

Mayoral Combined Authority Board

Tuesday, 08 October 2024

Bus Reform – Independent Review of Assessment and Consultation

Is the paper exempt from the press and public? In part – Appendices B, C and D are exempt

Reason why exempt: 3 - Info relating to financial/business affairs of particular person or authority

Purpose of this report: Policy Decision

Is this a Key Decision? Yes

Has it been included on the Forward Plan of Key Decisions? Yes

Portfolio: Travel & Transport

Portfolio Holder: Mayor Oliver Coppard

Lead Chief Executive: Martin Swales

Director Approving Submission of the Report:

Martin Swales, Chief Executive Officer (Head of Paid Service)

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Executive Summary

On election in May 2022 the Mayor made fixing South Yorkshire's buses, so that public transport is an efficient and effective public service, a strategic priority.

On 4 March 2022, the Mayor and Leaders at the MCA Board approved the recommendation to issue a Notice of Intention to prepare an assessment of a proposed bus franchising scheme ("bus reform assessment") in accordance with the Transport Act 2000).

The bus reform assessment was prepared, considering a range of operating models including an assessment of a franchising scheme. The bus reform assessment concluded that a franchising option ("the proposed franchising scheme"), better meets the objectives of the MCA based on affordability, value for money and policy objectives.

Section 123D Transport Act 2000 and the Department for Transport (the "DfT") guidelines require that, if after preparing an assessment of a proposed franchising scheme under section 123B, the MCA wish to proceed with the proposed scheme, they must obtain a report from an independent auditor on that bus reform assessment (the "independent review"). The bus reform assessment was considered at the MCA Board on 12 March 2024 and the Board approved the progression of the proposed franchising scheme to independent review.

The independent review has now been completed and this paper sets out its conclusions. If the MCA wishes to proceed further, the next stage of the process must be to undertake a consultation in accordance with section 123E Transport Act 2000.

What does this mean for businesses, people and places in South Yorkshire?

Bus services provide essential journeys allowing people to access employment, education, healthcare, leisure and social activities. Bus services are fundamental in supporting the MCA's ambitions to drive economic growth and to improve the prosperity, health and environment for the people of South Yorkshire.

However, bus services in South Yorkshire have been experiencing a long-term cycle of decline, an issue that has been further exacerbated by the impacts of the Covid-19 pandemic and rising levels of inflation. One of the effects of this has been a growing reliance on public funding to sustain bus service levels.

The bus reform assessment considers a range of possible future operating models for bus services in South Yorkshire alongside the underlying market and strategic challenges and opportunities and considers potential implications for the people of South Yorkshire.

Recommendations

1. The Board is asked to consider:

- 1.1 The independent review letter, setting out the conclusions from the independent review of the bus reform assessment undertaken by PwC (Appendix A);
 - 1.2 The independent review report prepared by PwC (exempt Appendix B).
 - 1.3 The updated bus reform assessment (exempt Appendix C); and
2. It is recommended that the Board approves:
- 2.1 Progression of the proposed bus franchising scheme to consultation in accordance with the provisions of sections 123E -123G Transport Act 2000.
 - 2.2 Giving notice of the proposed bus franchising scheme, and to publish and make copies available for inspection of the proposed franchising scheme, consultation document, bus reform assessment and independent review report in accordance with sections 123E(2)(d) and 123E(3) of the Transport Act 2000.
 - 2.3 The delegation of all the tasks required to finalise the consultation document and other required material, ready for publication at consultation launch, to the Head of Paid Service, Section 73 Officer and Monitoring Officer.

Consideration by any other Board, Committee, Assurance or Advisory Panel

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|-------------------------------------|-------------------|
| Mayoral Combined Authority Board | 04 March 2022 |
| Transport and the Environment Board | 27 October 2022 |
| Audit and Standards Committee | 20 September 2023 |
| Overview and Scrutiny Committee | 21 September 2023 |
| Audit and Standards Committee | 13 December 2023 |
| Mayoral Combined Authority Board | 12 March 2024 |
| Overview and Scrutiny Committee | 14 March 2024 |
| Audit, Standards and Risk Committee | 20 March 2024 |

1. Background

- 1.1 Approval is required from the MCA Board for progression of the proposed franchising scheme to consultation, in accordance with the provisions of section 123E of the Transport Act 2000.

Context

- 1.2 The bus market in South Yorkshire has been experiencing a long-term cycle of decline whilst growing its reliance on public funding to sustain bus service levels:

- Over the past decade, bus mileage in South Yorkshire has declined by 42%.
- In 2012/13, 13% of bus network mileage in South Yorkshire was supported by public funding. By 2023/24, this had grown to 24%.

In order to examine options to address this decline and deliver a bus service that meets the needs of South Yorkshire, a bus franchising assessment was undertaken by the MCA. This examined bus franchising against alternative options, including Enhanced Partnerships (EP and EP Plus).

- 1.3 The bus reform assessment concluded that bus franchising delivers the best value for money and affordability, when compared to the EP and EP Plus options. To sustain the 2023/24 bus network, each of the operating models would require additional public sector investment. However, such investment would deliver better value for money and be more affordable to the MCA under a franchised model.
- 1.4 On 12 March 2024, having received the bus reform assessment the MCA approved the progression of the bus reform assessment to Independent Audit (review). PwC were commissioned by the MCA to undertake this review in accordance with section 123D of the Transport Act 2000.

Outcome of the independent review of the bus reform assessment

- 1.5 The bus reform assessment was reviewed by PwC (supported by Steer) and a clarification and review process was supported by meetings facilitated by the MCA and the MCA's bus reform assessment partners Grant Thornton (supported by ARUP) (see exempt Appendices B and C).
- 1.6 The independent reviewers undertook the review in accordance with section 123D of the Act, to provide a report and express an opinion in relation to the following areas:
 - Whether the information relied on by the Authority in considering the matters referred to in section 123B(3)(d) of the Act (the affordability of the scheme) or section 123B(3)(e) of the Act (the value for money of the proposed scheme) is of sufficient quality;
 - Whether the analysis of that information in the bus reform assessment is of sufficient quality; and
 - Whether the Authority had due regard to the Guidance issued under section 123B of the Act in preparing the bus reform assessment.
- 1.7 The independent reviewers submitted clarification questions throughout the review process to determine their opinion. Some of the observations required adjustments to the bus reform assessment, which were documented and made by the MCA's technical advisors Grant Thornton and ARUP during the review process (further details of

these updates are provided below). These updates have been documented in the audit process and have been further reviewed by PwC in the completion of their independent review Report (exempt Appendix B).

- 1.8 The independent review concludes that, in all material respects:
- the information relied on by the MCA in considering the matters referred to in section 123B(3)(d) of the Act (the affordability of the scheme) or section 123B(3)(e) of the Act (the value for money of the proposed scheme) is of sufficient quality;
 - the analysis of that information in the bus reform assessment is of sufficient quality; and
 - the MCA had due regard to the Guidance issued under section 123B of the Act in preparing the bus reform assessment.
- 1.9 Following the updates to the bus reform assessment summarised in section 1.12 below, the bus reform assessment has been finalised and is attached as exempt Appendix C to this report.
- 1.10 Having considered the independent review report the MCA can determine if it wishes to proceed with the proposed franchising scheme. If it does wish to proceed then the next stage is consultation in accordance with Section 123E Transport Act 2000.

Update of the bus reform assessment

- 1.11 Since the approval of the progression of the bus reform assessment of a bus franchising scheme to independent review in March 2024, updates have been made to reflect the observations of the independent review.
- 1.12 These updates relate to the assumptions contained within the reference case, quantitative economic analysis, sensitivity testing and affordability conclusions.

Consultation proposal

- 1.13 Should the MCA Board choose to progress the proposed franchising scheme to the next stage in the statutory process, section 123E of the Act explains that after obtaining an independent review report, the MCA must:
- a) publish a consultation document relating to the proposed scheme (see section 123F);
 - b) publish the bus reform assessment of the proposed scheme;
 - c) publish the auditor's report on that bus reform assessment, and

- d) give notice of the proposed scheme in such manner as the authority or authorities consider appropriate for bringing it to the attention of persons in the area to which it relates.
- 1.14 To comply with section 123E of the Transport Act 2000, the MCA must consult the following statutory stakeholders, as described in the Guidance:
- Local bus operators.
 - Representatives of employees of operators.
 - Organisations representing local passengers.
 - Local authorities who would be affected by the proposed scheme, including National Parks Authorities where relevant.
 - The Traffic Commissioner, Chief Officers of Police for areas to which the proposed scheme relates, Transport Focus (the Passengers' Council), and the Competition and Markets Authority.
- 1.15 Additionally, the SYMCA wishes to consult the general public including:
- Bus users
 - Non-bus users
 - Other key stakeholders identified by the MCA
- 1.16 The consultation is proposed to be delivered through a range of methods including:
- A full consultation document with corresponding surveys.
 - A consultation brochure/leaflet.
 - Meetings and further direct engagement opportunities for statutory consultees.
 - 8 public information events at locations across South Yorkshire's four districts.
 - 5 public focus groups.
 - PR, media and promotional campaigns to raise awareness of the consultation.
- 1.17 The MCA would seek to ensure that the consultation process is inclusive and engages a broad range of South Yorkshire's stakeholders and residents.
- 1.18 Should the MCA Board wish to proceed to consultation, delegation to the Head of Paid Services, Section 73 Officer and Monitoring Officer is sought to finalise the consultation document and other material, ready for publication at the consultation launch.

Further steps

- 1.19 Should the MCA Board decide to proceed to consultation, it is anticipated that a 12-week consultation period would launch on 23 October 2024 and close on 15 January 2025. After the consultation period concludes, an analysis report will be produced and a consultation response report prepared.
- 1.20 These reports would enable the Mayor to consider the outcome of the consultation and take a decision on whether to make a franchising scheme (i.e. implement bus franchising).

2. Options Considered and Recommended Proposal

2.1 Option 1

Approve all recommendations.

2.2 Option 1 Risks and Mitigations

Approval of the progression of the bus reform assessment to the next stage of the process following receipt of the independent review report, will enable the MCA to start the process of statutory and public consultation of a proposed franchising scheme for South Yorkshire. The independent review report has concluded that the information analysis relied on in the bus reform assessment, was of sufficient quality and the bus reform assessment was completed in accordance with the statutory Guidance.

The Mayor will give conscious consideration to consultation responses and the consultation analysis, together with all other material considerations before deciding on whether to make a franchising scheme for South Yorkshire.

2.3 Option 2

Reject the recommendations.

2.4 Option 2 Risks and Mitigations

Rejection of the recommendations in this report would mean, the progression of the bus reform assessment to the next stage of the process which is to consult on a proposed franchising scheme for South Yorkshire, would not take place. This means that the MCA would not have the opportunity to take views from statutory consultees and the public on a proposed franchising scheme as the recommended way forward from the bus reform assessment.

2.5 Recommended Option

Option 1. The bus reform assessment drafted concluded that the implementation of a franchising scheme better meets the objectives of the MCA. The independent review concluded that the information and analysis

that underpinned the bus reform assessment conclusion was robust and followed the statutory guidance. The recommendations allow for views to be gathered on the work undertaken to date, before a decision is made.

3. Consultation on Proposal

- 3.1 The bus reform assessment, the conclusions of the independent review and the overall process for franchising continue to be discussed and reviewed with the MCA's constituent local authorities.

4. Timetable and Accountability for Implementing this Decision

- 4.1 Subject to the approval of the recommendations and approval by the MCA, the Head of Paid Service, Section 73 and Monitoring Officer would be given delegated authority to approve finalisation and publication of the consultation documentation required to support the next stage of the process.

5. Financial and Procurement Implications and Advice

- 5.1 The financial implications of the existing bus network and the options contained in the bus reform assessment were set out in detail in the previous report to the MCA Board in March 2024.
- 5.2 Under franchising, the MCA would pay operators to run bus services and retain revenue generated from passengers. It would be subject to the full implications of the financial performance of the bus network under a franchising model, including upside and downside revenue risk.
- 5.3 The principal financial risks of all options have been carefully assessed through the franchise assessment. The identification and quantification of risks was supported by Grant Thornton and ARUP and then tested by PwC. The MCA has since developed a Financial Risk Framework which has been shared with the South Yorkshire Director of Finance Group. This Framework builds upon the assessment proposals to outline the actions the MCA will implement, should it choose to progress to a franchised model. This work has been further scrutinised and commented on by BDO.
- 5.4 The bus reform assessment concludes that the franchise option would be affordable over a thirty-year appraisal period, having been modelled with consistently prudent assumptions concerning bus patronage, operating costs and funding available to invest in the network. These assumptions have been stress-tested for varying scenarios.
- 5.5 It should be noted that there is a macro latent risk around the commitment of Government to maintaining CRSTS2 funding at the levels committed through the Network North announcements. Approximately £350m of the £1.45bn committed to South Yorkshire through these announcements is required for investment into fleet and depot in the period 2027-2032.

- 5.6 Funding this investment through CRSTS2 avoids the additional financing costs that would arise should the MCA have to borrow to cashflow investment. Accordingly, a benefit of the franchised model is that it allows the MCA to fund the totality of bus activity in a more efficient manner than the current de-regulated model.
- 5.7 Should CRSTS2 funding be withdrawn or reduced, the costs of investment would need to be covered, in full or in part, by an alternative capital funding source or financed through borrowing with annual debt charges made to the revenue account. In the event that CRSTS2 funding is not made available, or made available at a reduced quantum, the MCA will need to consider the options at its disposal from existing and potentially future funding streams. The MCA has and continues to make representation into Government for the need for CRSTS2 funding to flow at its announced quantum.
- 5.8 It is proposed to fund the statutory and public consultation activity set out in this report from the “Bus Franchise Assessment” earmarked reserve. Provision has been made in the 2024/25 medium-term financial strategy and reserve strategy for the commencement of transition activity should the Board decide to proceed.
- 5.9 Procurement – all relevant procurement activity will be undertaken in accordance with the requirements of the Utilities Contract Regulations (UCR) 2016 and the Procurement Act 2023.

6. Legal Implications and Advice

- 6.1 In accordance with the requirements of the Transport Act 2000 and the Department for Transport’s Franchising Scheme Guidance, the next stages of a franchising process would, subject to determining to proceed, include:
- MCA approval to proceed to Consultation following consideration of the independent review report;
 - Publication of a notice of the proposed franchising scheme in accordance with sections 123E(2)(d) and 123E(3) of the Act
 - Statutory consultation;
 - Preparing and publishing a report setting out the MCA's response to the statutory consultation together with a recommendation as to whether to proceed with the proposed franchising scheme
 - If the decision is to proceed with the franchising scheme (which is a Mayoral decision under section 123G(4) of the Act), making and publishing the scheme, and
 - Transition to and implementation of the franchising scheme.

- 6.2 The independent review report must state whether (in its opinion):
- a) The information relied on by the MCA in producing the economic (value for money) and financial (affordability) cases of the assessment is of sufficient quality;
 - b) The analysis of that information is of sufficient quality; and
 - c) The MCA has had due regard to guidance issued by the Secretary of State under section 123B of the Act in preparing the assessment.
- 6.3 Following the preparation of the bus reform assessment, and the independent review report, the MCA should, if it wishes to proceed with the proposed scheme, then consult widely on its proposals. This should ensure that local passengers, residents, businesses, and transport providers are able to comment on the proposals before the MCA takes the decision as to whether to implement the franchising scheme.
- 6.4 The following documents must be published in support of this process:
- a consultation document relating to the proposed scheme;
 - the bus reform assessment; and
 - the report prepared by the independent auditor.
- 6.5 The MCA must consult on its proposals with key stakeholders which will include:
- Local bus operators
 - Representatives of employees of such operators
 - Organisations representing local passengers
 - Local authorities who would be affected by the proposed scheme
 - The Traffic Commissioner
 - Chief Officers of Police for areas to which the proposed scheme relates
 - Transport Focus (the Passengers' Council), and the Competition and Markets Authority
 - Any other bodies or individuals it considers to be appropriate
- 6.6 Following the consultation process, the MCA must prepare and publish a report setting out its response to the consultation together with its decision as to whether or not to proceed with the proposed franchising scheme. The MCA should address issues raised by respondents to the consultation as part of their response, including setting out any changes to the franchising proposal that they intend to make as a result. Depending on the significance of any changes, the MCA may choose to consult again.
- 6.7 If the MCA decides to proceed with the franchising scheme, it must include within its response to the consultation, how it will facilitate the involvement of small and medium sized operators in the provision of services through their procurement processes.

- 6.8 At the same time as the MCA publishes its response to the consultation, it must also make and publish the franchising scheme. This is the process of finalising and establishing what the franchising scheme will look like in practice.
- 6.9 As the MCA is a Mayoral Combined Authority, it must be the Mayor that takes the decision as to whether or not to proceed with a franchising scheme.
- 6.10 Members should be aware that, as with any decision taken by the MCA, there is a risk that the MCA may be required to defend itself from legal challenge through judicial review.

7. Human Resources Implications and Advice

- 7.1 Resourcing arrangements have been identified and available to be mobilised should the MCA agree to proceed with the consultation process.
- 7.2 If following the consultation process, the MCA proceeds with the Franchising scheme, a workforce plan and associated business case will be developed to determine future resources, in addition to the current MCA establishment.
Following a decision to Franchise, the Franchising Schemes and Enhanced Partnership Schemes (Application of TUPE) (England) Regulations 2017 will apply. In accordance with the regulations, where employees transfer from one bus operator to the franchise operator, following the award of the contract, the TUPE (Transfer of Undertakings (Protection of Employment) Regulations 2006) will apply

8. Equality and Diversity Implications and Advice

- 8.1 In making the decisions contained in this report, Members are reminded of their legal duty under section 149 of the Equality Act 2010 to have due regard to the need to:
- a) Eliminate discrimination, harassment and victimisation;
 - b) Advance equality of opportunity between those who share a protected characteristic and persons who do not share it; and
 - c) foster good relations between those who share a protected characteristic and persons who do not share it.
- 8.2 In having due regard to the need advance the equality of opportunity between persons who share a protected characteristic and persons who do not, Members should have due regard to the need to:
- a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

- b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- c) encourage persons who share a relevant protected characteristic to participate in public life or in any activity in which participation by such persons is disproportionately low.

8.3 An Equality Impact Assessment has been undertaken and this shows that there are no negative/material adverse impacts on persons with a protected characteristic. Attached to this report at Appendix D is the Equality Impact Assessment. It is for Members to determine the weight to be given to the various factors that inform the decision, including the equality impacts and the legal duty under section 149.

9. Climate Change Implications and Advice

9.1 Climate change implications are considered as part of the bus reform assessment in exempt Appendix C

10. Information and Communication Technology Implications and Advice

10.1 If the MCA agrees to proceed to the consultation phase of the process, it will require the development of a number of digital assets including dedicated pages on the SYMCA / Travel SY websites.

10.2 Digital communications will be designed to meet the needs of a diverse range of consultees, ensuring that documentation meets necessary accessibility standards. A seamless integration of the response portal, provided by the research agency, will be critical to facilitate a smooth and efficient user experience for all consultees participating in the process.

11. Communications and Marketing Implications and Advice

11.1 A communications plan has been developed to raise awareness of the Independent Review and a communications plan has been developed for implementation if a decision is made to move to public consultation.

List of Appendices Included:

- A. Independent Review letter
- B. Independent Review report (exempt)
- C. Updated bus reform assessment (exempt)
- D. Equality Impact Assessment (exempt)