

## Housing, Planning & Environment Overview & Scrutiny Committee

**Date:** 15 November 2018

**Subject:** Bus Reform Update

**Report of:** Michael Renshaw, Executive Director, TfGM

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### PURPOSE OF REPORT

To update Members on the progress in relation to the preparation of an assessment of a proposed bus franchising scheme for Greater Manchester by TfGM and associated next steps, in line with the Bus Services Act 2017.

### RECOMMENDATIONS

Note and comment on the contents of the report and request that further updates be provided as appropriate.

### CONTACT OFFICERS

Michael Renshaw, Executive Director, TfGM  
[Michael.Renshaw@tfgm.com](mailto:Michael.Renshaw@tfgm.com)

Rod Fawcett, Head of Policy, TfGM  
[Rod.Fawcett@tfgm.com](mailto:Rod.Fawcett@tfgm.com)

### BACKGROUND PAPERS

The following is a list of the background papers on which this report is based in accordance with the requirements of Section 100D (1) of the Local Government Act 1972. It does not include documents, which would disclose exempt or confidential information as identified by that Act.

Report to Planning, Housing and Environment Overview and Scrutiny Committee, 17 April 2018  
[https://www.greatermanchester-ca.gov.uk/download/meetings/id/3141/item\\_6\\_greater\\_manchester\\_bus\\_services\\_update](https://www.greatermanchester-ca.gov.uk/download/meetings/id/3141/item_6_greater_manchester_bus_services_update)

Report to GMCA, 27 July 2018, on Bus Reform  
[https://www.greatermanchester-ca.gov.uk/download/meetings/id/3519/19\\_bus\\_reform](https://www.greatermanchester-ca.gov.uk/download/meetings/id/3519/19_bus_reform)

## **1 INTRODUCTION**

- 1.1 Members may recall from a previous update on 17 April 2018 that following the introduction of the Bus Services Act 2017 (“the Act”), TfGM has been instructed by the GMCA to prepare an assessment of a proposed bus franchising scheme (“Assessment”).
- 1.2 Whilst TfGM is still in the process of preparing the Assessment, Members should note that the other activities being carried out by TfGM relating to the Assessment, as further detailed below, and TfGM’s proposal for how and when Members will be updated in the future.

## **2 PROGRESS SO FAR**

- 2.1 In accordance with the Act, and following instruction from the GMCA on 30 June 2017, TfGM is preparing the Assessment, which will relate to the entire Greater Manchester area and which will be informed by the Vision for Bus as set out in the 2040 Transport Strategy.
- 2.2 In line with the Act, the Assessment will describe the effects that the proposed franchising scheme is likely to produce, and compare making the proposed scheme to one or more other options for reform, such as partnerships.
- 2.3 TfGM is also engaging extensively with bus operators to explore other realistic options for improving local bus services – such as partnerships.
- 2.4 Members will recall from TfGM’s previous update that in order to prepare a robust assessment which takes into account an accurate picture of the Greater Manchester bus market, TfGM has requested a wide range of information from bus operators who run local services within and into Greater Manchester.
- 2.5 As progress on the Assessment has been made since TfGM’s last update to Members, TfGM has continued to use the information received as a result of these requests for information to inform its Assessment. TfGM will therefore continue to prepare its Assessment and if any further information is received, it will consider the same (as appropriate).

## **3 PROCESS TO A MAYORAL DECISION**

- 3.1 Following completion of the Assessment, the GMCA will have to obtain a report from an independent auditor on the Assessment in accordance with Section 123D of the Act. The Assessment and auditor’s report will then be considered by GMCA, which will take a decision on whether or not to proceed and hold a public consultation in accordance with Section 123E of the Act.
- 3.2 Following the consultation process, the GMCA would be required to prepare and publish a report setting out their response to the consultation. Depending on the nature of the responses received and the significance of any changes to the Assessment made in light of the responses, the GMCA may be required to re-consult on the proposed scheme.

- 3.3 Subject to the above stages being completed, the next step of the process would see the GMCA then considering the consultation feedback report alongside the Assessment of a proposed franchising scheme, and auditor’s report, before making a decision whether to proceed with the proposed scheme.
- 3.4 For further information on the process, Members should note Appendix 1, which summarises the process as set out in the relevant legislation and its associated guidance.
- 3.5 In consideration of the above and to build on the work currently being undertaken by TfGM in a transparent manner, the GMCA decided at its meeting on 27 July 2018 to instruct TfGM to:
- a. secure the conditional availability and preliminary briefing of a suitably qualified independent audit organisation (“Auditor”) so that after having prepared the Assessment and, should the GMCA wish to proceed with any proposed scheme, the Auditor may then be instructed to prepare a report in accordance with section 123D of the Act;
  - b. determine, if required by the conclusions in the Assessment, when it considers that the Assessment is ready to be submitted for audit, whether in advance of such submission there are any matters arising from the disclosure of information by operators of the analysis in the Assessment that may impact the substantive nature of the proposed franchising scheme or any alternative proposals being considered under the Assessment that should be referred to the GMCA for consideration and further directions to TfGM before the Assessment is finalised and submitted for audit; and
  - c. ahead of completion of the audit to take all appropriate steps to prepare the materials necessary to allow the GMCA to undertake the consultation process under section 123E of the Act, so that as soon as reasonably possible after obtaining a report in accordance with section 123D of the Act, TfGM may submit to the GMCA for consideration the Assessment and any report of the Auditor so that the GMCA may:
    - i. review the Assessment and audit report;
    - ii. determine whether to proceed to consultation or to remit the Assessment for further consideration;
    - iii. subject to ii above, instruct TfGM to undertake a consultation in accordance with section 123E of the Act on its behalf; and
    - iv. issue further directions to TfGM as appropriate.
- 3.6 This means that TfGM are now progressing some specific activities relating to both the audit and the consultation requirements of the Act. In terms of the audit, TfGM has now started a procurement process to invite tenders from potential suppliers to be the Auditor. This invitation will close in the coming weeks, whereby TfGM will then evaluate any bids received and consider whether to appoint an Auditor from those potential suppliers on a conditional basis so that upon completion of the Assessment and if the GMCA thereafter decided to proceed with any proposed scheme, the Auditor was available and ready to start work to provide a report in accordance with section 123D of the Act and the Franchising Scheme Guidance (“the Guidance”).
- 3.7 In carrying out this procurement exercise, TfGM will ensure that it complies with the Procurement Contract Regulations 2015 in respect of any engagement.

- 3.8 In addition to the above, the requirement to undertake a consultation is set out in section 123E of the Act and throughout the Guidance.
- 3.9 Together these detail the process that must be followed, the information that must be published and the persons who must be consulted (these persons are called statutory consultees and are listed in section 123E(4) of the Act, which includes but is not limited to bus operators operating in the area to which the scheme relates, representatives of employees of those operators and representatives of local bus users etc).
- 3.10 As well as being a requirement of the Act, the purpose behind the consultation is to consult with the public on any proposed scheme and invite their feedback on the same, so that an authority can decide whether or not to proceed with any proposed scheme (either with or without modification).
- 3.11 Members should note that if undertaking a consultation, an authority is required to publish a consultation document, a copy of its Assessment and audit report, as well as giving notice to consultees of the proposed scheme.
- 3.12 Section 123F of the Act describes what a consultation document is and this includes (but is not limited to) a document that describes the area to which the scheme relates, a description of the local services that are and are not to be included in the proposed scheme and the date on which the scheme is proposed to be made. The document will also need to include a summary of the assessment and set the date by which consultees can respond to the consultation, both of which are in an attempt to help inform responses.
- 3.13 Further to the GMCA's instruction of 27 July 2018, TfGM are considering the requirements of the Act in relation to the requirements around consultation, and is undertaking work to prepare appropriate materials. In doing so TfGM is aware that any consultation will also have to comply with certain common law principles. These are known as the "*Gunning Principles*" and include how:
- )] the consultation must take place when policies are at a formative stage;
  - )] sufficient reasons must be provided to allow for intelligent consideration;
  - )] adequate time must be allowed for consultees to consider and respond to proposals;
  - and
  - )] responses must be conscientiously taken into account.
- 3.14 TfGM will ensure that any consultation complies with these principles, as well as the requirements of the Freedom of Information Act 2000, the General Data Protection Regulations 2018 and the public sector equality duty as set out in section 149 of the Equality Act 2010.

#### **4 FUTURE UPDATES TO MEMBERS**

- 4.1 As TfGM progresses the work set out above, and subject to how that work progresses, Members can expect further updates from TfGM. However, given the current uncertainty on timings and the fact that such updates would be subject to TfGM and the GMCA

having complied with the appropriate legislative procedure as set out in the Act, TfGM cannot specify now a schedule that sets out exact dates when Members may be provided with a further update.

- 4.2 That said, it is expected that Members can expect an update before any decision is taken by the GMCA to proceed to undertake a consultation, as Members may wish to look to approve any proposed approach to consultation.
- 4.3 In contrast to this, it is not expected that Members will be updated upon completion of the Assessment prior to Audit, as it is believed that it would not be appropriate for Members to consider the Assessment without first having obtained any report of the Auditor.
- 4.4 Members should note that the preparatory work being undertaken by TfGM as set out above and note that further updates will be provided to the Scrutiny Committee as appropriate.

## **5 RECOMMENDATIONS**

- 5.1 Recommendations are set out on the front page of this report.

## **APPENDIX 1**

Authority produces an assessment of a proposed franchising scheme.



The authority obtains a report on its assessment from an independent audit organisation.



The authority consults on its proposed scheme, which includes both the assessment and audit report.



A report is prepared by the authority summarising the outcome of the consultation.



A decision is taken by the Mayor as to whether or not to introduce any proposed scheme.