

Transport for the North Audit and Governance Committee Meeting – Item 5

Subject: Review of the Constitution
Author: Deborah Dimock
Sponsor: Sasha Wayne Head of Legal
Meeting Date: 19 December 2018

1. Executive Summary:

- 1.1 This report provides an update on the progress of the review of Transport for the North's (TfN) Constitution.
- 1.2 At its inaugural meeting on 05/04/18 the TfN Board adopted the Constitution but made a proviso that the Constitution should be reviewed after 6 months.
- 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. This report provides an update on the responses to the questionnaire received to date.

2. Recommendation

- 2.1 That the information be received, and that the Committee consider the responses received to the questionnaire and the proposals for amendment of the Constitution.

3. Discussion:

- 3.1 The review was previously considered on the 19th September 2018 by a meeting of Audit and Governance Committee Members who raised the following issues to be considered within the Review:

1. Membership – Members were concerned that the meeting was inquorate and requested that a proposal to increase the Membership of the Committee go to the next Board Meeting.
 2. Core Functions – there was a question of the role of the Committee in the approval of accounts process.
 3. 22.4.3 - “Advise on the effectiveness of relationships between external and internal audit and other inspection agencies” - there was a concern that this requirement was very wide and there was a concern that they could not adequately fulfil the role in the time allowed.
 4. 63.4.2 and 63.4.9 - Code of Corporate Governance – The Committee have asked to see the Officer Code of Conduct, complaints procedure and other internal policies and asked about review processes.
 5. Rail North Partnership Board – the Committee members asked whether they had a role in relation to the Rail North Partnership Board and whether they were sighted on that. They also requested a report on the relationship between TfN and the Rail North Partnership Board and with the Secretary of State.
 6. They also raised a question as to whether the Chair and Vice Chair of the Committee should be appointed by TfN Board rather than the Committee itself and whether the Committee should have an Independent Chair.
- 3.2 In response to these comments a recommendation has been made to the TfN Board at its meeting on 06/12/18 that the number of TfN Board representatives on the Audit and Governance Committee be increased to 5 to assist in ensuring that future meetings of the Committee are quorate.

The other matters will all either be taken forward as part of the Review or will be brought back to the Committee at a future meeting.

4. Responses to the Questionnaire

- 4.1 At the time of writing this report 12 responses had been received to the Review Questionnaire, 4 from individual Members including LEP representatives, 1 from a statutory partner and 7 from the Constituent Authorities. A consolidated questionnaire containing all the comments received is at Appendix 1.
- 4.2 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.
- 4.3 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 2 who objected and considered that public speaking should be allowed at the Board while 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 for membership 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 2 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 2 of the larger LTAs should be presents.
 10. **Contracts under seal – to look at increasing the value above which contracts should be under seal –** A majority were in favour with only 2 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.
- 4.4 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.

5 Proposals for Amendments

- 5.1 On the basis of the responses so far, the following proposals can be made for amendments to the Constitution:
1. Introduction of a procedure for the CAs to give an annual consent for the co-option of new and replacement LEP representatives
 2. Introduction of a procedure for CA's to provide their consent to co-option in writing.
 3. Although 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)
 4. Clarification that the Majority and Minority parties will each be asked to nominate a Vice Chair of the TfN Board.
 5. Clarification of quorum provisions for the Rail North Committee to be 50% of Members (6) who together hold 50% of the weighted votes

6. 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.
7. Amendment of the sealing provisions.
8. Amendments to the 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.

- 5.2 The Constitution Review will need to take account of the findings of the Blake/Jones Review into the Rail North Partnership Board so that any recommendations for constitutional changes can be fed into the review before any final recommendations for changes to the Constitution are proposed to OBT, Executive Board and the Constituent Authorities before being taken to the TfN Board for adoption
- 5.3 The Constitution will also need to be amended to make provision for the establishment of the Newcastle upon Tyne, North Tyneside and Northumberland Combined Authority as a new Constituent Authority.

Appendices:

Amalgamated Questionnaire Responses

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 because it is not relevant to this report.		

Environment and Sustainability

	No
--	----

Consideration	Comment	Responsible Officer	Director
Sustainability / Environment	A full impact assessment has not been carried out because it is not relevant to this report.		

Legal

	No
--	----

Consideration	Comment	Responsible Officer	Director
Legal	there are no legal implications other than those included in the report		

--	--	--	--

Finance

Yes	
-----	--

Consideration	Comment	Responsible Officer	Director
Finance	There are no new financial implications as a result of this report.		

Resource

	No
--	----

Consideration	Comment	Responsible Officer	Director
Resource	Transport for the North HR Team has confirmed there are no new resource implications as a result of this report.		

Risk

	No
--	----

Consideration	Comment	Responsible Officer	Director
Risk	There are no new risks associated with this report		

Consultation

	No
--	----

Consideration	Comment	Responsible Officer	Director
Consultation	A public consultation has not been carried out because it is not relevant to this report. There has been full consultation of TfN's Members and Constituent Authorities		

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 CONSTITUION

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
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?	X X XXXXX	XX
Comment 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 could 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</p>		

<p>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>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?</p>	<p>XXXXX XXX</p>	
<p>Comment</p> <p>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 5th 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
If it is legally acceptable, do you think Members should be able to dial-in to Audit and Governance Committee Meetings?	xxxxx xxxx	xx
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.		

<p>It is difficult to comment until the legal position is known. If it is legally accepted, we would have no objection.</p>		
<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</p> <p>Need however to massively improve telephone conference facilities including video facilities</p>		
<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>If it is legally acceptable do you think that Members should be able to dial in to Rail North Committee Meetings?</p>	<p>Xxxxx xxx</p>	<p>x</p>

Comment

Only in exceptional circumstances and with sufficient notice given.

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.

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.

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
<p>Do you think that the balance of opportunity for members of the public to address the TfN Board and Committees is appropriate?</p>	<p>X XXXX XXX</p>	<p>XX</p>
<p>Comments</p> <p>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).</p> <p>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</p> <p>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.</p> <p>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.</p>		

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
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?	Yes with certain caveats Xxxxx xxx	
Comments 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>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>		
--	--	--

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 5th 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
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?	Xxxxx xx	xxxx
<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</p>		

<p>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> <p>Comments</p> <p>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.</p> <p>Risk of compromising public engagement</p> <p>Clearly, the constitution should reflect any current practice.</p> <p>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.</p> <p>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.</p> <p>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.</p>		
---	--	--

<p>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.</p>		
---	--	--

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		
<p>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?</p>	<p>Xxxxxxx x</p>	<p>xx</p>
<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
Do you agree that membership of the Rail North Committee should not be widened to include any member of a Constituent/Rail North Authority?	xxxxxx	xxx
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.		

<p>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.</p>		
<p>Needs Board membership</p>		
<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
<p>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?</p>	<p>X XXXX XX</p>	<p>XX</p>
<p>Comments</p>		

<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>		
---	--	--

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
<p>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?</p>	<p>Xxxxx xxxx</p>	<p>x</p>
<p>Comments</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 right 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 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</p>		

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.		
---	--	--

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
Do you agree that the threshold for executing contracts using the TfN seal should be increased to £150,000?	xxxxxx	xx
<p>Comments</p> <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>		
This is difficult to comment on, as we are unsure of the volume of contracts which are currently over £75,000.		

This is a pragmatic approach that will improve TfN's operational flexibility		
I don't agree with the proposal. They could use DocuSign. I would keep the threshold as it is.		
This is a practical and technical issue on which TfN's Finance Officer and Monitoring Officer are best placed to advise.		
We are more relaxed in respect of the £150 K agreement under seal been delegated to the Head of Paid Service.		
Do you agree that the TfN Finance Director should also be able to execute deeds that contain an indemnity?	Xxxxx xxx	x
<p>Comments</p> <p>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 to TFN. Although in reality this will be too late as a commitment will be already given.</p>		