

Transport for the North Board Report Item 5

Subject: Review of the Constitution

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Meeting Date: 20 June 2019

1. Purpose of the Report:

- 1.1 The purpose of this report is to recommend to Members a number of amendments to Transport for the North's Constitution following the Review of the Constitution

2. Executive Summary:

- 2.1 As Members will recall, at Transport for the North's Inaugural Meeting on the 5th April 2018, a request was made for the Constitution to be reviewed after the first six months of operation.
- 2.2 A review has been carried out and this report now makes a number of recommendations for amendments to the Constitution either as a result of the consultation carried out as part of the review or as a result of experience of the Constitution in operation.
- 2.3 The proposed amendments are as follows:

Co-option Consents

It is proposed that Members should be able to give consent in principle to the co-option of LEP representatives as a class of co-optees without having to consent to each individual LEP Member and that such consent shall be obtained in writing in advance of the Meeting.

Consultation of Members outside of formal Meetings

Under the provisions of the Local Government Act 1972 attendance at decision making meetings must be by a Member in person. The Constitution provides for the Chief Executive to take delegated decisions and it is proposed that provisions shall be included for the Chief Executive or an appropriate Director to be able to consult with

Members either by telephone or e-mail before taking such delegated decisions.

Public Speaking at Board and Committee Meetings

It is proposed that the Constitution should be amended to provide that public speaking will not normally be allowed at Board Meetings but that provision for public speaking shall be made at Scrutiny Committee Meetings.

Membership of Audit and Governance Committee

The membership of the Audit and Governance Committee has already been widened to include all Transport for the North Board Members and Substitute Members including Co-opted Members and it is not proposed that this should be widened further.

Transport for the North Partnership Board

The development of the role of the Partnership Board as a statutory advisory body to Transport for the North is being considered alongside the development of the Corporate Plan and potential further constitutional amendments resulting from the implementation of the Blake/Jones Review. A paper will be brought forward to a future meeting.

Membership of Rail North Committee

It is proposed that the Constitution should be amended to make it clear that the Rail North Committee is a Committee of the Transport for the North Board and that only Transport for the North Board or Substitute Board Members are eligible to be Members of the Committee.

Quorum

It is recommended that a quorum of 25% of Members who together hold 25% of the weighted votes be adopted for all Transport for the North Boards and Committees for the future.

Contracts and Indemnity Provisions

The Constitution currently requires all contracts over £75,000 to be under seal. This is unnecessarily restrictive, and it is proposed to increase this to £150,000 or as determined by the Monitoring Officer. The Constitution currently requires all indemnities to be signed by the Chief Executive. It is recommended that this provision be deleted.

General Purposes Committee

It is proposed that a Committee of Constituent Authority Members similar to the Rail North Committee should be established to deal with any issues which arise in relation to any of the major work programmes other than rail franchise which require more detailed Member oversight and political direction.

Blake/Jones Review

Further amendments to the Constitution will be required to implement the findings of the Blake/Jones Review once the report of the Review has been published.

Minor and Procedural Amendments

A number of minor amendments are proposed to correct typographical and other errors without altering the meaning of the document.

3. Discussion:

- 3.1 As part of the review a consultation exercise was carried out and a questionnaire was circulated to all Members of the Transport for the North Board, Scrutiny Committee and Audit and Governance Committee. The review was also considered at meetings of both the Scrutiny Committee and the Audit and Governance Committee and at meetings of the Executive Board and the Constituent Authorities Legal Officers. The amalgamated response to the consultation questionnaire is attached at Appendix 1.
- 3.2 Proposals for amendments to the Constitution which have come out of the review are set out below. The proposed wording of the amendments is set out in a Schedule of Amendments in Appendix 2. A copy of the Schedule of amendments and the revised Constitution have also been circulated to the legal officers of all the Constituent Authorities and their comments have been taken into account.

Further amendments will be proposed to a future meeting to implement the findings of the Blake/Jones Review and to consider the role of the Partnership Board

3.3 Proposed Amendments

Co-option Consents

Co-option of Members onto Transport for the North requires the consent of all the Constituent Authority Members and this can be

administratively difficult to obtain if these Members do not attend and are not represented at a meeting.

It is proposed that Members should be able to give consent in principle to the co-option of LEP representatives and other members of the Partnership Board as a class of co-optees without having to consent to each individual LEP Member and that such consent shall be obtained in writing in advance of the Meeting.

Consultation of Members Outside of Formal Meetings

Under the provisions of the Local Government Act 1972 attendance at decision making meetings must be by a Member in person. Given the extent of the Transport for the North area it can be difficult for Members to be present at meetings particularly if they are called at short notice. On a number of occasions over the last year when an urgent decision has been required the Chief Executive has consulted Transport for the North Board Members informally before taking a decision under delegated powers. It is therefore proposed that provisions shall be included in the Constitution to formalise such consultation with Members either by telephone or e-mail.

Public Speaking at Board and Committee Meetings

Requests to address the Transport for the North 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 where it is allowed, the formal requirements to be met before any request to speak is allowed.

In considering whether the public should be permitted to speak at formal meetings of the Transport for the North Board, Members need to take into account that Transport for the North 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.

Requests to speak have also been made to the Scrutiny Committee. The Scrutiny Committee makes representations to the Transport for the North 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.

There need to be procedural rules in the Constitution setting out when public speaking will be allowed, any requirements such as the written notice to be provided and the time limit for the period allowed for public speaking to assist members of the public who wish to be able to speak at meetings and also to ensure that there is a consistency of approach.

It is proposed that the Constitution should be amended to provide that public speaking will generally not be allowed at Board Meetings but that provision for public speaking shall be made at Scrutiny Committee Meetings and setting out the requirements for this.

Membership of Audit and Governance Committee

The membership of the Audit and Governance Committee has already been widened to include all Transport for the North Board Members and Substitute Members including Co-opted Members and it is not proposed that this should be widened further to other Members of the Constituent Authorities.

Partnership Board

The consultation responses relating to the meetings of the Partnership Board and the development of the role of the Partnership Board as a statutory advisory body to Transport for the North are being considered alongside the development of the Corporate Plan and potential further constitutional amendments resulting from the implementation of the Blake/Jones Review. A paper will be brought forward to a future meeting.

Voting Rights for Co-opted LEP Members

The proposal that LEP Co-opted Members should be given voting rights on the Transport for the North Board was raised by a LEP Member in the February Partnership Board Meeting. Following detailed considerations of the implications of such a proposal and the wording of voting rights in the Transport for the North Regulations it is recommended that Transport for the North maintains the status quo.

The reason for this is that how decisions are made and the weighted voting rights given by the Transport for the North Regulations are very specifically defined in the Regulations as follows:

"A question to be decided by Transport for the North on any other (than a reserved matter) matter may be decided only if agreed by members who together hold more than 50% of the votes in a weighted vote.

A weighted vote is a vote in which the number of votes to be cast by a member appointed by a constituent authority is determined by dividing the total resident populations of the area of that constituent authority at the relevant date as estimated by the Statistics Board by 200,000, and if the result is a whole number, rounding up to the next number"

Similar defined voting rights are given in relation to rail north matters weighted in relation to passenger miles on the franchise railways within the area of the Constituent Authority.

Although section 102G(5) of the Transport Act 2008 may generally allow for voting rights to be given to co-opted Members it does not allow Transport for the North to disapply the voting rights set out in the Regulations and the wording of the Transport for the North Regulations is so prescriptive that it is considered that it is not possible to interpret them in such a way as to allow weighted voting rights to be granted to co-opted members.

Quorum

The consultation proposal was that the quorum for the Rail North Committee should be 6 Members who together hold at least 50% of the weighted votes. This proposal was broadly supported in the consultation responses.

However, the quorum provisions have to be set at a level that enables Transport for the North to operate effectively. Recent experience at Scrutiny Committee, Audit and Governance Committee and Rail North Committee has proved that can be difficult to attain the 50% of members originally suggested for quorum. Schedule 12 to the Local Government Act 1972 provides for a general minimum level for quorum at Council Meetings of 25% and it is recommended that the level which should be adopted for the quorum of the Rail North Committee should be 25% of Members who together hold 25% of the weighted votes, for Scrutiny Committee, 25% of Members and for Audit and Governance Committee the quorum should be 3 Members of whom two shall be Members of the Transport for the North Board.

Officer Reference Groups

In response to the consultation questionnaire there was a call for the membership and remit of Officer Reference Groups to be included in the Constitution. Transport for the North is committed to establishing an Officer Reference Group for each major work programme and following discussion with legal officers at the Legal Officers Group it

was considered that it would be unnecessarily bureaucratic for the membership and remit of all the various officer reference groups to be included in the Constitution. However, it is proposed that the Constitution will be amended to confirm that the Membership and Terms of Reference of Officer Reference Groups will be referred to Executive Board.

Procedure at Meetings

A provision has been included to allow the Chair to call for Members to raise matters arising on the minutes of the previous meeting to reflect current practice.

Indemnity and Other Contractual Provisions

The Constitution currently requires all indemnities to be signed by the Chief Executive. This provision has proved unnecessarily restrictive of day to day business. All contract terms are approved by Transport for the North's legal team and any indemnity provisions are considered as part of that approval process. It has therefore been concluded that this provision is unnecessary, and it is proposed that the provision is deleted.

The Constitution also provides that all contracts over £75,000 should be under seal. This is also unduly restrictive, and it is proposed that this threshold should be raised to £150,000 or at the discretion of the Monitoring Officer.

General Purposes Committee

The Constitution provides for the establishment of the Rail North Committee to deal with any issues arising in relation to rail franchise management issues. The issues which have arisen since the May 2018 timetable change have demonstrated the importance of a smaller Committee of elected Members with detailed oversight able to give direction in relation to operational matters. It is therefore proposed that a similar Committee of Constituent Authority Members (the General Purposes Committee) should be established to deal with any issues which may arise in relation to any of the other work programmes which require more detailed Member oversight and political direction.

Rail North Committee - Blake/Jones Review

The Recommendations of the Blake /Jones Review contain a number of proposals for amendments to the Constitution in relation to the Rail North Committee. In particular the Review recommends that there should be greater political oversight of the decision-making process

empowering Members to be responsible and accountable for the strategic decisions which impact upon services to passengers in the North.

Amendments will be brought forward at a future meeting to implement the proposals set out in the Blake/Jones Review as far as they relate to Transport for the North's Constitution.

3.4 **Executive Board**

The Executive Board is not referred to in the main body of the Constitution. Since it has now been established as part of the governance arrangements for Transport for the North post statutory status, it is proposed that the terms of reference of the Executive Board should be included in the main body of the Constitution for completeness.

Scheme of Delegations to Officers

The Scheme of Delegations to Officers was not included in the original Constitution it is proposed that this should be included for completeness.

Miscellaneous and Minor Amendments

A number of minor amendments have also been made including to change Transport for the North to Transport for the North throughout and to correct minor errors.

4. Conclusion:

- 4.1 The proposed amendments seek to address the issues which have been raised through the review of the Constitution. If Members agree to the proposed amendments the revised Constitution will be proposed for adoption at the Annual Meeting on 31 July 2019.

5. Recommendation:

- 5.1 It is recommended that the Board approve the proposed amendments to the Constitution set out in the Schedule of amendments at Appendix 2 and approve the draft amended Constitution for adoption at the Annual Meeting on 31 July 2019.

6. Appendices:

- 6.1 Appendix 1 –

Consultation Questionnaire – Amalgamated Responses

6.2 Appendix 2 –

Schedule of Proposed Amendments

List of Background Documents:

The Constitution.

Required Considerations

Equalities:

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

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

Environment and Sustainability

Yes	No
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Consideration	Comment	Responsible Officer	Director
Sustainability / Environment – including	A full impact assessment has not been carried out because the report does	Deborah Dimock	Sasha Wayne

considerations regarding Active Travel and Wellbeing	not propose any new strategy or service provision		
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Legal

Yes

Consideration	Comment	Responsible Officer	Director
Legal	The legal implications have been considered and are included in the report.	Deborah Dimock	Sasha Wayne

Finance

No

Consideration	Comment	Responsible Officer	Director
Finance	Transport for the North Finance Team has confirmed there are no new financial implications.	Gareth Sutton	Iain Craven

Resource

No

Consideration	Comment	Responsible Officer	Director
Resource	Transport for the North HR Team has confirmed	Stephen Hipwell	Dawn Madin

	there are no new resource implications.		
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Risk

No

Consideration	Comment	Responsible Officer	Director
Risk	A risk assessment has been carried out and the key risks are included in the report.	Deborah Dimock	Sasha Wayne

Consultation

Yes

Consideration	Comment	Responsible Officer	Director
Consultation	A suitable consultation has been carried and the results are included in the report.	Deborah Dimock	Sasha Wayne