

## WMCA Board

<b>Date</b>	9 June 2023
<b>Report title</b>	Deeper Devolution Deal - Statutory Processes
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<b>Report has been considered by</b>	Mayor & Portfolio Leads Liaison

### The WMCA Board is recommended to:

- (1) To note the progress on the Deeper Devolution Deal implementation.
- (2) To ratify the decision of the WMCA Chief Executive to request the commencement of the statutory governance review.
- (3) To agree to initiate public consultation and awareness-raising on the Deeper Devolution Deal, the Governance Review and Scheme.
- (4) To agree to include as part of the above, and noting the opposition of three Leaders, statutory public consultation on the Health Improvement Duty, with a view to informing a final decision on this matter at the WMCA Board meeting in October.
- (5) To note the plans for Deal ratification at the WMCA Board meeting in October and to make provision for council discussion and endorsement of the Governance Review and Scheme, at the discretion of each council, by the 30 September.

### 1. Purpose

- 1.1 Following the announcement of the West Midlands Trailblazer Deeper Devolution Deal in March, this report provides a short update about the deal implementation process.

1.2 This report seeks formal approval to initiate statutory processes regarding some aspects of the Deal and sets out the process that constituent authorities will need to follow to allow for formal ratification of the Deal before the WMCA Board meeting in October.

## **2. Background**

2.1 The West Midlands Trailblazer Deeper Devolution Deal (DDD) was agreed in principle by the Mayor and Portfolio Leaders on 10 March 2023 and announced in the Chancellor's spring statement the following week. The full text of the deal is available [here](#).

2.2 The deal has more than 100 different provisions, the majority enhance the existing functions of the WMCA and unlocking over £1bn of new funds for the region. A summary of the main aspects of the deal can be found on the [WMCA website here](#).

2.3 A small number of provisions in the deal require a further statutory process before new functions can be assumed by the WMCA. These are the provisions for the WMCA to receive the Bus Service Operator's Grant (BSOG) and the Health Improvement Duty.

## **3. Implementation Update**

3.1 On Friday 19 May, an Implementation Update was presented to the Mayor & Portfolio Leaders meeting for discussion and feedback. The Implementation Update organises the provisions in the deal according to 25 workstreams, and provides an explanation of:

- How it is envisaged the deal provisions will be administered;
- How it is envisaged that the deal provisions will be delivered;
- How WMCA officer are engaging with local authority colleagues in the co-development of implementation plans;
- Key milestones and deliverables;
- Outstanding issues and questions of concern.

3.2 The purpose of the Implementation Update is to set out how the WMCA is currently plans to use its resource to realise the benefits of the deal, to help local authorities identify how they will be engaged in delivering provisions of the deal and identify the future areas where local authorities will be asked to support decision making on the deal provisions.

3.3 Another, more detailed, version of the Implementation Update (a 'final' Plan) will be provided to Local Authorities by 8<sup>th</sup> September to support their internal governance process for ratifying the deal throughout September and ahead of formal collective ratification of the deal at WMCA Board on 13 October.

3.4 Feedback on the Implementation Update was generally positive and discussion at the meeting focused mainly on the Health Improvement Duty. Representations were made by two Directors of Public Health who spelled out the benefits of the duty but three Leaders opposed its inclusion in the further development of the Deal. The implications of this are set out in paragraph 4.11 below.

## **4. Statutory Process and Deal Ratification**

4.1 In order for the WMCA to assume new powers and functions in the deal, WMCA has to follow the statutory process set out in the 2009 Local Democracy, Economic Development and Construction Act.

4.2 The preparation of a governance review and draft scheme for public consultation was requested by the Chief Executive of the WMCA under the delegation granted to her at paragraph 5.3 of the Scheme of Delegations:

- To take any action which is required as a matter of urgency in the interests of the Authority, in consultation (where practicable) with the Chair of the Authority and/or the appropriate portfolio holder

The WMCA Board is requested to ratify this decision.

4.3 The two new powers and functions in relation to the Deeper Devolution Deal are as follows:

- A Health Improvement Duty – this is known as a ‘local authority function’ and is still the subject of significant debate; it requires full public consultation in advance of it being conferred on the WMCA.
- The payment of the Bus Service Operators Grant (BSOG) – this is known as a ‘public authority function’ and can be conferred by the relevant Secretary of State without public consultation.

4.4 The statutory processes for both the Health Improvement Duty and BSOG function requires the preparation and publication of a draft Governance Review and Scheme (Annexes 1 and 2). The Scheme must set out what new functions are being sought. The Governance Review must evidence how each new function is likely to improve the exercise of statutory functions in the area or areas to which the order relates.

4.5 As stated above, a public consultation must also be carried out in relation to the Health Improvement Duty. Section C of the Governance Review provides further details about the apparent benefits of the Health Improvement Duty. Details of the consultation are set out in section 4 of this report.

4.6 Following the public consultation is closed, as part of the statutory process, each constituent authorities must:

- Provide feedback to WMCA on the draft Governance Review and Scheme in sufficient time to allow for them to be considered at the WMCA Board meeting on 13 October 2023. It is recommended that feedback is given by 30<sup>th</sup> September.
- Provide, through their own governance processes, individual Local Authority consent to the making of the Order for both the Health Improvement Duty and the BSOG functions.

4.7 At the meeting of the WMCA Board on 13 October, a summary of the public consultation outcome; a report containing feedback from the Local Authorities in relation to the Governance Review and Scheme; and the updated Governance Review and updated Scheme, will be submitted for consideration. The WMCA Board will be requested to decide whether to submit the required documents to the Secretary of State and request the preparation of a draft Order in relation to these two new functions. The submission of the required documentation will require a unanimous vote.

## **Public Briefing and Consultation**

- 4.8 Although public consultation is only required to satisfy the statutory process for the Health Improvement Duty, given the Devolution Deal's significance to the region, it is recommended that there is value in carrying out an awareness-raising campaign about the deal and its wide-ranging provisions.
- 4.9 It is proposed that this campaign - and public consultation about the Health Improvement Duty - would be carried out between 12 June and 11 August. This will comply with the Cabinet Office Consultation Principles, and would consist of a survey, a digital campaign to promote the survey, and a number of accompanying engagement activities across the region. The aim of the consultation is to provide the general public, business and other key sectors and other stakeholders across the seven local authority areas with the opportunity to share their views on the proposals.
- 4.10 The briefing paper and public consultation document is set out in Annex 3.
- 4.11 At the meeting of the Mayor and Portfolio Leads on Friday 19<sup>th</sup> May, three Leaders indicated their opposition to taking forward the proposed new Health Improvement Duty. Ultimately the devolution of this function will require the unanimous consent of all local authority leaders, however, while noting the opposition of three Leaders, it is recommended that the WMCA Board agree to consult the public on this matter and to use public feedback to inform local authority consents and any final decision of the WMCA Board on 13 October.

## **Ratification of wider provisions in the devolution deal**

- 4.12 The majority of the devolution deal is made up on provisions which relate to existing functions of the WMCA and these do not require statutory process. However, it is important that these still receive the formal consent of each constituent authority.
- 4.13 All constituent authorities are therefore requested to seek agreement for the deal through their own governance processes throughout September in order for the Deal to be fully ratified at the meeting of the WMCA Board on 13 October 2023.
- 4.14 Whether or not local authority leaders need to take the deal and implementation plans to their Cabinet or Full Council meetings is a discretionary matter for each local authority to decide. WMCA officers are committed to providing any necessary documentation – including an updated Deal Implementation Plan – by Friday 8th September to give local authorities a full month ahead of formal ratification.

## **5. Financial Implications**

- 5.1 Any onward financial implications as a result of the Deal will be reported to and approved through the formal Governance structures of the WMCA.
- 5.2 In relation to the Health Improvement Duty, it should be noted that the WMCA has received written confirmation from the Department for Health and Social Care that adopting the duty would make it “more likely” that we would receive the proposed Radical Health Prevention Fund, subject to other normal processes related to considering funding.

- 5.3 It is also important to note that would not mean that the WMCA would have access to funding that is currently only available to local authorities and other statutory health providers. As a concurrent duty, any funding that the WMCA received to pursue its responsibilities must be new and additional to the region to support its work in tackling the wider determinants of ill health. The duty would be based upon the same legislation as local authority public health duty (NHS Act 2006) but it differs insofar as the legislative order specifies how the duty must be applied. For example, the GMCA Health Devolution Order specifies that there will be no regulations that would require the combined authority to provide health services; it may not enter into partnership arrangements as if a local authority or NHS body; and it is a matter for all constituent local authorities as to whether the combined authority can enter into Section 75 pooled funding arrangements.
- 5.4 The maximum estimated cost of the consultation and engagement activities is £7,000.

## **6. Legal Implications**

### **The Governance Review**

- 6.1 Section 111 of the Local Democracy, Economic Development and Construction Act 2009 (the 2009 Act) requires the WMCA to consider the exercise of statutory functions in the West Midlands with a view to deciding whether the new functions contained in the deal would be likely to:
- Improve the exercise of statutory functions in the area of the WMCA;
  - Secure more effective and convenient local government for the area; and
  - have a positive or neutral impact on the identities and interests of our local communities.
- 6.2 Under section 112 of the 2009 Act, the review needs to conclude that the exercise of the power to make Orders under sections 104-107 in the West Midlands area would be likely to improve the exercise of statutory functions in relation to the West Midlands area.

### **The Scheme**

- 6.3 If the Review demonstrates that new functions and powers would be beneficial, the WMCA will prepare and publish a scheme with new functions and changed constitutional arrangements.
- 6.4 The Health Improvement Duty is a new Local Authority Function under Section 105 of the 2009 Act and as such the following statutory processes must be adhered to:
- Publication of a draft scheme
  - A Governance Review
  - Public Consultation
  - Consent from each individual constituent local authority
  - A unanimous vote at WMCA to submit the required documents to the Secretary of State to request the drafting of the Order
- 6.5 The new function in relation to the Bus Service Operators Grant is a new Public Authority Function under Section 105A of the 2009 Act and as such the following statutory processes must be adhered to:

- Publication of a draft scheme
- A Governance Review
- Consent from each individual constituent local authority
- A unanimous vote at WMCA to submit the required documents to the Secretary of State to request the drafting of the Order

## **7. Equalities Implications**

- 7.1 Assessments of the potential equalities impacts of the provisions within the Deeper Devolution Deal were undertaken as they were under development. Officers reviewed draft provisions, recommending alterations or alternatives to the proposed text, to have due regard to our equality duties.
- 7.2 Should Board agree to initiate public consultation and awareness raising activities on the Deeper Devolution Deal, Officers have planned how to engage harder to reach and diverse groups to try and secure more representative responses to the consultation than might be achieved without this.

## **8. Inclusive Growth Implications**

- 8.1 The principles of inclusive growth have been fundamental to the development of the Devolution Deal and are key to the proposed 'Single Outcomes Framework' which underpins the Deal and its objectives.

## **9. Geographical Area of Report's Implications**

- 9.1 The Deeper Devolution Deal relates to all geographic areas of the Combined Authority. In addition, the implications, opportunities, and observations of non-Constituent Authorities continue to be incorporated in the development of the Deal provisions.

## **10. Other Implications**

- 10.1 None.

## **11. Schedule of Background Papers**

- Governance Review
- Scheme
- Consultation document