



## Transport Delivery Overview & Scrutiny Committee

<b>Date</b>	11 December 2023
<b>Report title</b>	Future Bus Policy Delivery Options - Update
<b>Portfolio Lead</b>	Transport - Councillor Mike Bird
<b>Accountable Chief Executive</b>	Anne Shaw, Executive Director, Transport for West Midlands email: anne.shaw@tfwm.org.uk
<b>Accountable Employee</b>	Steve Hayes, Head of Network Transformation, Transport for West Midlands email: steven.hayes@tfwm.org.uk
<b>Report has been considered by</b>	Executive Board - 22 November 2023

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

#### The Transport Delivery Overview & Scrutiny Committee is recommended to:

- (1) Note the progress being made in considering future options for delivering bus services in the region.
- (2) Note the timetable for completing the Full Franchising Assessment in preparation for a decision by the WMCA Board in July 2024 to determine if the Authority should progress further to audit and consultation as set out in this report.
- (3) Note the progress made through existing Enhanced Partnership provisions led and agreed through the former Transport Delivery Committee.
- (4) Note the position associated with the consideration of municipal bus companies.
- (5) Consider whether to make any further recommendations to the WMCA Board.

## **1. Purpose**

- 1.1 To provide an update on the ongoing work to consider future options for delivering bus services in the West Midlands, which includes assessing the existing Enhanced Partnership Scheme, undertaking a Full Franchising Assessment, and considerations relating to municipal bus company operations such as those that operated before deregulation of bus services in 1986.

## **2. Background**

- 2.1 In 2019, the Combined Authority adopted its Vision for Bus, which established long-term objectives for better bus services in the region. In early 2020, TfWM commissioned work to assess the regulatory tools made available by the Bus Service Act 2017 to understand whether the most effective way of delivering this vision would be through continued and strengthened partnerships in a primarily deregulated environment or whether Franchising would prove a more effective option. Since the Vision for Bus was adopted in 2019 there has been substantial change in the bus market. A reduction in passenger numbers, partly resulting from the Covid pandemic, has impacted revenues, whilst inflation, notably fuel and wages, has impacted costs. Bus operators have been, and continue to be reliant on increased levels of public financial support. This has reduced the appetite of the private sector to take risk and this changing commercial picture is being taken account as part of the assessment.
- 2.2 The initial assessment of options was considered by WMCA Board in February 2022 and concluded that Franchising would be likely to:
  - Give greater control and certainty over the delivery of the Vision for Bus objectives
  - Enable better value for money and more transparency around public expenditure, which is proving to be substantially higher in a post-covid world
- 2.3 It also recognized the risks associated with Franchising but weighed these up against the not unsubstantial risks and significant commitments necessary within delivery through a negotiated Enhanced Partnership.
- 2.4 As a result, the WMCA Board agreed that work should progress to further consider options by way of a 'Full Franchising Assessment', which is required by legislation before any regulatory change is considered and work began on this in early 2023. The legislation requires that the assessment should be taken forward in line with the Government's Green Book approach to business case development ie. consideration of the Strategic Case, Commercial Case, Financial Case, Economic Case and Management Case. The assessment must consider the scheme in such detail that it could be reasonably implemented on the back of a decision to proceed. The assessment does not just consider franchising but also how well the Authority's objectives in relation to bus could be met through other delivery approaches, such as the status quo Enhanced Partnership or a more ambitious Enhanced Partnership, with work also being undertaken on the option for municipalization as raised by members within some of the region's Authorities.

### 3. Summary of Regulatory Options

- 3.1 Bus services in England (outside of London) were deregulated in 1986. Since then, private bus operators have been directly responsible for all aspects of bus service provision, including planning and operating bus routes, setting timetables, hours of operation and fares. The majority of this activity is undertaken fully commercially (ie. not under contract to anyone). Only around 10% of the network is operated under contract to the Transport Authority, for services that would otherwise not be commercially viable. The Bus Services Act 2017 created new legislation introducing the concept of 'Enhanced Partnership' whilst also enabling Mayoral Combined Authorities to move to an alternative system of 'Franchising'. In 2021 the Government introduced a National Bus Strategy which required Local Transport Authority's to implement either Enhanced Partnership or Franchising in order to be eligible for future bus funding. The National Bus Strategy also advised LTAs that whilst legislation did not permit them to set up a new municipal bus company they could purchase an existing bus company. For this reason, TfWM undertook to investigate this further as the Bus Options work is designed to consider the evidence that will allow the WMCA Board to make informed choices on the future direction of bus policy in the region.
- 3.2 In '**Franchising**', the network in its entirety would instead be planned by the Authority and contracts awarded to private bus operators to run services through a competitive procurement process, such that the entire network would be operated under contract. So, bus services are still operated by private companies, but under contract to the Authority – the Authority does not operate the services itself. This is often described as 'competition for the market' instead of 'competition in the market'. The private sector still operates the services, but they deliver this to a specification set by the Authority which determines fares, timetables, frequencies and other attributes.
- 3.3 This is different from what might be termed '**Municipalisation**'. Whilst the same legislation prevents Local Authorities from setting up new municipal bus companies, it *could* be possible for the Authority to acquire an existing bus company and operate it as an arms-length business, however under the existing regulatory framework such a company would be competing 'on the road' with the private sector, and if Franchising were to be implemented an Authority could not award contracts to the municipal company without undergoing a competitive process through which the private sector could also bid successfully. There is no provision for a municipal bus company to be in place and operate services either unchallenged by competition in a deregulated environment or awarded contracts without undergoing a competitive process within a franchised system. In cities where municipal bus companies still operate (eg. Nottingham and Reading), they are subject to on-the-road competition from the private sector. As part of an options assessment, the Authority can give consideration to whether the presence of a municipally owned bus company might help delivery of the region's objectives in relation to bus, both in a deregulated or franchised regime.
- 3.4 TfWM, and predecessor Centro, have a long history of partnership working to deliver positive outcomes for passengers, and the legislation in the Bus Services Act relating to '**Enhanced Partnership**' was designed in part by government to try and embed the West Midlands methodology of productive working between Authorities and Bus Operators within a legal framework. This is a statutory partnership in which operators, WMCA and Local Authorities are required to negotiate a number of binding commitments necessary in order to deliver the region's Bus Service Improvement Plan effectively.

- 3.5 This continues to be the region's chosen approach to delivering bus services, with the latest iteration of the region's Enhanced Partnership Scheme adopted in 2023. As well as day-to-day service delivery commitments, this also includes various transformational initiatives including significant investment in bus priority (largely funded through CRSTS), the commitment from operators to simplify fares – with the 'Bonfire of Bus Tickets' implemented during 2023, the first city region outside of London to have a fully Euro VI bus fleet (eliminating harmful exhaust emissions almost entirely), a commitment to a zero emission fleet by 2030 and a new passenger charter.

#### **4. Operator Input - Enhanced Partnerships**

- 4.1 The Options Assessment is there to provide the evidence required to make an informed decision about the future direction of the regional bus network. As the bus network delivers much more than a service for its own sake, and plays a vital role in the regional integrated transport system, connecting communities and people to places, the options consider the strategic advantages and disadvantages of changing to a franchised system.
- 4.2 The Options Assessment will include a determination of whether the existing Enhanced Partnership model agreed with operators will adequately deliver the region's objectives for better bus services. It will also consider what further outcomes could be delivered through pushing the boundaries of partnership further still. Operators are being approached on what additional commitments they might be able to make and what they would expect Authority's to deliver in return, to assess the viability of this. This will be considered in early 2024 so that the proposals are fresh by the time the Full Franchising Assessment is completed in order to make an effective comparison.

#### **5. Operator Input - Municipal Bus Operations**

- 5.1 The consideration of municipal bus operations is not a formal option within the Options Assessment, but is a piece of work being undertaken by TfWM to identify how easy this would be and how effectively this may support outcomes. As outlined above, establishing a new municipal bus company is not permitted, but there are circumstances in which an existing bus company could be purchased. It is the view of TfWM that this should not be ruled out as an option in the event of a major threat to existing services, but the establishment of a new municipal bus company is not an option unless there is a change in legislation and therefore requires no further work with bus operators at this stage.

#### **6. Operator Input – Franchising Assessment**

- 6.1 Legislation requires bus operators to provide any data required by the Authority in order to assist with the development of the assessment. This includes detailed revenue and cost data. This will enable TfWM to better understand the cost/benefit considerations and risks associated with implementing a franchising approach. It has taken longer than anticipated to receive data from operators, partly due to the substantial levels of information required to enable robust assessment, but this has now largely been received and is being assessed to enable an initial understanding of the financial implications in early 2024.

6.2 A wider market engagement exercise has also been undertaken, including operators both within the West Midlands and those who operate in the market elsewhere, to understand what their views may be on different options for delivering bus services in the region. The responses to this suggest that many operators – particularly those not currently operating within the region, would prefer the stability and lower risk profile associated with a Franchised system rather than the current framework, and if implemented effectively a Franchised system is likely to stimulate considerable interest in competition for contracts.

## 7. Five Case Model

7.1 The Assessment is being developed in line with the Green Book Approach, considering the following cases.

7.2 The **Strategic Case** recognises that bus travel is a means to support wider activity in society and considers WMCA's overall objectives and the importance of bus in enabling those. It considers how better bus services directly support the Local Transport Plan and what the challenges are in securing improvements, particularly limited competition in the market, declining long-term commerciality and the greater requirement for public subsidy.

7.3 The **Commercial Case** will set out what the effective options might be and what interventions may be required to deliver them. This will include a consideration of how contracts would be packaged up in a Franchised system (lotting strategy) and determining the most effective model for ownership of key assets including depots and fleet. It will consider how effective Enhanced Partnership has been in delivering outcomes to date and what more could be achieved through his approach.

7.4 The **Financial Case** will consider the financial implications of each regulatory option, including initial implementation and transition costs along with ongoing management and operational costs. It will set out capital and revenue expenditure requirements for different options over the appraisal period, any requirements for additional funding and an explanation of how this will be secured. For the purposes of the Assessment, to ensure a fair comparison between options, in each option the outputs (eg. size of network, age profile of fleet, fares etc.) will be considered to be the same.

7.5 The **Economic Case** will build on this by considering which option provides best value for money, considering not just the cost but wider social and environmental benefits. This will reflect on wider work being undertaken by the WMCA on the value of buses to society.

7.6 The **Management Case** will consider the extent of organisational and resourcing change required by WMCA within the different options. If progressed, Franchising would result in a major shift in responsibilities. Presently, many activities associated with providing bus services are fragmented across a number of organisations and opportunities may exist to deliver some of these more efficiently and effectively. The Assessment will consider where these opportunities might lie and demonstrate how they will be resourced.

7.7 Across all of the cases, the scheme being assessed will include some key assumptions, necessary in order to determine what franchising might 'look like' in the West Midlands. These assumptions will be developed based on a consideration of how the authority could best meet its objectives, but also considering how schemes operate elsewhere (eg. London and Manchester) and responses from the market engagement exercise.

## **8. Timescales**

- 8.1 Preparation of the Assessment is ongoing, with the next key step being the incorporation of modelling data that is being prepared following receipt of financial information from operators. The modelling will be refined as we move into 2024 and until this has been comprehensively assessed it is not possible to fully understand the financial implications of franchising and/or the extent to which risks can be mitigated. It is intended that the WMCA Board will consider the Full Franchising Assessment in July 2024 for a decision on whether to proceed with external audit of the assessment (as required by legislation), alongside public consultation. Following audit and consultation there will be further consideration of delivery options based on the outcomes of these processes in early 2025, with a go/no-go decision at that point. Should a decision be taken to proceed with Franchising it is likely that the process to complete the groundwork, develop service specifications, undertake procurement and mobilise contracts will take up to three years.
- 8.2 With commercial bus revenues impacted as a result of lifestyle changes following COVID, coupled with the resulting inflationary pressure impacting industry costs, TfWM continue to work closely with operators, utilising both local and central government funding resources, to secure a largely stable network until January 2025. However, there remains significant uncertainty around how challenges may be addressed beyond that date, but any interventions will be considered with an eye to how they might support the long-term objectives for improved bus delivery, serving the region's citizens.

## **9. Financial Implications**

- 9.1 Budget of £1.5m has been allocated from the CRSTS Capacity Fund to support this review, as well as associated audit work if required. The model will review three scenarios, the status quo, a strengthened Enhanced Partnership and Franchising, to establish which delivery model achieves the best outcome for the region. The model will be based on current costs and will review each option against what we currently spend, i.e. comparing what could be achieved by each delivery model within the same budgetary allocation. As part of this rationale, the proposals for both the Enhanced Partnership and Franchising, will be based on what is considered achievable and necessary outcomes rather than an ideal view of how the network could work in the future if finance was not a limiting factor. This is considered to be the best approach to provide a realistic, practical and fair basis for option appraisal.

## **10. Legal Implications**

- 10.1 The above report provides clear and insightful evidence of the required evaluation and due consideration to multiple issues that touch and concern the Mayoral Combined Authority in satisfying itself as to the merits of a fully franchised approach and informing the organisation's requirement to effectively evaluate the prospects of moving from the current position, with delivery of bus services being provided under the current Enhanced Partnership arrangements, and moving towards a fully franchised approach for the provision of bus services for the benefit of the region, if it were to choose to do so. The approach being followed by the Full Franchising Assessment working group is compliant with the processes set out within the Bus Services Act 2017 and associated guidance. Accordingly, there are no immediate legal implications flowing from this report.

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

- 11.1 This report applies to all geographical areas of the constituent Combined Authority Area. The assessment will assume the Franchising Scheme, or any other deliver option taken forward, is regionwide. There is a statutory obligation to consult neighbouring authorities through the process to ensure there is consideration of how any regulatory change in the WMCA area may impact on the delivery of bus services in neighbouring areas.

## **12. Other Implications**

- 12.1 The Full Franchising Assessment is also considering HR implications (including TUPE and pensions provisions), appropriate procurement mechanisms, investment in any ICT system requirements and any governance changes that might be necessary to implement Franchising or other regulatory options effectively.