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Briefing Paper

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Translink use of public funds: initial observations

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At the request of the Committee for Infrastructure, this Briefing Paper highlights current governance and financial arrangements that are relevant to Translink use of public funds, in light of recent evidence sessions and related correspondence with Assembly statutory committees; and makes some initial observations, to help inform the Committee's further consideration in this area.

Introduction

This Briefing Paper is prepared at the request of the Committee for Infrastructure. The Paper outlines relevant context-setting information, including relevant governance and financial arrangements, including requirements, governing Translink's use of public funds (section 1) – both legislative and non-legislative. That is followed by evidence given by public officials at recent statutory committee meetings in the Northern Ireland Assembly about such use, along with related Departmental correspondence (section 2). Thereafter, the Paper makes some initial observations, which aim to facilitate the Committee's further consideration of Translink's public funding use (section 3).

The Paper is not intended to address the specific circumstances of any particular individual. It should not be relied upon as professional legal advice or as a substitute for it.

1 Context-setting information

Outlined below is relevant context-setting information pertaining to Translink's governance and financial arrangements – both legislative and non-legislative; presented as follows:

1.1 Legislative Basis

1.2 Public Service Agreement with the Department for Infrastructure (DfI)

1.3 Key Governance and Financial Arrangements

1.1 Legislative Basis

The Northern Ireland Transport Holding Company (NITHC), trading as "Translink", was established under the Transport Act (Northern Ireland) 1967[1] (the 1967 Act), with its powers, duties and responsibilities discharged in accordance with:

- the 1967 Act
- the Transport (Amendment) Act (Northern Ireland) 1971[2]
- the Northern Ireland Transport Holdings Company (Extension of Powers) Order (Northern Ireland) 1972[3]
- the Local Government (Transfer of Belfast Corporation Transport functions) Order (Northern Ireland) 1973[4]
- the Transport (Northern Ireland) Order 1977[5]

In addition, when delivering public transport services in Northern Ireland for the Department for Infrastructure (DfI), a public service contract governs that relationship, pursuant to the Transport Act (Northern Ireland) 2011[6] (the 2011

[1] https://www.legislation.gov.uk/apni/1967/37/contents

[2] https://www.legislation.gov.uk/apni/1971/14/contents

[3] https://www.legislation.gov.uk/nisro/1972/175/contents/made

[4] https://www.legislation.gov.uk/nisro/1973/96/contents/made

[5] https://www.legislation.gov.uk/nisi/1977/599/contents

[6] https://www.legislation.gov.uk/nia/2011/11/contents

Act) and Regulation (EC) 1370/2007 (Public Service Obligations in Transport) (Amendment) (EU Exit) (Northern Ireland) Regulations 2021[7].

1.2 Public Service Agreement

In March 2022, the DfI entered into a new five-year Public Service Agreement[8] (the 2022 PSA) with the NITHC (which includes an option to extend for a further two years). That PSA is a public service contract under the noted 2011 Act and related Regulations; formally specifying the contractual relationship between the DfI (the commissioning public transport authority) and the NITHC (the public transport operator). It replaced the PSA that had been in place since October 2015. Its aim was to secure the provision of accessible, efficient, safe, sustainable and high-quality public transport services that both contribute to Programme for Government (PfG) outcomes and support wider policy objectives.

Under the 2022 PSA, the NITHC is required to deliver approximately 66,000,000 kilometres of bus services and 5,500,000 kilometres of rail services per annum in Northern Ireland and on cross-border services with the Republic of Ireland (RoI) and Great Britain.

The NITHC is expected to meet the 2022 PSA specified service delivery requirements – the stated Key Performance Indicators (KPIs). Those KPIs are based upon standard performance metrics employed throughout the United Kingdom and the Republic of Ireland (RoI), including those relating to: Environmental; Customer; Finance; Delivery; Safety and Security; and, Growth and Innovation.

In addition, the 2022 PSA requires the DfI to provide the NITHC with appropriate funding to fulfil the Company's duties.

1.3 Key Governance and Financial Arrangements

[7] https://www.legislation.gov.uk/nisr/2021/337/introduction/made

[8] https://www.infrastructure-ni.gov.uk/sites/default/files/publications/infrastructure/DFI%202022-0154%20-%20Attachment.PDF

The NITHC is classified by the Office of National Statistics (ONS) as a Public Corporation (PC) and the DfI its sponsoring government department.

PCs are defined for the national accounts by the ONS's *Public Sector Classification Guide*[9], as:

> *Independent legal entities, that are market producers and are subject to control by government units.*

A list of PCs is published alongside the ONS Guide.

Moreover, *Public Bodies: A guide for NI Departments*[10], issued in 2008 by Northern Ireland's Department of Finance (DoF), state PCs have the following main features:

- *…market bodies that derive more than 50% of their income from the sale of goods and services;*
- *Some charge for regulatory activities where these provide a significant benefit to the person paying the fee;*
- *They are owned or controlled by central government;*
- *They have substantial day to day operating independence so that they should be seen as institutional units separate from their sponsor departments.*

1.3.1 PCs' Governance Arrangements

Chapter 6 of DoF's *Corporate Governance in Central Government Departments: Code of Good Practice NI*[11] (dated April 2013) addresses Arm's Length Bodies (ALBs); a term used to include PCs. The principle underlying that guidance states:

> *Where part of the business of the department is conducted with and through ALBs, the department's Board should ensure that there are robust*

9 https://www.ons.gov.uk/methodology/classificationsandstandards/economicstatisticsclassifications/introductiontoeconomicstatisticsclassifications

10 https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/public-bodies-guide-07.pdf

11 https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/daodfp0613att.pdf

governance arrangements with each ALB Board. These arrangements should set out the terms of their relationship and explain how they will be put in place to promote high performance and safeguard propriety and regularity.

In addition, DoF's *Partnerships between Departments and Arm's Length Bodies: NI Code of Good Practice*[12] (dated March 2019) sets out good practice principles that can be applied to relationships between departments and their ALBs. The Code states effective partnerships are to be underpinned by the following principles:

The purpose of the Arm's Length Body should be clear and well understood; there should be a proportionate approach to assurance; departments and Arm's Length Bodies should share skills and experience; and most importantly, partnerships should be based on open, honest and constructive working relationships.

However, the Code further states that there is no "one size fits all" to partnerships between departments and ALBs; and ultimately, in consultation with its ALB, it is for the department to determine the most appropriate model of partnership.

Further information on such partnerships is contained in Chapter 7 of *Managing Public Money Northern Ireland*[13] (MPMNI) (dated October 2023). In particular, Annex 7.2 provides guidance on drawing up relationship documents, including Partnership Agreements, using DoF published templates. In terms of PCs, MPMNI emphasises the need for the financial performance of a PC to provide the sponsor department with a fair return on the public funds invested in the business and for departments to define any contractual relationship in a relationship document adapted to suit the corporate context while delivering public sector disciplines.

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12 https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/NI%20Code%20of%20Good%20Practice%20v3%20%28300323%29.pdf

13 https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/MPMNI%20-%20Chapter%207%20-%202023%20Review%20-%20Oct%202023.pdf

It should be noted that PCs do not have Accounting Officers; and they are not subject to MPMNI as a matter of course, as would be agreed in the context of any relationship documents.

Generally, PCs are governed in accordance with their constitutional documents. However, His Majesty's (HM) Treasury require the provision of a certain degree of information to maintain an audit trail for public spending and to input data in the Whole of Government Accounts. PCs prepare their accounts in accordance with Generally Accepted Accounting Practice (GAAP). There is no requirement for PCs to follow the Government Financial Reporting Manual (FReM). PCs, however, are subject to HM Treasury's *Consolidated Budgeting Guidance*[14]. In particular, the following provisions of that Guidance are noteworthy:

- Departments are expected to set PCs clear objectives and challenging targets covering Return on Capital Employed, dividend levels, efficiency, and quality of goods and services. The corporate plans of PCs should be subject to agreement by the department. That is particularly important where PCs have been underperforming against profits targets; face risks to performance, or might generate substantial levels of excess cash.
- Where a department wishes a PC to perform a social policy function then it should pay for that explicitly out of its budget rather than seeking to recover the costs by accepting PC underperformance or by overcharging PC customers. It may pay a subsidy to the PC. Subsidies are unrequited current payments to trading bodies.
- Capital grants are unrequited transfer payments that are intended to finance investment by the PC. Investment includes the acquisition of any fixed asset (land, buildings, vehicles, machinery, etc.) and any financial asset (lending, company securities, etc.). Grants to finance stock-building should also be treated as capital grants. Grants to refinance pension funds are capital grants.
- Even though most PCs capital expenditure does not score in budgets, departments are responsible for monitoring this expenditure and taking

[14] https://assets.publishing.service.gov.uk/media/640b61918fa8f556107caaa2/CBG_2023-24_final.pdf

steps to prevent undue increases. Departments are to obtain information about all PCs' outturn and planned capital expenditure and to pass it on to the HM Treasury as part of their regular monthly returns.

1.3.2 NITHC Overall Governance Framework

The DfI and the NITHC have agreed a suite of documentation that sets out their rights and obligations and how they will work together regarding the delivery of public transport services in Northern Ireland. In addition to the PSA, there is a "Partnership Agreement". Moreover, a Corporate and Business Plan is agreed each contract year as part of the Corporate Planning Process.

The overall governance framework within which the NITHC operates is outlined within the Partnership Agreement between the DfI and the NITHC (May 2023)[15]. In particular, the following provisions in the Partnership Agreement are noteworthy:

- The NITHC is required to follow the principles, rules, guidance and advice in MPMNI, subject to some minor derogations due to the nature of the NITHC's business and outlined in an Annex to the Agreement.
- The NITHC is required to follow due processes laid out in guidance contained in Better Business Cases NI.
- The NITHC and the DfI have a number of agreed arrangements in respect of the Audit and Risk Committee.
- The Group Chief Executive is designated as Accounting Officer for the Group by the DfI's Accounting Officer.
- In line with the DoF requirements, the NITHC's Accounting Officer is to provide an annual declaration of *fitness to act*[16] as Accounting Officer to DfI's Accounting Officer.
- The DfI's Accounting Officer may withdraw the NITHC's Accounting Officer designation, if the DfI Accounting Officer concludes that the

[15] https://trn-prd-cdn-01.azureedge.net/mediacontainer/medialibraries/translink/publications-and-documents/nithc/final-signed-copy-of-the-partnership-agreement-between-dfi-and-nithc-signed-17th-may-2023.pdf

[16] https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/daodof0517_0.pdf

NITHC's Accounting Officer is no longer a fit person to carry out the responsibilities of an Accounting Officer, or that it is otherwise in the public interest that the designation be withdrawn. (Withdrawal of the NITHC's Accounting Officer status would bring into question that Officer's employment as Chief Executive; and the Chair should engage with the DfI, if such circumstances arise).

- The Permanent Secretary, as DfI's Principal Accounting Officer, is accountable to the Norther Ireland Assembly for the issue of grant in aid to the NITHC.
- The Minister is responsible for, among other things, setting the NITHC's budget – that is, approving the amount of grant of subsidy or other funds to be paid to the NITHC, and securing Northern Ireland Assembly approval.
- The DoF has established, on behalf of the Assembly, a delegated authority framework setting out the circumstances where the DoF approval first is required, before expenditure can be occurred or commitments entered into. The DfI Accounting Officer has established an internal framework of delegated authority for the DfI and its ALBs that apply to the NITHC.
- Once NITHC's budget has been approved by DfI, NITHC have authority to incur expenditure approved in the budget without further reference reference to the DfI.

1.3.3 NITHC Financial Arrangements

The DfI annually provides both Capital and Revenue funding to the NITHC.

Whitehall's Department for Transport (DfT) provides definitions for Capital Expenditure and Current (Revenue) Expenditure in the context of transport in their Guidance document: *Transport expenditure: notes and definitions*[17] (dated December 2023):

[17] https://www.gov.uk/government/publications/transport-statistics-great-britain-guidance/transport-expenditure-notes-and-definitions

> ***Capital Expenditure:*** *includes expenditure on capital grants and spending on assets, such as the acquisition of land, buildings, vehicles and machinery. For transport, this includes the cost of building a road, or new rail lines and some maintenance work.*
>
> ***Current Expenditure****: covers recurring spending on items such as pay, benefits and the purchase of goods and services. For transport, this includes services such as concessionary fares and revenue support to public transport.*

DfI is the NITHC's primary source of Capital funding. It is also its second largest source of Revenue; providing approximately one-third of income in recent years. Of that income, passenger fares constituted the majority.

Under the 2022 PSA, the DfI is required to provide appropriate funding to the NITHC, so that it can fulfil its duties. It states[18]:

> *The Department shall compensate NITHC for the discharge of the Public Service Obligation*

It further states that such compensation:

> *… be maintained at such a level to ensure that as a minimum, the Public Service Obligation activities performed by NITHC enable it to meet going concern requirements over the lifetime of the Corporate and Business Plan.*

Moreover, the 2022 PSA specifies any such compensation is to be made in accordance with the Annex to Regulation (EC) 1370/2007 (Public Service Obligations in Transport) (Amendment) (EU Exit) (Northern Ireland) Regulations 2021[19]. The compensation is to be calculated in accordance with Schedule C (Financial Schedule) of the 2022 PSA, and paid by the Department in accordance with Schedule D (Payment Schedule) of the 2022 PSA.

[18] https://www.infrastructure-ni.gov.uk/sites/default/files/publications/infrastructure/DFI%202022-0154%20-%20Attachment.PDF

[19] https://www.legislation.gov.uk/nisr/2021/337/introduction/made

Moreover, section 17 of the PSA provides information on fare revenue, stating:

NITHC at all times will retain the fare revenue and antecedent fares risk…any fare revenue generated by NITHC whilst fulfilling a Public Service Obligation shall be taken into account when calculating the compensation payable by the Department in respect of the Public Service Obligation under clause 3 and Schedule C.

And section 5 of it highlights section 32 of The Transport Act (Northern Ireland) 2011[20], which states:

The Department may pay grants towards approved capital expenditure incurred or to be incurred in-

(a) providing vehicles;

(b) providing, improving or developing facilities for passenger transport.

Thereafter, section 5 of the PSA states:

NITHC shall ensure that any capital expenditure undertaken by NITHC is consistent with the strategic direction of the Department, the Department's Minister and the Northern Ireland Executive and is included in NITHC's Corporate and Business Plan.

NITHC shall ensure that any capital expenditure which has a corresponding resource implication is reflected through the Corporate Planning Process and in any relevant business cases.

2 Recent Public Officials' Evidence Sessions and Departmental Correspondence

Recent evidence sessions at Northern Ireland Assembly statutory committee meetings – as recorded in the Assembly's Official Report - included public official statements about Translink's use of public funding:

- 20 March 2024 – Committee for Infrastructure meeting

[20] https://www.legislation.gov.uk/nia/2011/11/part/5

  - A Translink Official gave evidence regarding, amongst other things, the use of public funds for the provision of public transport services[21] - see Assembly Official Report transcripts in sub-section 2.1 of this Paper.
  - DfI Officials responded to questions from the Committee on comments made by the Translink Official from the previous session – see Assembly Official Report transcripts in sub-section 2.2 of this Paper.
- 10 April 2024 – Minister of Infrastructure to the Committee for Infrastructure, in response to a request made by the Committee for Infrastructure, which addresses the comments made during the 20 March 2024 Committee for Infrastructure meeting.

Each of the above are outlined more fully in the below sub-sections.

2.1 Committee for Infrastructure: Evidence Session 20 March 2024: Translink

Excerpt from transcript of the *Northern Ireland Assembly Official Report – Committee for Infrastructure: Roles and Functions of Translink, including Annual Report and Accounts and Business Plan: Translink* (20 March 2024)[22]:

> ***Mr Conway:*** *…The other area is the infrastructure. It has not had the required investment over a number of decades. A lot of the maintenance of the rail network should come from resource funding, but we have not had the funding to do it, so we have tended to get a lot of it out of our capital funding, which takes funding away from the capital plan. That is to maintain the network, never mind the enhancements and future extensions that we want to do. The whole system starts grinding to a halt.*

21 https://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=32306&eveID=16572

22 https://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=32306&eveID=16572

…..

The Chairperson (Mrs Erskine): *You mentioned in your evidence that you have had to utilise capital funding for maintenance. Obviously, that should come from your resource funding, as you said. Does that occur annually?*

Mr Conway: *It does, yes.*

The Chairperson (Mrs Erskine): *Do you need to seek the Department's approval when reclassifying capital to resource?*

Mr Conway: *We do. We do an economic appraisal, as we do for any capital project. We go through the normal process to identify the work that needs to be done to a particular asset. Having to wait every year to get capital allocated, and then go through an economic appraisal and a capital appraisal, is a cumbersome way in which to do maintenance. Resource funding is typically done for maintenance on a multi-year basis. We agree the amount of funding that we need to maintain the network over multiple years. That allows us to engage more efficiently with our supply chain, whereas, with capital funding, we do maintenance in a stop-start way.*

The Chairperson (Mrs Erskine): *For how long have you had to shift —?*

Mr Conway: *For as long as I have been in Translink, so 10 years.*

2.2 Committee for Infrastructure: Evidence Session 20 March 2024: Department for Infrastructure

Excerpt from transcript of the *Northern Ireland Assembly Official Report – Committee for Infrastructure: Water and Departmental Delivery Group – Finance and Budget Briefing: Department for Infrastructure* (20 March 2024)[23]:

The Chairperson (Mrs Erskine): *…During the evidence session with Translink, officials highlighted that capital funding is reclassified to allow*

23 https://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=32307&eveID=16572

for the maintenance of assets. What is your view on the movement between capital and resource?

Ms Thompson: *We give Translink a resource budget and a capital budget, which are fixed. It is then up to Translink to categorise them, using the right accounting classifications, for want of a better term, to get them into the right place. Chris Conway was saying that schemes that might otherwise be funded via that revenue funding are being funded via capital but Translink cannot, and does not, ask for reclassifications between the two categories that we give it. It is utilising its capital money and its revenue money in particular ways, and there is nothing that I am aware of that has moved between the two. If Translink is categorising something as capital, then it has to be able to defend that as capital. If it categorises something as revenue, it has to be able to defend it as revenue.*

The Chairperson (Mrs Erskine): *That is not what we heard today in this Committee.*

Ms Thompson: *Translink does not ask us to move anything across, and it cannot.*

The Chairperson (Mrs Erskine): *I asked the Translink representatives whether they speak to the Department about that. They said that they did and that that had been going on for the guts of 10 years.*

Ms Thompson: *Sorry, it is the way you are phrasing the question. They are not moving money from revenue to capital, OK? We give them a revenue budget and we give them a capital budget. There is no movement going on. What they are, presumably, doing is looking at a particular scheme, and saying, "That's a particular scheme. I'm going to charge that to the capital budget". So, they are not actually changing the budgets from one side to the other, they are just saying, "Rather than that project being charged to revenue, I'm charging it to capital". That is what they are looking at. They are not moving money between the two. Maybe it is the way that it has been phrased.*

The Chairperson (Mrs Erskine): *OK.*

***Ms Thompson:** It is about a particular project being charged to capital rather than to revenue, just as when it comes to roads Colin has maintenance projects that go on in capital and maintenance projects that goes on in revenue.*

***The Chairperson (Mrs Erskine):** Does the fact that there is some movement happening between the two demonstrate that there is a higher degree of underfunding on the capital side?*

***Ms Thompson:** I guess that there are challenges in capital and revenue. Both are challenged. We need to ensure that they are taking forward the projects as best as they possibly can and, in particular, doing the essential work that we talked about earlier. Translink knows the projects that it needs to take forward, particularly on the railways, and it will make sure that those happen. That resonates with the conversation elsewhere: it is doing a lot of work and a lot of really good schemes. Can it do more? Absolutely: it can do more, both in capital and in revenue, but that is the reality of the budget situation that we are in.*

***The Chairperson (Mrs Erskine):** For clarity, how much capital has been reclassified? None?*

***Ms Anderson:** We cannot reclassify from resource to capital.*

***The Chairperson (Mrs Erskine):** OK.*

***Mr K Buchanan:** Chair, may I follow up on that? What rules does the Department provide Translink with? I know that Translink cannot reclassify funding in the same way that for roads capital and revenue cannot be moved. Do you give Translink any rules, or, if there are no rules, is it, effectively, just one pot?*

***Ms Thompson:** It is about accounting standards. The rules are not set by us. They are set by 'Managing Public Money NI' and accounting standards.*

***Mr K Buchanan:** If Translink defines something as capital or revenue, who comes up with the guidelines for it to define which is which?*

Ms Thompson: *The accounting standards are set globally for everybody by the accountancy bodies.*

Mr K Buchanan: *You said that they could charge something against capital.*

Ms Thompson: *They have to look at a project, define it, put it into the right place and talk to their auditors about that. That is what they have to do.*

Mr Durkan: *Have they ever come a cropper on that?*

Ms Thompson: *No.*

2.2.1 NITHC Financial Performance

In its evidence session to the Committee for Infrastructure on 20 March 2024, the NITHC reported a 2024 forecast loss of £17 million[24]. To facilitate the Committee's further consideration of that figure, the Committee may wish to consider Table 1, below, outlines the Capital and Revenue Support from the DfI to the NITHC between 2018 and 2023, as well as its overall financial performance during that time:

Table 1: 2018-2023 Capital and Revenue Support from DfI

£ million	2023	2022	2021	2020	2019	2018
Capital Support	252.6	241.5	157.3	110.0	112.9	84.8
Revenue Support	89.6	158.3	221.8	71.6	85.0	73.8
Profit/(Loss)	(82.3)	0.4	38.0	(53.8)	(17.3)	(11.3)

Sources: Translink Annual Report and Accounts 2018-2023

The Table shows that the NITHC has incurred significant losses year on year between 2018 and 2020. In 2020, the NITHC reported a loss of £54 million

24 https://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=32306&eveID=16572

(2019: loss of £17 million, 2018: loss of £11 million). In its 2021 report on DfI's Annual Report and Accounts 2020-21[25], the Northern Ireland Audit Office (NIAO) reported that "[Translink] has incurred significant losses and depleted its cash reserves year on year since 2014-15". It should be noted that during the pandemic, public transport fell dramatically, resulting in a significant impact on the NITHC's income. During that time, the Department received an enhanced budget for public transport and provided significantly increased funding to the NITHC. In 2021, the NITHC reported a profit of £38 million, followed by a modest profit of £0.4 million the following year. In 2023, the NITHC reported a loss of £82 million.

In its evidence session to the Committee for Infrastructure on 20 March 2024, the NITHC reported a 2024 forecast loss of £17 million[26].

2.3 Correspondence from the Minister for Infrastructure to the Committee for Infrastructure - 10 April 2024

A recent departmental correspondence dated 10 April 2024, from the Minister of Infrastructure to the Committee for Infrastructure; it responded to a request made by the Committee for Infrastructure, which had addressed the comments made during the 20 March 2024 Committee for Infrastructure meeting. The correspondence stated:

> *Members requested a response to the comments by the Translink Chief Executive referring to maintenance expenditure being reclassified as capital expenditure. This was not a reference to accounting definitions but rather an explanation of how a significant maintenance backlog has arisen due to constrained resource funding over at least a decade. This constrained funding has resulted in the deterioration of some assets to such an extent that normal maintenance interventions, which would have been resource funded, could not address or remediate the issues, and*

[25] https://www.niauditoffice.gov.uk/publications/html-document/dfi-annual-report-and-accounts-2020-21-cag-report

[26] https://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=32306&eveID=16572

hence how this has created the need for capital projects, which are funded from capital.

Once Translink's capital and resource budgets have been approved by the Department, Translink has the authority to spend these budgets without further reference to the Department. However, this does not remove the need for Translink to seek formal Departmental approval where proposed expenditure is outside the delegated limits or is for new schemes not previously agreed. Nor does it negate the need to follow due processes laid out in guidance contained in Managing Public Money NI (MPMNI) and Better Business Cases (NI).

Expenditure is classified as either capital or revenue (resource) as determined by International Accounting Standards (IAS) and both accounts and budgets must follow these same principles. Public Expenditure budgeting guidance does not permit the reclassification of capital budget to resource budget and there have been no such reclassifications.

3 Initial Observations

During the 20 March Committee for Infrastructure meeting, a Translink Official stated:

A lot of the maintenance of the rail network should come from resource funding, but we have not had the funding to do it, so we have tended to get a lot of it out of our capital funding, which takes funding away from the capital plan.

As noted in sub-section 1.3.3 of this Paper, Whitehall DfT's definitions for Capital and Current Expenditure provide a useful benchmark for the types of public expenditure which could be classified as either Capital or Current (Revenue/Resource) in the context of transport. The inclusion of "some maintenance work" under DfT's Capital Expenditure is particularly noteworthy in the context of the Translink Official's statement.

It is also pertinent to note, that as a PC, Translink has no requirement to follow the Government Financial Reporting Manual (FReM) as noted in section 1. Instead, it is bound by International Accounting Standards (IAS), which classifies expenditure as either capital or revenue (resource), as defined by IAS. Moreover, both accounts and budgets for PCs must follow such IAS principles.

Moreover, at the 20 March Committee for Infrastructure meeting, in response to discussion on the use of capital funding for maintenance, the noted Translink Official further stated:

> *…We do an economic appraisal, as we do for any capital project. We go through the normal process to identify the work that needs to be done to a particular asset. Having to wait every year to get capital allocated, and then go through an economic appraisal and a capital appraisal, is a cumbersome way in which to do maintenance. Resource funding is typically done for maintenance on a multi-year basis. We agree the amount of funding that we need to maintain the network over multiple years. That allows us to engage more efficiently with our supply chain, whereas, with capital funding, we do maintenance in a stop-start way.*

It is noteworthy here that Translink is required to follow due processes laid out in DoF guidance, including *Better Business Cases NI*[27], as noted in section 1. Some of the steps identified by the Translink Official, including *Economic Appraisals,* are outlined in that guidance. The Committee may wish to note that those identified processes are to occur before any expenditure is made. The requirement for DfI approval provides an additional layer of accountability in terms of expenditure classification, as DfI would be well within its rights not to approve any appraisals for Capital funding if its officials thought the expenditure should instead be classified as Revenue. Translink are also accountable to both their internal and external auditors.

The Committee may recall from its 20 March meeting that the Department for Infrastructure stated:

[27] https://www.finance-ni.gov.uk/topics/finance/better-business-cases-ni

If Translink is categorising something as capital, then it has to be able to defend that as capital. If it categorises something as revenue, it has to be able to defend it as revenue.

Thereafter, the Department confirmed in written correspondence dated 10 April 2024 to the Committee that the noted Translink Official's statement:

…was not a reference to accounting definitions but rather an explanation of how a significant maintenance backlog has arisen due to constrained resource funding over at least a decade. This constrained funding has resulted in the deterioration of some assets to such an extent that normal maintenance interventions, which would have been resource funded, could not address or remediate the issues, and hence how this has created the need for capital projects, which are funded from capital.

Section 5 of the PSA between NITHC (Translink) and DfI states:

NITHC shall ensure that any capital expenditure which has a corresponding resource implication is reflected through the Corporate Planning Process and in any relevant business cases.

In this context, the Committee may wish to note that if Resource (revenue) implications are being effectively flagged at the business case stage, and factored into the Corporate Planning Process and corresponding Budget allocations then the use of capital expenditure for maintenance should be limited. It is unclear from the information and data examined for purposes of this Paper as to whether such Resource (revenue) implications have been reflected accurately, or whether such implications were simply not funded due to other pressures.

In its 2021 report on DfI's Annual Report and Accounts 2020-21[28], the Northern Ireland Audit Office (NIAO) reported that "[Translink] has incurred significant losses and depleted its cash reserves year on year since 2014-15". The NITHC reported a profit of £38 million that year, followed by a profit of £0.4 million the

[28] https://www.niauditoffice.gov.uk/publications/html-document/dfi-annual-report-and-accounts-2020-21-cag-report

following year. It is unclear from the NIAC report, or from Translink Annual Reports of the current, or historic position of Translink's cash reserves; and whether those reserves have been, or could be used more effectively going forward to ensure maintenance is addressed in a timely manner using revenue funding.

The Committee may recall from earlier in the Paper that PCs must not build up excessive cash Reserves, per HM Treasury's *Consolidated Budgeting Guidance*[29], which states:

> *Departments should ensure that PCs do not build up excessive cash balances. Cash balances are excessive if they are more than the amount needed to fund expenditure in the next three years as set out in the corporate plan that has been agreed with the department.*

Moreover, Schedule C (Financial Schedule) of the 2022 PSA states[30]:

> *…this Agreement remains subject to the Department's clawback rights as set out in Section 50 of the 1967 Act which permits the Department, with the approval of the Department of Finance, to require NITHC to pay to the Department any moneys which appear, in the view of the Department, to be surplus to requirement.*

It further states[31]:

> *Funds held in any reserve may be a factor for consideration when grant is determined.*

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[29] https://assets.publishing.service.gov.uk/media/640b61918fa8f556107caaa2/CBG_2023-24_final.pdf

[30] https://www.infrastructure-ni.gov.uk/sites/default/files/publications/infrastructure/DFI%202022-0154%20-%20Attachment.PDF

[31] https://www.infrastructure-ni.gov.uk/sites/default/files/publications/infrastructure/DFI%202022-0154%20-%20Attachment.PDF

Finally, the Committee is aware that on 11 April 2024, the Minister of Finance announced in her Written Statement an additional allocation to Translink for the 2023-24 financial year, stating[32]:

> *The Department for Infrastructure will receive £3.090 million of Resource funding for Translink to offset the 2023-24 operational deficit it incurred in delivering the agreed Public Service Obligation.*

In addition to that, during an evidence session to the Committee for Finance on 17 April 2024[33], the DoF confirmed that a proportion of an end-year forecast underspend of non-ring fenced Resource DEL would be reallocated to Translink Reserves – that is, £12 million split between Translink Reserves and DVA, but the breakdown between the two was not stated.

[32] https://www.niassembly.gov.uk/assembly-business/official-report/written-ministerial-statements/written-ministerial-statement/

[33] https://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=32535&eveID=16631