



National Audit Office

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## **Report**

by the Comptroller  
and Auditor General

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## **Department for Transport**

# Investigation: the Department for Transport's funding of the Garden Bridge

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Department for Transport

# Investigation: the Department for Transport's funding of the Garden Bridge

Report by the Comptroller and Auditor General

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to be printed on 10 October 2016

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National Audit Act 1983 for presentation to the House of  
Commons in accordance with Section 9 of the Act

Sir Amyas Morse KCB  
Comptroller and Auditor General  
National Audit Office

7 October 2016

# This investigation looks at the Department for Transport's £30 million grant towards construction of the Garden Bridge.

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## **Investigations**

We conduct investigations to establish the underlying facts in circumstances where concerns have been raised with us, or in response to intelligence that we have gathered through our wider work.

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# What this investigation is about

**1** The Garden Bridge (the Bridge) is a proposed new pedestrian bridge and garden spanning the River Thames in London from the top of Temple underground station to the South Bank. The Department for Transport (the Department) and Transport for London (TfL) have each committed £30 million towards the scheme. The remaining £125 million is to be funded from private donations. Design, build and maintenance of the Bridge is the responsibility of the Garden Bridge Trust (the Trust), a registered charity set up specifically for this purpose.

**2** This investigation looks at the Department's grant of £30 million towards construction of the Bridge. The Department is responsible for assuring itself that the grants it makes are spent with economy, efficiency and effectiveness and that proportionate steps are taken to protect the interests of the taxpayer.<sup>1</sup> The investigation covers:

- the Department's initial decision to provide grant funding to the Trust; and
- the Department's decision to increase, on three occasions, the amount of its £30 million contribution that it was willing to commit to before construction started on the project.

**3** We are aware that several other organisations, such as the Charity Commission, are investigating aspects of the Bridge. We did not examine their work.

**4** Our work does not assess the value for money of the project as a whole. It is limited to the portion of funding provided by the Department. The National Audit Office is not the auditor of TfL, nor is it the auditor of the Trust.

**5** This report is based on documents received from the Department, correspondence with its officials and information published in the public domain.

<sup>1</sup> HM Treasury, *Managing Public Money*, paragraph 7.10 and annex 5.1, July 2013 with annexes revised August 2015.

# Summary

## Key findings

The grant funding to the Garden Bridge

**1 The initial funding commitments to the Garden Bridge (the Bridge) project were made by the then Chancellor of the Exchequer (the Chancellor) to the then Mayor of London (the Mayor), without the involvement of the Department for Transport (the Department).** In his 2013 Autumn Statement, the Chancellor announced that the government would contribute £30 million towards construction of the Bridge. This was subject to a number of conditions including the provision of a satisfactory business case. The Mayor was to contribute a further £30 million as part of a funding package to provide £60 million of public funding towards the project. The remainder, then estimated at £115 million, was to come from private sources. The Chancellor nominated the Department to administer the government's contribution (paragraphs 2.1 to 2.3).

**2 In its assessment of the business case, the Department concluded that there was a significant risk that the Bridge could represent poor value for money.** The Department assessed the business case against the criteria it uses to assess transport projects. It found that the monetised transport benefits arising from faster journey times were minimal. In the Department's view the Bridge was not predominantly a transport scheme, and as such did not align with any specific transport policies. Wider benefits, such as those associated with tourism, were considered highly uncertain (paragraphs 2.4 and 2.5).

**3 The Department agreed to make the £30 million investment in spite of its concerns about the value for money of the Bridge.** It chose to provide the contribution through an increase in its block grant to Transport for London (TfL). In its grant redetermination letter to the Mayor it set out a number of expectations about how the funding should be used. TfL would in turn make the funding available to the Garden Bridge Trust (the Trust) in phases, once certain milestones were complete. In this way, TfL became responsible for assuring and overseeing all of the £60 million public funding and for ensuring value for money for the taxpayer. The Department viewed this as a pragmatic way of fulfilling the Chancellor's commitment to the Bridge that limited the government's exposure to the project's unusual risks. It also simplified the Trust's arrangement for accessing public funding by allowing it to obtain this from a single source. In November 2014, the Department paid £30 million in full to TfL. This funding commitment to the project aimed to kick-start the fundraising efforts of the Trust (paragraphs 2.6 to 2.11).

**4 Providing the funding through the TfL grant left the Department with limited oversight of its support to the Trust.** The Greater London Authority (GLA) Transport grant is not ring-fenced and does not require TfL to provide a detailed breakdown of how it spends this funding. Instead, the Department's expectations are set out in an annual settlement letter. These expectations are not legally binding; however, the Secretary of State has the right to amend the level of the grant in current or future years, for example if TfL has not complied with the basis on which the grant was given. The Department relied on regular meetings with officials from TfL and the Trust for oversight of its £30 million contribution towards the Bridge (paragraph 2.13 and Figure 3).

**5 The Department sought to protect taxpayers' money by imposing a cap on the amount of its funding that could be used for pre-construction activity.** In a letter to the Mayor in November 2014, the Department stipulated that a maximum of £8.2 million could be spent on pre-construction works. Money spent before construction has started is at greater risk than money spent once a project is certain to go ahead (paragraph 2.12).

**6 The Department subsequently relaxed this requirement on three separate occasions, despite considerable uncertainty as to whether the Bridge would be built:**

- In June 2015, the Department agreed to increase the cap to £9.95 million. This was because the Trust faced cost increases of £1 million as it approached contract award and a funding shortfall of £2.5 million as much of the private funding could only be called upon once construction was certain (paragraphs 2.16 and 3.5 to 3.10).
- In February 2016, the Department increased the cap by another £3.5 million when the Trust let the main construction contract. The Trust let the contract before it had secured the site for the Bridge's south landing and therefore before construction could begin (paragraphs 3.11 to 3.17).
- In May 2016, ministers agreed to underwrite cancellation liabilities of up to £15 million for a limited period until September 2016, bringing the Department's total exposure to pre-construction losses to £28.5 million. The land acquisition issue was unresolved (paragraphs 3.18 to 3.26).

Officials from the Department advised ministers against increasing the Department's exposure for the second and third increases.



**7 In accordance with his duties under *Managing Public Money*, the accounting officer sought a ministerial direction to give the Trust indemnity against cancellation liabilities.** In giving support to this project the government expected that it would take on more risk than private donors. The accounting officer viewed the size and nature of the increase in government's exposure as materially different from what had gone before. The Department was at risk of losing up to £28.5 million with nothing to show for it as the Trust had not secured the land on the South Bank and it was not certain that the project would go ahead (paragraph 3.23).

**8 The Secretary of State formally directed his accounting officer to increase the Department's pre-construction exposure for a limited period, citing wider benefits to the government's agenda and the London economy.** He also believed that failing to support the project would increase the risk of cancellation and that providing support would maximise the likelihood of the government securing value for money. The Department agreed to underwrite cancellation liabilities of up to £15 million to September 2016 (paragraphs 3.24 and 3.25).

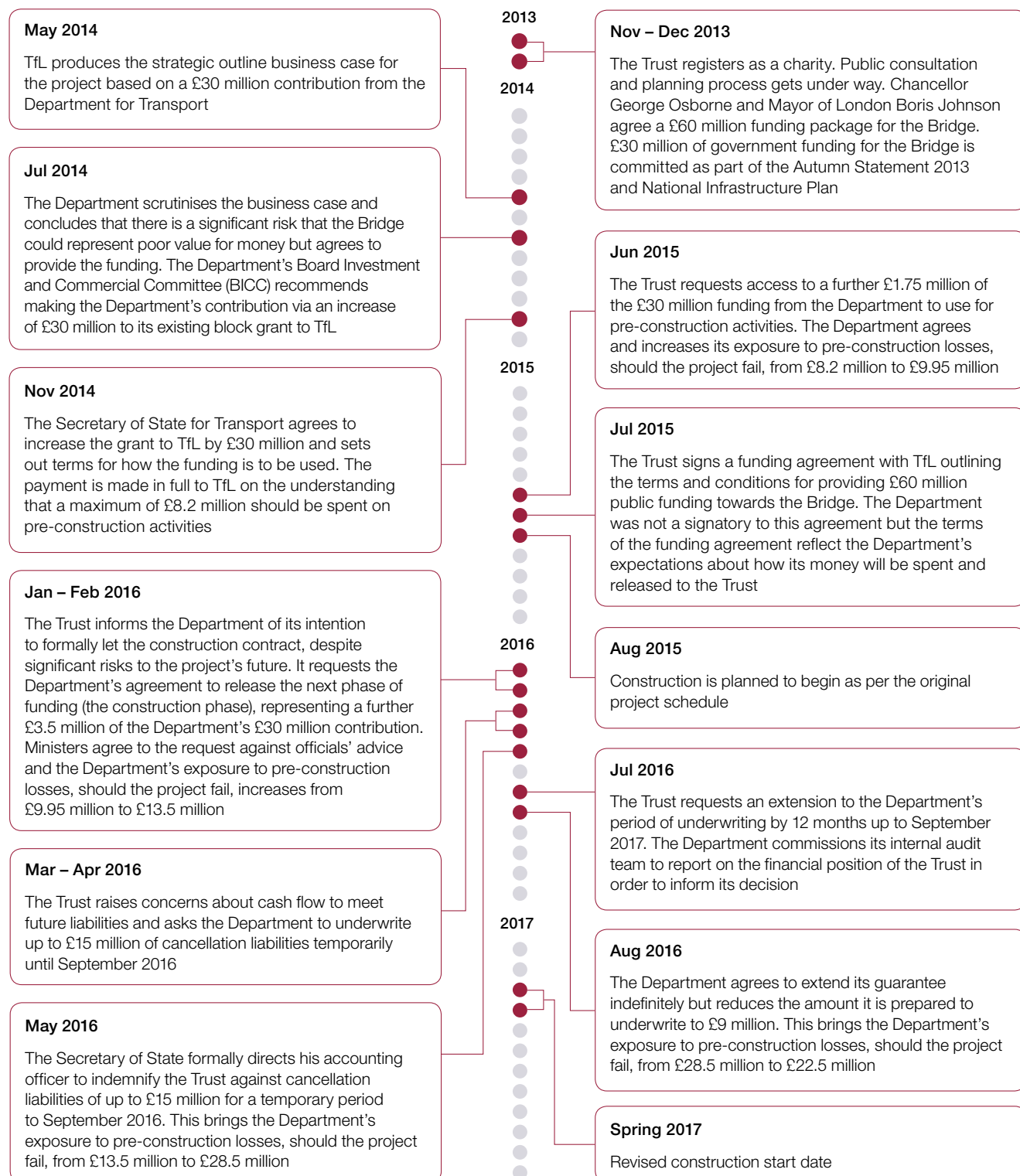
**9 In August 2016, the Department agreed to extend its guarantee period indefinitely but reduced the amount it was willing to underwrite to £9 million.** This reduced the Department's total exposure from £28.5 million to £22.5 million. It did this following an internal audit report of the Trust's finances commissioned by the newly appointed Secretary of State (paragraphs 3.27 to 3.30).

**10 Since June 2016, the Department has received written monthly updates from the Trust on the status of the project and the steps being taken to address the main risks.** These reports have included a narrative update on the way the Trust has managed key risks and some have contained a risk register. They have not contained standard project performance information such as progress against schedule and budget, nor have they contained information on the Trust's progress against fundraising targets (paragraph 3.26). These reports have been supplemented by discussions at the regular official-level meetings (paragraph 2.15).

**11 When the Department made its decision to provide funding towards the Bridge, three of the four conditions set by the Chancellor as the basis on which the government would provide its funding had not been met.** Of four conditions originally set, only one, that TfL would match the Department's funding of £30 million and release it to the Trust on an equal basis, had been met in full. TfL has now converted £20 million of its contribution to a loan. Their respective contributions remain equal but are provided on slightly different terms (paragraphs 2.2 and 2.17). Responsibility for ongoing maintenance of the Bridge, should the Trust not be able to raise sufficient funds, has not yet been agreed (paragraph 3.32).

**12 There remains a significant risk that the project will not go ahead.** The Trust has still not secured the land on the South Bank for the Bridge's south landing. This has impacted on the timetable (see **Figure 1**). The main contractor has been put on standby and construction is now expected to begin in the spring of 2017, approximately 18 months later than planned. In terms of risks to affordability, the Department's internal audit report identified a funding gap between the project's cost and levels of private investment (paragraphs 1.4 and 3.27 to 3.31).

- **The Department now stands to lose a maximum of £22.5 million of its £30 million grant, should the project not be able to proceed.** This consists of £13.5 million in costs so far to complete pre-construction activity, and a further £9 million of cancellation liabilities (paragraph 3.29 and figure 4).
- **If the project continues, it is possible that the government will be approached for extra funding should the Trust face a funding shortfall.** The project has faced cost increases and delays to the schedule. The pattern of behaviour outlined in this report is one in which the Trust has repeatedly approached the government to release more of its funding for pre-construction activity when it encounters challenges. The Department, in turn, has agreed to the Trust's requests (paragraphs 3.30 to 3.32).

**Figure 1****History of the Department for Transport's funding of Garden Bridge**

# Part One

## About the Garden Bridge

**1.1** The Garden Bridge (the Bridge) is a proposed new pedestrian bridge and garden spanning the River Thames in London from the top of Temple underground station to the South Bank. It is also known as the Temple to South Bank footbridge. It is scheduled to open in 2019.

**1.2** Design, build and maintenance of the Bridge is the responsibility of the Garden Bridge Trust (the Trust), a registered charity set up for this purpose. As at October 2016, total costs for the Bridge are estimated at £185 million, of which £60 million has been committed from the public purse. The Department for Transport (the Department) and Transport for London (TfL) have each agreed to provide £30 million towards the scheme. The remaining £125 million is to be funded from private donations.

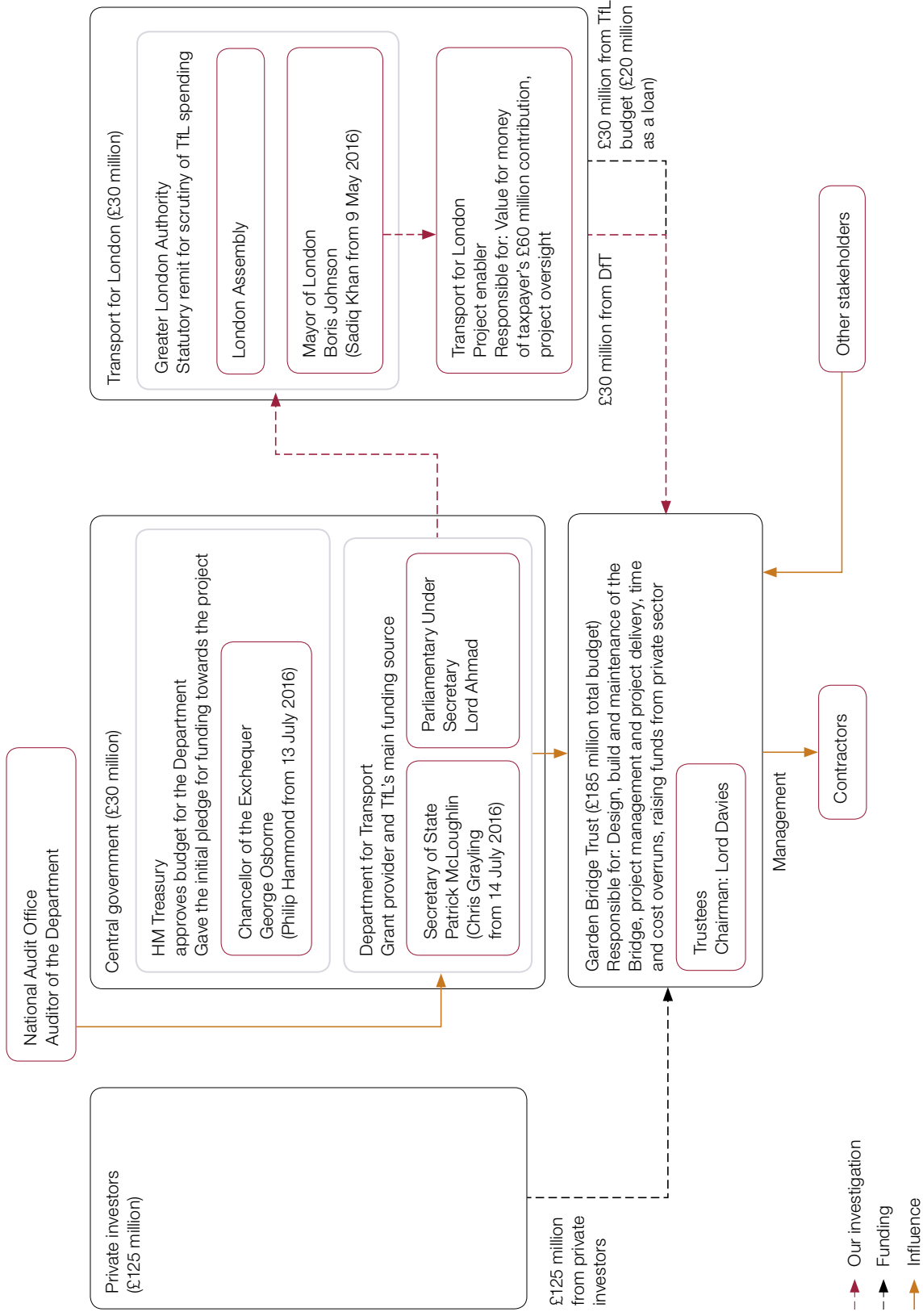
**1.3** TfL is responsible for administering the £60 million of public funding to the project and for ensuring that the £60 million of public funding provides value for money. The Greater London Authority (GLA) is appointed by statute to scrutinise TfL's decisions on spending. The London Assembly is an elected body, part of the GLA, that scrutinises the activities of the Mayor of London. The National Audit Office does not audit TfL, but is the Department's auditor. The Department is responsible for ensuring that any funding it provides to third parties, such as TfL, is applied in accordance with Parliament's intentions (**Figure 2**).

**1.4** Early Design work on the Bridge took place in January 2013. Construction of the bridge was originally due to start in September 2015 but has not yet begun. After a series of delays to the project the Trust is now aiming for construction to begin in spring 2017. In May 2016, the newly appointed Mayor of London, Sadiq Khan, announced that £37.7 million had already been spent on the Bridge – significantly more than the £21 million set out in the business case for pre-construction activity.<sup>2</sup>

**1.5** The remainder of this report looks in detail at how the Department arrived at the decision to fund the Bridge, the expectations the Department set for the funding, and whether the Department assured itself that these expectations were adhered to. It also looks at the risks of further financial exposure to the taxpayer.

<sup>2</sup> This figure is made up of £36.4 million spent to May 2016 and £1.3 million committed to an underwriting of cancellation liabilities.

**Figure 2** Overview of governance and funding arrangements for the Garden Bridge project



Source: National Audit Office analysis of Garden Bridge Project documents

## Part Two

### The government's funding of the Garden Bridge

**2.1** In 2013, the then Chancellor of the Exchequer (the Chancellor), George Osborne, and the then Mayor of London (the Mayor), Boris Johnson, agreed a funding package to support the Garden Bridge (the Bridge). The Chancellor agreed to provide £30 million of central government funding; a further £30 million was to come from the Mayor. The government's contribution towards the construction of the Bridge was announced in the 2013 Autumn Statement and was included in the National Infrastructure Plan in December 2013.<sup>3</sup> This part of the report looks at:

- the government's decision to contribute £30 million of public funding to the Bridge;
- how the Department for Transport (the Department) assessed the value for money of its grant; and
- the way the Department chose to provide the funding.

#### **Government's decision to commit £30 million of public funding to the Garden Bridge**

**2.2** HM Treasury nominated the Department to administer central government's contribution to the Bridge. On 14 January 2014, the Chief Secretary to the Treasury confirmed in his 2013 autumn settlement letter to the Secretary of State for Transport that the government would fund £30 million for the Bridge. This was on the basis that:

- the Mayor of London would match this funding from Transport for London (TfL) resources;
- a satisfactory business case would be produced, demonstrating that the project provided value for money;
- TfL would fund the Bridge's ongoing maintenance; and
- the Mayor would cover cost overruns or shortfalls in funding.

<sup>3</sup> HM Treasury, 'National Infrastructure Plan 2013', December 2013.

**2.3** The Chancellor and the Mayor did not agree on who was responsible for cost overruns and ongoing maintenance (such as staffing, security, management, and landscape and structural maintenance) of the Bridge. On 27 March 2014, the Mayor wrote to the Chancellor explaining that TfL was not in a position to take on responsibility for the maintenance and running of the Bridge and that the Garden Bridge Trust (the Trust) was responsible for securing all remaining funding for construction. In this letter, he agreed both TfL and the Department would provide £30 million in contributions once the business case was complete.

### **How the Department assessed the value for money of its contribution**

**2.4** In May 2014, TfL produced a strategic outline business case on behalf of the Trust, with input from HM Treasury. The Department reviewed the business case against its criteria for assessing transport projects. It concluded that there was a significant risk that the scheme could represent poor value for money. The Department's view was that the Bridge was predominantly not a transport scheme and did not align with any of the Department's specific policies. Forecast monetised transport benefits, arising from faster journey times, were low. The Department's economic analysts identified several scenarios with benefit–cost ratio (BCR) ranging from 5.8 for the most optimistic to -2.4 for the most pessimistic, and were most confident in a BCR of -0.9.<sup>4</sup> The upper estimates included a wide range of benefits associated with tourism and culture. These benefits are more difficult to measure using conventional transport economic appraisal and are associated with a high degree of uncertainty. The Accounting Officer concluded that, on the balance of probabilities, the level of risk to value for money was acceptable.

**2.5** On 14 July 2014, the Department's Board Investment and Commercial Committee (BICC) met to discuss the business case. Officials raised several concerns with the BICC based on their analysis of the business case. These included:

- uncertainties relating to value for money;
- the financial viability of the project should the Trust not be able to not raise sufficient funding from private sources;
- the narrow timeframe for building the Bridge between 2015 and 2018 to avoid works in the river conflicting with the construction of the Thames Tideway Tunnel; and
- only one of the Chancellor's conditions for contributing to the project had been met – that funding should be matched by funding from TfL (see paragraph 2.2).

<sup>4</sup> A negative BCR indicates that costs outweigh the benefits

**2.6** Officials suggested two alternative ways forward to the BICC:

- a** A submission to the Secretary of State recommending, on balance of probabilities, that the Department should continue to support the project, and commit the appropriate funding, while highlighting the risks.
- b** Seek a ministerial direction, on the basis that BICC could not satisfy itself of the project's viability based on standard assurance procedures.

**2.7** In considering the options presented, BICC was concerned that if it insisted on the Department's normal business case approvals being completed in line with standard departmental procedures, it might stall or cause unacceptable delays to the project. BICC discussed the possibility of providing the £30 million through an increase to TfL's block grant, rather than directly to the Trust. BICC board members wanted to understand if the Department's funding would be recoverable under this arrangement if the project was not completed. In practice, any unspent portion of the Department's funding would be recoverable only by adjusting the grant in future years.

### **Redetermination of the Greater London Authority (GLA) transport grant**

**2.8** BICC concluded that the best course of action was for the Department to fund the project through increasing its block grant to TfL (the GLA transport grant) by £30 million (**Figure 3**). TfL would then manage the release of the Department's funding alongside its own. BICC believed that this approach would clarify and simplify responsibility for the project. It agreed that accountability and responsibility for securing value for money for the Department's grant should rest with TfL. BICC board members did not discuss the option of a ministerial direction. BICC agreed to advise Ministers of its conclusion via a submission.

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### **Figure 3**

#### The GLA transport grant

The government uses grant funding to help pay for statutory services provided by local government bodies.<sup>1</sup> In 2014-15, the Department spent £4.4 billion of its total spend of £20.1 billion on grants to fund local transport. Of this, £1.8 billion (41%) went to TfL through the annual GLA transport grant under the terms of The Greater London Authority Act.<sup>2</sup> Responsibility for providing transport in London is devolved to the Mayor. The Department cannot attach any specific conditions setting out how the grant should be spent.

The Department does not require TfL to provide a detailed breakdown of how it spends this funding. Therefore, the Department's oversight of the grant is minimal. However, the Department's expectations about progress on certain projects and any specific transport concerns are set out in an annual settlement letter from the Department to the Mayor. These expectations are not legally binding but the Secretary of State for Transport has the right to amend the level of the grant in current or future years if, for example, TfL has not complied with the basis on which the grant was given.

#### **Notes**

- 1 In our July 2014 report on government grant services, we defined a grant as a permanent transfer of funding for a specific purpose, which is used in accordance with a set of terms and conditions. This is consistent with the definition used by government for the Whole of Government Accounts.
- 2 The Department is obliged under section 101 of the Greater London Authority Act to provide a transport grant to the Greater London Authority, which it in turn is obliged to pass to TfL. In common with local authorities, the Department is not able to ring-fence the grant.



**2.9** In the subsequent submission to the Secretary of State for Transport on 21 July 2014, officials took forward BICC's decision. They recommended that the Secretary of State should agree to increase the GLA transport grant by £30 million in 2014-15. TfL in turn would make the £30 million available to the Trust in phases, subject to the terms of a funding agreement. The submission reflected the risks to value for money and asked ministers to note:

- the unique and novel nature of the project and the risks to it that could follow from a delay or withdrawal of government funding;
- that most of the Chancellor's conditions for providing funding had not been met;
- that the Department's review of the business case had highlighted significant risks relating to value for money and the likelihood of completing the scheme. Most notably, the necessary land on the South Bank had not been acquired; and
- funding committed to pre-construction activity was at risk of providing little to no benefit, should risks to the delivery of the project materialise.

**2.10** The submission went on to describe the increase in the TfL grant as a pragmatic way of fulfilling the Chancellor's commitment to the Bridge. This solution limited, but did not eliminate, the government's exposure to the project's unusual risks. The submission set out other reasons including that the Department may lack the necessary statutory powers to pay the Trust directly; and that TfL might be better placed than the Department to manage the funding process because of its greater involvement in the project such as its right of attendance at Board meetings.

**2.11** On 12 November 2014, the Parliamentary Under-Secretary of State wrote to the Mayor informing him that he had increased the grant for the financial year by £30 million to £1.77 billion to reflect the Department's commitment to provide partial funding for the Bridge. This letter set out the basis for providing this additional funding, which was that:

- TfL would provide an equal amount of funding to the Bridge from its existing resources;
- TfL would provide each party's contribution *pari passu* with the other, that is, that the Trust would draw down on funding from the Department equally, pound for pound, with that from TfL;
- the funding agreement will state that the funds are only to be spent on construction of the Bridge, or on third-party fees relating to pre-construction activities;
- the construction contract should be let under an open, competitive process;
- TfL will advise the Department if they become aware of any material risk or issue that could threaten the project's deliverability to time or budget; and
- TfL agrees to satisfy itself that the project continues to represent good value for money throughout.

**2.12** The letter also set out that the grant had been increased on the understanding that a maximum of £8.2 million of the £30 million funding would be used for pre-construction activities. Money spent on pre-construction activity is at greater risk than money spent once a project is certain to go ahead and the Department sought to limit its exposure. Much of the private funding was to be committed only once the project had moved into construction.

**2.13** Under the terms of the GLA transport grant the Department's conditions were not legally enforceable. The Department's main lever to ensure that TfL complied with these conditions was the Secretary of State's right to reduce TfL's grant in current or future years.

**2.14** On 13 November 2014, the Department paid £30 million in full to TfL, on the understanding that the conditions set out in the letter would be included in a formal funding agreement between TfL and the Trust. Paying the full amount to TfL represented a funding commitment to the project aimed at kick-starting the fundraising efforts of the Trust.

### **The Garden Bridge funding agreement**

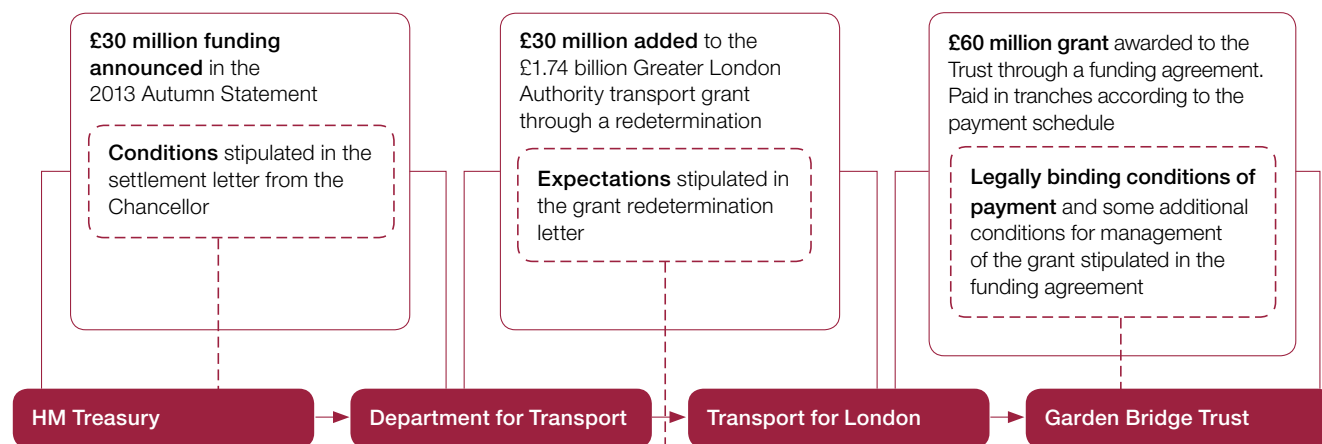
**2.15** On 2 July 2015, seven months after the Department paid the grant to TfL, TfL signed a funding agreement with the Trust. This laid out the terms under which TfL would provide £60 million of public funding for the programme.<sup>5</sup> The agreement included all the relevant conditions of the Department's grant to TfL (see **Figure 4**). In particular, it stated that TfL would assume responsibility for overseeing the Trust as sponsor for the project and agree to release funding to the Trust subject to certain milestones being met. The agreement included terms designed to allow TfL to oversee the Trust's management of the project, such as notifying TfL of changes to the cost of the Bridge or issues with delivering the project. The Department was not a signatory to this agreement, and therefore had no formal oversight or assurance role in the project. The Department told us that it has held frequent meetings with the Trust and TfL, at ministerial and official level, since early 2015 to discuss progress and risks. These meetings were not minuted.

**2.16** The agreement between TfL and the Trust split the release of the £60 million public money into three distinct tranches: pre-construction, construction and final. Under the terms of the agreement, payments for 'construction' were to begin once the main construction contract was awarded, subject to a number of conditions. As requested by the Parliamentary Under-Secretary, the terms of the agreement capped the amount that could be used before construction began. However, the cap was set at £9.95 million, rather than the £8.2 million that the Department originally specified. The reasons for this increase are covered in Part Three (paragraphs 3.5 to 3.8).

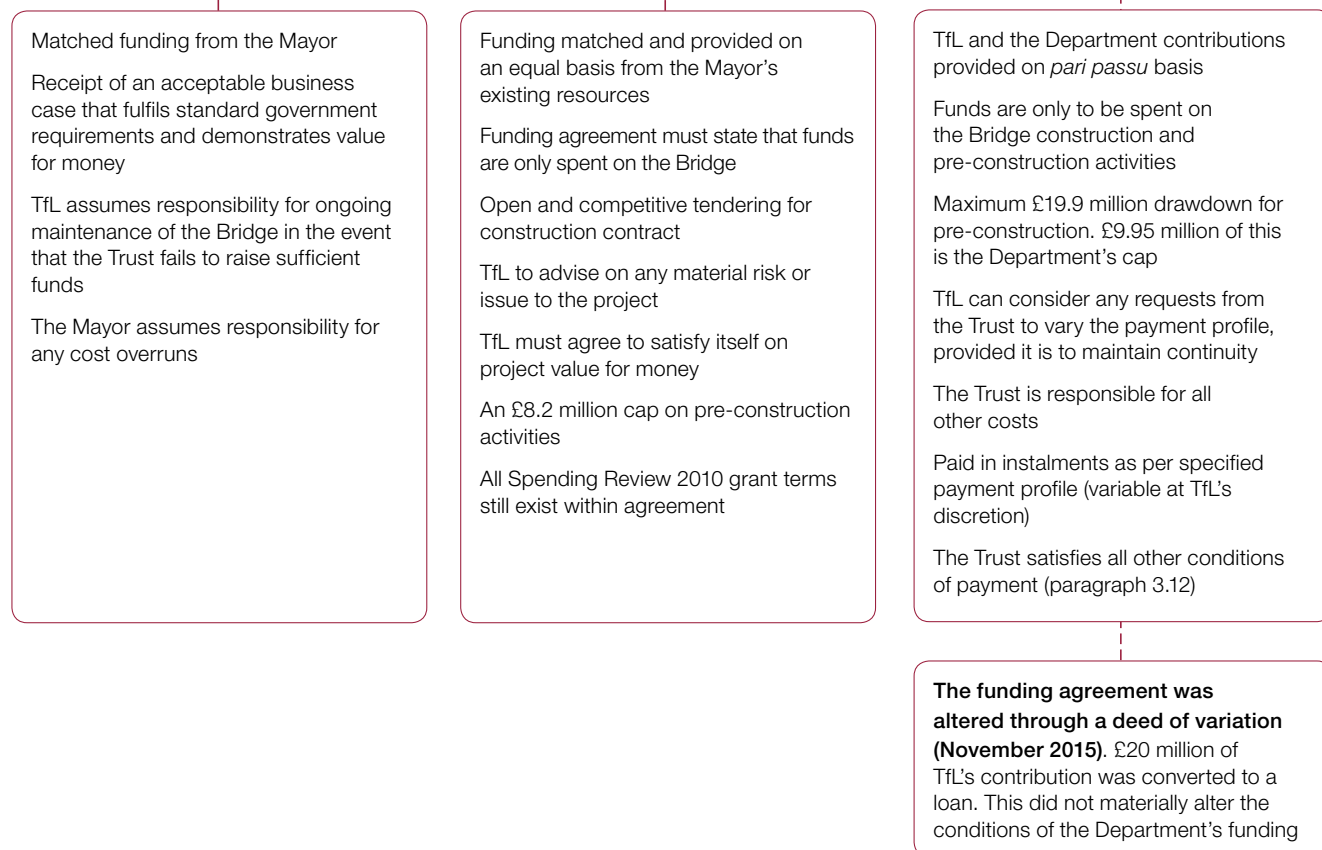
<sup>5</sup> This funding included the £30 million grant contribution made by the Department.

**Figure 4**  
Garden Bridge Project funding flow and conditions

**Mechanism**



**Conditions**



Source: National Audit Office analysis of project documentation

**2.17** TfL subsequently decided to convert £20 million of its funding to a loan. On 13 November 2015, a deed of variation to the funding agreement was signed to reflect this. Its decision followed a letter to the Mayor from Lambeth Council on 23 September 2015, in which the council indicated that it had withdrawn its support for the project because it opposed the level of financial support that TfL was providing for it. As the freeholder for the land on the South Bank that the Trust needed to acquire, Lambeth Council's agreement was needed before any variation on the lease could take place. The Department and TfL's respective contributions remained equal at £30 million but the funding was provided on slightly different terms. Government can expect to recover a proportion of the construction costs through VAT once the Bridge is constructed.

## Part Three

### The Department for Transport's financial exposure to the Garden Bridge

**3.1** In November 2014 the Department for Transport (the Department) agreed to fund £30 million to the Garden Bridge (the Bridge) project on the understanding that the amount that could be spent on pre-construction activities was limited to £8.2 million (paragraphs 2.11 to 2.13). Under the terms of the Greater London Authority (GLA) transport grant, the Department could not legally enforce this condition, but the agreement provided a common understanding of the basis on which funding was being provided.

**3.2** The cap was intended to limit the government's financial exposure should the project not go ahead. Funding provided before the project is certain to go ahead is at greater risk of not achieving value for money than funds provided once construction has started.

**3.3** Between November 2014 and May 2016, the Department agreed to increase the level of the Department's financial exposure to the project on three separate occasions before a subsequent decrease. Should the project be cancelled, the amount that taxpayers now stand to lose, at October 2016, is capped at £22.5 million (**Figure 5** and **Figure 6** overleaf).

**3.4** This part of the report sets out the events surrounding each of the Department's decisions to increase its financial exposure before construction and the risks to the Department of further financial exposure.

#### **First increase in the Department's exposure to £9.95 million**

**3.5** On 22 May 2015, Transport for London (TfL) requested permission from ministers to release a further £1.75 million of the Department's £30 million grant to the Garden Bridge Trust (the Trust) for pre-construction activity.

**3.6** The Trust's forecasts at the time showed that it needed an extra £3.5 million over original estimates. This was to cover activities before award of the main construction contract, which was then scheduled for September 2015. The £3.5 million covered:

- cost increases of £1 million as the Trust established overall project costs in the lead up to award of the contract; and
- a funding shortfall of £2.5 million because a number of private donors had agreed to commit funds only once the construction contract had been let.

### Figure 5

#### The Department's change in financial exposure before construction

##### First increase

In June 2015, shortly before the funding agreement between TfL and the Trust was signed, ministers agreed to increase the cap on the amount that could be spent on pre-construction activities from £8.2 million to **£9.95 million**. This was because the Trust had experienced a shortfall in the amount of private donations that could be spent on pre-construction activity and because costs leading up to the letting of the main construction contract had become clearer.

##### Second increase

In February 2016, the Department agreed to increase its cap on pre-construction expenditure from £9.95 million to **£13.5 million** as the Trust had let the main construction contract and, under the terms of the funding agreement, was entitled to draw down on the next phase of funding.

##### Third increase

In May 2016, the Department agreed to underwrite cancellation liabilities of up to £15 million to September 2016 following a ministerial direction to do so. This raised the Department's total exposure to **£28.5 million**. The Trust had not been able to secure the required private funding. It needed additional reserves to cover cancellation costs should the project not go ahead.

##### Decrease in exposure

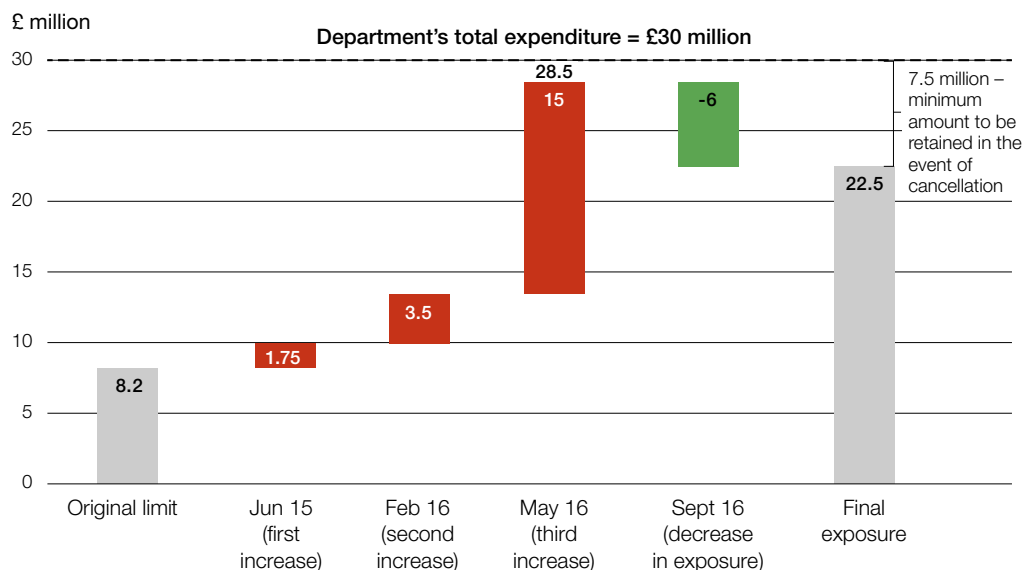
In August 2016, the Department agreed to extend the period over which it would underwrite cancellation liabilities indefinitely. As a condition of the extension, the Department said that it would reduce the amount it would underwrite from £15 million to £9 million. This reduced the Department's total exposure should the project fail from £28.5 million to **£22.5 million**.

Source: National Audit Office analysis of Department for Transport documentation

### Figure 6

#### The Department's changes in financial exposure before construction

The Department's exposure increased on three separate occasions to £28.5 million, before falling to £22.5 million



Source: National Audit Office analysis of Department for Transport documentation

**3.7** TfL proposed, in line with the terms of the Department's grant (see paragraphs 2.11 and 2.12), to split this £3.5 million evenly between TfL and the Department. This would mean that each party released a further £1.75 million. The Trust assured TfL that overall cost estimates for the project remained unchanged at £175 million. There was no suggestion that the Department would be approached for additional funding over the £30 million committed.

**3.8** On 17 June 2015, departmental officials advised their ministers to agree to increase the Department's exposure by £1.75 million. Their advice set out several benefits of doing so, including: avoiding a funding shortfall causing delay to the project; avoiding any future suggestion that the Department had failed to support the project at a critical time; and reducing doubts about the government's confidence in the project's deliverability. They also warned that accepting this proposal would be very likely to reduce the amount of funds that the Department could recover from TfL should the project be cancelled.

**3.9** The project's future was still uncertain and officials highlighted two significant risks in their advice. First, the Trust might fail to secure sufficient levels of third-party funding in time to award the construction contract in September 2015. Second, the preferred bidder might withdraw from the project before contract award. They believed that reducing the risk to delivery would outweigh the relatively small increase in financial exposure.

**3.10** Ministers followed this advice and the Department confirmed its agreement to increase its exposure on 19 June 2015 in an email to the managing director of planning at TfL. The funding agreement between TfL and the Trust was signed in July 2015, reflecting the revised limit of £9.95 million. The Department did not attach any additional conditions to its increased exposure. It did not request any further assurances or information about the project.

### **Second increase in the Department's exposure to £13.5 million**

**3.11** On 6 January 2016, the Trust's chairman wrote to the Department's Parliamentary Under-Secretary to tell him that the Trust intended to formally let the construction contract. Under the terms of the funding agreement between the Trust and TfL, payments for the 'construction' tranche of the project would begin once the main construction contract was awarded (see paragraph 2.16). Award of the contract would give the Trust access to a further £7 million of funding, £3.5 million each from the Department and TfL.

**3.12** Release of this funding was subject to several conditions within the funding agreement. These were that the Trust must have demonstrated to TfL's satisfaction that it had:

- secured, or was able to secure, a sufficient level of funding, including the grant from TfL, to cover the costs of construction of the Bridge;
- secured, or was able to secure, all necessary consents needed to deliver the project;
- completed an appropriate 'go/no go' gateway review, including proper assessment and management of risk;
- appropriate plans in place for the operation and maintenance of the Bridge; and
- secured a satisfactory level of funding to operate and maintain the Bridge once it is built for at least the first five years.

**3.13** On 27 January 2016, the Trust wrote to TfL to set out how it had satisfied these conditions. On 29 January 2016, TfL confirmed to the Department, in an email, that it was satisfied that the Trust had met the conditions and was entitled to the next £7 million of public funding. TfL then asked for the Department's agreement to release the next £3.5 million of its funding once the contract was let.

**3.14** The Trust had not yet acquired the land on the South Bank for the Bridge's south landing. Without this land, it was not certain that the Bridge would be built, and construction could not begin. The Department had expected the contract to be awarded only once significant delivery risks related to land and planning had been resolved and there was certainty that the project would go ahead. The Department had applied a cap of £9.95 million to the amount of its funding that could be spent on pre-construction activity to limit its financial exposure if the project were cancelled. Agreeing to release additional funding at this stage would increase the Department's exposure to pre-construction losses to £13.5 million.

**3.15** On 9 February 2016, the Trust let the contract with the land and planning issues unresolved. It was let with a break clause in case the project was cancelled. On the same day, departmental officials updated ministers on the situation. With the backing of the accounting officer, they advised that the Department should refuse to increase its exposure. They reasoned that any additional expenditure should be at TfL's risk until there was greater certainty that the project would go ahead.

**3.16** Officials' advice was not followed. On 12 February 2016, the Parliamentary Under-Secretary wrote to the then Mayor of London to confirm that he was content to increase the Department's cap on pre-construction activities by £3.5 million. This was to allow the Trust to progress with essential enabling works, environmental monitoring and site preparation works. His agreement was based on the understanding that TfL would provide a further £3.5 million, to be drawn upon equally by the Trust.



**3.17** The letter cautioned that the Department was not expecting to allow the Trust access to any more of its £30 million contribution (beyond the new cap of £13.5 million) until the project's remaining issues had been resolved. These included the issues concerning acquisition of land and satisfaction of planning conditions.

### **Third increase in the Department's exposure to £28.5 million**

**3.18** The Chairman of the Trust met with ministers on 23 February 2016 and raised concerns about cash flow to meet future liabilities with them for the first time. He explained that the trustees needed to call upon a limited amount of financial protection for a limited period in case the project was not delivered. Under charity law the trustees can become personally liable. To avoid this happening the trustees wanted to ensure that there were sufficient reserves to meet all known liabilities in the event of the project being cancelled.

**3.19** On 5 April 2016, the Trust formally asked for assurance that it could draw upon an additional £15 million from the Department to cover its contractual liabilities, should the project be cancelled between 30 April 2016 and 30 September 2016. The Trust had not been able to secure financial assurance from private sources because much of the private funding could only be called upon once construction was certain. The Trust had still not acquired the site for the south landing and therefore construction could not commence.

**3.20** Before taking a decision on whether to agree to the Trust's request, ministers sought to find out more about the status of the project with a series of questions. In its response, the Trust acknowledged that the land acquisition issue remained significant but was outside of its control.

**3.21** On 13 May 2016, the chairman of the Trust repeated his request for the Department to underwrite construction liabilities for a limited period. He explained that without this guarantee they would have to make an urgent decision about the future of the project at the next board meeting on 23 May.

**3.22** Officials had advised ministers that agreeing to the Trust's request would bring a significant risk that almost all of the Department's £30 million grant would be irrecoverable should the project be cancelled. Agreeing to underwrite construction liabilities of £15 million would bring the Department's exposure to pre-construction losses to £28.5 million. The Department considered the size and nature of the increase to be materially different to what had gone before.

**3.23** The accounting officer was concerned that the government was already taking on more risk than private sector donors. He believed the Department to be at the very limit of what he regarded as proportionate or prudent financial exposure to the risk of the project not proceeding. On 24 May, in accordance with *Managing Public Money*, he sought a ministerial direction to provide indemnity against cancellation liabilities (see **Figure 7** overleaf). This was in the context of an email from the Cabinet Secretary informing the accounting officer that the then Prime Minister and the then Chancellor felt frustration at the need for a direction.

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## Figure 7

### Ministerial directions

*Managing public money* includes guidance to accounting officers on when to seek a ministerial direction.

Each departmental accounting officer should take care to bring to the attention of the minister(s) to whom he or she is responsible any conflict between the minister's instructions and his or her duties. The accounting officer cannot simply accept the minister's aims or policy without examination.

If the minister decides to continue with a course the accounting officer has advised against, the accounting officer should ask for a formal written direction to proceed. An oral direction should be confirmed in writing quickly. Examples of where this procedure is appropriate are:

- regularity: if a proposal is outside the legal powers, Parliamentary authority, or Treasury delegations; or incompatible with the agreed spending budgets;
- propriety: if a proposal would breach Parliamentary control procedures or expectations;
- value for money: if an alternative proposal, or doing nothing, would deliver better value, for example a cheaper, higher-quality or more effective outcome for the Exchequer as a whole; and
- feasibility: where there is a significant doubt about whether the proposal can be implemented accurately, sustainably, or to the intended timetable.

Source: HM Treasury, *Managing Public Money*, August 2015, Section 3.4; first printed in National Audit Office, *Investigation: the Government's funding of Kids Company*, October 2015

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**3.24** The Secretary of State formally directed the accounting officer to increase the Department's pre-construction commitment to £28.5 million on 25 May 2016. He cited a number of reasons for doing so:

- wider benefits to the government's agenda and to the London economy;
- contribution to the Department's policy objectives including promoting walking;
- failure to increase the Department's pre-construction commitment would lead to a high risk of the project being cancelled;
- cancellation would mean writing-off the public sector's committed contribution (as at May 2016, in excess of £35 million); and
- providing the additional commitment would maximise the likelihood of the government securing value for money from the contribution already made.

**3.25** The Department confirmed this position to the Trust in writing on 25 May 2016 and asked the Trust to provide monthly updates on the status of the project and the steps taken to address the main risks and issues facing it.

**3.26** As at October 2016, the Department has received four written status reports from the Trust. These reports have included a narrative update on the way the Trust has managed key risks and some have contained a risk register. They have not contained traditional indicators of project performance, such as progress against schedule and budget, or information about the Trust's progress against its fundraising targets. The Department told us that it receives verbal updates on the project's status at its regular meetings with the Trust and TfL.

### **Decrease in the Department's exposure to £22.5 million**

**3.27** On 11 July 2016, in a letter to ministers, the Trust asked the Department to extend its underwriting of cancellation liabilities by a further 12 months to September 2017. This followed the Trust's decision to put its main construction contractor on standby while negotiations for securing necessary land on the south bank of the river continued to take place. In response to this request, and to help inform its decision, the Department commissioned its internal audit team to undertake a short review of the Trust's finances in July 2016.

**3.28** The Department's internal audit team expected cancellation liabilities to rise to £14.2 million over the revised period of guarantee. They also identified a potential funding gap of up to £75 million.<sup>6</sup> The review concluded that any further release of its funding was likely to be lost should the project not go ahead. On 29th July 2016, Department officials advised ministers against putting more taxpayer's money at risk by extending the government guarantee.

**3.29** On 23 August 2016, the Department wrote to the Trust agreeing to extend its underwriting of the Trust's cancellation liabilities. It agreed to do so indefinitely, however it reduced the amount it was willing to guarantee to £9 million. £9 million was equal to the projected cancellation liabilities to the end of September 2016, when the existing guarantee was due to expire. Ministers did not want taxpayers to be disproportionately exposed to the risks of the project failing. They wanted private sector backers to underwrite cancellation costs beyond £9 million. They understood that refusing the Trust's request outright would most likely have led to the project being cancelled. Capping the government guarantee at £9 million reduced the Department's financial exposure by £6 million, should the project not go ahead. This took government's overall financial exposure from £28.5 million to £22.5 million. As the Trust must have sufficient reserves to cover its cancellation liabilities, the lower guarantee could increase the likelihood that the Trust decides it is not prudent to continue with the project if the costs of increasing commitments cannot be met from other sources. In this way it could increase the likelihood that the government's guarantee will be called upon.

### **Remaining risks to the Department should the project go ahead**

**3.30** The Department's total commitment to the project remains unchanged at £30 million. If construction of the Bridge goes ahead, £16.5 million of the government's contribution, £7.5 million, will go towards construction activity.

<sup>6</sup> The funding gap is the difference between the estimated total project costs of £185 million and the funding of £110 million that had been contractually committed to the Bridge as at July 2016. Committed funds included the £60 million public funding.

**3.31** Cost estimates for the Bridge increased from £158 million in the strategic outline business case in May 2014, to £175 million in the funding agreement in July 2015. In August 2016, the Trust's chairman estimated costs to have reached £185 million. The project has been delayed on several occasions and construction is now forecast to start in spring 2017, approximately 18 months after the original target. Opening of the Bridge has been pushed back to 2019. There remains a risk that, should the Trust face a funding shortfall, the government will be approached for further funding. The pattern of behaviour outlined in this report is one in which the Trust has repeatedly approached the government to release more of its funding for pre-construction activity when it encounters challenges. The Department, in turn, has agreed to these requests.

**3.32** The Trust is responsible for running and maintenance of the Bridge. The Trust's 2016 business plan estimates annual running and maintenance costs at £3 million. To secure planning permission and a river works licence allowing construction of a Bridge across the River Thames, the Trust had to obtain certain guarantees in respect of these costs. In June 2015, the then Mayor of London issued a mayoral decision acknowledging a requirement for the GLA to provide guarantees to the Port of London Authority (PLA), Westminster Council and Lambeth Council about obligations relating to the establishment, upkeep, maintenance and operations of the Bridge's gardens and public spaces. His guarantee was provisional on the Trust being able to demonstrate that it had secured appropriate levels of funding for the first five years of operation. In April 2016, he amended this in a second mayoral direction to offer guarantees providing that the Trust could demonstrate that it had an appropriate funding strategy in place for the first five years of operation. The newly appointed Mayor, Sadiq Khan, has made clear his position that no further public funds under his control would be provided towards the Bridge. It therefore remains unclear who would be responsible for running and maintenance should the Trust face a shortfall in funding.

# Appendix

## Our investigative approach

### Scope

**1** We conducted an investigation into how the Department for Transport (the Department) provided £30 million of grant funding towards the Garden Bridge (the Bridge). We considered the extent to which the Department assured itself that the grant was spent with economy, efficiency and effectiveness and that proportionate steps were taken to protect the interests of the taxpayer. This report considered:

- the initial decision to put public money towards the Bridge;
- the decision to increase, on three occasions, the amount of the £30 million it was willing to commit to pre-construction activities; and
- the subsequent decrease in exposure to pre-construction losses and the management of risk to further exposure in the future.

### Methods

**2** In examining these issues, we drew on a variety of evidence sources.

**3** We liaised closely with the Department as the funder of the audited grant. We interviewed key individuals and reviewed documents obtained from the Department, which included:

- a** correspondence between the Department, the Garden Bridge Trust (the Trust), and Transport for London (TfL) relating to project status and financial matters – this provided a timeline of events and activities where the Department was involved in decision-making that influences the project; and
- b** project documents – such as the business case, funding agreements between parties and the project plan.

**4** We reviewed other documents relating to the management and financial status of the project at key milestones up to the reporting date, including public sector funding information. These publicly available documents were obtained via the TfL website.

**5** We looked into the requirements of *Managing public money* and drew on expertise within our financial audit teams for advice on this. We also reviewed the Department's financial audit documents relating to TfL's grant.

**6** We were kept up to date with the project's progress and current issues through the press and through correspondence with MPs from various London boroughs and members of the public engaged with the project.

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