

# Office of the PPP Arbiter

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**Press Notice 02/10**

**27 April 2010**

## **PPP Arbiter defers final decisions on Tube Lines Periodic Review**

Chris Bolt, the Arbiter for the London Underground Public-Private Partnership (PPP) Agreements, today determined that Tube Lines cannot finance the work London Underground wants done under the PPP on the basis of what London Underground has said it can afford. To address this, he has given London Underground an opportunity to restate the level of charges it can afford, and to review its future requirements.

Chris Bolt said: "On 9 April, London Underground gave me revised assumptions of what it can afford to pay Tube Lines over the remainder of its PPP Agreement. It suggested that I should adopt those revised figures in my final directions on charging and financing due to be published this Thursday, 29 April. But there is no provision in the contract for this. Tube Lines had previously argued that what London Underground said in 2008 it could afford is not enough to finance London Underground's future requirements, and I agree with this. As a consequence, London Underground can now formally notify me of changes in its affordability limits, and any other changes it wishes to make to its future requirements. I have given it until 21 May to do so."

Given the importance of new contractual terms being in place for the start of the second contract period on 1 July, the Arbiter has proposed that Tube Lines should respond to London Underground's revised terms by 11 June, although it is for Tube Lines and London Underground to agree this date in the first place. He would then propose to issue his final directions on charging and financing by 30 June.

**ENDS**

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## Notes for editors

1. The PPP Agreements contain provisions for a Periodic Review to take place every 7<sup>1</sup>/<sub>2</sub> years. On 8 December 2008, London Underground issued restated contract terms for Tube Lines and set its Affordability Constraints; Tube Lines responded to this on 30 June 2009 with updated pricing. The contract allows time for a period of negotiation or for a reference to the Arbiter for directions on future pricing, prior to the start of the second 7<sup>1</sup>/<sub>2</sub> year review period for Tube Lines on 1 July 2010.
  2. The current reference, made by London Underground on 23 September 2009, sought directions or guidance on a number of matters including:
    - costs;
    - performance revenues;
    - Infrastructure Service Charge (ISC) payments; and
    - financing requirements
  3. In its response to London Underground's restated contract terms, Tube Lines contended that "a Notional Infraco would be incapable of financing performance of the Restated Terms on any basis". The PPP Agreement provides that, if the Arbiter agrees that this contention is correct, London Underground issues revised terms, and Tube Lines has a further opportunity to respond.
  4. Directions given by the Arbiter are binding on the Parties, and may modify the contract, unless both Parties agree to set the direction aside. The Arbiter also has powers to make directions on matters which are ancillary or incidental to the matter referred to him.
  5. The PPP Agreements contain a Dispute Resolution Agreement. Claims for breach of contract are resolved, ultimately by the courts, and are not within the scope of the Arbiter's functions.
  6. The remit of the PPP Arbiter is set out in the GLA Act and is supplemented by contractual provisions included within the PPP Agreements. Under the terms of the GLA Act, the Arbiter gives directions on matters specified in the PPP Agreements or guidance on any matter relating to a PPP Agreement, when requested to do so by a PPP Party. The PPP Arbiter's role is principally to ensure that any differences between London Underground and the relevant Infraco about the ISC to be paid to the Infraco or about efficiency and economy can be resolved independently, swiftly and with certainty.
  7. The Arbiter is appointed by the Secretary of State, but is independent of Government and of the PPP Parties. Chris Bolt was appointed as the first Arbiter on 31 December 2002 and his appointment runs until 30 June 2011.
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