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Sir Brendan Barber
Independent Lead
TfL Pension Fund Review

By email to: pensionreviewsubmissions@tfl.gov.uk

Date: 16th September 2021

Dear Sir Brendan,

RE: TfL Pensions Review Stage 1 Call for Evidence - TSSA Response

I am writing to you with TSSA's response to the Stage 1 Call for Evidence issued on 16th August 2021 and which followed the first Pension Review Contact Group meeting held on the previous Friday.

As you will see, TSSA's response is broken into two parts:

- Part 1: General
- Part 2: Call for Evidence questions

Part 1: General

From the start I want to be clear that TSSA opposes making any changes to the TfL Pension Fund that will negatively affect members' benefits. Our view, and that of our members, is that the past and future benefits accrued in the Fund are deferred wages which will enable Fund members to enjoy a level of financial security beyond the State Pension when they come to retire. Members are also very mindful that when they joined the Scheme they received a promise about the level of benefits they could expect to receive upon retirement based on a set final salary formula in return for the contributions that they and TfL have paid. On both of these counts, to make changes that would reduce deferred wages or renege on the defined benefit promise will, as we have seen in other companies, undermine trust and confidence in the motivations of the employer that is likely to have a range of consequences from industrial disputes, increased staff turnover and the inability for the company to be able to offer a balanced and attractive employment package to future employees.

TSSA is also very aware that both the briefing at the first Contact Group meeting and the content and questions in the Stage 1 Call for Evidence have the effect of funneling thoughts and responses to accept that there is a need for change to the Pension Fund. If that is the purpose, we reject that approach because:

- **2021 Valuation:** The 31st March 2021 Triennial Valuation of the TfL Pension Fund has not been completed and may not be until June 2022 in accordance with The Pensions Regulator's (TPR) fifteen month deadline.

  Normally, changes to a DB pension scheme occur because a deficit situation has arisen and part of the recovery plan is to make changes. However, whilst the TfL Pension Fund had a £603m deficit (95% funded) at the March 2018 Valuation, necessitating additional employer contributions under the balance of cost nature of the Fund, currently we are not aware that the 2021 Valuation will show the Scheme still in that position.

  The reason for that statement is that the return on assets has substantially improved in the year leading up to 31st March 2021. The Fund's latest Annual Report and Accounts[1] shows an increase of £2.47bn in the net return on assets with a net increase in the fund recorded as £2.52bn. Overall, the level of net assets has improved from £10.58bn (31st March 2020) to £13.101bn a year later. The latest figure is also substantially higher than the 2019 level of net assets, recorded as £10.95bn.

  No information has currently been made available for the technical provisions that have to be compared with the level of assets to arrive at the funding level. However, we note that the Call for Evidence includes Appendix 3 Charts 7 and 8 at Page 26 that appear to indicate overall that the Fund is about 100% funded. This calls in to question the need for a review of the Scheme that would lead to changes to benefits, etc;

- **Refusal to supply up to date information justifying savings:** At the first Contact Group meeting in August several trade unions including TSSA asked for an indication of the level of savings that were being considered in the Fund and how that would then justify changes to benefits. The response we received was that the Fund Review has no set figure in mind.

  However, the TfL Independent Panel Review that was published in December 2020 claimed that the funding gap in the Scheme could be reduced by £100m alongside limiting future public sector liabilities including by applying a cap.[2] Various suggestions were made about ways to make savings as well as to change the classification of the Scheme to move away from TPR regulation (the TPR would still be involved in setting standards of practice in public sector schemes in relation to governance and administration).

  The Pension Working Group (PWG) at its meeting on 15th January 2021 requested sight of justification of the level of savings, framed as a FOI (Reference 2238-2021) in terms of "who and what information was shared for the Independent Report." However, as you are aware, TfL's response on 18th

[1] Page 46, TfL Pension Fund Annual Report and Accounts for year to 31st March 2021 at: https://content.tfl.gov.uk/2021-annual-report-and-accounts-1.pdf
[2] Page 31, TfL Independent Panel Review at: https://content.tfl.gov.uk/tfl-independent-panel-review-december-2020.pdf

March 2021 was to refuse to share any information "on commercial confidentiality grounds" leading to the conclusion that financial information had been supplied to the Independent Review.

I have subsequently written to you via Martin Boots about this issue and been assured that the email (dated 17th August 2021 and sent at 1655) has been forwarded for your response.

The point for TSSA is that it is clear some work has already been done to look at ways of changing the Scheme and levels of savings have been considered but the refusal to share that research suggests a lack of transparency and openness by TfL. It could also undermine the credibility of the Independent Review if the measures suggested then become the basis of the final recommended approach or if information sharing and a lack of openness became a bone of contention .

- **TPR Funding Code and Pension Schemes Act 2021:** Section 7 of the First Call for Evidence cites changes to TPR's approach and describes, in paragraph 7.3 and 7.4, elements of both the recent TPR Funding Code Consultation and the Government's Pension Schemes Act 2021.

  Our concern here is that the emphasis in the Call for Evidence is that of looking at the TfL Pension Fund from the perspective of a mature and closed (or about to close) scheme with a long term funding objective whose ultimate aim is to reach significant maturity, thereby substantially reducing dependency on the scheme employer.

  The TfL Pension Fund is not in that circumstance because it admits new members (even using the Fund as its auto enrolment Scheme) and currently has an investment policy that includes high risk, return seeking assets like equities.

  We are aware that fears existed in some open (to new members) DB pension schemes that both the Funding Code Consultation and Pension Schemes Bill (ie, before Royal Assent was achieved) would be applied in a way that forced open arrangements to adopt more mature, less risk based investment policies and cause them to close because of increased costs due to a one size fits all approach (even though a twin track system was proposed – Fast Track and Bespoke).

  Both in the TPR first stage consultation and during the passage of the Bill through Parliament this issue was raised repeatedly and the Government and TPR have now recognised that allowance must be made for the different circumstances that open (to new members) and less mature schemes find themselves in when compared to closed arrangements.

  For instance, in a lengthy speech at the end of a debate in the House of Lord on the Pension Schemes Bill, Baroness Stedman-Scott OBE (Parliamentary Under Secretary of State at the Department for Work and Pensions) committed to take various actions, including through secondary legislation, and stated:

"We absolutely do not want to see good and viable defined benefit schemes close unnecessarily. We want them to be treated on their merits in a truly scheme-specific regime. We have said that open schemes should be able to provide the same level of security for members as closed schemes. I want to make it absolutely clear that this does not mean that they necessarily need to invest in the same way. We simply mean that members in an open scheme should be able to enjoy the same level of confidence that the benefits they have worked hard to build up will be paid in full, as for members in a closed scheme. We completely agree that open schemes that are not maturing and have a strong employer covenant should not be forced into an inappropriate de-risking journey. We will ensure that such schemes and employers which can support a higher risk and higher expected reward investment strategy can continue to invest in this way. If they are already doing the right thing, they should not need to significantly increase contributions as a result of these new measures."[3]

Pensions Minister Guy Opperman MP has made similar statements[4] whilst David Fairs, Executive Director for Regulatory Policy, Analysis and Advice at The Pensions Regulator highlighted his response on open schemes being less mature by writing:

"Truly open schemes with a strong flow of new entrants may always be immature. In those circumstances…we recognised that schemes might invest in more illiquid and volatile assets in the expectation of a higher return."[5]

- **Political motivation as driver of Review:** A further point we want to make is that it is difficult to be able to separate a political motivation in the Government's approach to providing funding for Transport for London.

  Ever since the Conservative Government's decision to cut the General Operating Grant, a decision that was subsequently revisited and brought forward to the Financial Year 2017/18, TfL has been in difficulties. Consequently, TfL is the only major world city that does not receive a central government subsidy[6] despite the importance of the UK's capital to the country's economy.

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[3] See Hansard Column 1110, House of Lords debate on Pension Schemes Bill, 21st January 2021 at: https://hansard.parliament.uk/lords/2021-01-19/debates/6D6F0A1E-0B12-4969-8070-54A4DAB00477/PensionSchemesBill(HL)

[4] See: https://www.professionalpensions.com/opinion/4024455/guy-opperman-funding-measures-protect-pension-scheme-member

[5] See: https://blog.thepensionsregulator.gov.uk/2020/12/08/db-funding-code-busting-a-few-myths/

[6] See: "TfL's budget shows operating deficit almost halved as Mayor calls for Government investment in transport" published by TfL 20th March 2019 and available at: https://tfl.gov.uk/info-for/media/press-releases/2019/march/tfl-s-budget-shows-operating-deficit-almost-halved-as-mayor-calls-for-government-investment-in-transport See also: The House of Commons Library looked at Paris, Berlin and New York – at: https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7425#fullreport

The Conservatives have lost two London Mayoral elections to Labour yet the consequence of the Covid-19 Pandemic has required the Labour Mayor to approach the Tory Government for financial assistance. For the citizens of London, the conditions attached to the short term settlements have seen the imposition of Government policy, like fare increases, even though the majority voted for a candidate offering a different agenda. The latest manifestation of this is the demand for a review of the TfL Pension Fund motivated by similar policy that affected the public sector.

- **<u>TfL's review of expenditure:</u>** A final point in this part of our response is to draw attention to remarks made at the first Trade Union Contact Group meeting where it was claimed that every item of expenditure is being reviewed. The point raised at the meeting was the cost of maintaining the private sector involvement in London Bus. In another forum with TfL, TSSA has previously submitted the following table which illustrates the levels of profit extraction taking place by bus companies with concessions from TfL:

Company Name	**Profit**				**Company Number**
	2016	**2017**	**2018**	2019	
London United	£5.1m	£5.8	£0.639m	-£7.6m	02328561
Arriva London North	£12.7m	£15.3m	£10.9m	No accounts available	02328559
Arriva London South	£51k (£4.9m income)	£2.8m	£5.7m	No accounts available	02328467
Abellio London Ltd	£3.6m (£7.5m income)	£4.9m	£4.6m	£2.3m	03786162
Abellio West London Ltd	£1.02m	£0.747m	£1.6m	£3.4m	00689260
(Go Ahead) London General Transport Services	£32.2m	£34.2m	£32.4m	£31.6	02328489
Metroline Ltd	£28.1m	£21.7m	£14.8m	£10.3m	02826284
Stagecoach UK Bus (London)	£20.2m	£18.4m	£13.3m	£16.1m	SC100764
Total	**£102.97m**	**£103.85m**	**£83.9m**	**£56.1m**	
Total after tax profit 2016-2019					**£346.82m**

NOTE: The profit figures do not include the additional amounts attributed in the company accounts to "income." Two small companies (Sullivan Buses and Tower Travel) are omitted.

As can be seen, TfL would have an opportunity to gain over £80m <u>a year</u> by public ownership of its bus operations.

Part 2: Call for Evidence questions

Part of TSSA's preparation to answer these question has involved conducting members' meetings which have been well attended and provoked a number of questions, comments and concerns. On top of that, we have also carried out a short online survey of our membership across Transport for London and London Underground. The results of both the members' meetings and survey are reflected in our answers.

1. How should long term sustainability be viewed and how does this look from the perspectives of members; the employer; taxpayers; farepayers; the Trustee and others? What are the key features of long-term sustainability for the pension arrangements of TfL?

From a <u>members' perspective</u>, over 96% of our members participating in the TSSA survey believe that the long term sustainability of the TfL Pension Find must mean that it:

- Represents value for money in terms of what is paid by members in relation to the benefits (pension, etc) received upon retirement
- Is and remains affordable
- Remains secure and is not subject to change
- Delivers on its promises and can be trusted to pay out the benefits being paid for
- Is seen as a long term commitment

This result should be understood against the fact that over 96% of TSSA's members see the long term future of the TfL Pension Fund in its <u>current form</u> as either 'extremely important' or 'very important' to them. This means that Scheme has to remain open for new entrants and further accrual.

In addition, members to date have:

- Been confident of the long-term sustainability of the TfL Pension Fund and its ability to continue to deliver on the Employer pension promise;
- Been aware of TfL's status as a statutory undertaking, delivering long term sustainability benefits via a statutory and financial underpin and for some, that informed their reason for joining the organization in the first place;
- Noted that pensions are cited as a key pillar of remuneration within the TfL's 2021 Financial Sustainability Plan and that has reinforced in members' minds that the Employer promise will continue to be delivered and is deemed sustainable over the longer term;

- Continue to take comfort from the strength of the Employer Covenant and the fact that there is no requirement for TfL to seek to be a profitable undertaking or meet payment obligations to external shareholders.

2. How should long term affordability be viewed, and how does this look from the perspective of members, the employer; taxpayers, farepayers, the Trustee and others? What are the key features of long-term affordability for the pension arrangements of TfL?

From the perspective of members, long term affordability is a major factor but for many it is also wound up with what is being paid for, ie, the level of pension benefits that have been promised.

From the limited data that is available, current active membership of the scheme is high with few eligible employees not already members (noting that some may not have joined because they retained legacy arrangements in pension schemes like the Local Government Pension Scheme due to TUPE transfer into TfL whilst some formerly active members of the TfL Pension Fund have chosen to become deferred members to avoid exceeding the Lifetime Allowance).

The levels of membership would suggest that employees see the Scheme as affordable in terms of the benefits that they could receive and encourages them to want to join and remain a member. That conclusion is supported by the outcome of our survey in which 80.6% of members supported keeping contributions at current levels whilst 99% of respondents see their pension as an important part of their employment reward package.

Members also note that Employer pension contributions remain small and manageable within the context of total TfL income. We would also highlight that through various pay frameworks over many years, TfL has improved still further the affordability of the Scheme via actively and consistently constraining pensionable pay growth, a point that we explore further below.

3. What do you consider to be the key risks and challenges in the short-, medium- and long-term in relation to the Scheme (for example, investment risk, salary risk, longevity risk) and how could these risks and challenges be mitigated?

In common with other DB pension schemes and TPR requirements, the TfL Pension Fund adopts a risk based approach in its management of the challenges it faces and as such can be seen as pooling risks, whether from investment performance, pensionable salary inflation, increasing longevity or any changes to the Employer's covenant rating.

On this last point, the lack of a long term funding settlement from the UK Government – as referred to at the start of this submission – is what has the potential to cause issues with the covenant rating and create the need to revise the current investment policy to one that is less risk based with the effect of creating a deficit situation.

Pension schemes also take a long term perspective and not the short term expediency of political interest and opportunism that the TfL Pension Fund is currently facing which, frankly, calls into question the whole pretext of the Fund Review.

The question asks for the key risks and challenges facing the Scheme and the one that TSSA would identify as of primary concern <u>now</u> is that of the current external threat posed by the outcome of the Review. The Scheme itself has not caused this threat from within itself because from what we know its 2021 Valuation should show a substantial improvement in its funding position. Instead, the risk comes from external sources intent on cutting the pensions of workers to fulfil short term financial aspirations and political goals.

4. How should TfL's pension arrangements compare with other pension arrangements available elsewhere in the public sector?

TSSA believes the TfL Pension Fund is currently competitive with other public sector arrangements and remains a significant part of the reward package (the view of 99% of TSSA members). It was designed specifically for employees in TfL and LU and has individual characteristics to that end.

To answer this question more specifically would require the Review Team to identify Schemes they thought to be comparable.

In the TfL Independent Panel Review schemes in Network Rail and the Civil Service were quoted and claimed to have been 'reformed.' That claim is misleading because there was no altruistic intention to change any of those schemes to improve member benefits. Instead, the motivation was simply cost cutting and de-risking that would benefit the employer whilst potentially undermining the pensions members thought they were going to enjoy.

In Network Rail, for instance, the initial impetus to change was a substantial deficit in their Section of the trust based Railways Pension Scheme but it is worth recognizing that the final salary defined benefit arrangement is still open and where most employees <u>choose</u> to accrue pension benefits. The latest Valuation (2019) also showed the Scheme to be in a surplus situation.

Comparison with Civil Service pensions also fails to recognise that that arrangement is a statutory, unfunded, pay as you go scheme with the Government pocketing all contributions and benefits payable from the public purse as they fall due, rather than from a fund like the TfL Scheme built up from employers' and employees' contributions paid in the past and then invested.

5. What are your views on how TfL's pension arrangements can be fair to all going forward, including different cohorts of members and the sharing of risk between the employer and the employee?

The TfL Pension Fund is a balance of cost defined benefit final salary scheme that is currently affordable to members. The nature of DB schemes is that virtually all risk is with the employer that provides the scheme for its employees. To change the risk would entail a significant alteration to – or closure of – the Fund which TSSA and its members are opposed to.

As stated at the first Contact Group meeting, TSSA is opposed to a race to the bottom by moving to a Defined Contribution arrangement that places virtually of the risk with the member.

6. How are the current pension arrangements valued by TfL's staff? How important are the current pension arrangements in recruiting new staff and retaining existing staff?

99% of TSSA members have told us through the survey that their pension is an ‘extremely important’ or ‘very important’ part of their reward package.

It is also fair to say that TfL’s staff greatly value the current pension arrangements, something that has been shown from the Union’s survey in which 96% of TSSA’s members see the long term future of the TfL Pension Fund in its current form as either ‘extremely important’ or ‘very important’ to them.

In our survey of members, we also asked them about staff retention. Over 83% agreed that in the event that “the Fund was changed so that it became more expensive for members and/or future pension benefits were reduced, it would influence whether they continued to work for TfL and lead them to choose to leave for another job.”

This outcome is compounded by the majority of survey participants – over 66.4% - who do not trust TfL to protect the Pension Fund which is a stinging indictment of how employees view their directors.

TSSA also wants to highlight that the latest Annual Accounts suggest that some TfL Directors may have exhausted their Lifetime Allowance (LTA) (from 2021/22 to 2025/26 set by the Government at £1,073,100) but for most TfL workers, their TfL pension remains a vital component delivering financial security in old age in the face of the dismal financial security provided by the new State Pension.

At our meetings with members these outcomes have also been forcibly presented with people actively talking about the options to leave that are available to them now or in the near future. Members are only too aware of TfL’s existing recruitment difficulties, describing the turnover in staff and telling us that it is only by keeping the Pension Fund in its present form, open to new members, that ensures they stay when external job opportunities arise or they are approached to leave for higher salaries. It is the Pension that keeps them in TfL

Some of the anger has also been tied up with the application of the Pay for Performance and Senior Management Reward Framework arrangements which many members are deeply unhappy with (see response to next question).

Frankly, taking these matters together could create a perfect storm for TfL with large numbers of highly experienced and very competent staff looking to leave the organisation, with all of the consequences for TfL in terms of the loss of experience, threats to service provision, the cost of recruitment, the inability to attract new employees and even the expensive use of contractors and temps.

What's more, this process of staff leaving could become ever more endemic as those employees remaining would be faced with increased workloads, further eroding depressed morale and leading to an 'outbreak' of mental health issues

7. Are there other considerations or criteria the Review should consider?

The Review needs to consider the application of the Pay for Performance (PfP) system that TfL has operated since 2015 and which has become discredited in the eyes of staff. It is supposed to ensure that staff are properly rewarded for their commitment and dedication but instead has left a significant number of employees having to get by on salaries that have either:

- been frozen for many years
- have only been increased by below inflation levels
- or are in receipt of non pensionable lump sums instead of salary increases.

TSSA can provide further information on this complex issue which has impacted many members' pensions because of the effect on pensionable salary growth, undermining the value of the final salary which members expect to see increased year on year. An illustration of this factor can be seen in the basic calculation used to determine a members' pensions:

1/60 x pensionable service x pensionable salary

In essence, PfP has been used as a form of unofficial and unagreed pensionable salary capping that, unlike in other schemes, has not been uniformly applied to all Fund employees because of the terms of the pay system. In our survey, for instance, we found that:

- nearly half (45%) of respondents have only received below inflation pay increases in the last three years
- close to a quarter (23.44%) had not received any salary uplift in the same period.

Clearly, this issue adds to the sense of injustice and anger with TfL that I have referred to in my response to the previous question.

What's more, the pay system in not applied to London Underground staff who receive full and completely pensionable annual salary increases.

8. Is there anything else you would like to add?

TSSA wants to add that any change to the Pension Fund is likely to have a disproportionate effect on lower paid staff, women employees and younger workers with the potential to raise equality issues that could lead to discrimination claims.

In making this claim we have in mind how increasing contributions, for instance, would more heavily impact the lower paid employees in TfL and LU and even cause some to leave the Scheme, potentially in large numbers depending on the level of increase. The implication of the affordability issue for future pension provision for people in this position could easily set them in train for an increased reliance on the new State Pension, still the lowest in Europe, and a retirement potentially in poverty. However, higher paid staff, particularly at senior management level, have more of an ability to cope with the pension contribution increases and can thus weather such storms. They are also protected more by the offer of financial advice, including around avoiding exceeding the Lifetime Allowance and sheltering money. We see this as an unfairness that should be recognised and avoided.

The issue with women members is that many join TfL and its Pension Fund later in life which means that they are more deeply affected by changes to their pensions in a way often not experienced by men able to join the Fund earlier in a career. Many women with caring responsibilities aren't able to begin a career until later in a working life so have to plan to work longer to accrue a reasonable pension. Put simply, the loss of the ability to accrue pension benefits is more acutely felt by women than men with the former likely to be more reliant on the State Pension at SPA (State Pension Age).

Younger workers also face the dilemma of being a member of a pension scheme that favours older staff with longer service in order for them to be able to achieve a reasonable level of pension on retirement. At present, it appears that virtually all eligible employees join the Scheme when they start to work for TfL in the hope that they will get the same level of benefits as their more experienced colleagues. However, in the event that changes are made it is the younger workers who will be the most adversely affected, potentially losing out on the opportunity to accrue the same level of benefits as older people with longer service. They may also face the competing demands of saving for a home or remaining in the Scheme at a time when member contributions to the latter increase to the point when they feel they have no opportunity but to drop out of the Fund. In essence, the outcome of the Review has the potential to treat people differently because of age which could lead to issues of discrimination.

Conclusion

It is clear from the evidence that we have presented that TSSA and its TfL members are opposed to any change to the Pension Fund. It is also clear that there is a lot of distrust in the motives behind the demand for a review of the Pension Scheme and whether a spirit of openness would actually prevail given the denial of the previous request for information. The application of the Pay for Performance policy had already eroded much goodwill but now that the Pension Fund is up for review numbers of highly qualified and experienced staff are telling us that they are actively considering departing the organization because of yet another assault on their employment package.

We have also noted that the Call for Evidence seems to be aimed at achieving a particular outcome which would see a process of de-risking take place that would lead to the Pension Fund being progressively closed, first to new entrants and then to further accrual, and along the way a vastly inferior DC alternative would be put in place. We oppose that course that would only undermine employees' deferred wages and their income for retirement. Finally, TSSA wants to know what ever happened to Recommendation 7 from TfL's Financial Sustainability Plan[7] where "any review of the Reward package is considered holistically, and the scope of any review includes all elements of the base pay, pensions and benefits offering"?

Yours sincerely

Rob Jenks
Policy Officer, TSSA

[7] Recommendation 7, Page 87, TfL Financial Sustainability Plan at: https://content.tfl.gov.uk/financial-sustainability-plan-11-january-2021.pdf