

TRANSPORT FOR LONDON

AUDIT COMMITTEE

SUBJECT: MEMBERS' INTERESTS

DATE: 4 MARCH 2010

1 PURPOSE AND DECISION REQUIRED

- 1.1 At the meeting of the Audit Committee on 16 December 2009, the rules which apply to the declaration of interests by TfL Members were discussed.
- 1.2 The Committee asked for a paper which sets out the rules that apply to TfL Members and for a comparison of those rules with the ones which apply to Members of local government and other public bodies including the GLA. The Committee also asked for an update on the possibility of seeking statutory change to the rules which apply to TfL Members and the process for doing so.
- 1.3 The Committee is asked to note this paper.

2 THE DECLARATION OF INTEREST RULES WHICH APPLY TO TFL MEMBERS

- 2.1 The rules which govern the declaration of interests of members of TfL are set out in the Greater London Authority Act 1999 ("the GLA Act").
- 2.2 The GLA Act provides that if any TfL Member has any interest, whether direct or indirect, and whether pecuniary or not, in any matter being considered at a meeting of TfL, the Member must disclose the nature of the interest to the meeting and must not take part in any deliberation or decision of TfL or any of its Committees with respect to that matter.
- 2.3 It is an offence, punishable by a fine of up to £2,500, for a TfL Member to fail to disclose an interest or to participate in discussions or make decisions on matters in respect of which the TfL Member has a personal interest.
- 2.4 A summary of the rules which apply to TfL Members is set out in Appendix 1.
- 2.5 The obligations on TfL Members stand in contrast to the requirement that the Mayor must have regard to the desirability of appointing Members of the TfL Board who have experience in transport, finance and commerce, national and local government, the management of organisations and the organisation of trade unions or matters relating to workers generally. A TfL Member may be prevented from deliberating or deciding on matters most relevant to his or her experience when they come before the Board because the TfL Member has a declarable interest by virtue of having such experience.

2.6 It is proposed to include an audit of TfL's arrangements for the declaration of interests as part of the Audit Plan 2010/2011.

3 DECLARATION OF INTEREST RULES WHICH APPLY TO THE GLA AND LOCAL GOVERNMENT

3.1 Members of the GLA, the London Fire and Emergency Planning Authority ("LFEPA") and the Metropolitan Police Authority ("MPA") are subject to a different regime which also applies to local government generally. That regime disapplies the provisions of local government legislation if a relevant authority adopts a model code of conduct. The code is very prescriptive and the extent to which Members are prevented from deliberating and making decisions in respect of matters in which they have an interest differs to the TfL rules. The model code has been drafted specifically with elected members in mind rather than non-executive members of a board.

3.2 A summary of the Model Code as it applies in the context of the GLA is set out in Appendix 2.

3.3 Instead of pecuniary or non-pecuniary direct or indirect interests, the model Code refers to "a personal interest in any business of the Authority" and includes an extensive list of the matters or scenarios which give rise to such an interest. The interests of a "relevant person", that is a family member or close associate, must also be disclosed.

3.4 A personal interest will only affect the ability of a GLA Member to participate in discussions and decision making in a matter under consideration if the personal interest in the matter is a prejudicial one.

3.5 A Member will only have a prejudicial interest in a matter if the matter:

(a) affects the GLA Member's financial position or the financial position of any person or body through which the GLA Member has a personal interest; or

(b) relates to a licensing or regulatory matter; or

(c) does not fall within an exempt category of decisions (housing, school meals or transport, statutory sick pay, Members' allowances, payments or indemnity, ceremonial honours given to Members or setting council tax or precepts);

and

(d) a member of the public who knows the facts would reasonably think the personal interest is so significant that it is likely to prejudice the GLA Member's judgement of the public interest.

- 3.6 The prejudicial interest test sets the GLA regime apart from the rules which apply to TfL Members. If the test were to be applied to TfL Members, it is only likely to affect a TfL Members' capacity to discuss and make decisions about a matter in respect of which he or she has an interest if the matter has financial implications for the TfL Member or a relevant person or body or it relates to some form of approval or issue of licence that affects the TfL Member or relevant person or body. Further, the effect on the TfL Member or associated person or body would have to be reasonably regarded as being so significant that it is likely to prejudice the Member's judgement of the public interest for it to constrain the TfL Member.
- 3.7 In addition to adopting the code, relevant authorities must also appoint a Monitoring Officer and establish a Standards Committee. Complaints that a Member may have breached the code are determined by the authority's Standards Committee with appeal to the Adjudication Panel for England. Sanctions which may be imposed include censure and suspension from office. It is not, however, a criminal offence to breach the model code.
- 3.8 It is not proposed that TfL seek to become part of the model code regime. However, other options for reforming the rules which apply to TfL Members are being explored.

4 DECLARATION OF INTEREST RULES WHICH APPLY TO OTHER PUBLIC BODIES

- 4.1 Statutory rules which apply to members' interests of other public bodies which are not caught by the 2000 Act generally take the following forms:
- (a) A general requirement on members to disclose direct and indirect interests and to refrain from participating in discussions and decision making (for example, Members of the London Development Agency, Environment Agency, Channel Four Television Corporation and the Civil Aviation Authority);
 - (b) A requirement on the appointing body to satisfy itself that a person will have no financial or other interest likely to prejudice his or her discharge of the functions of a member combined with a continuing obligation on members to make declarations as they become apparent (for example, Ofcom in respect of the Channel Four Television Corporation and the Lord Chancellor in respect of the Legal Services Commission); or
 - (c) A requirement on the organisation to establish and maintain a system for the declaration and registration of private interests of Members and for the register to be published (for example, the Human Tissue Authority and the Food Standards Agency).

5 OPTIONS FOR REFORMING THE RULES WHICH APPLY TO TfL MEMBERS

- 5.1 There are numerous options for reforming the rules which govern TfL Members' interests. An obvious amendment is to decriminalise breach of the rules given that criminal sanctions do not appear to apply to the Members of other public authorities including those subject to the model code.

- 5.2 Another option for amendment would be to extend the circumstances in which the Mayor may give a dispensation to a Member who has an interest, for example, when it is in the public interest for the Member to deliberate and make decisions on a relevant matter.
- 5.3 The provisions of the GLA Act which set out the Members' interest rules may be amended by way of a TfL Bill. Decisions to proceed with a TfL Bill are made by the TfL Board and also require the Mayor's consent. A Bill costs around £500,000, takes around two to three years to become law and is subject to the scrutiny of Parliament and its committees.
- 5.4 TfL is currently canvassing the arguments for changes to legislation with a view to identifying sufficient changes to justify the expense of promoting a bill in the 2010/2011 parliamentary session.

6 DECLARATION OF GIFTS AND HOSPITALITY BY TFL MEMBERS

- 6.1 TfL Members must also comply with the rules regarding receipt of gifts and hospitality. In accordance with TfL's 'Guidance to Employees on the Receipt of Hospitality and Gifts', TfL Members must notify the Secretariat of gifts or hospitality received in his or her official capacity which have a value of more than £50 in addition to registering the gift or hospitality as an interest if applicable.
- 6.2 TfL's policies and procedures on the declaration of gifts and hospitality are currently being reviewed following an internal audit paper and a revised policy is likely to be produced in the next few weeks.

7 RECOMMENDATION

- 7.1 The Audit Committee is asked to NOTE this paper.

8 CONTACT

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TFL MEMBERS' INTEREST RULES

1 SOURCE OF RULES

- 1.1 Schedule 10 of the GLA Act which incorporates provisions from local government legislation.

2 APPLICATION

- 2.1 The rules apply to a Member of TfL.

3 NATURE OF INTERESTS TO BE DISCLOSED

- 3.1 TfL Members are required to declare direct and indirect pecuniary and non-pecuniary interests. A member need not disclose remote or insignificant interests.

(a) Direct pecuniary interest

1. 'Direct pecuniary interest' is not defined in the GLA Act but is taken to include payments or receipts of cash or assets and benefits and disbenefits to the value of assets. A pecuniary interest need not amount to a pecuniary advantage; if a TfL Member stands to gain or lose financially from a matter under consideration, then s/he is likely to have a pecuniary interest in it.

(b) Indirect pecuniary interest

1. The GLA Act adopts the definition of 'indirect pecuniary interest' from the Local Government Act 1972 ("the 1972 Act").
2. Members have an indirect pecuniary interest if:
 - o they or their spouse or civil partner is a member of a company or other body with which a contract is made or is proposed to be made with the TfL Group or which has a direct pecuniary interest in the matter under consideration; or
 - o they or their spouse or civil partner are a partner or are in the employment of a person with whom the contract is made or is proposed to be made or who has a direct pecuniary interest in the matter under consideration.
3. TfL Members must be living with their spouse or civil partner and know of the spouse or civil partner's connection with the company or body for it to be deemed the interest of the TfL Member.
4. The rules do not apply to membership of or employment by a public body. A 'public body' is any body established for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, the governing body of a university, university college or college, school or hall of a university and the National Trust

for Places of Historic Interest or Natural Beauty incorporated by the National Trust Act 1907.

5. The rules are also disappplied if a TfL Member does not have a beneficial interest in the securities of the company or other body in question. 'Securities' includes shares, instruments creating or acknowledging indebtedness, units in a collective investment scheme etc. Securities in overseas companies must be taken into account.

(c) Non-Pecuniary Interests

1. Non-pecuniary interests are not referred to in local government legislation and the GLA Act does not contain a definition.
2. The National Code of Local Government Conduct which was issued for the purpose of providing guidance on the 1972 Act refers to non-pecuniary interests as including personal and private interests arising through:
 - o association with family and friends; and
 - o membership and association with clubs, societies and other organisations such as the Freemasons, trade unions and voluntary bodies.
3. As a rule of thumb, a non-pecuniary interest is one which members of the public would think might affect a TfL Member's conduct or influence his or her actions.

(d) Remote or Insignificant Interests

1. A TfL Member need not disclose any interest which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a TfL Member in the consideration or discussion of, or voting on, any question with respect to a contract or matter.
2. A TfL Member also need not disclose an interest which a TfL Member has merely as a ratepayer, inhabitant of the area, or water consumer, or as a person entitled to participate in any service offered to the public.

(e) Dispensations

1. Notwithstanding the above restrictions, the Mayor has the power to permit TfL Members who are interested in any matter to be deliberated at a meeting of the Board or any of its Committees to participate and vote in relation to that matter where the proportion of TfL Members prohibited from taking part in the proceedings would be so great as to impede the transaction of business. The Mayor must notify TfL of his decision to exercise this power and this shall be recorded in the minutes for the Board or its Committee as appropriate.

4 HOW AND WHEN SHOULD DISCLOSURES BE MADE?

4.1 Disclosures can be specific or general.

(a) Specific Disclosures

1. TfL Members must make specific disclosures at a meeting of TfL at which the matter in which they have an interest is being considered. In addition to Board meetings, a meeting of TfL includes meetings of Committees and Panels.
2. A TfL Member must make the disclosure before the issue is considered or, if the interest is not apparent until the matter is under consideration, as soon as the interest becomes apparent. A TfL Member may also give a notice in writing to the Secretary which can be read and considered at the meeting if the TfL Member chooses not to attend.
3. The GLA Act provides that the disclosure must be recorded in the minutes of the meeting. If a meeting was in open session, the minutes recording the declaration will be publicly available.

(b) General Disclosures

1. The GLA Act adopts local government requirements and provides that a general notice given in writing to the Secretary by a TfL Member that they or their spouse or civil partner with whom they are living is:
 - a member or in the employment of a specified company or other body;
 - a partner or in the employment of a specified person; or
 - a tenant in any premises owned by TfL;

will satisfy the requirement to disclose any interest arising from those relationships.

2. In accordance with these requirements, TfL maintains a publicly accessible register of TfL Members' interests which may be publicly inspected. The Register of Interests also appears on the TfL website.
3. Members receive a form on which they declare their interests at approximately six monthly intervals. In addition, TfL Members are required to notify TfL of any new interests (or changes to existing interests) within 28 days that they arise.
4. As the prohibition on speaking or voting on a matter involving such an interest remains, it is prudent to make a specific disclosure even when a general disclosure has been made.

5 THE EFFECT OF MAKING A DECLARATION

Meetings of the Board and Committees

- 5.1 If a TfL Member has made a declaration of interest in respect of a matter that is brought up for consideration at a meeting of the Board or Committee, the TfL Member must not take part in any deliberation of or decision made with respect to that matter.
- 5.2 If the matter is being considered in open session of the Board or a Committee, the TfL Member need not withdraw from the meeting but should not take part in any deliberation or decision.
- 5.3 If the matter is being considered in closed session of the Board or a Committee, the TfL Member should withdraw from the meeting.

Meetings of Panels

- 5.4 The GLA Act refers only to a TfL Member refraining from taking part in any deliberation or decision of TfL or any of its Committees which relates to a matter in respect of which the TfL Member has a declarable interest. A meeting of a Panel is a meeting of TfL and therefore TfL Members must declare their interests in matters that are brought up for consideration but can participate in discussions and make decisions.
- 5.5 However, if the matter is being considered in a closed session of a Panel meeting, the TfL Member should withdraw from the meeting if requested to do so by the Chair of that meeting.

6 RELATED PARTY TRANSACTIONS ENTERED INTO BY TFL MEMBERS

- 6.1 TfL Members are asked once a year whether they have entered into a related party transaction with TfL. This information is required under Financial Reporting Standards in order to compile the Annual Accounts.
- 6.2 A related party transaction is where a TfL Member, a close family member or a company controlled by a TfL Member or a close family member has entered into a transaction with TfL or any of its subsidiary companies (excluding the appointment of the TfL Member).

7 SANCTIONS

- 7.1 Failure to comply with the rules regarding Members' interests is a criminal offence punishable by a fine of up to £2,500 unless the Member proves that he or she did not know that the contract, proposed contract or other matter in which he or she had the interest was the subject of consideration at the meeting.

GLA MEMBERS' INTEREST RULES

1 SOURCE OF RULES

- 1.1 The 'Code of Conduct of the GLA' ("GLA Code") adopted by the GLA pursuant to the Local Government Act 2000 and the Local Authorities (Model Code of Conduct) Order 2007.

2 APPLICATION

- 2.1 The rules apply to the Mayor, Deputy Mayors, Members of the London Assembly and co-opted Members (a person who is Member of any GLA Committee or Sub-Committee or represents the GLA on any Joint Committee or Joint Sub-Committee and is entitled to vote at meetings of the Committee or Sub-Committee).

3 SCOPE OF THE CODE

- 3.1 The GLA Code states that it must be complied with whenever a GLA Member:
- (a) conducts the business of the GLA (including the business of the office to which the GLA Member is elected or appointed); or
 - (b) acts, claims to act or gives the impression of acting as a representative of the GLA.
- 3.2 Whether a GLA Member is acting in an official capacity is more relevant to the general obligations governing conduct than to the declaration of interests rules as the categories of interests to be disclosed are prescribed and encompass GLA Members' private activities and personal relationships. The only exception is the receipt of gifts or hospitality worth more than £25 which would not include gifts or hospitality given to the GLA Member in his or her private capacity by family members or any person with whom the GLA Member has a close association for example, on the occasion of the GLA Member's birthday or at Christmas.

4 INTERESTS WHICH MUST BE DECLARED BY GLA MEMBERS

- 4.1 A personal interest in any business of the GLA includes an interest that relates to or is likely to affect:
- (a) a body that the GLA Member is a member of, in a position of control or management and:
 - (i) the GLA Member has been appointed or nominated to the position by the GLA; or
 - (ii) the body exercises public functions, charitable purposes or whose principal purposes includes the influence of public opinion or policy (including any political party or trade union);
 - (b) any employment or business carried on by the GLA Member;

- (c) any person or body who employs or has appointed the GLA Member;
- (d) any person or body other than a relevant authority who has made a payment to the GLA Member in respect of his or her election or for expenses incurred by the GLA Member in carrying out his or her duties;
- (e) any person or body who has a place of business or land in the GLA's area and in respect of whom or which the GLA Member has more than £25,000 in a class or securities or 1/100th of the total issued share capital;
- (f) any contract for goods, services or works made between the GLA and:
 - (i) the GLA Member;
 - (ii) a firm in which the GLA Member is a partner;
 - (iii) a company of which the GLA Member is a remunerated director; or
 - (iv) a business in respect of which the GLA Member has more than £25,000 in a class or securities or 1/100th of the total issued share capital;
- (g) the interests of a person from whom the GLA Member has received a gift or hospitality of at least £25;
- (h) land:
 - (i) in which the GLA Member has a beneficial interest;
 - (ii) in respect which the GLA is the landlord and the GLA Member is the tenant;
 - (iii) in respect which the GLA is the landlord and a company, firm or business in which the GLA Member has an interest (as outlined in (e) above) is the tenant; or
 - (iv) in the GLA's area for which the GLA Member has a licence (alone or jointly with others) to occupy for 28 days or longer.

4.2 A GLA Member also has personal interest in any business of the GLA where a decision in relation to that business might reasonably be regarded as affecting the GLA Member's well-being or financial position or the well being or financial position of a "relevant person" to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the Assembly constituency affected by the decision.

4.3 A "relevant person" is a member of the GLA Member's family or any person with whom the GLA Member has a close association. Standards for England has interpreted the latter category as someone who is more than an acquaintance and is someone a reasonable person might think a GLA Member would be prepared to favour or disadvantage. For example, a friend, a colleague or a business associate.

5 HOW AND WHEN MUST AN INTEREST BE DECLARED BY A GLA MEMBER?

- 5.1 A GLA Member must inform the Monitoring Officer of his or her interests within 28 days of election or within 28 days of any changes. If information about an interest is sensitive information (and the Monitoring Officer agrees that it is sensitive) then it need not be included when registering an interest. Information is sensitive if its disclosure to the public creates or is likely to create a serious risk that a GLA Member or a person who lives with the GLA Member may be subject to violence or intimidation.
- 5.2 In addition to registering an interest, GLA Member must declare that they have a personal interest and the nature of the interest in a meeting of the GLA before the matter is discussed or as soon as it becomes apparent. However, if the interest arises solely from being a member of or having a position of control or management on any body to which the GLA Member was appointed or nominated by the GLA or any other body exercising functions of a public nature then an interest need only be declared if the GLA Member speaks on the matter provided the interest is not a “prejudicial interest”.

6 THE EFFECT OF HAVING A PERSONAL INTEREST: PREJUDICIAL INTERESTS

- 6.1 A personal interest will only affect the ability of a GLA Member to participate in discussions and decision making in a matter under consideration if the personal interest in the matter is a prejudicial one.
- 6.2 A prejudicial interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the GLA Member’s judgement of the public interest. According to Standards for England, the mere existence of local knowledge or connections with the local community is not sufficient to give rise to such prejudice; some factor must be present that might positively harm the GLA Member’s ability to judge the public interest objectively. The nature of the matter under consideration is important including the number of people affected.
- 6.3 However, the GLA Code confines the circumstances in which a GLA Member’s ability to act in the public interest might be compromised. An interest in any business of the GLA is by default not prejudicial if the business:
- (a) does not affect the GLA Member’s financial position or the financial position of any person or body through whom the GLA Member has a personal interest;
 - (b) does not relate to an approval, consent, licence, permission or registration that affects the GLA Member or any person or body through whom the GLA Member has a personal interest; or
 - (c) relates to the functions of the GLA in respect of:
 - (i) housing, provided those functions do not relate particularly to the GLA Member’s lease;

- (ii) school meals, transport or travelling expenses unless it relates particularly to the school which the GLA Member's child attends;
 - (iii) statutory sick pay;
 - (iv) an allowance, payment or indemnity given to GLA Members;
 - (v) any ceremonial honour given to GLA Members; or
 - (vi) setting council tax or a precept under the Local Government Finance Act 1992.
- 6.4 In addition, the GLA Code also sets out that a GLA Member has a prejudicial interest in any business before a scrutiny committee or sub-committee of the Assembly where:
- (a) The business of the committee relates to:
 - (i) a decision made, or action taken, by another of the Assembly's committees (include sub-committees) of which the GLA Member was a member; or
 - (ii) any matter for which the GLA Member has been appointed as a representative of or adviser to the Mayor;

and at the time the decision was made or action was taken, the GLA Member was a member of the committee and the GLA Member was present when the decision was made or action was taken.

- 6.5 A prejudicial interest must be declared in a meeting as soon as the interest becomes apparent to the GLA Member. The GLA Member must then leave the room unless the public are allowed to make representations, give evidence or answer questions about the matter by statutory right or otherwise in which case the GLA Member may also stay for that purpose. The GLA Member must leave the meeting after she or he has made representations, given evidence or answered questions and before a debate has started. The GLA Member must not seek improperly to influence a decision about the business in respect of which he or she has a prejudicial issue and for this reason is not allowed to remain in the public gallery to observe the vote on the matter.

7 SANCTIONS

- 7.1 The Standards Committee (England) Regulations 2008 prescribe the process for dealing with complaints that a Member may have breached the code.
- 7.2 Such complaints are to be determined by the authority's Standards Committee with appeal to the Adjudication Panel for England. A Monitoring Officer prepares an investigation paper.
- 7.3 The following sanctions may be imposed:
- (a) censure of that member;
 - (b) restriction for a period not exceeding six months of that member's access to the premises of the authority or that member's use of the resources of the

- authority, provided that those restrictions meet **both** the following requirements:
- They are reasonable and proportionate to the nature of the breach.
 - They do not unduly restrict the person's ability to perform the functions of a member.
- (c) partial suspension of that member for a period not exceeding six months;
- (d) suspension of that member for a period not exceeding six months;
- (e) that the member submits a written apology in a form specified by the Standards Committee;
- (f) that the member undertakes such training as the Standards Committee specifies;
- (g) that the member participates in such conciliation as the Standards Committee specifies;
- (h) partial suspension of that member for a period not exceeding six months or until such time as the member has met **either** of the following restrictions:
- They have submitted a written apology in a form specified by the standards committee.
 - They have undertaken such training or has participated in such conciliation as the standards committee specifies.
- (i) suspension of that member for a period not exceeding six months or until such time as the member has met **either** of the following restrictions:
- They have submitted a written apology in a form specified by the Standards Committee.
 - They have undertaken such training or has participated in such conciliation as the Standards Committee specifies.