

LONDON ASSEMBLY

Len Duvall AM, Chair of the GLA Oversight Committee

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Sadiq Khan

Mayor of London
City Hall

(sent via email)

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Dear Sadiq

It is now twelve months since you withdrew your support for the Garden Bridge project by announcing that you were not prepared to make the financial guarantees necessary for construction to begin.

Over the past year, controversy surrounding the project – and the Garden Bridge Trust responsible for managing it – has not abated. Amidst the claims, counter-claims and insinuations that continue to swirl around this issue, there are deeper lessons that the GLA Group can learn: lessons that I, as Chair of the GLA's Oversight Committee, feel a particular responsibility to put on the record.

It is not my intention to re-state all the conclusions of the two major reports on the project that have so far been produced: the Oversight Committee's report of March 2016, and Dame Margaret Hodge's report, which you commissioned in October 2016. These two reports had very different terms of reference. In March 2016, the Committee was charged solely with investigating the circumstances and procedures surrounding procurement during the very early stages of the project. Dame Hodge, examining the project six months later, was asked to examine conduct and procedures more widely, as well as the escalating costs of the project and whether it continued to represent good value for public money.

Dame Hodge's report, commissioned by you as Mayor of London, was clearly intended to facilitate an executive decision. The London Assembly's GLA Oversight Committee, in contrast, seeks to influence longer-term goals: we scrutinise the internal processes of the GLA and its

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functional bodies. Maintaining and increasing transparency within the GLA Group of organisations is a key goal for the Committee.

The Assembly is guided in its work, in part, by the GLA Group Corporate Governance Framework Agreement, drawn up as a result of a review of the Authority's corporate governance in 2008. That review established, among other things:

- the critical role of **culture and behaviour** in the operation of any corporate governance regime;
- the need for **openness and transparency** in the operation of any such regime; and
- the need for **enhanced coordination** across the GLA Group with respect to corporate governance.

These three themes in particular are used to guide the Committee's work.

The GLA regime is unusual in British political life. As the 2008 review pointed out,

"In structure, most of its powers are focused ... on the executive Mayor. Apart from those staff specifically appointed to service the Assembly and the three statutory officers, most of the GLA staff are appointed for the purpose of enabling the delivery of the Mayor's policies." [Introduction, p.3]

I believe that the Garden Bridge project has highlighted three important issues of governance that derive directly from this structural focus on Mayoral policies and powers: issues that must be addressed if the public and political credibility of the GLA – and indeed of the Mayor's Office – is to be maintained.

The first issue concerns Mayoral Directions.

During the course of the Garden Bridge project, the (then) Mayor, Boris Johnson MP, issued two such Directions. The first instructed Transport for London (TfL) "to undertake activities to develop and help enable a proposed footbridge (the Garden Bridge)". The second, controversially, loosened the conditions under which TfL was tasked to release public funds to the Garden Bridge Trust, at a particularly sensitive time. It is my opinion that the first Mayoral Direction should have been reported to the TfL Board or one of its committees for review and decision at that time even if officers were formally able to take action. As it became clear over time that this was an issue on which the Mayor of London was playing a direct, personal role; at that point, TfL officers should have asked the Board to give full and proper consideration to what they were doing on this project, and not simply as brief mentions within wide-ranging general updates from the Commissioner.

Mayoral Directions clearly place some strain on internal procedures and put the principles of good corporate governance at risk. Dame Hodge, in her report, suggests that such Directions can take on the appearance of edicts, to be followed unthinkingly by GLA officers or

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departments. Indeed, this impression is reinforced by the single, disappointingly brief paragraph on the subject in the GLA Corporate Governance Framework Agreement:

“Whilst there may be discussion and a divergence of opinion on some issues, once a statutory Direction has been issued the officers of each organisation subject to that Direction will engage with the GLA in a positive manner to fulfil the Direction’s requirements promptly and in full, whilst still meeting their obligations to their own organisation.” [Paragraph 30]

Dame Hodge, in her report, states explicitly that:

“...officials and politicians should have followed open, non-discriminatory and fair processes. Even if a Mayoral Direction had been in place, requiring TfL to deliver the Garden Bridge, a duty to follow due process endures and the Mayoral Direction does not give authority to manipulate procurement processes.” [para 52]

The Garden Bridge project has clearly demonstrated that the Corporate Governance Framework Agreement would benefit from clearer guidelines about the proper corporate response to Mayoral Directions. Any change to agreed processes must be taken in a transparent fashion.

The pressure of a Mayoral Direction is perhaps most importantly demonstrated by failings in the procurement process of Spring 2013, inviting companies to tender for design, engineering and project management services. The matter has been investigated extensively, both by the Assembly’s Committee and by Dame Hodge.

The flaws in the process suggest that it may have been distorted, not merely as a result of managerial stress, but deliberately. Suspicions about the procurement process have revolved around the fact that the company winning the tender – Heatherwick – had been involved in informal conversations with senior officers about the project since July 2012, almost a year before the procurement process was instigated, and went on to dominate the Garden Bridge Trust, when it became the delivery vehicle for the project.

The Oversight Committee identified three flaws in the process that stood to benefit Heatherwick:

- Before the procurement was opened, TfL communicated informally with the design firms chosen to tender, which they should not have done;
- The three firms invited to tender were given a brief that misrepresented the project’s ambitions and scope, and an unreasonably short time to respond to the invitation (twelve days). Only Heatherwick would have known the true objective of the project and only Heatherwick were placed to respond to the invitation fully; and
- Key documents that would have provided a detailed explanation of the evaluation of bids were lost, making it hard to answer questions about the scoring of bids and the way in which that scoring was conducted by just one person.

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The second issue that I believe needs to be addressed, indeed, relates to this one person. Many of the questions relating to the flaws in the procurement process seem to return to Richard de Cani at TfL – who was Director of Strategy, working to Michele Dix, and then (from February 2015) Managing Director of Planning, working to the Commissioner.

Two questions remain unanswered about Mr de Cani's involvement in the process:

First, the extent of his involvement in the procurement process is uncertain.

Secondly, there are grounds for believing that Mr de Cani may have been overly involved in amending the internal audit report on the process before publication, with a clear conflict of interest. The audit's original intention was to assess the project's objective and scope, and the openness and transparency of the procurement process; the final published report judges both project and process solely in value-for-money terms. The Assembly's Oversight Committee received a leaked copy of an earlier version of the report, the content and tone of which was substantially different from the version made public.

The changes between the two reduce and soften criticism of how managers conducted the procurement. In particular, the final draft entirely removed a statement that the fairness and objectivity of the procurement process had been "adversely affected" by the errors in the procurement process.

It is important to note that Assembly Member Caroline Pidgeon secured the commitment from Sir Peter Hendy, former Commissioner of TfL, to publish the review in full. Without that commitment, only the conclusion and summary would have been published, which would have given the public a misleading impression of the seriousness of the review's findings.

We know that Mr de Cani commented on the draft version of the audit report. It is unclear who may have been responsible for altering the report, but the effect of the changes is certainly to divert scrutiny away from Mr de Cani and his role in the process.

All in all, I believe that Mr de Cani still has a case to answer about his conduct. I am copying Ernst & Young (TfL's external auditor) into this letter, noting that they hold the local audit function previously exercised by District Audit, for their consideration as to whether any further action is required.

Furthermore, I believe that under the previous District Audit regime, where surcharging was a potential penalty (until this was changed by the Local Government Act 2000) in relevant cases, the (then) Mayor's actions could have been subjected to full and proper review.

It is important to remind ourselves that this TfL internal audit report would not have been produced at all if Members of the Assembly's GLA Oversight Committee had not asked the TfL audit team to investigate the procurement process.

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To that extent, the role of the London Assembly and its committees in holding the Mayor and managers within the GLA functional bodies to account has proved robust and effective.

But we remain unconvinced that TfL has adequate internal checks and balances to ensure that decisions by individual managers – especially those relating to the commitment of public money – are transparent and accountable.

The wider issue is whether TfL is sufficiently robust to stand up to a demanding Mayor and to ensure that proper procedures and processes are respected and followed. In Sir Peter Hendy's discussions with Dame Hodge, he references that while no excuse for an imperfect process "the pressure to get on with this [ie the Garden Bridge] was absolutely enormous..." and that "Isabel [Dedring, former Deputy Mayor under Boris Johnson MP] was on our backs every day".

We very much welcome the commitment from Mike Brown, Commissioner of Transport, to take a series of actions to, inter alia, improve transparency and scrutiny at Board level and support staff to escalate concerns and risks about non-compliance with procurement processes.

The third issue concerns contractual relationships between the GLA and external bodies.

The GLA Group currently lacks detailed guidance on the management of contracts and projects with external organisations. The GLA Group Corporate Governance Review of 2008 explored, in its own words, "the arrangements to enable the Mayor to most effectively exercise his executive power across the GLA Group" and "the key elements that should be covered in a group-wide corporate governance framework." It did not, however, seek to extend those standards of governance beyond the GLA Group itself, or to clarify how such standards should be met in relationships with external bodies.

The Corporate Governance Review's report pointed out that the complicated relationship between the Mayor and the functional bodies creates a political tension that puts the standards of corporate governance at risk.

"The former Mayor [Ken Livingstone] regularly voiced frustration at the lack of direct control over the Functional Bodies afforded to the office of the Mayor who has manifesto commitments to deliver. He sought to strengthen the 'levers' available to the Mayor in that regard. This has, in turn, led to concerns in relation to the transparency of decision-making processes and practices group-wide being raised by the London Assembly." [paragraph 9]

The Garden Bridge Trust is a prime example of a Mayor seeking to bypass all the functional bodies of the GLA by establishing, or encouraging the establishment of, a body *outside* the GLA Group in order to deliver his commitments or ambitions. It was incorporated as a charity in October 2013, only two months after the Mayor issued his first Mayoral Direction to TfL. Its founding member was Thomas Heatherwick, who had led the winning bid for design consultancy services on the project.

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At a stroke, the designer hired by TfL to advise on the Garden Bridge Project had become, in effect, the managing director of the organisation tasked with completing it. The consultant had become his own client. Indeed, there is correspondence from some of the individuals involved to indicate that many of those appointed to the Trust believed they had been appointed by Thomas Heatherwick himself.

With the incorporation of the Garden Bridge Trust, TfL became side-lined. Its responsibilities for managing the project had not been entirely clear from the outset; now it was committed to funding and underwriting an enterprise over which it had no managerial control.

It is difficult to imagine that the incorporation of the Garden Bridge Trust had any other purpose than to centralise control of the project in the hands of the favoured consultancy and to remove it from scrutiny – either by TfL or any other part of the GLA. There are similarities here with the London Assembly's concerns over the lack of transparency and practices of London & Partners.

Indeed, these questionable arrangements might never have come under scrutiny at all if the project had succeeded. The Garden Bridge Trust claimed it had always hoped to fund the project from private sources. But sufficient funds from the private sector were never forthcoming. Investors and philanthropists were probably wary of the project's weak business case and the increasing public concern about the probity of its management arrangements. By the time you came to office, it was becoming clear that the project would succeed only by virtue of increasingly large injections of public money – investments that almost certainly would never see any meaningful return.

Most recently, the situation has descended into near-farce, with unseemly squabbles between TfL and the Trust – now in the process of being wound up – over access to minutes of meetings. TfL is threatening legal action – no doubt incurring yet further costs in the process. In particular, I remain concerned as to whether the second tranche of funding should have been released in January 2016 on the basis of the letter submitted to Richard De Cani (dated 27 January 2016). This letter does not, to my mind, provide sufficient detail of how the Trust proposed to resolve the funding condition. This may be an issue that TfL's external auditors want to consider.

Getting a clear understanding of the financial outlays on the Garden Bridge project has been further complicated by statements by the former Mayor, Boris Johnson MP. In his comments to the Assembly's GLA Oversight Committee in March 2018, Mr Johnson asserted that further costs were incurred by you during what he described as a period of indecision. In fact, this expenditure appears to have been authorised by central Government and had nothing to do with you.

At the heart of this sorry affair is the confused and weak business case for the project. Without a clear case that a Garden Bridge would improve public access across the river and generate, somehow, revenue to cover necessary maintenance, TfL had no substantive reason to be involved in the project, or to commit public funds and guarantees to it.

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There is no evidence that TfL ever examined the business case for the project; instead, they seem to have acted entirely as the agent of a Mayoral whim.

I believe that the London Assembly and the Mayor, as partners in the governance of London, have lessons to learn from the Garden Bridge fiasco, and responsibilities to act.

- Firstly, we need to clarify the status of Mayoral Directions and the proper response to them of functional bodies within the Corporate Governance Framework Agreement;
- Secondly, we owe it to Londoners to investigate further the activities of GLA Group organisations working to fulfil the ambitions of a London Mayor;
- And thirdly, I believe that we need to fundamentally review the procedural guidelines for projects in which a GLA functional body contractually engages with any outside body.

Nothing less than a thorough review of these matters will persuade London's citizens that we are serious about conducting business according to the four principles underlying the GLA's corporate governance: openness, integrity, accountability and equality.

I look forward to your reply.

Your sincerely

Len Duvall AM
Chair of the GLA Oversight Committee