

# CP 3.1 Draft Membership

## Code Part A – Conduct

*Draft code to be agreed between Transport Focus and DfT in Spring 2015*

This code applies to the Chairman and all Members (collectively referred to as 'Board Members') of the Passengers Council, as established by section 19 of the Railways Act 2005 (as amended) and referred to in this code as Transport Focus<sup>1</sup>.

This guidance applies to what Members do, whether it is for their own benefit or for anyone else's (including spouses, parents and children), including acting as a trustee. It does not directly apply to dealings in which spouses, parents or children take their own separate decisions. Those decisions will be insulated from Members knowledge by the rule that they must not in any case give confidential or private information they have as a Board Member to anyone other than in the course of their duty as a Member.

### 1. General

- 1.1. Board Members are expected to adhere to the Nolan Seven Principles of Public Life<sup>2</sup> and perform their duties and functions accordingly. But simply to comply with any rules of conduct may not in itself be enough because appearances also matter. Members should, therefore, at all times avoid any occasion for suspicion and any appearance of improper conduct. What the public believes about Members' conduct will affect the credibility and integrity of the organisation as well as those responsible for making appointments. The purpose of this Code is to assist Board Members in the carrying out of their duties.
- 1.2. Members' main duty is to the whole of the travelling public as this relates to users (and potential users) of railway and station services in Great Britain, services and facilities as they relate to road passenger transport in England, excluding London<sup>3</sup>, and users of the strategic road network in England. In addition, there is a wider duty to co-operate with other bodies representing the interests of users of public transport passenger services<sup>4</sup>.
- 1.3. In the event of any personal or private interest in a question which has to be decided by the Board, Members should formally declare and take no part in the reaching of that decision except in the special circumstances described in paragraphs 17 and 18 below. Indeed, Members should not accept membership or remain in membership of the Board if business or professional interests cause them to declare an interest so often that they can be of little value to Transport Focus, or if it would be likely to weaken public confidence in the duty of the organisation to work solely in the public interest.

<sup>1</sup> Transport Focus is the new operating name of the Passengers Council with effect from the date of Royal Assent to the Infrastructure Act 2015.

<sup>2</sup> The Committee on Standards in Public Life (first Chair Lord Nolan) See annex A.

<sup>3</sup> Definition provided by the Passengers' Council (Non-Railway Functions) Order 2010: a local (bus) service, domestic coach service or tramway operating in England (except excursions or tours) except London

<sup>4</sup> Transport Act 2000 Part IV, Chapter II, Section 228 (s76 of the Railways Act 1993, as amended]

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- 1.4. Board Members are expected to demonstrate by personal example their commitment to the mission and objectives of Transport Focus and expectations of them individually and collectively. They are also expected (as a Board) to keep under review the arrangements in place for how the Board will interface with the professional staff. Board Members performance will be reviewed against these expectations on or about the anniversary of appointment each year by the Chairman of the Board. He or she will also be responsible for allocating Members to sub-committees and other duties, taking account of individual preferences and interests, wherever possible. One such sub-committee will be the Audit and Risk Assurance Committee (ARAC), which the Board must create and maintain.
- 1.5. The Framework Document <sup>5</sup> agreed between Transport Focus and the Department for Transport sets out discrete responsibilities for the Board and Chairman; Members should ensure they familiarise themselves with these provisions.

## 2. Disclosure of interests

- 1.1. Responsibility for declaring a financial, political or any other relevant interest as defined below rests with Members themselves and they must not rely on others to remind them of their responsibilities in this respect. Neither is it reasonable to expect the Chairman or another Member to draw their attention to a possible conflict of interest otherwise than by means of a general statement.
- 1.2. A publicly available register is kept by the business services staff in which Members' interests will be recorded (e.g. shares, directorships, party political positions or affiliations, other public appointments, etc). It is the responsibility of each Member to keep the register updated, as necessary. Members will be asked to validate their entry on the register on an annual basis to take account of any changes of circumstance.

Transport Focus will also maintain a publicly accessible register of any offer of gifts or hospitality made to Members – see sections 22 and 23 below.

ARAC may audit any of the above registers at its discretion.

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<sup>5</sup> See <http://www.passengerfocus.org.uk/about/transparency-and-accountability/publication-scheme/who-we-are-and-what-we-do>

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### 3. Financial and Business Interests

1.1. Members should not seek, accept or retain Board membership if they, or any body with which they are associated, has a substantial financial interest in, or is closely related to the business affairs of

- (i) any operator of railway passenger, freight, infrastructure, or track renewal services; or rolling stock, leasing and maintenance services; or
- (ii) any operator of local bus services, domestic coach services or tramway services; or
- (iii) any undertaking which provides design, construction, technical, finance or operational services in respect of the strategic road network in England; or
- (iv) any company which operates managing agent contracts, regional technology maintenance contracts, asset support contracts, design, build, finance and operate contracts or which owns and/or operates service areas in respect of the strategic road network in England; or
- (v) any road haulage undertaking

If any Member has a substantial financial interest in or is closely involved in the business affairs of the operator of any form of transport or transport related services, they should consider whether a conflict of interest is likely to be perceived and declare it accordingly. Both direct and indirect financial interests in any matter coming before the Board should be disclosed. Such a disclosure will normally prohibit speaking or from voting on the matter, and Members should also consider leaving the meeting for the duration of the discussion on the matter concerned.

### 4. Shareholdings

1.1. Board Members may have access to confidential and/or price sensitive information (such as proposed fare increases) from licensed operators and the regulatory bodies. It is therefore necessary to introduce specific restrictions on shareholdings within the transport industry in order to avoid conflicts of interest.

1.2. These restrictions are designed to protect Members, Transport Focus, and the Department for Transport against allegations that confidential information has been used for private gain; or that advice on regulatory matters has been tainted by financial interest.

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- 1.3. Controls over Members' share-dealing and financial interests should distinguish between shares and interests in companies which are direct participants in the rail / bus / coach / tram road industry and other shares and interests where there may be a connected but indirect interest<sup>6</sup>. For purposes of simplicity and clarity, a distinction is made between categories of shareholding as set out in sections below.
- 1.4. Members must refrain from buying or holding shares in any "Category A" company as defined at Annex B. In addition, Members should not hold shares as a trustee or in any comparable representative capacity when they are the person who has a primary responsibility for investment decisions. Members may hold or acquire holdings in "Category B" companies as defined in Annex C, but these should be declared in the Register of Interests and, if acquired after appointment, approval must be sought and obtained from the Secretary of State.
- 1.5. Members who are appointed executor (in a non-professional capacity) under a will where the deceased had a holding in a company defined as a "Category A" Company in Annex B, and where it is not appropriate to dispose of the holding immediately following the grant of probate, should immediately notify the business services staff.
- 1.6. Where funds in vehicles such as PEPs, ISAs, Unit, Investment, Pension or other Trusts containing "Category A" shares, are managed by a third party, and Members have no influence over the "share-basket" procured on your behalf, the shareholding need not be relinquished.
- 1.7. Where Members have shareholdings in companies which have an interest in potential licensees, franchisees or operations<sup>7</sup>, they should declare such interest prior to the discussion of any matter directly relating to that company. Members should be especially aware of the consequences of becoming aware of and / or using price sensitive information.<sup>8</sup>
- 1.8. Where Members have or acquire "Category A" shares, they may either dispose of them within six weeks of notification of ownership or trusteeship, or ensure that they are put into trust or some other financial arrangement where a third party is clearly responsible for the management of the funds for the duration of Membership. This action should be recorded in the Register of Interests.

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<sup>6</sup> The Nolan report made clear an expectation that, in terms of financial propriety, Codes of Conduct for Members of Non-Departmental Public Bodies should be "as rigorous as those which apply to Ministers and Civil Servants"

<sup>7</sup> ie a company that is actively pursuing a course of commercial activity that may mean, in the foreseeable future, it becomes a licensee, franchisee or operator or owner / ultimate owner of such a company

<sup>8</sup> Insider dealing within the meaning of the Criminal Justice Act 1993 (sections 52-64) is a criminal offence.

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1.9. Any Member who is uncertain as to the application of any of these restrictions should seek further advice. Where there is any doubt about the need to declare a financial interest, Members would be well advised to register such interests, to avoid any possible doubt as to propriety.

### 5. Disclosure of non-financial interests

1.1. Interests which are not financial can be just as important. Members must not allow the impression to be created that they are, or may be, using their position to promote a private or personal interest, rather than forwarding the interests of the generality of the public. Private and personal interests include those of family and friends as well as those arising out of membership of an association, club, or political party. Members who have a personal or private non-financial interest in a matter arising at a meeting should always disclose it, unless it is insignificant, or one which they share with the generality of the public.

1.2. When declaring such a private or personal interest, Members should decide whether it is clear and substantial. If it is not then they may continue to take part in the discussion of the matter and may vote upon it. If, however, it is a clear and substantial interest, then (except in the special circumstances described in paragraph 20 below) they should not take any further part in the proceedings, and should always withdraw from the meeting whilst the matter is being considered. In deciding whether such an interest is clear and substantial, Members should ask themselves whether members of the public, or the press, knowing the facts of the situation, would reasonably think that they might be influenced by it. If this is likely, applying reasonable judgement, then they should consider the interest clear and substantial.

### 6. Political activities

The following rules apply to all Board Members:

1.1. Members are free to engage in any political activities, provided that they are conscious of their general public responsibility and exercise proper discretion, particularly in regard to the work of the Board. On matters affecting that work, they should not make political speeches or engage in other political activities which might cause the public to believe the organisation has a party political bias. Board members should not serve as officers carrying out executive duties in any political party.

1.2. Board Members who are also Members of the House of Lords will no doubt be guided in their conduct in that House by the Statement made by Lord Addison in the House on 21 March 1951 as amended by the Second Report from the Select Committee on Procedures of the House, 3 February 1971.

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- 1.3. Members who are elected to the House of Commons, Scottish Parliament, National Assembly of Wales, the Greater London Assembly and/or European Parliament should resign from the Board immediately.
- 1.4. Members of the Board are free to maintain associations with Trade Unions, Co-operative Societies, trade associations etc, to the extent that such associations' interests do not conflict, or be perceived to conflict, with the interests of Transport Focus.
- 1.5. Any Board Member who is doubtful about the application of these rules, or about the propriety of any political activity, should seek guidance.
- 1.6. The foregoing rules apply equally to political activity on behalf of any political party or organisation.

### 7. Exceptions

- 1.1. In the following circumstances, but only in these circumstances, it can still be appropriate to speak, and in some circumstances to vote, in spite of the fact that a Member has declared a clear and substantial private interest:
  - (a) If the interest arises in the capacity as a Member of another public body, it is acceptable to speak and vote on matters concerning that body; for this purpose, a public body is one where membership of that body would not give any direct or indirect financial interest in the matter.
  - (b) If the interest arises from being appointed by the organisation as its representative on a body formed for a public purpose (and not for the personal benefit of Members) Members may speak and vote on matters concerning that organisation.
  - (c) If there is an interest arising from being a Member of the management or governing group of another body (e.g. local users' pressure groups and transport trades unions) to which a Member was not appointed by the Board, then it is acceptable to speak on matters in which that body has an interest; members should not however vote on any matter directly affecting the finances or property of that organisation, but they may vote on other matters in which the organisation has an interest.
  - (d) If the interest arises from being an ordinary Member or supporter of such an organisation, then Members may speak and vote on any matters in which the organisation has an interest.

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### 8. Use and disclosure of confidential and private information

1.1. Board Members may have access to information which has not been made public and is still confidential. They may also have access to information which is commercially sensitive. Members should appreciate that, as a matter of Common Law, they have a general duty of confidentiality and that, in addition, it would be a criminal offence to disclose certain kinds of information, for example under Section 145 of the Railways Act 1993 (as amended), and Section 5 of the Official Secrets Act 1989.

### 9. Gifts and hospitality

A policy on the acceptance of gifts and hospitality is important not only because of the matter of the reputation of Transport Focus, but also because failure to adhere to the rules may result in criminal proceedings if bribery and/or corruption is suspected.

The principal statute dealing with bribery and corruption is the Bribery Act 2010 (the Act).

The Act provides severe penalties for individuals and organisations found guilty ‘beyond reasonable doubt’ of bribery, a form of corruption.

Whilst the emphasis of our policy on gifts and hospitality has historically been on gifts and hospitality *received*, the Act introduces offences of *bribing others* and, through them, other organisations.

You should be aware of the provisions of the Act; it is no defence in law to say you were unaware of them. A summary of the main provisions is included at Annex D. This policy develops the provisions of the Act, providing both general and specific guidance and unashamedly errs on the side of caution. You should note therefore that contravention of this guidance may result in disciplinary action even if the law itself is not broken.

It is however a defence under the Act (for bodies corporate indicted for bribery) for Transport Focus to prove that it has adequate procedures in place to prevent such improper conduct. Transport Focus reviews these arrangements from time to time, but the passing onto the police and / or Director of Public Prosecutions of any evidence of actual or potential wrongdoing under the offences created by the Act should be assumed by the Board and staff to be an absolute given.

#### *Perceptions and reality*

Notwithstanding the legal / criminal issues, perceptions of misconduct can be allayed via good judgement and following the rules. For example, a working lunch or dinner with a TOC Senior Manager/Director may be a proper way of doing business, provided that no extravagance or suspicion of misconduct is involved.

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Likewise, it may be reasonable to represent Transport Focus at a social function or event organised by outside persons or bodies, provided that there is a demonstrable benefit to the organisation, and therefore the passenger in doing so. This is particularly relevant where any costs associated with attendance fall upon Transport Focus (e.g. travel / overnight accommodation).

With regard to the acceptance of gifts, everyone must be equally mindful of the public perception of acceptance. Of particular concern are gifts or favours which are, or appear to be, sufficiently substantial that individuals or the organisation might be accused of being influenced by their acceptance. A similar concern is that we might appear to be endorsing the products or services of the donor.

### *Generally applicable rules*

Board members and staff should treat with great caution any offer of any gift, favour or hospitality made to them by any representative of the transport industry specifically, or the wider business community more generally. There may well be occasions where Transport Focus could be inhibited in its activities if restraint in such matters is not maintained. There are certain hard rules about the acceptance or refusal of specific hospitality or tokens of goodwill, but there are more general rules that apply to both staff and members under this policy:

Each individual Board member and employee is personally responsible for all decisions connected with the offer or acceptance of gifts and hospitality and for avoiding the risk of damage to public and government confidence in the work of the Passengers Focus.

Under no circumstances may gifts or hospitality be accepted on behalf of staff or Board members by their spouses, partners or their children.

Breaches of the specific rules in relation to offers/acceptance of gifts and hospitality are regarded as misconduct, and will be dealt with under the specific provisions of the Membership Code or Staff Handbook.

Under no circumstances must cash or cheques in any currency be accepted, and any such offer should always be reported to the Accounting Officer and ARAC via form GH1

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### *Specific rules*

#### **1.1. Minor gifts**

These may be defined as items of inconsequential monetary value and carry a branded or promotional message; they include, but are not limited to, pens, diaries, calendars, mouse pads, key fobs and posters.

Such gifts may be accepted.

#### **1.2. Gifts offered by overseas organisations**

Provided there is no real or perceived commercial interest, gifts may be accepted but, using reasonable judgement, and where appropriate. Such gifts will be offered for charity raffle.

Form GH1 to be completed. Appropriate entries made in the gifts and hospitality register

#### **1.3. Gifts offered at the time of business transactions or contract awards**

No such gifts should be accepted under any circumstances.

All *offers* must be reported to the Chief Executive or Head of business services (which will then be reported to ARAC) on form GH1. They should be refused, or returned, as appropriate, explaining the Board's policy.

#### **1.4. Gifts offered on the conclusion of business transactions or contract awards**

No such gifts should be accepted under any circumstances.

All *offers* must be reported to the Chief Executive or Head of business services (which will then be reported to ARAC) on form GH1. They should be refused, or returned, as appropriate, explaining the Board's policy.

#### **1.5. Other gifts**

These might include, but are not limited to: bottles of wine or spirits; cinema or theatre tickets; travel tickets; hampers.

Using reasonable judgement, and where appropriate, such gifts may be accepted on behalf of the organisation but only subject to the approval of the CEO / Accounting Officer, and may not be retained by any one individual. Such gifts will be offered for charity raffle.

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Form GH1 to be completed and authorised in advance or immediately subsequently. Appropriate entries made in the gifts and hospitality register, including treatment of any such gift

### 1.6. Benefits

These are less easy to define, but offers of benefits to other public servants / appointees have included, (but are not limited to): free use of company sporting or other facilities; use of a discounted shopping card provided by company; provision of goods or services at a reduced price; free membership of a local club or facility; participation in a foreign trip, either free or reduced rate; option to buy a car at a favourable price.

No such offers should be accepted under any circumstances.

Form GH1 to be completed, and reported to the Chief Executive or Head of Corporate Services (they will then be reported to ARAC.)

### 1.7. Hospitality – business hours

The most likely kind of hospitality in these circumstances would comprise working lunches, buffets, breakfasts etc.

Hospitality provided by commercial parties with whom Transport Focus has a relationship may be accepted if the reason is legitimate Transport Focus business, and there is no obvious reason why Transport Focus should not return the favour if the opportunity arose.

Alcohol should, as a general rule, be avoided on such occasions

Form GH1 to be completed. Appropriate entries made in the gifts and hospitality register

### 1.8. Hospitality – social hours

Such offers may include cocktail parties, receptions, dinners, dinner dances, and award ceremonies. As a general rule, associated offers of overnight accommodation and travel should not be accepted.

Hospitality provided by commercial parties with whom Transport Focus has a relationship may be accepted if the reason is the promotion of such relationships with a tangible passenger benefit, and the acceptance plus any associated costs to Transport Focus are proportionate.

As a general rule, associated offers of overnight accommodation and travel should not be accepted

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### 10. Expenses and allowances

1.1. There are rules enabling Members to claim expenses and allowances in connection with their duties on the Board. These rules must be scrupulously observed.

### 11. Use of facilities

1.1. Members have a responsibility to ensure that any facilities (such as transport, stationery or administrative services) provided through public funds for the use of the Board are used strictly for those duties and for no other purpose.

### 12. Appointments to other bodies

1.1. Members may be appointed to other bodies as a representative of Transport Focus. In such circumstances, they must always observe this Code in carrying out such duties on those bodies in the same way as they would on the Board. If an offer of an appointment to another body is made, it may be necessary to seek, and secure, the approval of the Secretary of State prior to accepting. All appointments accepted whilst a member of the Board must be registered with the corporate services staff, who can provide guidance as necessary.

### 13. Relationships with other Members and staff colleagues

#### *Discrimination*

1.1. The operating environment of Transport Focus should be fair and equitable, and free from discrimination, bullying and harassment. Staff and members should be able to conduct their duties with dignity and to the best of their ability – those acting contrary to these principles should understand that such behaviour is in conflict with this Code.

Discrimination against other members or staff on the following grounds will not be tolerated:

- Disability
- Race, colour ethnicity or national origin
- Gender
- Sexual orientation and / or gender reassignment
- Religion or belief
- Age
- Political belief
- Spent convictions
- Trades union or Employment Association activity, membership or non-membership of such bodies
- Association with a person who has, or is believed to have, any of the above attributes/associations

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### *Harassment, Bullying and Victimisation*

1.2. This consists of unwanted and uninvited conduct that affects the dignity of people at work, or in their role as a Board Member. Such behaviour is unacceptable and constitutes a breach of this code. As a general rule these definitions apply:

- Harassment – Unwelcome conduct that violates a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment. This may be verbal, physical or visual (including electronic images) and can amount to unlawful discrimination. Harassment may involve a single incident or persistent annoyance. It may be directed towards one individual, several individuals or a group of people.
- Bullying – A systematic succession of events that are overtly aggressive and intend to pressurise or coerce someone to do something, humiliating and demeaning the individuals involved. It variously involves routine abuse of power, repeated aggression (verbal, written, electronic, psychological, physical) persistent criticism, personal abuse and ridicule.
- Victimisation – Less favourable treatment of a fellow member or member of staff resulting from them exercising their rights – including making a complaint, intending to make a complaint or assisting in an enquiry about a complaint of harassment or discrimination.

### 14. Grievance Procedure and whistleblowing

#### 15.

1.1. Any member who considers that they have been a victim of the type of behaviour listed above should raise the matter, in the first instance with the Chief Executive or Chairman. If they are more comfortable doing so, they may use the grievance procedure set out at Annex C.

1.2. A whistleblowing policy and procedure is available, in the event that Board members feel its use necessary, from the Head of Business Services.

### 16. Compliance with the Code

#### 17.

1.1. Members are personally responsible for all decisions connected with matters covered by this Code and for avoiding the risk of damage to public confidence in the work of the organisation and its Board. Compliance with this Code is a condition of appointment; a breach of it may lead to an appointment being terminated. Members are reminded that certain types of breach might also involve sanctions under criminal law.

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### 18. Personal Liability of Board Members

#### 19.

1.1. Although any legal proceedings initiated by a third party are likely to be brought against the Board, in exceptional cases proceedings may be brought against the Chair or other individual Board Members. However, the specific terms of appointment of Board Members apply in this respect as set out in section 10 of the annex to the Secretary of State's appointment offer letter: save where reckless behaviour has occurred on the part of the Member and provided that he or she has acted honestly and in good faith, the Department will meet any civil liability and reasonable legal expenses in the event of any proceedings brought against Members as a result of action they have taken in the execution of their functions.

### 20. Declaration and acceptance of the Code

1.1. This Code is promulgated by the Board of Transport Focus (meeting in London on 12 February 2015) by agreement with the Department for Transport and [will have / has] effect from 30 March 2015 (or with Royal Assent to the Infrastructure Act 2015, if this is earlier). It has been developed in the context of the Cabinet Office's Guidance on Codes of Conduct for Board Members of Public Bodies of October 2000. The Code is part of the condition of appointment to the Board as set out in section 2 of the annex to the Secretary of State's offer of appointment letter.

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### Annex A

## The Nolan Principles -The Seven Principles of Public Life

**Selflessness:** Holders of public office should act solely in terms of the public interest.

**Integrity:** Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

**Objectivity:** Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

**Accountability:** Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

**Openness:** Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

**Honesty:** Holders of public office should be truthful.

**Leadership:** Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

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### Annex B: category A companies

These relate to rail, bus, coach, tram and roads

Companies falling into this category are:

1. Network Rail and any partly owned subsidiary, or holding / ultimate holding company of any other company which is a party to such a subsidiary;
2. Any company which is a franchised Train Operating Company (that operates scheduled services for the carriage of passengers by railway) but including any such company that is (a) exempted from franchising under section 24 of the Railways Act 1993 or otherwise (b) known as an 'open access operator';
3. Any holding / ultimate holding company of any company in (2) above
4. Any company which operates local bus services, domestic coach services, tramway services or passenger transport facilities within the meaning of section 19A of the Railways Act 2005<sup>9</sup> as amended).
5. Any holding / ultimate holding company of any company in (4) above
6. Any company which operates managing agent contracts, regional technology maintenance contracts, asset support contracts, design, build, finance and operate contracts or which owns and/or operates service areas in respect of the strategic road network in England.
7. Any holding / ultimate holding company of any company in (6) above.

*The definition provided is for guidance and clarification purposes only. The responsibility for not trading, or acting, in an ill-advised way, lies with individual Members. In the event of doubt, Members should always seek advice.*

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<sup>9</sup> This provision inserted by virtue of section 74 of the Local Transport Act 2008 (c. 26)

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### Annex C: category B companies

These are rail related only

Companies falling into this category are:

1. Any company that
  - (a) is not a Category A company; but whose business activities comprise in whole or in main part such railway services as fall within the meaning of Section 82 of the Railways Act 1993 (as amended):

#### Section 82

(1) In this Part, “railway services” means services of any of the PART I following descriptions, that is to say— Meaning of

- (a) services for the carriage of passengers by railway; “railway services” etc.
- (b) services for the carriage of goods by railway;
- (c) light maintenance services;
- (d) station services;
- (e) network services.

(2) In this Part—

“light maintenance services” means services of any of the following descriptions, that is to say—

- (a) the refuelling, or the cleaning of the exterior, of locomotives or other rolling stock;
- (b) the carrying out to locomotives or other rolling stock of maintenance work of a kind which is normally carried out at regular intervals of twelve months or less to prepare the locomotives or other rolling stock for service;

“network services” means any service which consists of, or is comprised in, the provision or operation of a network (or of any of the track or other installations comprised in a network), but does not include any service which falls within paragraphs (a) to (d) of subsection (1) above;

“services for the carriage of passengers by railway” includes services for and in connection with the carriage of luggage, parcels or mail on trains which at the time are available, and primarily intended, for use by passengers; and references to carrying, or to the carriage of passengers by railway shall be construed accordingly;

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“station services” means any service which consists of, or is comprised in, the provision or operation of a station; and, for the purposes of the above definitions of “network services” and “station services”, where a person permits another to use any land or other property comprised in a network or station he shall be regarded as providing a service which falls within the meaning of “network services” or “station services”, as the case may be.

(3) Without prejudice to the generality of the definition in subsection (2) above, “network services” includes services of any of the following descriptions, that is to say—

(a) the construction, maintenance, re-alignment, re-configuration or renewal of track,

(b) the installation, operation, maintenance or renewal of a railway signalling system or of any other railway communication equipment

(c) the construction, control, maintenance or renewal of electrical conductor rails or overhead lines, of any supports for such rails or lines, and of any electrical substations or power connections used or to be used in connection therewith, and the provision of electrical power by means thereof

(d) the provision and operation of services for the recovery or repair of locomotives or other rolling stock in connection with any accident, malfunction or mechanical or electrical failure

(e) the provision and operation of services for keeping track free from, or serviceable notwithstanding, obstruction (whether by snow, ice, water, fallen leaves or any other natural or artificial obstacle or hindrance) or for removing any such obstruction

(f) the provision, operation, maintenance and renewal of any plant, equipment or machinery used in carrying on any of the activities specified in paragraphs (a) to (e) above

(g) the exercise of day to day control over train movements over or along any track comprised in the network

(h) the preparation of a timetable for the purposes of such control as is referred to in paragraph (g) above, and it is immaterial for the purposes of this subsection and that subsection whether or not the person who provides the service in question also provides or operates a network, or any of the track or other installations comprised in a network, or provides the service on behalf of a person who does so.

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(4) In determining whether any service is a station service, it is immaterial whether or not the person who provides the service also provides or operates a station, or any part of a station, or provides the service on behalf of a person who does so.

(5) In this section, “maintenance” includes the detection and rectification of any faults.

(6) “Railway” has its wider meaning in the application of this section in relation to any provision of this Part for the purposes of which “railway” has that meaning.

*The definition provided is for guidance and clarification purposes only. The responsibility for not trading, or acting, in an ill-advised way, lies with individual Members. In the event of doubt, Members should always seek advice.*

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## Annex C: Grievance Procedure

### 1. Introduction

Transport Focus values the contribution Members make to the organisation and aims to promote an environment in which Members interact with each other and with staff on the basis of mutual trust and respect. It is expected that Members will also contribute to this objective through their observation of the Membership Code.

However, relationship difficulties can sometimes arise. When they do, individuals and groups have the right to express their concerns openly with an expectation that they will be listened to and their views respected. The Grievance Procedure, which is set out below, provides a framework for resolving such difficulties.

### 2. Underlying Principles

It is expected that where problems concerning Membership of the Board arise, most will be dealt with satisfactorily in the course of the normal, day-to-day working relationship between Members and the Chairman. The procedures that follow are to be used only when this is not possible.

Members have an obligation to state the nature of the grievance and to say what they want done about it. Complaints should be dealt with fairly and consistently and as near to the point of origin as possible. The Chairman has a duty to deal with the issues promptly and try to resolve them speedily.

There should be an impartial investigation of the grievance, but proportionate in scale to its nature. A Member has the right to be accompanied at any meeting.

The provisions of the Membership Code offer Members guidance in understanding the behaviour, standards of conduct and contribution expected of them.

# CP 3.1 Draft Membership

## Code Part A – Conduct

### 3. Procedure

#### 3.1 Stage One

Any grievance relating to membership should be raised formally, in writing, with the Chairman. If the grievance is wholly or in part against the Chairman the matter should be raised with the Chief Executive. The Chairman / Chief Executive undertake to acknowledge it within five working days, and will normally diarise a meeting to be held within a subsequent period of ten working days. Any Member may be accompanied at this discussion by a colleague or a representative from a professional body.

The Chairman will endeavour to resolve the grievance without delay and should respond personally and in writing within a further 5 working days of the initial discussion. Where no meeting takes place, a substantive response within ten working days of submitting the grievance will be provided.

#### 3.2 Stage Two

Where a Member believes that the response from the Chairman at Stage One is unsatisfactory, he or she may refer the matter to ARAC. The grievance will be heard within one month of it being referred to the Committee. Again, any member may be accompanied at this meeting by a colleague or a representative from your professional body or Trade Union. A member of the senior executive team will also attend the meeting.

Following the hearing, time may be needed to review the circumstances of the grievance, which may delay the outcome. Members should, however, receive a response within 10 working days. If it is not possible to respond within this timescale, an explanation for the delay will be provided together with an indication of when a response can be expected.

#### 3.3 Stage Three – Appeal

Where a Member remains dissatisfied after the second stage, they may appeal to the appropriate officer at the Department for Transport. Full details will be provided with the outcome of the stage two hearing response. Once again, the Member may be accompanied at this meeting by a colleague or a representative from his or her professional body or Trades Union.

The decision reached at Appeal is final and represents the completion of the internal grievance procedure. A record will be kept at all stages of the procedure and will be available for all parties.

# CP 3.1 Draft Membership Code Part A – Conduct

## Annex D - the Bribery Act 2010 in detail

Section 1 of the Act makes it an offence to promise or give financial or other advantage to someone where (a) it is intended to induce that person to do something improper or reward them for so doing, or (b) it is known or believed that to accept such a bribe would in itself be wrong.

It makes no difference whether the person being bribed carries out the improper activity or it is carried out by someone else.

Section 2 makes it an offence to request, agree to receive or accept a financial or other advantage:

- Intending that a function or activity should be performed improperly
- If the request, agreement or acceptance is improper
- As a reward for improperly performing a function or activity
- Where a function or activity is performed improperly in anticipation or as a consequence of a request, agreement to receive or acceptance of a financial or other advantage

Relevant functions and activities are set out as:

- Any function of a public nature
- Any activity connected with a business
- Any activity performed in the course of a person's employment
- Any activity performed on behalf of another body or person

At least one of the following conditions must also apply:

- The person performing the function or activity is expected to do so in good faith;
- The person performing the function or activity is expected to perform it impartially
- The person performing the function or activity is in a position of trust by virtue of performing it

Territorial considerations

A function or activity is relevant even if it:

- Has no connection with the UK
- Is performed outside the UK

Improper performance and expectation

- A relevant function or activity is performed improperly if it performed in breach of a relevant expectation
- A relevant expectation is what a reasonable person in the UK would expect it to be (and disregards non-written/codified local custom and practice in non UK jurisdictions)

Penalties

- On summary conviction (in a magistrates court) up to a £5,000 fine and up to a year in prison, or both
- On conviction on indictment (in the Crown Court) unlimited fine and up to ten years in prison