



Transport Delivery Committee Meeting

Date	6 th November 2017
Report title	Midland Metro Penalty Fare
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Report has been considered by	Metro Operations Board

Recommendation(s) for action:

Transport Delivery Board is recommended to:

1. Note the contents of the report
2. Support the proposed application of 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
3. Recommend to WMCA board on the 8th December 2017, that it approves the application of a TWAO as detailed above.

1.0 Purpose

- 1.1 To inform Transport Delivery Committee (TDC) 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.

2.0 Background

- 2.1 On the 14th March 2016 Transport Delivery Committee (TDC) approved a proposal to submit an application to the Secretary of State for an order to increase the penalty fare on Midland Metro in accordance with the Midland Metro (Penalty Fares) Act 1991. The current penalty fare on Midland Metro is £10 and is deemed an unsuitable deterrent for fare evasion.
- 2.2 The proposal approved by TDC included a two tier penalty system, with the opportunity for the penalty to be reduced by 50% if paid within 21 days.
- 2.3 When progressing this matter as proposed, the Department for Transport (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.
- 2.4 Whilst WMCA can submit the application as proposed, the ambiguity surrounding this issue may lead to the application being rejected or if approved could mean that only the actual penalty amount defined in the Act could be collected (without the two tier system).
- 2.5 Continuing in this manner therefore poses risks to the delivery of the anticipated penalty fare regime which is based on a 2 tier system and has been agreed with consultees.
- 2.6 Following legal advice from Winckworth Sherwood, Parliamentary Agents, it is proposed that WMCA applies for a TWAO to confer on WMCA the powers to set out a two tier system and also to make changes to penalty fares including making any increases. This would 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.
- 2.7 The method would give 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).
- 2.8 Whilst there are no statutory consultees for the TWAO, WMCA are consulting with passengers, Metro Passenger Panel, Transport Focus and the operator of Midland Metro National Express Midland Metro. Information regarding the proposal has also been issued to local councillors and MPs along the metro route and the local authority transport departments.
- 2.9 It is proposed that approval to submit the TWAO is sought at the WMCA Board on the 8th December and the application be made in January 2018, subject to approval being granted by the board.

2.10 Legal Comments

- 2.11 Legal comments are incorporated within this report.

2.12 Financial Comments

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