



## WMCA Board

<b>Date</b>	8 December 2017
<b>Report title</b>	Midland Metro Penalty Fare
<b>Portfolio Lead</b>	Councillor Roger Lawrence - Transport
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<b>Report to be/has been considered by</b>	WMCA Programme Board - 24 November 2017

### Recommendation(s) for action or decision:

#### The WMCA Board is recommended to:

1. Note the background to the existing penalty fare regime.
2. Approve the proposed submission of an application for a Transport and Works Act Order (TWAO), to seek the necessary powers for West Midlands Combined Authority (WMCA) to make changes to the penalty fares on Midland Metro (including increases and a two tier system), removing the requirement for Secretary of State approval

## **1.0 Purpose**

To inform the WMCA Board of the proposal to submit an application for a TWAO to amend the Midland Metro (Penalty Fares) Act 1991 so as to (i) establish a two tier system of penalty fares; and (ii) confer powers on WMCA to make changes to the penalty fares on Midland Metro in the future without the requirement for an Order of the Secretary of State for Transport subject to negative resolution in Parliament (iii) To seek approval under the provisions of section 239 of the Local Government Act 1972 (which applies in this case by virtue of section 20 of the Transport and Works Act 1992) for WMCA to submit the TWAO to amend the Midland Metro (Penalty Fares) Act 1991.

## **2.0 Background**

- 2.1 Midland Metro currently operates a penalty fare regime in accordance with section 4 of the Midland Metro (Penalty Fares) Act 1991. The Act states that: 'If a person travelling on a Metro vehicle, on being required to do so by an authorised person, fails to produce a fare ticket or a general travel authority, he shall be liable to pay a penalty fare if required to do so by an authorised person.' The current penalty fare is £10 (set by s.5 (1) of the Act).
- 2.2 Whilst the penalty fare of £10 may have been appropriate at the time of the original Act, the impact of inflation on ticket prices has meant that this no-longer serves as an effective deterrent to potential fare evaders, particularly given that the cost of single end to end journey on metro is currently £4.10.
- 2.3 In September 2014 Metro Programme Board granted permission to request the Secretary of State to make an order increasing the level of the penalty fare. The application was to be made in accordance with section 5(2) of the 1991 Act. The Board further approved the proposed amount at which the new penalty fare should be levied (£70) and that there should be an opportunity for this to be reduced by 50% if paid within 21 days.
- 2.4 The penalty fare amount and the procedure for administering the penalty fare regime was consulted with and approved by the operator of the tram system, Transport Focus and Midland Metro Passenger Panel. It was also presented to and supported by Transport Delivery Committee on the 14<sup>th</sup> March 2016.
- 2.5 The approved approach was deemed to be the simplest, quickest and most cost effective route to increase the penalty fare.
- 2.6 The proposal was consulted with the DfT. Following consideration, however, the DfT formed a view that WMCA has no legal power at present to implement a two-tier system. This is because the 1991 Act specifies the penalty amount, meaning that acceptance of a reduced penalty would in effect be at the discretion of WMCA rather than on a statutory basis. Legal advisers at the DfT pointed to the fact that it has previously thought it necessary to give other bodies' specific statutory powers to accept a reduced penalty for prompt payment.

- 2.7 Whilst WMCA can submit the application as proposed, the ambiguity surrounding this issue may lead to the application being rejected or if approved (without the specific inclusion of the two tier system) could mean that only the actual penalty amount defined in the Act (£70) could be collected. In addition, the timescales and procedures for such an application are not defined and therefore with Brexit and other priorities there is no obligation for this to be presented in Parliament within our desired timeframe.
- 2.8 Continuing in this manner therefore poses risks to the delivery of the desired penalty fare regime which is based on a 2 tier system that has been agreed with consultees, in addition to the time it may take to achieve a decision. Consequently the options for amending the penalty fare regime have been reconsidered.
- 2.9 Following legal advice from Winckworth Sherwood, Parliamentary Agents, it is proposed that WMCA applies for a TWAO to confer on WMCA the powers to establish a two tier system and also to make changes to the level of penalty fares charged. This would enable the WMCA to increase the penalty fare to £70 and make legislative provision to enable WMCA to accept a reduced fare within a specified period. The TWAO would remove the requirement for the Secretary of State to approve penalty fares, instead giving him a consultative role.
- 2.10 A TWAO application is secondary legislation made under the Transport and Works Act 1992. It has a defined process and timescales. It requires consultation ahead of the submission of the TWAO application (and submission of a report summarising those consultations), but many of the stakeholders have already been consulted (as detailed above) and are satisfied with the proposed changes. A notice has also been placed in the public notice section of the Birmingham Post and the Express and Star newspapers. Whilst it is not a statutory requirement, metro passengers have also been consulted via posters on tram stops, information on the WMCA and National Express Midland Metro websites and via social media.
- 2.11 The timescales for the TWAO application process are largely governed by the amount of time needed for consultation which is largely complete. It is likely that the process would therefore take –
- Consultation and preparation of application 3 months (Underway)
  - Objection period (immediately after submission) 6 weeks
  - Period for dealing with written objections if there are any (expected to be through written representations) 3 months
  - Decision 4 months
- 2.12 The advantages of this method would be the defined process and timescales as well as giving WMCA the powers to make future changes to Penalty Fares on Midland Metro as deemed appropriate without the requirement to seek approval through Ministerial order and negative resolution of Parliament. The provisions sought by WMCA have precedent in the Croydon Tramlink (Penalty Fares) Order 2003 (S.I. 2003/1614).

### **3.0 Impact on the Delivery of the Strategic Transport Plan**

- 3.1 Changes to improve the protection of future revenues will support the continued success of Midland Metro which has an important expanded future role. This is a key part of the metropolitan rail and rapid transit network in the metropolitan tier of the Strategic Transport Plan.

#### **4.0 Wider WMCA Implications**

- 4.1 The Midland Metro Concession currently held by ALTRAM L.R.T. Ltd will expire on the 1 October 2018. At its meeting on 17 March 2017 the Board of the West Midlands Combined Authority approved the recommendation in principle to award a Public Services Contract to Midland Metro Limited ("MML") in accordance with the provisions of EU regulation 1370/2007.
- 4.2 It is anticipated that the Public Services Contract will come into effect no later than 2 October 2018 and that the functions currently discharged by Altram L.R.T. Ltd and its Operating sub-contractor Travel Midland Metro will be taken up by MML at that date. This will include ticket sales and revenue collection.
- 4.3 WMCA will at this point take revenue risk on Midland Metro and will need to ensure MML has robust revenue protection measures in place. An appropriate penalty fare regime is fundamental to this to act as a deterrent to potential fare evaders. By seeking the changes as proposed WMCA will be protecting future revenues which contributes to the continued and successful delivery of Midland Metro operation.

#### **5.0 Financial implications**

- 5.1 There are no financial implications from this report as the activity in relation to supporting the above can be resourced within current budgets.

#### **6.0 Legal implications**

- 6.1 The WMCA has power to apply for a TWA Order by virtue of section 20 of the Transport and Works Act 1992. Subsection (2) of section 20 provides that the power to make a TWAO application is subject to the same conditions (if any) that apply to the applicant when promoting a Bill in Parliament.
- 6.2 The WMCA has powers to promote Bills in Parliament under section 10 of the Transport Act 1968 (as amended) and section 239 of the Local Government Act 1972 (as amended) (LGA 1972).
- 6.3 In order to comply with the conditions that apply to the exercise of the power in the LGA 1972, special notice of this meeting and its purpose has been given in accordance with section 239. If the WCMA approves the submission of the TWA application, it will also be required by the LGA 1972 to decide, at a subsequent meeting whether to confirm this.

#### **7.0 Equalities implications**

- 7.1 No equality impact is envisaged. A comprehensive communications plan for all customers is proposed for penalty fare changes.

#### **8.0 Draft Order**

- 8.1 A copy of the draft Transport and Works Act Order for submission is contained within appendix A.