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Letter to Stakeholders from Ken Livingstone

On Tuesday 27 March I was, with great regret, forced to support the first measures in the initiation of a judicial review of the proposed PPP on the London Underground. I wanted to set down clearly the reasons I felt I had no option but to take this serious action, particularly as it was not in line with my earlier expectation that it would be possible to arrive at an agreement with the government. I also wanted to indicate my views on the way ahead on the discussions regarding modernisation of the London Underground.

The overall context is that having appointed Bob Kiley as Commissioner of Transport for London I evidently take careful account of his advice as regards all operational issues he considers indispensable for safe, economic and efficient running of the Underground system. Overall budgetary matters affecting the city are a separate but related issue which falls within my responsibility and judgements. The points below reflect this.

In order to maintain undertakings given to the government regarding confidentiality of its proposed contractual arrangements for PPP, members of my office are not directly involved in the negotiations with the government on PPP. Bob Kiley evidently discusses with me and keeps me informed of the main issues of policy in the negotiations and the stance he believes should be taken. On 16 March Bob Kiley and I held a meeting at which he briefed me regarding the overall progress of the talks. These negotiations had two aspects - financial and operational. Regarding finance I must state that I had considerable reservations regarding the implications of the proposals put by the government in the talks. It has become clear in the negotiations that the cost of the proposed contractual arrangements for PPP far exceeds, to an even greater degree than anticipated, that of alternative forms of raising finance for the modernisation of the London Underground. Due to this expense the subsidies that would be required from the Treasury, over and above the payments scheduled for Transport for London/London Underground, would commence at a figure of £700 million a year rising to approximately £1 billion. While the government stated that it was willing to undertake to make payments to meet these for at least the first 7.5 year period of the 30 year period of PPP contracts I estimate that they open London to considerable and problematic financial consequences.

I do not expect that the Treasury would go back on a direct agreement for such payments in the period specified, but I believe that there is considerable risk that attempts would be made to attempt to claw back large parts of these sums by other routes - for example via revising reviews of social deprivation, education spending and other budgets for London. The argument would be used that London was already receiving large payments for the Underground and therefore other budgets should be curtailed - when the real reason for the large subsidies was the expense of the government's preferred version of PPP contracts. To accept such an agreement would therefore be to open up London to significant financial exposure that would negatively affect the whole city including the business community. This would be a very serious undertaking for the city.

Despite my considerable reservations I concluded that, because of the great importance of arriving at an agreement on the Underground, I would agree to such an arrangement if it would secure agreement on modernisation of the Tube. The GLA would counter the risk that would exist for other budgets for London by vigorously campaigning to ensure that the city received adequate sums for social deprivation, infrastructure, education and other areas.

A second aspect was the operational running of the London Underground. Bob Kiley has continuously and clearly stated that neither he, nor any other management of LUL, would be able to guarantee the efficient and safe running of the Underground without the integration of actual operation of the trains with the maintenance activities that directly or indirectly affected train movements in the passenger environment. This has been throughout a central requirement of unified management control.

Lack of such integration was, as is by now well known, the reason for the Hatfield train disaster and the problems besetting Railtrack and the national rail system – although Bob had explained the fundamental issues involved prior to the tragedy. Evidently if it were not possible to give such a guarantee regarding safety and efficiency it would not be possible to accept a settlement on the Underground. I therefore concurred with his position that, without such an agreement on integration of management of maintenance with train operations, no compromise could be accepted. The only way to assure this would be through securing control of maintenance and related key approvals and rights on the capital work itself.

My anticipation following the government's 28 February proposals was that it would be possible to arrive at an agreement along the following lines.

- Despite my reservations on financing, the Greater London Authority would accept the financial proposals required by

the contractual arrangements for PPP put forward by the Treasury.

- The great bulk of the work (very roughly 70 per cent) involved in the proposed PPP contracts consists of major capital programmes that would be carried out by private companies under the PPP.
- Given that almost all expert opinion recognises the major mistakes made in rail privatisation in separating train operations from maintenance the government would agree to Bob Kiley's proposals to modify the PPP agreement to ensure integrated management of the two.

This would have represented a genuine compromise on both sides. I was therefore considerably surprised that the government refused to make any substantive shift on a key component, the integration of train operations and maintenance. The control over the maintenance scope that the government team would permit to be exercised by LUL was so severely limited that it did not even include all routine repairs of signals and track, let alone those maintenance activities that are critical to safe and reliable customer service. This meant that the government insisted on excluding from LUL control even such elementary aspects of maintenance operations as the ballast and track support, drainage (to prevent corroding, eroding, flooding etc.), bridges, earthworks, embankments and trackside structures and fences. Without the right to control maintenance on features such as these it would be impossible for LUL management to ensure efficient, or even safe, running of the Underground. I think it is absolutely clear that the issues that the government would not allow to be included in the areas of maintenance in respect of which LUL would have meaningful control are vital for the safe and efficient running of the trains, and indeed cannot be separated from them – as strongly confirmed by the facts that have become public since Hatfield.

At the same time that the government would not give meaningful control on maintenance it did proceed to retract, reverse or so substantially undermine as to be meaningless earlier offers on governance and the oversight of capital work. The following specific offers from the Government, presented in its correspondence of 28 February, were either voided or vitiated:

- LUL rights to approve Maintenance Plans and prioritisation and implementation of major programmes of work
- The TfL Commissioner to lead in developing modifications to the PPP tender
- The right to veto annual Infracos business plans and budgets (covering capital and maintenance)
- The right to require the Infracos to refrain from any activity that, in LUL's opinion, 'is not in the best interest of the Underground'

- Unrestricted change-order rights, at LUL's discretion would be included subject to compensating the Infracos for cost, time, and performance implications
- LUL right to supervise Infraco's performance in other key areas of work
- LUL power to direct Infracos in the execution of their work
- The right to remove the Infraco CEOs
- The right to approve and remove other key managers
- Outside Public Interest Directors to hold 50% of the seats on each Infraco Board, but with only half of these chosen by TFL.

It is therefore evident that far from there being continuing new TfL demands the government in fact withdrew proposals it had made itself. The argument presented by the government for retracting its previous proposals, and refusing to maintain the integration of train operation and maintenance, was that such changes would not be accepted by the market. But this is self-evidently a sophistical argument. If the TfL commissioner were to lead in developing modifications to the PPP tender, as the government first proposed and then retracted, evidently it would soon be ascertained whether there would be bidders for the revised PPP contracts. The market should decide what the market will accept, it is not the government's role to claim that it is the pre-emptive and best judge of that market.

I am frankly and genuinely surprised that the government should allow negotiations on such a vital issue for the future of London as the Underground system, with all its implications, to break down due to intransigence on issues regarding which the overwhelming bulk not only of expert but public opinion would clearly support Bob Kiley's position. However, while I would be willing, even with definite reservations expressed above, to take the financial exposures involved for London if agreement could be arrived at to secure an efficient and safe Underground system, it would evidently be irresponsible for the city to accept such exposures if it could not be guaranteed that a safe and efficient Underground system would be their result.

Given this situation, and the exposures involved for London, I have no alternative but to support initiation of a judicial review of the proposed contractual arrangements for PPP. It however remains my firm hope that it is possible to resolve this issue by negotiation. Given my willingness to arrive at compromise on the financial arrangements, and that the major capital programmes will be carried out by private companies under the PPP, I believe that the government's current negotiating position to refuse to modify the PPP contracts to accept integration of operations and maintenance is misguided intransigence. I believe it quite possible that further reflection, and expression of opinion by London stakeholders, will

lead to revision of this position and I continue to work to that end.

Yours sincerely

Ken Livingstone
Mayor of London

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