

GLA Oversight Committee, 9 July 2015

Transcript of Item 10: Transport for London (TfL) Board Governance

Len Duvall AM (Chair): What expertise should the Board have beyond those areas required in the Greater London Authority (GLA) Act?

Isabel Dedring (Deputy Mayor for Transport): Howard [Carter, General Counsel, TfL] and I were just talking about this yesterday, actually. What we have tried to do with the Board over the last couple of years and in the last recruitment in particular - with medium success, let us say - is that, as far as I am concerned, we need to *not* have a Board full of people who only know about transport but, clearly, you want people on the Board who have a deep knowledge of transport.

Fundamentally, also, TfL is a huge retailer, in a sense. We have a vast number of customers taking 27 million trips a day. These are people who are using our network and expecting a level of service. We have tried to bring in a few people who also have retail experience. Roger [Burnley] is from Sainsbury's and brings that background to the table and Brian [Cooke], with the London TravelWatch background, the same thing: trying to bring a customer perspective in. That is just as important as having people with transport experience.

The other thing is that we have a huge capital programme, obviously, and so somebody like John Armit is trying to bring capital programmes experience to the table as well. Then we need people with finance experience and accounting experience. We are probably a bit heavy on that at the moment. We have Eva [Lindholm], Peter [Anderson] and others who bring that and Michael Liebreich to a certain extent. We have Keith [Williams].

Then there are people who have experience in large organisations and who understand things like delivering efficiencies in large organisations and organisational change. Somebody like Keith [Williams] brings that and Roger [Burnley], again, from Sainsbury's and to a certain extent other people as well.

I am very keen that we have people who have a progressive voice on transport issues. Somebody like Michael [Liebreich], who comes from an environmental/green background, is very enthusiastic on those topics, apart from having professional experience in it. Michael is one of the people who brings that to the table.

The last thing I would mention that we are quite light on at the moment is a whole set of issues around innovation, the digital age, social media, big data, transparency and how we use data in this day and age. It has been an issue that has been identified at the Finance Committee that we also do not really have the depth of expertise on the Board to deal with some of these big signalling contracts, big information technology (IT) issues and also just the efficiencies that we could be delivering in the IT area. It has been a gap also partly within the organisation but certainly at Board level there is not anyone who really can get to grips with some of those issues. Indeed, within the Independent Investment Programme Advisory Group (IIPAG) too, we have identified that there is an issue with IIPAG's expertise in scrutinising some of these projects because they are coming more from the traditional engineering fields rather than from some of these new areas. Those would be, as far as I see it, the big areas.

Then you get into the whole of diversity and representation, but that is a different issue. In the first instance, you want people who can get to grips with the big themes of what TfL is about.

Len Duvall AM (Chair): Is it fair to say that for TfL, the considerable professional executive expertise of the Board is the critical friend and the added value to its work? That is essentially the role of the TfL Board.

Isabel Dedring (Deputy Mayor for Transport): Yes, and an objective assurance process, exactly.

Len Duvall AM (Chair): Yes, the checks and balances of what is going on.

Isabel Dedring (Deputy Mayor for Transport): Yes, which is why it needs to be not too politically driven and also not too much about having particular stakeholder groups represented. If this were a public limited company (PLC), then you would make sure that you had people on the Board who understood the key issues that the organisation is grappling with and have direct experience in those areas. That is not to say that they should not be able to represent stakeholder views, but that should not be the driving force behind the establishment of a Board.

Len Duvall AM (Chair): Fine. In this context of a public body, is the shareholder the Mayor, who chairs it, or is it Londoners? Who are the shareholders?

Isabel Dedring (Deputy Mayor for Transport): In the sense that the Mayor is democratically elected by London, it is the Mayor. However, really, it is the Mayor as the representative of Londoners, which luckily with transport is easier than with some other areas because pretty much every Londoner encounters transport in some form or another pretty much every day.

Len Duvall AM (Chair): I am just trying to get a handle on where the non-executives see their shareholder is. It is quite clear in the private sector, but on a Board like this it may well be less clear. On the choice and quality of applicants and the process and TfL's ability to attract a good pool of high-calibre people, what is the process that we go through?

Isabel Dedring (Deputy Mayor for Transport): I have done this only once and Howard [Carter] can comment on previous occasions. Perhaps I will make a few comments on my experience in 2012. Juliette Carter [Assistant Director, Human Resources and Organisational Development, GLA] was involved in that as well and she might want to comment, too.

I am pretty happy with all of our Board members in different ways and we ended up with a good outcome, but I have to say that I was quite shocked at how difficult it was to get good candidates and we had to do a lot of reaching out through our networks - mine, Howard's, others' - which you would not really want to do because you always worry that you are going to end up with some kind of bias in the system. Therefore, there is a public process. Anyone can apply. We - well, I do not; others like Juliette and others - sift through all of the CVs. However, the calibre was not brilliant in certain respects and we did have to top it up by reaching out to people and tapping people up.

There were particular areas that were really problematic. I was very keen to make sure we had decent female representation and non-white representation on the Board. These are just basic things nowadays. It was extremely difficult and the results are there for everyone to see in terms of the Board composition. There is insufficient female representation, as far as I am concerned, on the Board but we did get a lot of female applicants but they were not appointable, in my view.

I do not know how we fix that next time around, but we need to think about how we do that and whether there is some way of reaching out to a broader base of people. Again, we were trying to reach beyond the transport space and say, "Hey, if you have experience that you think is relevant, whether that is in a PLC environment or making trainers or whatever it is, we want to hear from you". It was more difficult than I

expected. It is reasonably well compensated. It is very high profile. It is a very interesting topic. You would think you would be inundated with applications. I do not know, Howard, whether you want to add anything?

Howard Carter (General Counsel, Transport for London): My recollection is that there is usually a large number of applicants but, when you look at the quality of those applications, there are not that many high-quality applicants. Then you are struggling a little bit to work out quite where the full Board is going to come from. It is a process that is run with an advert. It is a very open process. Also, people put the word around and suggest people who might be interested. There is some attempt to do that.

Isabel Deding (Deputy Mayor for Transport): The obvious thing to do is to use some of the organisations that have board practices and do board searches, but we wanted to avoid the expense associated with that and so we did not want to --

Howard Carter (General Counsel, Transport for London): The next time around, there is a bit of a case, for exactly the reasons Isabel has just been saying, for working out the best way to be more proactive, particularly to deal with some of the gender inequality and balance issues. There are organisations out there that will help with that.

In fact, in the effectiveness review that we have just asked Deloitte to do is quite timely. We are doing the regular triannual externally facilitated board effectiveness review and Deloitte is helping us with that. We are asking it to help us with some suggestions about how we - or actually the GLA because of course it is a Mayoral appointment - might do better in terms of improving the calibre of the candidates that we get.

Len Duvall AM (Chair): OK.

Caroline Pidgeon MBE AM: It really carries on the discussion about Board representation. If I could start with Howard, can you just absolutely confirm that members who are on the Board are not there to represent specific interests aside from those set out in the legislation: women, disabled people and people living, working and studying outside who travel into London rather than just Londoners? Apart from those set out in the legislation, can you just confirm the members' role?

Howard Carter (General Counsel, Transport for London): There are two separate things. One is the skill-sets that members have and that is what we have been talking about up until now. In fact, that is what the legislation largely talks about and it sets down some statutory skill-sets and issues that members ought to have experience of.

With the exception of the two members whom we specifically have to appoint as people who will represent the interests of commuters by rail - and there is a statutory provision that specifically asks us to nominate two members - and who are given that responsibility under statute, all the members of the TfL Board when they sit as Board members are there to promote the interests of TfL. That is the role. That is the job description. That is what is specified in their terms of appointment.

Of course, they all come with a range of experiences and backgrounds and predispositions and views about things because that is human nature and that is the nature of non-executive boards. When they sit in judgement, as it were, and are taking decisions about the matters in front of them, they are there to act in the best interests of TfL and the stakeholders and shareholders - call them what you like - that TfL is there to serve. That is a very long way around to saying, "Yes", I think, but I am agreeing with you.

Caroline Pidgeon MBE AM: Yes, that was helpful detail. Do you think members actually understand that?

Howard Carter (General Counsel, Transport for London): I would hope that they do. It is certainly made clear to them when they are appointed that they are there to act in the best interest of TfL. Their terms and conditions of the role specify that very clearly. When you have other interests in life, you obviously bring views from those other areas and it is a fine line.

Caroline Pidgeon MBE AM: Could it be more clearly set out in something like Standing Orders?

Howard Carter (General Counsel, Transport for London): The role of members is set out in the job description. We could certainly put something in the Standing Orders. That tends to deal with processes and procedural things, rather. If what you are asking is whether it would be helpful if we were clearer on that in terms of the next round of reappointments, I would agree with that. Perhaps it would also be helpful - and we are going to come on to conflicts of interest - if some of that was even clearer than it already is.

Caroline Pidgeon MBE AM: Do you have some sort of code of conduct and all that sort of thing?

Howard Carter (General Counsel, Transport for London): Yes. TfL has a code of conduct that applies to the whole organisation and we very specifically and clearly apply that to Board members as well. It is the same sort of code of ethics that you would expect a large organisation to have and that is incorporated into the terms of appointment of Board members and it is specifically referred to. Obviously, the statutory provisions around conflict of interest and behaving appropriately are all set out in there as well.

Caroline Pidgeon MBE AM: From everything that has been said already, one of the challenges is that you want Board members to come in with all this expertise, knowledge and experience in different fields and also some in the transport field, but also you do not want them to be pushing, "I come from the rail industry and therefore that is all I am going to focus on and I am going to be pushing for stuff that benefits my colleagues in that field".

Is it a contradiction and should you perhaps be looking, when you do appoint members, to then give them an area that they could champion? We used to do this on the Metropolitan Police Authority (MPA). Just before I arrived, on the MPA members were given an area that they focused on and championed that could be different to - and should be different to - the field they come from if it is transport and conflicting. Is that possibly a way to try to square this circle?

Isabel Deding (Deputy Mayor for Transport): I was just going to say that that sounds interesting.

Howard Carter (General Counsel, Transport for London): Yes, it is possible.

Isabel Deding (Deputy Mayor for Transport): As part of the Board effectiveness review, I would be very happy to have a look at that as a model. If somebody can give us something in terms of how it would work in that example, it would be really valuable.

We do that informally and it does not tend to work because people say, "Yes, I am going to do that", and then they get distracted off to something else. Different Board members have different amounts of time that they are prepared to put in. Some of them will want to go off and have lots of bilateral discussions with officers on particular issues they want to champion, which I am always very supportive of, but others just do not have the time to do that. What you do not want to do is to give topic X to person X and they really pursue it and topic Y ends up languishing somewhere and then somehow implicitly that topic does not matter because nobody has pursued it. It can be a bit tricky, but if there is a model that has worked well I would be very interested to see it.

Caroline Pidgeon MBE AM: I do not know. Others were on the MPA. I just know that, certainly, the independent members particularly had an area and they became quite expert in . It might be that that could be something you could do on the TfL Board.

Isabel Deding (Deputy Mayor for Transport): It might help with one thing, which is that not just in the Board meeting itself but in the subcommittees we get certain Board members who tend to be extremely vocal and dominate the discussion and others whom you cannot get to say anything. It might help with that because it might draw people out a bit more. They do say something, but you would like to be a bit more active and you can sit there saying, "Hey, does anyone else want to say something?" Sometimes it can be a bit difficult to draw people out.

Caroline Pidgeon MBE AM: I know. Val [Shawcross CBE AM] may want to follow up, but particularly about having someone on customer issues. We will let Val come in on that because she has done the work on that, maybe. Isabel, to what extent do you think the Board should be more representative of Londoners?

Isabel Deding (Deputy Mayor for Transport): Do you mean in terms of the diversity and composition? Yes, to a large extent, it should absolutely be. As far as I am concerned, the first-level criteria have to be the kinds of things we were talking about earlier. You need people who know about capital programmes. You need people who understand customer service.

However, the immediate second priority would be to make sure that we have a diverse and representative group of people, which we do not really have at the moment. Despite best efforts in 2012 and something I was personally very committed to, it was very frustrating and disappointing. Having been through that, I do not see any alternative to using maybe more than one proper search organisation that could help us and then we just need to accept that we are going to have to pay an amount of money to help get the right people in.

Caroline Pidgeon MBE AM: Sometimes you do have to take a risk with people.

Isabel Deding (Deputy Mayor for Transport): That I was very prepared for. There were people and you think on the face of it, "Is this person going to be able to do it?" However, it was not that. It was not like, "You do not know anything about transport and therefore you would not be appropriate". That kind of thing was not an issue. We were prepared to be quite broad in who might come to the table, but we were not fishing from a very good pool in that respect. We did it in a very proactive but very informal way.

My advice to anyone doing it in 2016 would be that you would want to do it with some professional organisations that specialise in that area and give it quite a clear brief about what you want in that respect.

Caroline Pidgeon MBE AM: Given that you have helped spearhead this recruitment and we have only four women and no one who is black or minority ethnic, it is staggering.

Isabel Deding (Deputy Mayor for Transport): Yes. I can remember that we had a longlist of 150 people and it was incredibly thin. Then we went around and tried to add more people into the mix. It was incredibly difficult.

Howard Carter (General Counsel, Transport for London): The shortlist did not look like that, either. It just happened that we were just struggling with finding good people.

Caroline Pidgeon MBE AM: Did you at any point then think, "We need to go and get someone else to help us and we are going to have to pay someone to do this because what we are doing is not working"? I am not

sure I would have been prepared to sign off on that and I am surprised, really, that you guys would have to report back to the Mayor.

Isabel Deding (Deputy Mayor for Transport): In retrospect, probably, we should have just said, "Let us just want another N months and extend everybody's contract". That is something we could have done: extend the previous Board's contracts.

Howard Carter (General Counsel, Transport for London): Maybe the answer is to leave some vacancies and carry on trying. That is another thing that we could have done, to be fair.

Caroline Pidgeon MBE AM: Yes, OK.

Valerie Shawcross CBE AM: Just to come in on a specific point, I did two rapporteurships on customer services and we put it to you that sometimes you can use your management of a Board or Board functions to help develop an area of the organisation where there is a particular weakness. The Transport Committee through the rapporteurships suggested to TfL that it should have a Board champion for customer services. The response to the specific recommendations in terms of the specific improvements and developments to be made was, "Yes", and was very good and has been really positive, but the response to that particular recommendation was almost the only one that was rejected.

My feeling was that TfL had misunderstood the role that was being suggested. There should be somebody who would have a strategic role in developing customer services. Do you not think that that is something that TfL in hindsight would have benefited from? On the one hand, you have very good ticketing arrangements. On the other hand, things like information, phone access, customer charters, complaints procedure, the website and all of that has been lagging behind the service performance.

Isabel Deding (Deputy Mayor for Transport): Yes, I have spoken to Vernon [Everitt, Managing Director, Customer Experience, Marketing and Communications, TfL] about it and his position is that we would want every Board member to be a champion. However, that is your point about how maybe that is a misunderstanding of why clearly they should be representing and championing customers because, going back to your point, they are our shareholders, effectively, as London. What you are describing is something different, which is what kind of improvements we need to see specifically within the customer area. Again, I do not see any reason why we could not have such a person --

Howard Carter (General Counsel, Transport for London): We should look at that again in the effectiveness review and we should ask Deloitte for models about how that kind of thing works with other boards.

Isabel Deding (Deputy Mayor for Transport): Yes, that is a good idea.

Howard Carter (General Counsel, Transport for London): That would be interesting. The only slight caution I would have is that if you start to pick a champion for one thing, maybe you have to have a champion for others and it affects the model and the way that you are operating with the Board. However, as we have already been discussing, there is a broader issue including that area but perhaps including some others where you might choose to organise the Board in a slightly different way and give several people those different responsibilities. That is something we should look at as a broader question, including that specific point, and see whether there is merit in it.

Isabel Deding (Deputy Mayor for Transport): Yes, it might work within the context of what Caroline [Pidgeon MBE AM] is describing but maybe even better where you have somebody who is doing that as well as people who are tasked with other areas to --

Valerie Shawcross CBE AM: Fundamentally because TfL still to some degree has its operational silos and is such a large organisation with service specifics and expertise required, it is sometimes on those crosscutting issues, like developing a customer service architecture that works for people, that things fall over and not going on anybody's list.

Isabel Deding (Deputy Mayor for Transport): Yes. I am totally open-minded to it and we will definitely look at it as part of the review that is going on at the moment and look at some alternative models.

Just for interest, what has happened in practice is that Tanni [Grey-Thompson] has ended up being a really strong sounding board for all of the access-related issues, although she was a bit reluctant to do that because she did not want to get pigeonholed into that area but she and I have just worked together on a bunch of those things. Michael Liebreich has really championed some of the data issues and transparency and how we use big data and information and what we publish and do not publish. We have ended up cobbling it together from different people who had a strong interest in different areas, but that does not mean that we have ticked all of the areas that you would be describing.

Valerie Shawcross CBE AM: There is a difference between a tactical role where you say, "This is the person whom I am going to try out on this idea", and having a strategic role where you say, "Strategically, we need to develop the organisation to perform these functions better", or whatever. It sounds like Tanni and Michael --

Isabel Deding (Deputy Mayor for Transport): Tanni and Michael and there are a few others who have also done similar bits.

Valerie Shawcross CBE AM: Tanni has been tactical but Michael has been empowered to be strategic about his function.

Isabel Deding (Deputy Mayor for Transport): She has been strategic on the data point particularly, but not on issues like how much we charge for people to call us and how many ways there are for people to come into the organisation and what we do with victims or customer-care cases that are really egregious. Yes, I get what you are saying, as long as it is positioned to not preclude other people getting involved in those kinds of issues, obviously.

Valerie Shawcross CBE AM: Thank you.

Len Duvall AM (Chair): This next set of questions is about conflicts of interest but also about decision-making and what goes where in the structure of your Board.

Darren Johnson AM: Howard, why did the Cycle Superhighways programme paper go straight to the Board and not to the Finance and Policy Committee first?

Howard Carter (General Counsel, Transport for London): It was a timing issue. There was a Finance and Policy Committee a couple of weeks or so before the Board and the paper was not ready. There were two options. One was to defer to the next Committee or we could have also had a one-off meeting as well. The other option was to take it straight to the Board. It was purely a timing issue because the project had various timelines and was dependent on doing things in certain times during school holidays, over the summer and that kind of thing to lessen the impact if the project was going to go ahead.

Darren Johnson AM: Presumably, there are similar timing issues in other TfL projects outside of cycling. How often do investment decisions go straight to the Board like this without going through a committee first?

Howard Carter (General Counsel, Transport for London): It does happen, but it is rare and we try our absolute best to avoid it. It does happen occasionally.

Darren Johnson AM: This was very much an exception, then?

Howard Carter (General Counsel, Transport for London): It was unusual. I would not say it was exceptional. It was unusual.

Darren Johnson AM: Did any members of the Board raise concerns about the paper being fast-tracked?

Howard Carter (General Counsel, Transport for London): We informed the finance committee meeting that it would ordinarily have gone to that that was what we were intending to do and so we did not just do it without letting anybody know. There was no objection at that point. When we reached the Board discussion, I seem to remember that there were a couple of members who said they would have preferred to have had the discussion first at the Finance and Policy Committee.

Isabel Deding (Deputy Mayor for Transport): Most of them were people who were on the Finance and Policy Committee, which was slightly mystifying.

Howard Carter (General Counsel, Transport for London): Yes, there were a couple of people who raised a concern about that at the Board meeting.

Darren Johnson AM: If the paper had gone to the Finance and Policy Committee, how would the item have been dealt with in that scenario, given the Chair of the Committee's conflict of interest?

Howard Carter (General Counsel, Transport for London): As we have done on other occasions, we would have identified that conflict of interest and we would have advised him that he could not chair the meeting or indeed take part in that particular item.

Darren Johnson AM: Another member would have deputised to chair that particular item?

Howard Carter (General Counsel, Transport for London): Yes the Deputy Chair or, if the Deputy Chair was not available, another member would be asked to deputise. We have done that on occasions in the past.

Darren Johnson AM: Looking back at this whole process, are there any lessons that can be learned and things that can be improved upon in terms of future conflict of interest issues and decision-making processes at Board level?

Howard Carter (General Counsel, Transport for London): The conflict of interest thing is always a hard one because it is not always easy for people to recognise that they have a conflict of interest in an issue --

Jennette Arnold OBE AM: Why not?

Howard Carter (General Counsel, Transport for London): -- and the borderline between a conflict and a particular interest or a keen view about a particular issue can be quite a hard line to draw.

Darren Johnson AM: Do you think that there is a particular difficulty when you are dealing with non-elected members? With elected members, we get it drummed into us from day one. We get the fear of God put into us by people like you over conflict of interest issues.

Jennette Arnold OBE AM: They are sitting on the Board. Rubbish!

Howard Carter (General Counsel, Transport for London): I would like to think that we are just as clear with non-executive Board members as we are with elected politicians about what the rules are about conflicts of interest. It may be that there are some areas of business where those rules are not as important or not as prominent.

Darren Johnson AM: It is a cultural issue?

Howard Carter (General Counsel, Transport for London): It is a cultural thing, yes. I hesitate to say that some areas are not as good at enforcing those rules as others, but it does come as a surprise sometimes. Also, when you are in public bodies, you also have issues about judicial review to look at as well. That is not always understood by people who are coming from the commercial sector. It is different, actually. It just is a difference.

We do an awful lot to try to draw that to people's attention. It is in the terms of appointment. It is in the statute. It is in the Standing Orders. We tell people about that when we induct them. I offer an awful lot of informal advice to Board members. I quite regularly get Board members phoning or emailing me to say, "Can I just mention this? Do you think this is a conflict?" There is a healthy dialogue about that. Most people usually err on the side of caution. Most of those conversations are people doing that just to make sure and, more often than not, my advice is, "Actually, I do not think there is a conflict". Occasionally, there are issues where you think there is and usually the person concerned accepts that. It is not always the case, but just occasionally people do not agree. Usually people accept that advice when it is given.

We have all these documents that say all of this. We do not have one document that says, "Here is the advice about conflicts of interest". In fact, just talking to Isabel yesterday about this and also talking to Deloitte, which has just started to do the work on the effectiveness review, we have been wondering aloud to ourselves whether we should have a document that is just headed "Guidance for Board members on conflicts of interest".

Andrew Boff AM: I am astonished that you do not have that already. I am knocked over by that.

Isabel Dedring (Deputy Mayor for Transport): What Howard was saying was what he has just said. It is already in all of these bits of paper, Andrew. The point is that it is in all of their appointment things or whatever. When people ask about it, Howard sends them the bit from the legislation that says, "This is what a conflict is". What we do not have is a slightly more expansive, "Let me help you interpret this piece of legislation. This is what the law says and that means things like this. Here are some examples of cases that we have had in the past when people have recused themselves and that kind of thing".

Basically, if you are dealing with the 80% or 90% of cases where people are being super-careful and do not want to have a conflict, then there is not a problem because they are self-policing. It is more about the cases when people do not want to hear what you have to say on the subject. Then it would be useful to say, "Here is the conflicts policy", and it is a slightly more expansive bit of paper than a cut-and-pasted piece of legislation.

Andrew Boff AM: Yes, I am sorry. I was just astonished by that.

Jennette Arnold OBE AM: Chair, we have to make clear how astounded we are in terms of what we just heard. Let us get some clarity and let us stay with the example that we started with in terms of TfL's approach to managing conflicts of interest. When the Board considered the Cycle Superhighways programme, there was confusion over certain members. These are members and we have their CVs here in front of us. All of them sit on major boards and are well experienced and appeared to be confused about whether they had a conflict of interest or not. Indeed, the Chair - or I think it was the Chair - adjourned the meeting so that there could be a discussion about whether there was a conflict and allowed people to speak. Did you advise the Chair that this was appropriate behaviour?

Howard Carter (General Counsel, Transport for London): I will just take those two things separately first. I do not think there is any confusion. Everybody was clear because we have spelled it out and we gave some specific advice that was pertinent to that decision about what we considered to be conflicts of interest. We were absolutely clear about that. It is fair to say that everybody who could potentially have had a conflict of interest agreed with that advice except for one person. There was one member who did not agree with our view about whether he had a conflict of interest or not and he said that at the meeting. Therefore, there was not any lack of clarity. There was disagreement by one person, but no lack of clarity.

In terms of the process, I did offer the Board an option because there was a feeling amongst some members that it would be helpful if those members who had a conflict could give their views to the Board so that, when the Board considered the matter, the Board had the benefit of those views. The process that was followed was that the Board was suspended to allow a couple of members to make a statement and say what their views were.

Jennette Arnold OBE AM: Normally, in real life, if you have a conflict, you are not allowed to speak at that hearing.

Howard Carter (General Counsel, Transport for London): That is right. That is the normal process.

Jennette Arnold OBE AM: You gave the Chair permission to allow people --

Howard Carter (General Counsel, Transport for London): I did not give permission. I advised the Board that it was an option and that it was consistent with Standing Orders if the Board wished to follow that process. Having been given that advice, the Board decided to follow that advice.

Jennette Arnold OBE AM: With TfL's Standing Orders? Would you find that sort of Standing Orders in any other reputable major organisation, do you think?

Howard Carter (General Counsel, Transport for London): Our Standing Orders are absolutely typical of most large organisations.

Jennette Arnold OBE AM: How easy is it for Board members to understand whether they have a conflict of interest or not?

Isabel Dedring (Deputy Mayor for Transport): How easy is it?

Jennette Arnold OBE AM: What is the difficulty?

Isabel Deding (Deputy Mayor for Transport): Howard has commented on that. People ask us questions. He explains what the conflict is. It is true to say that the legislation is quite broad. I have read it. If somebody wants to interpret that they do not have a conflict of interest and chooses to do so, at the end of the day, they can technically do that under the law. As I understand it, the position is that if you have a conflict the burden is on you to recuse yourself. Howard gives advice and says, "It is my strong advice to you that you do or do not have a conflict". However, the actual liability for participating in a conversation if you have a conflict of interest is on the individual and the obligation to recuse yourself is on the individual, like I was saying. In an extreme example, Howard or Boris [Johnson MP, Chair, TfL Board] could not forcibly remove that person from the chair. That is the actual technical, legal position. I am not saying that is a good position. I am just saying that that is actually the legal position on the subject. Howard can correct me if I am wrong.

Howard Carter (General Counsel, Transport for London): Yes, you are absolutely right.

Jennette Arnold OBE AM: Can I then carry on with Isabel? Do you think that your Board members - and it goes back to the point that the Chair made at the start - have a duty to act in a way that gives Londoners confidence that the Board members are there to represent Londoners' interests and not their own?

Isabel Deding (Deputy Mayor for Transport): That sounds reasonable to me, yes.

Jennette Arnold OBE AM: You are confident that your Board members have that at the forefront of their minds?

Isabel Deding (Deputy Mayor for Transport): It is very hard to say what they actually have in their minds, but hopefully that would be why we would be appointing them and what they would understand. They are all very clear. They are not there to represent whatever their day job happens to be. Roger [Burnley] is not there to make sure that Sainsbury's can get its lorries to wherever it wants to get them in time and he understands that.

Jennette Arnold OBE AM: There is nothing written and I suppose at your level you would not give them training like other people?

Isabel Deding (Deputy Mayor for Transport): No. There is a number of different documents, all of which contain that information and explain what their obligations are as Board members, the Standing Orders, their terms of appointment, various bits of paper --

Howard Carter (General Counsel, Transport for London): The legislation.

Isabel Deding (Deputy Mayor for Transport): -- the legislation and there is training as well.

Howard Carter (General Counsel, Transport for London): For all members.

Isabel Deding (Deputy Mayor for Transport): All I am saying is that what is in someone's mind about what they consider to be their duty or their conflict, none of us can know what is in someone's mind.

Jennette Arnold OBE AM: As far as we know from what has come out so far, is it fair to say that the only occasion when you had a member of the Board, if you like, challenging the information that has been given to all Board members about a conflict of interest has been one member of the Board? Is it that one, just from your experience?

Howard Carter (General Counsel, Transport for London): No, I would not say that. Sometimes there is a discussion. I can remember two or three times when Board members have not necessarily been comfy when we have said, "I think you have a conflict of interest on that issue", and they have not necessarily agreed. However, almost always --

Isabel Dedring (Deputy Mayor for Transport): I was one of them.

Howard Carter (General Counsel, Transport for London): Yes, that is true. We have had a conversation about that. I have had that conversation with several Board members. They do not always agree with me but usually we have a discussion and come to an agreed position.

Jennette Arnold OBE AM: In this review that is happening, did you say that looking at conflicts of interest was within that review--

Howard Carter (General Counsel, Transport for London): Yes, it is in the review. Good corporate governance these days requires you to do an effectiveness review of the operation of the Board and you should do that every year. One in every three years, the advice is that you should have that as an externally facilitated review and bring in a consultancy firm that has some specialism in this and ask it to take a look at your operations and make recommendations.

We have just come, coincidentally, this year to the third anniversary of the last time that we did this and so we were due an externally facilitated review this year. We have just appointed Deloitte, which has a specialist unit that specialises in providing effectiveness reviews to large boards, to work with us on that. It will be doing some fieldwork on that this summer and will be reporting to the Board in the autumn on the outcome of that. Absolutely, every issue that we have talked about up until now and definitely including how we handle conflicts of interest in within the remit of that review.

As I have said earlier, we have just been having some discussion already with Deloitte and with Isabel we were discussing yesterday whether there is even more that we could do. I would say we do a lot. I would say we do everything that any professionally run and well-managed board would expect you to do in terms of giving people advice in terms of conflicts of interest. However, you can always do more and you can always try to be more helpful. We were discussing whether, if we were to have a very specific note and give some worked examples to Board members on some of the issues that do come up from time to time, it might be helpful. That is something that we are going to ask Deloitte to give us some suggestions about.

Jennette Arnold OBE AM: Going back to this adjournment - which is just so bizarre and if I had time I would look it up because I do not think that you would find any other body doing something like that - will you ask Deloitte to look at this? It is clearly totally out of order for someone with a conflict of interest to speak to Board members. How could they not be biased by what has been said?

Howard Carter (General Counsel, Transport for London): We have already drawn exactly that example to Deloitte's attention and asked it to have a look at that and asked it to make any suggestions it would like to make as to how we might improve things. We have done that.

Jennette Arnold OBE AM: Chair, I am forever gobsmacked by TfL. That is all I have to say. I am forever gobsmacked.

Len Duvall AM (Chair): OK.

Caroline Pidgeon MBE AM: Obviously, we are talking about Board members having interests when they are officially in a committee meeting. However, imagine that there is a major project going on that is going to come to the Board and it is quite clear that this Board member – perhaps because of who they work for – is against this for whatever reason. They have very clear positions and they are going to be conflicted and not able to vote at the meeting. What issues are there or what processes do you have in place to stop them actively lobbying everyone they know at TfL – because they have their contacts – over and above what any other ordinary person out there who might be against a project can do – they could write in an objection – and ringing up the Chair of TfL or ringing up goodness knows who? What processes are in place? That is a real issue as well. You know you cannot officially be at the meeting but you could be having an undue influence.

Isabel Deding (Deputy Mayor for Transport): Just so that I am clear, Board members lobbying within the organisation in particular, staff members and --

Caroline Pidgeon MBE AM: Heavily lobbying when they know they cannot be on the Board.

Isabel Deding (Deputy Mayor for Transport): Yes, understood.

Caroline Pidgeon MBE AM: Publicly, no, they have exempted themselves but what are they are doing behind the scenes to try to get what they really want when they are conflicted? What is in place there? Particularly, it could be very dangerous in terms of their influence.

Howard Carter (General Counsel, Transport for London): The code of conduct that I mentioned earlier says that you must declare conflicts of interest and that you must not take part in any aspect of a project or a decision if you have a conflict. Obviously, it also runs to using informal as well as formal governance means to promote positions.

Having said that, informal discussions about what people think about significant issues happen all the time. People bump into the Commissioner. People bump into the Chair. Those discussions will happen whether people are Board members or not. It is a bit hard to say that there cannot be any discussion whatsoever between a Board member and a member of staff or another member of the Board. That is just unrealistic. People will discuss those issues. However, absolutely, they should not use their position on the Board to promote or not promote issues in which they have a conflict of interest. They may have strong views about them and that is a different issue, but not when they have a conflict.

Caroline Pidgeon MBE AM: It is just very difficult if you have a Board member who is quite influential and assertive and who is for or against a project – it may benefit their company; it may benefit them personally – and they can be above Board at a certain level, but behind the scenes as a councillor you certainly could not. You would not be able to talk to officers about it because you would have a clear conflict. You would have to be very careful. I just do not see that the processes are in place at TfL to manage that.

Howard Carter (General Counsel, Transport for London): There is no specific process that deals with that particular scenario. In practice, senior staff talk to all sorts of people about issues and it is not a case of anybody being isolated. They will talk to anybody who wants to talk to them about an issue and they will have a meeting with them if they want to talk it through or if they want to make a point or send a letter or an email or whatever it is. No one is actually isolated and does not speak in that way.

I am not sure that Board members get any particular access that is any greater than anybody else. They may know which phone number to ring or they know which person might be dealing with a particular issue and so it may be practically easier, but if somebody approaches us and has views about something we will always listen.

Isabel Deding (Deputy Mayor for Transport): Caroline's point is that, like for your example of councillors, there must be some process in place that says that either councillors has to inform the secretariat equivalent about who they are going to see or that staff are not allowed to meet people who have a conflict or whatever it is. The question is whether we have anything like that in place.

Howard Carter (General Counsel, Transport for London): Yes, we do. All meetings that Board members have with members of staff are arranged via the secretariat and so we do have an oversight of that. If somebody was exploiting access to something like that - and I have to say that I have never come across it and am not aware of that happening - then we would have some visibility of that.

Caroline Pidgeon MBE AM: You are saying that it is the same access everyone else has except they would have the right phone number, but it is a lot more than that. If you are as influential as you are to be on the Board - and we have some pretty big names here - or the Remuneration Committee or whatever, you can pick up the phone and you would ring back if you did not answer then and you would probably have access to the Mayor's phone and all that sort of thing.

You need to think carefully - maybe in this review going on - to look outside of the technical meetings to make sure things are in place. There are people here who are involved in major property companies and a decision by TfL could have a major impact on their companies' business, let alone possibly them personally, and you need to be very careful. Particularly - and later on in this agenda we will get into the more commercial stuff that TfL is doing - you could have conflicts there that have huge financial reimits.

Howard Carter (General Counsel, Transport for London): We will give that some thought. It has never been a particular issue in practice, in my experience, but I take the point and we will --

Caroline Pidgeon MBE AM: Howard, through the limited contacts I have at TfL, I seem to know far more than you about really what seems to be going on. I would not be saying such things so confidently in public, I have to say.

Len Duvall AM (Chair): OK.

Valerie Shawcross CBE AM: Some of the ground I was going to cover has been covered and so, if you will forgive me, Chair, I will just try to stretch it a bit further. I was at the meeting in February when there was this peculiar adjournment. In fact, it was the second time that had happened, was it not? There was meeting in the previous year when the meeting was suspended to allow Bob Oddy to speak on taxi issues.

Has that now become your *modus operandi*, Howard? Is that your regular practice for dealing with conflicts of interest at meetings? It was on your advice.

Howard Carter (General Counsel, Transport for London): It is not my practice. I offered options to the Board. It was the Board's decision to do that. It has happened on those two occasions. I certainly would not recommend it as regular practice or *modus operandi*. In both cases, it was a practical solution because the Board actually wanted to hear the views of the people concerned so that it had the benefit of those views when it took its deliberations.

What we absolutely do not do is allow those people to take part in the decision-making that follows from that.

Valerie Shawcross CBE AM: It did, from an observer's point of view, look very confused. It did not look, Howard, just as if it were a sort of circumnavigation. Also, on the one hand, the Chair said, "Let us suspend the meeting", and the webcast was turned off, etc, and there was no transparency to the rest of the public

who were not in the room as to what was happening. Those comments were not made in a public environment; they were made in a relatively small room.

The other thing was that when the meeting reconvened, in fact, the Mayor and officers directly addressed the points that had been made supposedly in private. Even within its own terms, Howard, I put it to you that that was a very confused and dysfunctional activity.

Howard Carter (General Counsel, Transport for London): I can see why you might say that.

Valerie Shawcross CBE AM: Would you agree, though?

Howard Carter (General Counsel, Transport for London): I can certainly see because your point about the fact that the issues raised at that point in the meeting were then discussed and debated --

Valerie Shawcross CBE AM: It was immediately afterwards. Nobody even moved from their seats.

Howard Carter (General Counsel, Transport for London): I can understand why you might say that that would cause confusion. The only thing I would just take issue with from what you said is that it is not true that the webcast was turned off, certainly not in relation to the Cycle Superhighways.

Valerie Shawcross CBE AM: It was not a formal part of the meeting and, therefore, it was not minuted and would not be transparent to anybody who was not in the room at that moment. We can check the webcast.

Howard Carter (General Counsel, Transport for London): We did note the fact that it occurred. We did make it absolutely clear that that was what had happened.

Len Duvall AM (Chair): Sorry, can we just be very clear about that? What was minuted, then? You minuted that you adjourned the meeting to take statements from two people who were interested parties? Is that actually in the minutes?

Andrew Boff AM: Can I just say how shocking that is for any of us?

Darren Johnson AM: Yes.

Valerie Shawcross CBE AM: I did write immediately to Sir Peter Hendy [Commissioner, TfL] and I was written back to and he did explain this point as Howard has just explained it, although I do not accept that explanation but I can see why you might say that, Howard. He also reiterated this point that it is for the members themselves to decide if they have an interest or not.

What is clear is that there is no external sanction. It is rather old-fashioned English and an assumption that people will play by what is best practice with no sanction in case they do not. Also, there is an assumption that the Chair is God and, if the Chair accepts that this practice is within the rules, it is deemed to be OK. There seems to be no public accountability on that practice. Do you accept that? We have no way of challenging. I wrote to Sir Peter Hendy and was given the advice that the Chair accepted it and it was up to the members and, therefore, that was it, end of story. There was no accountability and no sanction.

Howard Carter (General Counsel, Transport for London): At the end of the day, there is political accountability. Leaving that aside, the Board is free to run its own affairs and people can criticise that --

Valerie Shawcross CBE AM: It is running its own affairs? They are public affairs.

Howard Carter (General Counsel, Transport for London): -- and there are ways of raising that and of making complaints. No, there is no independent arbiter to decide that, but I have not come across that in any other situation.

Valerie Shawcross CBE AM: To be sympathetic to the people concerned, do you not think there is a fundamental problem with the role as understood? People are appointed because they have an external role - for example, they are involved in the taxi industry - and then they are not given a proper, transparent way of speaking on taxi issues. It is incredibly frustrating for them. Nobody in the outside world can quite understand it. It would be better in some ways to have them in an external advisory role that is operated in a much more transparent way --

Isabel Dedring (Deputy Mayor for Transport): Like a Board observer or something?

Valerie Shawcross CBE AM: -- rather than either they are completely gagged on the Board or they are put through this peculiar, convoluted practice that everybody else I know felt --

Jennette Arnold OBE AM: It is peculiar.

Valerie Shawcross CBE AM: -- was dodgy and nonprocedural. They are in a difficult position, are they not?

Howard Carter (General Counsel, Transport for London): Absolutely. It is a difficult position. It was a pragmatic solution to a difficult position and I can see why you might think it was not completely satisfactory. Anyway, it is what was done. You are absolutely right that there is a fundamental difficulty with having Board members who are also stakeholders in decisions that the Board may have to take and who may feel that in some sense they have to represent the interests of the group or organisation that they come from.

It will not be my decision, but my suggestion would be that we should think very hard about that when it comes to the reappointments to the Board next year. We should think very hard about whether it would be right to put anybody in a position where they could get themselves in a situation where the organisation they represent might have issues that conflict with the organisation.

It is difficult because we have already spoken about the difficulty of attracting high-calibre Board members. The difficulty is that the more those members understand about the organisation, the more they understand about the service delivery in a particular part of what we do and the more they understand about the way TfL should be operating, then the tendency will be for them to have some involvement in TfL's current activities. Finding people with that balance who bring the right expertise that you want them to have and some knowledge and understanding of those issues so that they can contribute at that level but yet do not come with some kind of representation, role, conflict or involvement is a very difficult thing to do.

However, there is a case, perhaps, for looking at how some of those stakeholders can feed into the organisation without feeling that it is appropriate to put them on the Board.

Valerie Shawcross CBE AM: Thank you.

Joanne McCartney AM: I am sorry to press this even further but, Howard, you said earlier that it was a 'pragmatic' solution to adjourn the meeting but that it was not one you would recommend as regular practice.

Valerie Shawcross CBE AM: They did it twice in six months.

Joanne McCartney AM: Would you consider it to be good practice?

Howard Carter (General Counsel, Transport for London): It would be better to not get into that situation.

Jennette Arnold OBE AM: It is bad practice.

Joanne McCartney AM: I can infer that it is not good practice. I am just wondering. When you are giving legal advice, do you offer that advice as well?

Howard Carter (General Counsel, Transport for London): I hesitate to say it is not good because, seriously, the option is that you say to these people --

Joanne McCartney AM: If it is not something you are happy with as a regular practice, it is not good practice.

Howard Carter (General Counsel, Transport for London): -- "You have a very strong interest in this issue and you have some significant opinions about it, but the Board is going to say that you are not allowed to speak and you are not allowed to present those issues to the Board", and the Board will go ahead and take a decision without the benefit of them. There is an argument that it is actually more transparent --

Jennette Arnold OBE AM: That is what people do.

Howard Carter (General Counsel, Transport for London): -- and more open to have those issues out there. It was filmed. We were open about the fact that it had happen. Yes, there is an argument that it strengthens the decision-making process if everybody who has strong opinions is able to give them.

Having said that, the way conflicts of interest normally work is that people who are involved like that are not involved in the decision-making process whatsoever. There is a conflict there between those two things.

Andrew Boff AM: They cannot have their cake and eat it.

Joanne McCartney AM: Equally, you earlier said that it was the conduct of Board members and how the Board operates in a public-sector organisation is that it is open to judicial review of its decisions, whereas a private company is not. Are practices such as these, on the other hand, rather than being seen as strengthening decisions, giving ammunition to those who want to challenge your decisions, too?

Howard Carter (General Counsel, Transport for London): It could. I do not think we did anything like that. I would absolutely have advised strongly against if I thought that that was opening us up to a judicial review issue. I did not think that. Because it was transparent and because we were dealing with the issue about how Standing Orders worked, I did not feel that it was creating a legal risk. That is not to say that there is not a risk about a reputational issue and, whether you think it is good practice or not, I am not disagreeing in relation to that. However, I did not think and I still do not think it created any particular additional legal risk in relation to the taking of that decision.

Joanne McCartney AM: I am having difficulty. You said originally that you gave quite clear advice that a Board member who had a conflict of interest therefore should not take part. Now you are saying that you do not think that would have opened you up to judicial review.

Howard Carter (General Counsel, Transport for London): Yes. They did not take part in the deliberation.

Caroline Pidgeon MBE AM: They did.

Jennette Arnold OBE AM: They influenced the decision.

Valerie Shawcross CBE AM: And their contribution was discussed.

Jennette Arnold OBE AM: Yes.

Andrew Boff AM: Can I just ask? If we looked back at the minutes --

Howard Carter (General Counsel, Transport for London): So was the contribution of everybody who had responded to the consultation exercise. It was no different to anybody else.

Len Duvall AM (Chair): There lies the point. It is entirely open for those who have a conflict of interest to respond to the consultation and withdraw from the meeting or be made to withdraw from the meeting. The Board can still hear their views. On the issue about the Board wanting to hear their views, there are processes that could have allowed that to happen along with everybody else. However, when you are coming to the table, when it is a deliberative part of the decision-making and when is it not? You get yourself into all sorts of difficulties and no doubt you were trying to be helpful, but in some ways it needed to be very clear-cut because it is not clear-cut and it may have given mixed messages to your Board members about what conflicts of interest are in the future.

Andrew Boff AM: When you get the minutes of the meetings and you want to justify a decision of the minutes, will the contribution made *in camera* feature in the minutes of the meeting?

Howard Carter (General Counsel, Transport for London): It was not *in camera*. It was recorded.

Isabel Dedring (Deputy Mayor for Transport): It was suspended.

Andrew Boff AM: It is *in camera*, then, is it not?

Howard Carter (General Counsel, Transport for London): It was in public and so it definitely was not *in camera*. I do not have them in front of me but, as I recall, the minutes record the fact that the meeting was suspended to allow two members who had a conflict of interest to make a statement and then the meeting continued.

Andrew Boff AM: Would the minutes record what that statement was?

Howard Carter (General Counsel, Transport for London): No, the minutes do not record that.

Darren Johnson AM: That's not satisfactory.

Valerie Shawcross CBE AM: What if the decision had gone the other way?

Len Duvall AM (Chair): Thank you, Isabel. We understand you need to go.

Isabel Dedring (Deputy Mayor for Transport): Thank you. Yes, sorry about that.