

## EXTRORDINARY GENERAL MEETING – TfL Pension Fund Summary

On Friday 25 April 2014 at 14:00, an Extraordinary General Meeting (EGM) took place in line with the Trust Deed and Rules as a requisition requesting such a meeting had been received signed by 200 Members. The EGM was held at the Queen Elizabeth II Conference Centre and had 131 attendees; the majority of whom were pensioners and active members but also included a number of Trustees and deferred members.

The panel representing the TfL Pension Fund included, Maria Antoniou (Independent Chair of Trustees), Stephen Field (Fund Secretary), Ian Pittaway (Legal Advisor to the Fund) and Gareth Oxtoby (Scheme Actuary to the Fund).

Each requisition was read out by the Chair of Trustees which was followed by the Trustee's position on each requisition and then a question and answer session followed.

### Requisition 1

"We the undersigned TfL Pension Fund members believe that all employees employed by TfL and throughout London Underground should be allowed to join the TfL Pension Fund.

In line with the above, the undersigned believe that the trustees should insist that the rules of the fund are honoured and that all employees who meet the membership criteria of the fund are allowed to join the TfL Pension Fund. In particular, this would include those previously employed by Tube Lines and Metronet.

In accordance with Rule 52(2) of the TfL Pension Fund, Trust Deed and Rules, we demand that an Extraordinary General Meeting be called to discuss the above demands."

The Chair then summarised the Trust Deed and Rules in regards to membership of the TfL Pension Fund, as;

Under the Trust Deed, a person entering Service may join the TfL Pension Fund (Fund) but, the term "Service", is a defined term and means employment by any Participating Employer provided that if their contract states that an employment shall not be reckonable for pension purposes under the Scheme, then it shall be excluded from this definition. It is therefore within the power of the Participating Employer of an employee to determine whether or not that person is eligible to join the Fund. If a member's contract of employment permits them to join, then they will be automatically admitted to the Fund. If their contract of employment does not permit them, then, under the Trust Deed and Rules, they are not admitted and it is not within the power of the Trustee of the Pension Fund to admit them.

The Chair explained that the question of eligibility of membership is therefore not a matter between the employee and the Fund, rather it is a matter between the Employer and the employee and is determined by their employment contract. The role of the Trustees is to look after the pension benefits of those members who are eligible and have joined the Fund.

Questions were then raised as to why the Trustees could not do more to engage with the Participating Employers to allow these employees to join the Fund, which is a final salary pension scheme, as opposed to their defined contribution schemes as it was felt that their contributions would help to sustain the Fund for all members. It was also commented that certain Tube Lines employees, particularly senior management level employees, that were TUPE transferred over to London Underground were allowed to join the Fund and would inevitably draw a greater portion of

funds upon retirement, but the majority of operational staff were not TUPE transferred. Questions were also raised as to whether Tube Lines employees were given the same opportunity as former Metronet Employees to join the Fund.

The Chair explained her position was that of an independent Chair of Trustees and part of her responsibilities was to ensure that there were sufficient monies in the Fund to pay benefits for all Members within the Fund. She explained that the TfL Pension Fund was open to new entrants as a final salary defined benefit pension scheme and reiterated the point that membership was determined by the Employers and therefore the Trustees had no involvement or influence as to who the Employer extended their contractual employment rights to as this was a matter between the employee and Employer when considering the contract of employment.

A question was raised as to why the requisitions could not have been included as part of the Annual Members Meeting resulting in significant cost-savings in hiring a hall and the necessary resources to facilitate the meeting, and potentially avoiding a further EGM being called to have a formal vote by only a very small representation of the Fund.

The Fund's Legal Advisor confirmed that the Trustees do not have power to allow someone to join whose contract precludes them from joining. So it is not that the Trustees are choosing to exclude people, it is actually written in the Trust Deed and Rules that governs the TfL Pension Fund which the Trustees are bound by. Any amendments to the Trust Deed and Rules would require the consent of the Principal Employer and the Trustees in regards to membership criteria but would be ultimately determined by the Principal Employer in the first instance.

The general feeling from the floor was that they did not accept that the Trustee had no influence over contractual employment rights to join the Fund, and therefore should as part of the Trustee's remit engage with the Employers to allow non-Members to join the Fund.

The Chair stated that the Trustee engaged with the Principal Employer on a regular basis to ensure there is an appropriate investment strategy in place and to negotiate a funding recovery plan which results in the Employers paying additional contributions to alleviate the funding deficit and to ultimately ensure the Fund can pay all Member benefits for those Members that have a contractual right to be in the Fund.

A comment was made from the floor, that, even if the Trustees were able to allow all employees from Metronet and Tube Lines into the Fund, their Employer was required to pay around six times the employee contribution (including an amount towards the funding deficit) for every member in the Fund and therefore the Trustees had no power to force the Employer to pay the contribution.

The Fund's Actuary informed the audience that he is appointed by the Trustees and part of his role concerns the funding of the Fund. He confirmed that an Actuarial Valuation is undertaken every three years to ascertain the funding level. Over the three years prior to the 2012 Valuation, the number of actual employees in the Fund did increase which confirmed that some new employees were being admitted to the Fund. In terms of financing of accruing benefits, members pay 5 per cent of their pay into the Fund whilst the employer is paying around four times that – specifically it currently costs the Employer 20.4 per cent of pay. It is important to note that the Fund remains in deficit in respect of there being sufficient money available to finance those benefits that have built up thus far. The 2012 Valuation showed a deficit of around £700 million which is independent of whether new entrants come in or not. Ultimately the Employer determines whether they want to permit their employees to enter the Fund as they clearly have to pay the balance of the cost of benefits accruing to them.

A discussion took place amongst those that were present regarding the PPP arrangements which came into place following the transfer of work to Metronet and Tube Lines and there was a recollection of an agreement at the time that the members affected would be allowed to retain their membership in the Fund as well as any new employees. There was some debate as to whether this actually extended to new employees.

The Chair confirmed that existing members were part of a sectionalised scheme and continued with their membership of the Fund in line with the Trust Deed and Rules.

The Fund Secretary added that members at the time were covered by the John Prescott guarantee of protected status when they were TUPE transferred out of London Underground and those members continue to remain in the Fund but any new employees after that time were not covered by the Prescott guarantee.

An informal indicative vote took place and more than half of the audience were in favour of supporting the motion of Requisition 1.

## Requisition 2

"We the undersigned TfL Pension Fund members believe that those scheme member's with deferred pension benefits from other sources are being disadvantaged by the trustee's decision to suspend transfers in for a further three years. It is the belief of the undersigned that the trustee's decision to suspend transfers in for a further three years makes any such decision more permanent than temporary. It is also believed that the trustees have failed to acknowledge the improvement in the funding level of the TfL Pension Fund following the 2012 Triennial Actuarial Valuation at the expense of those members who would like to have the opportunity to transfer in funds from former employers or personal pension benefits into the TfL Pension Fund.

In accordance with Rule 52(2) of the TfL Pension Fund, Trust Deed and Rules, we the undersigned demand that an Extraordinary General Meeting is called to discuss the Trustee Board's decision to further suspend transfers in to the TfL Pension Fund."

The Chair then outlined the Trustee's position on the matter by stating that on 30 November 2009, the Trustee received a formal proposal from the Managing Director of Finance, Steve Allen of TfL, requesting that the Trustee consider suspending transfers in for a three year period from 1 April 2010 until 31 March 2013. TfL, in their letter, made a number of points to the Trustees as follows: One: there is no legal requirement to grant members a transfer in either under statute or under the Trust Deed. This is at the full discretion of the Trustee. Two: many schemes no longer accept transfers in. Three: those transfers could cause a funding strain if the assumptions used in calculating them turned out to be wrong. This in particular is true of longevity and assumed future investment performance. In addition, the granting of added years from transfers in improves the death in service benefits and ill health benefits for members with a potential cost to the Fund. TfL's letter also noted that there is inequality in that the transfer in facility is only available to contributing members with past pension benefits, and the final point in their letter was that the Fund had a deficit of over £1.3 billion at that point, in the context of which TfL did not wish to be exposed to greater risks as a result of further transfers in. Transferred in liabilities in respect of current employees alone amounted to some £75 million at the 2006 Triennial Actuarial Valuation, which was the most up-to-date assessment available at the time TfL's letter was written.

So the Trustees reviewed the points made by TfL and considered them at length and depth with significant discussion during a meeting on 8 December 2009. The Trustee took independent actuarial advice and independent legal advice. The advice confirmed that the points made by TfL

were in fact accurate. The Trustee considered the position and decided to accept the proposal for a three year suspension, which the Trustee Board is legally empowered to do. A key point for the Trustee is that it did not wish to accept a further funding risk that could put existing members' benefits at any risk, especially as the Fund was in deficit.

The decision was then communicated to members shortly after the December meeting. Members were then given a three month opportunity to transfer in ahead of the suspension on 31 March 2010. That was a topic of significant discussion with the Trustees who wanted to allow people to have a window of opportunity to transfer in any benefits they had, so people were given a three-month period of notice to transfer any funds they had.

Any new employee that has joined TfL since the suspension was put in place was made aware as part of their joining pack, so when they joined the organisation, they were fully aware that transfers in were suspended so they were under no illusion when they joined the organisation that transfers in were not currently permitted. All of the documents concerning the Fund have been amended to reflect the current suspension. That was the first suspension.

In November 2012, TfL again wrote to the Trustees asking for a further suspension of another three years up until 31 March 2016. The Trustee again considered the proposal at its meeting on 11 December 2012. Again, the Trustee had a lengthy debate and, again, it took independent actuarial and legal advice. The Trustee decided to agree to TfL's proposal for a further three year suspension until 31 March 2016. This second suspension will automatically expire in March 2016. If a further request is made by TfL in 2016, the Trustee at that point would consider it afresh, taking into account the merits of the circumstances at that point in time.

The Chair shared the issues which influenced the Trustees when making their decisions. Firstly, the Fund still has a significant deficit and accepting additional liabilities could worsen that position to the potential detriment of current Members. Therefore the Trustee has a legal obligation to maintain security for existing benefits that are being accrued with the Fund which could be jeopardised by allowing those current Members to increase their pensionable service having transferred in benefits unconnected with TfL or the TfL Pension Fund. Whilst the decision to suspend was taken on its own merits, it is becoming increasingly unusual for pension schemes to accept transfers in on a final salary basis.

The Chair shared with the meeting that a recent survey revealed that over 90 per cent of final salary schemes today do not accept transfers in on a 'defined benefit' basis and that number is increasing. This was not a factor that influenced the Trustee's decision making process but provided context as to what other pension schemes were doing.

So to summarise, the Trustee Board has gone through the appropriate due process to consider TfL's proposals to suspend transfers in on both occasions and on each occasion the Trustee has taken independent professional advice, both legal and actuarial. It is satisfied that the decisions it took were fair and reasonable in the circumstances that it was faced with at the time.

Questions were raised as to whether the actuarial assumptions could be tailored specifically to provide a more conservative assumption when calculating the added service bought into the Fund.

The Fund's Actuary stated that the assumptions used to calculate the added service arising from a transfer of pension rights from a previous employment could be made more prudent to adjust the added service but would always carry a risk for the Fund.

The Chair reiterated that the suspension would automatically be lifted in March 2016 unless a further request came from the Principal Employer which would be reviewed at the time with independent actuarial advice and independent legal advice. All new employees, that are Members of the Fund, were not misled into believing that they could transfer their previous pension funds into the Fund. Also the Trustee did provide an opportunity for existing Members, at the time of the first suspension, to transfer their previous employment pension benefits into the Fund, through general communications to all Members.

A question was raised referring to the recent budget and the Government's proposal of having one pension provider pay a single pension (all of an individual's pension entitlements having been transferred over to that provider) and therefore whether the Fund could accept the transfer in as a defined contribution (AVC) in addition to their final salary defined benefit which would not incur any additional risk for either TfL or the Fund.

The Fund's Actuary stated that some of the changes proposed in the recent budget were not clarified as yet but stated that a transfer which was brought into the Fund on a defined contribution basis would not result in any additional risk to the Fund but there was unlikely to be any direct benefit to the Member either.

The audience questioned whether the suspension could be reviewed again prior to 2016 and whether the assumptions could be reviewed to allow for more prudent assumptions to be applied to the level of added service and ultimately lift the suspension.

The Chair confirmed that the Trustees looked at a number of options at the time, which included the potential strain, and costs to the Fund and that is why they took independent advice, however at that point in time the Fund had a deficit of £1.3 billion and confirmed that the Trustee has a good track record of robust negotiations and getting a meaningful recovery plan and ongoing commitment from TfL to the Fund.

In regards to how the transferred in credit was calculated, the Fund's Actuary stated that it is based on the member's salary when they come in and there is an assumption made about how that salary will progress in the future. Clearly that is an assumption, based on the historic experience of the Fund which should be broadly right but it may well not be correct for an individual and it could be quite significantly incorrect if someone gets particularly accelerated promotions above average after transferring their pension benefits. He added that the resulting credit did not include any residual liabilities from a previous pension scheme (ie no deficit is transferred to the Fund) as the transfer value is a monetary figure which is converted into added service of equal value based on an actuarial calculation.

A comment was raised that the first suspension took place whilst there was a recession going on and the Fund's deficit had improved significantly since that time, which provided good reason for further negotiations to take place with TfL and lift the suspension thus supporting the motion.

The Chair confirmed that the Fund still remained in deficit and stated that actuarial and legal advice was sought to justify the decision to implement the suspensions and TfL have to be proactive to discuss the possibility of a suspension as they have to take additional risk to ensure there is sufficient monies in the Fund to pay for future pension benefits.

A question was raised noting that there was now a 6 year suspension in place and whether the Trustee could indefinitely suspend transfers in every 3 years.

The Chair stated that the suspension would fall away automatically in 2016 unless another request was made and the Trustee would again seek professional advice before considering the request. She added that the previous suspensions were agreed to by a majority of Trustees when they were asked to vote on the proposal.

The Fund's legal advisor stated that theoretically the Trustees could continually suspend transfers in for 3 year periods as long as they had considered it afresh each time and sought independent professional advice at that time.

The Fund's Scheme Actuary commented that the 2009 Valuation showed a deficit of £1.3 billion, and the next Valuation carried out in 2012 showed a reduced deficit of about £700 million which was largely due to the fact that TfL had been paying additional money into the Fund. Since 2012 the deficit is estimated to have improved a little bit but not significantly. The funding of the Fund is formally looked at every three years and the deficit level in 2015, which was still likely to be significant, could change either way. Allowing Members to transfer in would increase the risk of that deficit increasing in the future, not necessarily by a huge amount in the context of the Fund overall as had been pointed out earlier on, but it is an additional risk that is there.

A question was raised as to whether the Trustee had to wait until 2016 before reviewing their decision again about suspending transfers in.

The Fund Secretary stated that there was a formal undertaking in place between the Trustees and TfL to continue the suspension until 2016 but that this agreement could be amended if agreed.

The Chair stated that she would raise the issue again with TfL as to whether they would consider amending the agreement to start the discussions again about the suspension of transfers in.

Before an informal indicative vote took place, a question was raised in regards to proxy vote forms that had been completed and as to whether they would be considered as part of the informal vote.

The Chair stated that in line with the Trust Deed and Rules the meeting could only formally consider the business as described in the circular and that whoever drafted the requisitions clearly had a copy of the Trust Deed and Rules in front of them because they made explicit reference to the Trust Deed and Rules' numbers so they should have been aware of the constraints in conducting this meeting. The requisitions asked for a discussion rather than a vote.

The Chair confirmed that clearly a vote could not be stopped on a show of hands basis but explained that the proxy votes are not part of the process but in the same way as the previous informal vote took place, the Chair had no objection if those present wished to conduct another one.

An informal vote by show of hands took place with less than half of the audience in agreement with the motion.