Manchester can be a full day

Need however to massively improve telephone conference facilities including video facilities

This would save considerable amounts of travelling time for Members from the North East.

We agree with the above suggestion, but please note that we do not consider that the Rail North Committee is 'advisory' (as referred to in the explanatory note above). The voting rights at the Rail North Committee are reflective of the arrangements that previously applied to the members of Rail North Limited, and directly affect TfN's interaction and influence over the Rail North Partnership Board and the joint franchise management team.

In the long run this should provide better representation.

The CA's Monitoring Officer is unclear why the LGA 1972 provisions would not apply. In any event, attendance other than in person (particularly in the absence of audio-visual links available to the public) would impede transparency and may hinder full discussion of items at the meeting.

Merseytravel/Combined Authority response

This had been raised during the initial consultation on the constitution. We were specifically advised this could not occur either of TFN or its constituent committees.

If a legal way to do so is available then this is an area that can be considered although this may be difficult with recording meetings. We were not aware that attendance is an issue specifically that would render alternative arrangements to be made.

### **3. Public Speaking**

#### Issue

Consideration needs to be given to the question of whether Members of the public are to be allowed to speak at Board and Committee meetings and if so what are the formal requirements for doing so. Requests to address the TfN Board and the Scrutiny Committee have been made by Members of the public. It is important that a consistent approach is taken to such requests and it is

appropriate that the Constitution should have clear rules in relation to public speaking and if it is to be allowed, the formal requirements to be met before any request to speak is allowed. To date, requests to address the TfN Board have been refused with follow up meetings with TfN Executive Officers offered as an alternative.

In considering whether the public should be permitted to speak at formal meetings of the TfN Board, Members need to take into account that TfN is a strategic decision-making body. In many cases the decisions of the Board will be taken following a wide and organised formal public consultation exercise during which there will have been appropriate opportunities for all views to have been expressed and considered. In these circumstances, in the event that individuals were to be allowed to address the Board, the results of a public consultation could be distorted by the views of an individual or group of individuals. In allowing public speaking it would also be necessary to ensure that an equal opportunity is given to opposing views.

Similarly, a request for an audience was made at the Scrutiny Committee in June and on this occasion was agreed by the Committee. The Scrutiny Committee makes representations to the TfN Board and can be seen as part of the wider consultation process. In considering whether it is appropriate for members of the public to be allowed to address the Scrutiny Committee, the same considerations apply, namely that it is important that a formal consultation process is not distorted and that an equal opportunity for expression is given to opposing views.

However, it is also important that TfN is seen as a transparent organisation that engages with the wider public and some opportunities for members of the public to address Members of TfN directly might be appropriate. Committee meetings (Scrutiny, Audit and Governance and Rail North) may prove to be the most appropriate forum for public interaction.

If public speaking is permitted it should be subject to certain procedural requirements such as written notice to be provided and a limit to the period allowed for public speaking.

#### Proposal

That there should not be an opportunity for members of the public to address the TfN Board or Partnership Board, but that procedures should be adopted for members of the public to address other Committees of TfN

Question	Yes	No
<b>Do you think that the balance of opportunity for members of the public to address the TfN Board and Committees is appropriate?</b>	8	2
Comments Public attendance at committee meetings in an observational capacity would seem reasonable. It is not clear how enabling members of the		

public to directly address committees would relate, add value and interface with, the committee agenda and its work programme. The Audit and Governance Committee has only met once informally thus far and it is difficult to envisage where an address would add value to the committee procedures at this stage. It might be more productive to consider alternative means for public engagement such as an open forum with the Board / Committee where issues / concerns could be raised by members of the public and where appropriate farmed out to the relevant committee / officer group to consider and respond. Regular opportunities for invites (say quarterly) to the general public to write in with issues / concerns could also be considered alongside occasional public forum(s).

We agree with the proposal that members of the public should not be allowed to address the TfN Board or Partnership Board, as long as there are opportunities for them to participate in other Committees and consultations.

It would be acceptable for members of the public to speak at the TfN Board and Committee if there were clear guidelines in place and it was linked to the agenda. For example, time should be limited (e.g. to 5 mins), the number of people should be limited, first come, serviced basis etc.

No level of decision making in public administration should be exempt from meeting the people their decisions affect. Hence whilst it is the case that such occasions will be limited the Constitution should allow for this.

Time for all meetings is limited and a public speaking element of some items could take up too much time. Could potentially allow written public representations (of say max 300 words) for any TfN statutory meeting.

It is important for TfN to be both transparent and accountable to the people of the North. This will be undermined if the public is excluded from having a direct dialogue with the Board. We would suggest that a structured

opportunity for the public to ask questions and/or pass comment is provided on a regular basis, perhaps through some form of 'public question time'. Most, if not all, elected representatives who sit on the Board will be familiar with this type of public engagement. The same principles should apply to the Partnership Board. Please see response to Q5.

We would agree that members of the public should not generally be permitted to address TfN forums. If public participation is to be permitted, this should be by invitation only, in accordance with new procedures to be agreed.

Public should not be allowed to speak at Audit Committee.

It would be rarely, if ever, appropriate for a member of the public (as opposed to a nominated representative from a particular organisation) to address the TfN Board or a Scrutiny Board in person.

The Combined Authority's experience (and that of his predecessors the ITA) was to allow public question time. It is however difficult to "pick and choose" to which Committees this applies to, although we have drawn a line at scrutiny i.e. to not allow questions in that forum. The policy and consequential changes to the constitution does need some thought as to its applicability and how such questions will be dealt with particularly if some members will be dialling into the meeting.

#### **4. Membership requirements for the Audit and Governance Committee.**

##### Issue

The Constitution provides for four Members of the Audit and Governance Committee to come from the TfN Board Members. TfN Members resolved at the June 2018 TfN Board meeting to extend membership of the Committee to all members of the TfN Board, including co-opted Members.

However, the time commitment required by membership of the Partnership Board and the TfN Board has meant that it has been difficult for these Members

to commit resources to this additional position. To ensure the Constituent Authorities are adequately represented on the Committee, consideration needs to be given to widening the eligibility for the Committee position to encompass other Members of the Constituent Authorities.

### Proposal

That eligibility for representation of the Constituent Authorities on the Audit and Governance Committee should be extended to all Members of the Constituent Authorities and in the case of the Combined Authorities to Members of their Constituent Authorities

Question	Yes	No
<p><b>Do you think that Membership of the Audit and Governance Committee should be widened to include other Members of the Constituent Authorities and in the case of Combined Authorities, their Constituent Authorities?</b></p>	8	
<p>Comments</p> <p>The proposal suggests extending eligibility yet the question above refers to membership which is a little confusing. The committee has only met once informally thus far. I would support the proposal for widening eligibility to all constituent authorities at the current or even increased level of members. However there is a danger that the membership of the Committee will become too large and unwieldy to be an effective part of the wider governance of TfN if the membership is widened to include constituent authorities within combined authorities (and which rather mitigates against the underpinning principle of a combined authority). If it is less about widening membership and more about eligibility allowing for one member from each regional group would keep the overall size to a more manageable level although still a significant increase from the current level. Continuity will be an important aspect of any adjustments to membership ensuring that members are sufficiently versed in the work of the committee, able to fully participate and avoiding the need for substitutes.</p> <p>Yes with certain caveats.</p> <p>Further clarity is required around this question.</p> <p>We do not have a problem with the membership of the audit and Governance committee being widened. The important point is that the members of the committee have the appropriate skills set to do the role.</p>		

<p>Comments</p> <p>This is a pragmatic approach.</p> <p>I have no problem with extending the membership as indicated.</p> <p>The Constitution should make clear what level of seniority, within a Constituent Authority, should be held by the representatives who will attend the Audit and Governance Committee. Within that guideline, a Combined Authority should be able to nominate the relevant representative, if that representative is employed by a Constituent Authority, rather than the Combined Authority itself.</p> <p>May be issues arising which require wider membership involvement.</p> <p>If every authority is to be represented on this committee, widening membership to any members of the constituent authorities of the CA widens the pool of potential representatives for the CA on this committee, which may facilitate attendance.</p> <p>The preferred solution is deputies/substitutes otherwise there is potential of dilation of resource and lack of decision-making due to a lack of knowledge about areas if members just attend to maintain numbers A designated deputy is able to obtain information from their principal which will ensure consistency of decision-making/thought/involvement with TFN.</p>		
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## **5. The publicity to be given to TfN Partnership Board**

### Issue

The Constitution provides that:

“TfN is committed to openness and transparency and arrangements are in place to enable webcasting of meetings of TfN and its Committees and ensuring similar standards of transparency are achieved for Partnership Board Meetings”

As decided by Members at the inaugural TfN Board meeting on 5<sup>th</sup> April, the TfN Partnership Board meetings are held in private and the papers are not automatically required to be published in advance. The ability of the Partnership Board to meet in private and at short notice affords an opportunity for open and constructive discussion on commercially sensitive and confidential matters.

Furthermore, the Partnership Board is not a decision-making body nor is it a committee of TfN to which the publicity requirements of the Local Government Act 1972 apply, although it is subject to requests for information under the Freedom of Information Act 2000 and Environmental Information Regulations 2004.

Therefore, consideration should be given to amending the Constitution to clarify that the TfN Partnership Board will meet in private and that papers will not be required to be published in advance.

#### Proposal

That the Constitution is amended to clarify that the arrangements for the TfN Partnership Board meetings and associated papers.

Question	Yes	No
<b>Do you agree that the Constitution should be amended to clarify that the Partnership Board will meet in private and that papers will not be required to be published in advance?</b>	7	4
<p>Comments</p> <p>Agree with the proviso that all efforts should be made where practicable and appropriate to publish papers in advance and where non-sensitive made publicly available.</p> <p>Do not agree. Bodies of this nature should be transparent. The appropriate review of papers should take place to separate items of a commercially sensitive nature from public view.</p> <p>If it is necessary for the Partnership Board to meet in private to ensure that commercial matters can be openly discussed this should be explicitly stated in the Constitution. If it is not stated explicitly as an exception to the principle of transparency it may foster concerns that information that could be open to scrutiny is being withheld.</p> <p>The public should be given the opportunity to see how TfN functions. This would also help the public to be informed as to the extent and limitation of TfN's powers. Meeting in private would undermine the principles of devolving power to people in the north.</p> <p>I would accept the view regarding publication of papers.</p>		

Comments

The GM view is that the Partnership Board should not be held in private. It needs to remain transparent to the public (consistent with our general comment that TfN needs to be accountable to the Constituent Authorities that it represents). Exclusions to the admission of the public are already included within the Constitution, so it would be useful to understand why these may not be considered appropriate/sufficient.

Risk of compromising public engagement.

Clearly, the constitution should reflect any current practice.

However, it is unclear to the CA's Monitoring Officer why the same standards of transparency should not apply to the Partnership Board, given that the usual LGA 1972 provisions provide for late meetings, late items and confidential and exempt information.

There is arguably a wider issue to be addressed i.e. to review and clarify the role and function of the different boards and groups as currently there is a risk that the same business is considered by largely the same membership but constituted as different boards or meetings.

It is acknowledged that the constitution is contradictory because 63.4 .11 (e) indicates that the minutes and the papers will be published. In the interests of transparency and openness they should be but the adoption of the access to information criteria in all cases will enable certain matters to be declared as exempt.

There is clearly a requirement upon those officers supporting these various meetings to ensure that papers are delivered in a timely fashion to meeting attendees otherwise the quality of debate in decision-making will be affected.

## 6. The Appointment of Vice Chairs to the TfN Board

### Issue

The Constitution provides for the appointment of two Vice Chairs of the TfN Board and a local protocol has been established following recommendations at the TfN Shadow Board in April 2018 that one should come from the major political group and one from the next largest political group.

The voting arrangements for the TfN Board are set out in the Regulations and are on the basis of a weighted vote which makes voting procedures cumbersome and unsuited to such an election.

### Proposal

That the majority party and the next largest party should each be invited to make one nomination for a Vice Chair of the TfN Board

Question		
<b>Do you agree that the majority party and the next largest party should each be requested to make one nomination for the position of Vice Chair of the TfN Board?</b>	7	2
<p>Comments</p> <p>the party split is unhelpful and politicises TfN.</p> <p>This ensures a degree of political balance and is likely to promote a need to make decisions by consensus which is important given the diversity of the North's communities.</p> <p>This issue should to be addressed informally with voting TfN Board Members, rather than through the TfN Constitution.</p> <p>Need a workable approach that is majority based.</p> <p>We are struggling to see how this will assist and improve matters as a voting mechanism will still be engaged.</p>		

## 7. Rail North Committee Membership

### Issue

The Constitution provides for the Rail North Committee to be a Sub-Committee of the TfN Board with the membership of the Rail North Committee being drawn from the Members of the TfN Board with one Member representing each of the eleven Regional Groups.

The Rail North Committee needs to take important decisions in relation to rail franchise matters and it is important that the decisions it takes are in line with those the TfN Board would take. If its membership were to be different from that of the Board this would not necessarily be the case.

#### Proposal

That the membership of the Rail North Committee should be drawn from the membership of the TfN Board and that other Members of the Constituent Authorities should not be eligible to be Members of the Rail North Committee

Question	Yes	No
<b>Do you agree that membership of the Rail North Committee should not be widened to include any member of a Constituent/Rail North Authority?</b>	6	3
Comments We do not agree with this proposal, as it is important to maintain and build good partnerships.		
But with the proviso that the RN Committee member could be the TfN Board substitute Member.		
This flows from the DfT/TfN Partnership Agreement through which the Northern Rail and Transpennine Express Franchises are governed. As that Partnership Agreement requires formal powers of decision-making to be used from time to time, the Rail North Committee needs to have the correct membership so as to be able to exercise those powers on behalf of TfN.		
I can understand the reasons behind the proposal. I am concerned, however, that some of the constituent authorities will not have a voice. TfN was established so that authorities in the North had a voice and I am not sure if this is a little restrictive and outside the principles for which TfN was established.		
The CA's Monitoring Officer understood from previous assurances that membership could		

include any member of the Combined Authority. Limiting membership to the CA's TfN Board member restricts the CA's choice of representative.		
Needs Board membership		
<p>This is a difficult issue as the membership of the committee would normally be drawn from the principal i.e. the Rail North Committee, as a committee of TFN would normally be drawn from the membership of the TFN board.</p> <p>However, the migration of Rail North into TFN was on the basis that those members of Rail North were not disenfranchised as a result of this migration. To make these changes now will lead to some Rail North members not being represented at TFN board level and will have no role/opportunity to influence decision-making particularly in relation to those matters that Rail North had been designated as being responsible for.</p>		

## 8. Rail North Committee Quorum

### Issue

As currently drafted, the Constitution makes no specific provision for the quorum for the Rail North Committee. The Constitution contains general provisions which provide for a quorum on the basis of weighted votes, requiring Members who together hold more than 50% of the weighted votes to be present. Therefore, consideration should be given to amending the Constitution to provide for a defined number of Members (for instance six Committee Members) being present who together hold not less than 50% of the weighted votes.

### Proposal

That the quorum of the Rail North Committee should be six Members who together hold not less than 50% of the rail franchise matters weighted vote.

Question	Yes	No
<b>Do you agree to the amendment of the quorum provisions to require six Members to be present who together hold not less than 50% of the weighted votes?</b>	7	2
<b>Comments</b>		

<p>Needs further discussion, as it may be more appropriate to have 7 members rather than 6. It would seem sensible to have not less than 50% of the rail franchise matters weighted vote.</p> <p>Six members out of 19 Constituent authorities of TfN is insufficient to establish a suitable quorum. Suggest 50% of members should be present. This will increase the importance of the RN committee as well as helping to ensure that you do not get a position where a small but quorate (6 member) RN Committee which is unrepresentative of the whole of RN makes a recommendation that the TfN Board reverse / reject.</p> <p>A quorum is necessary and this is a pragmatic approach.</p> <p>Query as to whether this should be further caveated by specifying that at least 2 of the larger LTAs should be at the meeting, in order for the meeting to be quorate. For further discussion.</p> <p>“Reserved matters” considered by the committee require a 75% vote; under the proposed quorum, a meeting could be quorate but not able to pass a resolution on a Reserved Matter.</p> <p>This would seem to be a sensible decision, unless by doing so will lead to members being disenfranchised.</p>		
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## **9. Officer Reference Groups**

### Issue

The Constitution includes a commitment to include Officer Reference Groups within the governance arrangements of each of the major programmes of work to ensure that the officers of the Constituent Authorities and other interested Local Authorities can have an input into the formulation of schemes and strategies. There was a request from some Constituent Authorities for the Constitution to include the terms of reference and membership (Authorities not named individuals) of these Groups. However, it is considered that there is a need for these groups to be able to evolve over time to meet the demands of the

business of TfN and to include these details in the Constitution would restrict TfN's ability to revise terms and membership to respond to changing situations

Proposal

That details of the terms of reference and membership of all the Officer Reference Groups should not be included as an Appendix to the Constitution but any changes to terms of reference or Membership of an Officers Reference Group should be reported to the Executive Board.

Question	Yes	No
<b>Do you agree that changes to the remit and membership of each of the Officer Reference Groups should be reported to, and reviewed by, the Executive Board?</b>	9	1
<p><b>Comments</b></p> <p>Could possibly lead to very unrepresentative ORG's being selected by the Executive Board.</p> <p>Which appears to have occurred in the recent NPR task and finish group where only the six original cities were involved.</p> <p>ALL constituent authorities should have an ultimate <b>right</b> to be represented on ORG's but the Executive Board should work to agree a smaller but varied representation as and when necessary.</p> <p>It is essential that TfN as a body is trusted by the constituent authorities to provide a balanced approach that considers all views. If TfN appears to be controlled by core cities through operational and task and finish groups then TfN will ultimately lose credibility and support.</p> <p>This approach will avoid the Constitution being bogged down by reference to officer structures that, whilst important for policy development, do not have formal powers of decision-making.</p> <p>It is not appropriate for officer reference groups to be detailed in the Constitution; they are not decision-making nor involve TfN Members, so their inclusion is confusing in terms of accountability.</p> <p>However, the input of officers from this authority and others into TfN decision-making is key, and any changes to the officer</p>		

<p>reference group should be reported to and reviewed by the Executive Board.</p> <p>Allows some flexibility.</p> <p>You will recall that we made extensive representations in respect of this matter. It is our firm view that the terms of reference for the officer groups should be incorporated into the constitution with a clear indication of how such could/should be changed. Whilst we don't disagree that process for changing such needs to be indicated in the constitution we remain of the view that the terms of reference should be part of that constitution too.</p>		
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## 10. Contracts

### Issue

The Constitution provides that:

- i. any contract over a value of £75,000 should be under seal; and
- ii. any contract that includes an indemnity must be executed by TfN's Chief Executive.

These provisions are proving difficult to administer in practice due to the availability of the authorised signatories. The existing execution requirements have the potential to result in procedural delays and impact on the day to day operations of TfN. Therefore, consideration should be given to:

- i. amending these provisions to increase the threshold above which sealing is required; and
- ii. amending the requirement for the Chief Executive to execute all deeds of indemnity to include the TfN Finance Director as an authorised signatory.

### Proposal

That the threshold over which contracts should be under seal should be raised to £150,000: and  
that the TfN Finance Director should be authorised to execute Deeds containing an indemnity clause.

Question	Yes	No
<b>Do you agree that the threshold for executing contracts using the TfN seal should be increased to £150,000?</b>	6	2
Comments		

<p>We believe the decision as to sealing or not should rest with the Senior Legal Officer who can decide if sealing is required. Value is not a determinant of this.</p>		
<p>This is difficult to comment on, as we are unsure of the volume of contracts which are currently over £75,000.</p>		
<p>This is a pragmatic approach that will improve TfN's operational flexibility</p>		
<p>I don't agree with the proposal. They could use DocuSign. I would keep the threshold as it is.</p>		
<p>This is a practical and technical issue on which TfN's Finance Officer and Monitoring Officer are best placed to advise.</p>		
<p>We are more relaxed in respect of the £150 K agreement under seal been delegated to the Head of Paid Service.</p>		
<p><b>Do you agree that the TfN Finance Director should also be able to execute deeds that contain an indemnity?</b></p>	8	1
<p>Comments If it helps administration and proper approvals are in place for the entering into of the legal documentation</p> <p>This is a pragmatic approach that will improve TfN's operational flexibility.</p> <p>This is a practical and technical issue on which TfN's Finance Officer and Monitoring Officer are best placed to advise.</p> <p>We can see how the arrangements that have been adopted could slow matters and would appear to be cumbersome. However, by allowing indemnities to be an officer decision alone could bind the organisation to significant liabilities without any recourse to members. Therefore, we would suggest that the need to be some parameters upon this. At the very least there should be a report retrospectively</p>		

to TFN. Although in reality this will be too late as a commitment will be already given.		
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## APPENDIX 2

### Schedule of Proposed Amendments

Co-option Consents	<p><b>25.3.1</b> **The Members of TfN appointed by the Constituent Authorities may appoint further Co-opted Members if they all agree to do so. Written approval to the co-option may be provided and such written approval may extend to all representatives nominated for appointment to the TfN Board by the eleven LEPs within the area of TfN and to any Independent Members of the Audit and Governance Committee nominated during the year following the Annual Meeting.</p>
Partnership Board	<p><b>11.2.1</b> The Partnership Board shall not be a Committee of TfN and its meetings may be conducted in private.</p>
Urgent Action by the Chief Executive	<p><b>21.2.5</b> Take any action which is required as a matter of urgency in the interests of TfN, in consultation (where practicable) with the Chair or Members of the TfN Board. Where action is taken as a matter of urgency a report shall be submitted to the next meeting of the TfN Board. Consultation with Members may be by such method as the Chief Executive may determine including by telephone, e-mail or informal meeting.</p>
Audit and Governance Committee	<p><b>22.3 Membership and Quorum</b></p> <p><b>22.3.1</b> The Committee shall be composed of 8 members and the quorum shall be four of whom at least two shall be Members or Co-opted Members of the TfN Board.</p> <p><b>22.3.2</b> The Finance Director shall be entitled to take decisions on any matter within the terms of reference of the Audit and Governance Committee after consultation with the Members of the Committee either in writing or by telephone.</p>
Membership of Scrutiny Committee	<p><b>23.1.1</b> Appointees to the Scrutiny Committee must be a member of the appointing Constituent Authority or in the case of a Combined Authority, one of the Constituent Authorities of the Combined Authority but may not be Members of the TfN Board or the Rail North Committee (including substitute and co-opted members),</p>

<p>Public Speaking - Scrutiny Committee</p>	<p><b>23.2</b> Different approaches to scrutiny reviews may be taken in each case but members will seek to act in an inclusive manner and will take evidence from a wide range of opinion. <b>In particular the Chair will consider requests from members of the public to speak at meetings of the Committee provided the request has been made in writing to the Monitoring Officer not less than 48 hours before the date of the meeting. Members of the public if allowed to speak shall be allowed up to 3 minutes to address the Committee.</b></p>
<p>Procedure at Board Meetings</p>	<p><b>15.11 (c )</b> The second item on the Agenda shall be the Approval of the Minutes of the previous meeting. After Approval of the Minutes of the previous meeting the Chair may ask if there are any matters arising upon the Approved Minutes, pursuant to which any Member may ask as to the current position or progress made on any item contained in the Approved Minutes. The Chair shall avoid any debate or discussion that could be construed as attempting to change or vary a previous decision and shall not allow any debate or discussion to transgress the statutory rule that only business specified in the Council Summons may be disposed of at a Council meeting.</p>
<p>Public Speaking - TfN Board Meetings</p>	<p><b>25.7    Public Speaking</b> <b>25.8</b> Members of the public will not normally be allowed to address a meeting of the TfN Board. Any request to address a meeting of the TfN Board will be referred to the Chief Executive who will make appropriate arrangements for the member of the public to meet either with officers of TfN or a delegation of Members of the Board outside the TfN Board Meeting.</p>
<p>Rail North Committee</p>	<p><b>Membership</b></p> <p><b>24.2.1</b> The Rail North-Committee shall be established consisting of one Member and one Substitute Member appointed by each of the Regional Groups set out in paragraph 24.3</p> <p><b>24.2.2</b> The Member appointed shall be a Member or Substitute Member of the TfN Board.:</p> <p><b>24.2.3</b> The quorum for any meeting of the Committee shall be six Members who together hold not less than 50% of the rail franchise matters weighted votes.</p>

