

BARNSELEY METROPOLITAN BOROUGH COUNCIL

This matter is a Key Decision within the Council's definition and has been included in the relevant Forward Plan

REPORT OF THE EXECUTIVE DIRECTOR PLACE TO CABINET ON 23 FEBRUARY 2022

Assessment of Bus Franchising Option for South Yorkshire

1. PURPOSE OF REPORT

- 1.1** To update Members on the bus franchising option being explored by SYMCA and to request their support for SYMCA to issue the notice of intention to prepare a formal Assessment of a proposed franchising scheme in accordance with S.123C of the Transport Act 2000.
- 1.2** This notice must be published before the formal assessment can be prepared. Following issue of the notice, SYMCA will be able to require operators to provide certain relevant information about the local services they operate to help develop its assessment.

2. RECOMMENDATIONS

- 2.1** Cabinet is asked to recommend to the meeting of full Council on 24 February 2022, that the proposal for SYMCA to issue the notice of intention to prepare a formal Assessment of a proposed franchising scheme in accordance with S.123C of the Transport Act 2000 be supported; and
- 2.2** To request that the Council are granted a formal opportunity by SYMCA to influence and shape what the assessment considers, either specifically within the prescribed requirements or have "other matters" included.
- 2.3** That the Council reserves the right to formally withdraw from the process at any stage if appropriate funding solutions cannot be found.
- 2.4** To request that, in parallel, SYMCA carry out a detailed projected cost of the current Bus Partnership model over a three and five year period to help facilitate side-by-side comparisons with future franchise costs.

3. INTRODUCTION

- 3.1** Work has been ongoing with the SYMCA (which now includes SYPTE) to develop a bus service for Barnsley and South Yorkshire that will:
 - Keep the wheels of the regional economy moving. Well-designed bus networks can enhance people's access to employment and other opportunities, ensuring that the benefits of economic growth can be more fairly distributed.

- Help the transition towards a zero-carbon future. By reducing the need for individual car use, overall CO2 emissions are lower in places where public transport ridership is higher.
- Provide opportunities for people. In rural areas they can provide an essential lifeline. Everywhere, they connect communities and promote social interaction.

3.2 National Bus Strategy: Bus Back Better (March 2021)

The National Bus Strategy (NBS, launched in March 2021, required every local transport authority in England to develop a Bus Service Improvement Plan (BSIP) and implement this through either a statutory enhanced partnership plan and scheme or a franchising scheme.

The Bus Back Better Strategy also specified that in order that bus services would continue to receive recovery funding, SYMCA had to agree to “commit to” entering into an Enhanced Partnership by June 2021 and to prepare a BSIP and submit to the Department for Transport by the end of October 2021.

3.3 Enhanced Partnership and Bus Franchising Models

These two models operate as follows:

Enhanced Partnership

An EP is a non-compulsory agreement between willing operators and local transport authorities. It extends what existing Bus Quality Partnerships can cover (e.g. the colour of buses, frequencies on certain routes, multi-operator ticket pricing) and gives more flexibility.

An Enhanced Partnership is underpinned by an EP Plan (EPP) and Scheme (EPS). Together these documents form a legally binding agreement between SYMCA and local bus operators. The agreement should give SYMCA a way to deliver the actions set out in the SY Bus Service Improvement Plan (BSIP), subject to funding availability.

If bus operators running 75 per cent of local bus services support an EPS, the scheme is compulsory for other bus operators. Authorities also become the traffic commissioner, responsible for the registration of bus services.

Franchising.

Franchising, sometimes referred to as local control, gives combined authority mayors similar powers to the Mayor of London over buses. On-the-road competition ends and this is effectively a commissioning model. Mayors, working with their local cabinets, specify the bus service in their region — the routes, fares, frequencies and quality of bus services. This is based on data from operators on ridership and profitability of the existing network. Operators bid to run services in return for a fixed fee paid by the Combined authority. Fares are set and collected by the CA.

3.4 Bus Service Improvement Plan (October 2021)

The SY BSIP was submitted to DfT at the end of October, setting out our vision for South Yorkshire’s Bus system. It was a major contribution to the Mayoral Transport

Strategy's vision to "build a transport system that works for everyone, connecting people to the places they want to go within the city region....and will be safe, reliable, clean, green and affordable'.

3.5 Enhanced Bus Partnership (Nov 2021)

The BSIP formed the basis of the SY Enhanced Partnership. This was approved as a course of action by SYMCA on 15 Nov and by BMBC Cabinet on 17 November 2021.

A formal notice was issued to our bus operators to inform them of our intention to enter into a Statutory Enhanced Partnership and to consult them on our Enhanced Partnership Plan (EPP) and Scheme (EPS) in November.

The Plan and Scheme are statutory documents which require consultation by law under the Transport Act 2000, section 138F. To ensure the public's views continue to inform the development of bus services in South Yorkshire, SYMCA are seeking feedback on the Enhanced Partnership Plan and Scheme in a [public consultation](#) which is running from Friday 7 January until Sunday 20 February 2022.

3.6 Exploring options for Bus franchising

In the BSIP, the MCA also committed to undertake a review of potential future delivery models for the South Yorkshire bus network. In the Plan, it was made clear that, whilst the Enhanced Partnership that would follow from the submission of this initial BSIP was the first delivery model that would be employed, other models could be more appropriate, or necessary, in the future to achieve all that is required to transform bus travel in SY. The other future alternative option to the EP was the franchising model.

To explore the benefits of franchising versus the Enhanced Partnership model SYMCA commissioned DLA Piper to produce a report which analysed how each could deliver the 40 bus improvement measures mapped out in the BSIP.

3.7 DLA Piper Report

The DLA Piper report, commissioned by SYMCA, advised that, whilst in theory a Partnership can deliver the BSIP ambitions, the operators always have the right to object and veto any aspect that they do not agree with. The report stated that, in their view, a franchise gives the control to deliver what is required at a cost and with risks. Consideration of the DLA Piper report and its findings by the MCA board has led to the proposal from SYMCA below.

4. PROPOSAL AND JUSTIFICATION

4.1 The proposal from SYMCA is laid out in the report which went to the MCA Board on 24 January (Appendix B) setting out the process to formally assess bus franchising as an option to deliver the Bus Service Improvement Plan (BSIP). It requested that the constituent Local Authorities consider the matter ahead of an additional MCA meeting on 25 March to determine whether to issue the notice of intention to prepare an assessment of a proposed franchising scheme in accordance with S.123C of the Transport Act 2000.

4.2 The proposal from SYMCA to prepare an assessment of a proposed franchising scheme

will analyse whether a franchising scheme could deliver additional benefits over an Enhanced Partnership and the resources required to realise these benefits. This would enable the MCA (and its constituent local authorities) to make an informed decision on the best model for future governance of bus services in South Yorkshire (noting that getting to a point of implementing franchising could take 4 years at the very least and more likely considerably longer. It should also be noted that the franchising process can technically be stopped at each of the stages of the overall process.

4.3 The DLA Piper Report laid out the various steps, potential timescales and estimated costs that SYMCA would need to work through to make a bus franchise scheme.

It should be noted that the entire process could take anywhere between 4 and 10 years (with significant risks of delays making it likely that a four-year timeframe is not achievable or realistic)

Step 1 covers the DLA Piper Report already presented to MCA Board.

This report supports the recommendation to the Council that Step 2 be entered into, i.e. notice of Intention to proceed, which would lead to Step 3, the preparation of a formal assessment of a proposed bus franchising scheme.

Step	Likely timescale (likely range)	Cost (likely)	Notes
1 - Initial Technical, Legal and Financial Evaluation	6 months (3 -12 months)	£150,000	DLA Piper have already carried out this initial evaluation, the findings from which are reflected in this paper.
2 - Notice of Intention to Proceed	1 month	N/A	This notice must be published before the assessment referred to in Step 3 can be prepared. Following issue of the notice, SYMCA will be able to require operators to provide certain relevant information about the local services they operate to help develop its assessment.
3 - Prepare Assessment of Proposed Franchising Scheme	12 months (9 -24 months)	£2,500,000	<p>The 12 month estimated timescale is based on the assumption that SYMCA plan their approach to this as part of Step 1, and that information requests from operators can potentially be accelerated materially.</p> <p>There is now also Traffic Commissioner precedent for what information can be released, and much of the information required should now either be provided by operators anyway as open data or be</p>

			<p>information that operators had to provide for the purposes of CBSSG.</p> <p>The key constraint on this step will be modelling required for the economic and financial cases – if SYMCA need to build or significantly adapt new models for the purposes of producing the business case, then this will extend the timescale.</p>
4 - Independent Audit of the Proposed Franchising Scheme	4 months (3 - 9 months)	£400,000	This timescale relies upon work to procure the auditor being carried out so that they are in a position to commence when assessment is complete.
5 - Formal Consultation on the Proposed Franchising Scheme	3 months (3 – 6 months)	£250,000	Longer period would assume a need to reconsult on certain aspects of the assessment/scheme. Section 123E(4) of the Transport Act 2000 lists statutory consultees (see section 3.5(a)(iii) below). Although there is not strictly speaking a requirement to consult with all of the public under the statute, it is likely that given the potentially significant impact of a decision to franchise on the public (and in particular users of public transport) either the public will be included within the statutory consultation or a parallel public consultation will be run.
6 - Consideration of Consultation Responses and Mayoral Decision	3 months (1 – 12 months)	£350,000	This will be dependent upon level of consultation responses. This assumes that a full public consultation is carried out, rather than purely consultation with express statutory consultees.
7 - Making the Franchising Scheme	1 month	N/A	Assumed period to reflect need to align with approvals
8 - Mobilisation and Implementation planning	18 months (12 – 48 months)	£500,000	This makes some assumptions including that there will be only a 6-9 month mobilisation and planning period (6 month minimum required by law), and that SYMCA will be in a position to commence procurement shortly after the decision is made with only a couple of months to complete document development.

			<p>This will mean that most document development will either have been done, or can be done using SYMCA/SYPTE existing templates.</p> <p>Note that any decision to break the procurement process down into staggered tranches etc. to aid mobilisation and the development of a procurement plan will lengthen time until all franchised services introduced.</p>
TOTAL	<p>48 months (4 years)</p> <p>Range of 33 - 113 months (3.75 – 9.4 years)</p>	£4,150,000	

- 4.4** Note that these figures assume that SYMCA has the organisational structure to manage the transition to franchising at different stages (as will need to be set out in the commercial case under any assessment). To the extent that additional resource is required within the organisation to manage this (either during the assessment period, or once a scheme has been made), this will increase costs.
- 4.5** Given these potential increases, it is likely the total cost of assessing and consulting on the franchising model for South Yorkshire, including provision for inflation and contingency, would be in the region of c £5 million over the proposed period.
- 4.6** This £5m estimated cost would simply be incurred in doing the development work to implement franchising and does not cover the eventual running and operating costs of any future franchising scheme.
- 4.7** Of more significance, there are likely to be further substantial costs associated with moving to a franchising model including transition costs [costs of transitioning to a franchising delivery model over a 5 or more year period], planned improvements to bus services / infrastructure which are currently unfunded and significant additional costs associated with maintaining existing bus services as a consequence of declining patronage and other factors.
- 4.8** Based on figures from the Transport for Greater Manchester [TfGM] franchising scheme and other local estimates these costs could be in the region of £200+ million over the period of the development / transition phases. These would have potentially huge consequences for the Council's budgets, council tax levels and services moving forwards [see the financial implications at Section 7 and the summary provided at paragraphs 7.11 to 7.13.

- 4.9** Currently Greater Manchester MCA are dealing with a legal challenge to franchising from the bus operators. This Judicial Review in the High Court has come about from bus operators Stagecoach and Rotala claiming that GMCA was 'unlawful' in relying on an assessment of the 'cataclysmic' impact of Covid-19 on its bus franchising proposals. While the costs of JR are not currently known, they will be substantial and in addition to the costs of assessing and delivering a bus franchising scheme
- 4.10** From a legal perspective, SYMCA may decide not to pursue the introduction of a franchising scheme at any point up until Step 7, when the Combined Authority would decide to make the franchising scheme and it is published. If SYMCA did not want to implement the franchising scheme after Step 7, the scheme would need to be revoked in accordance with the legislation provided that the statutory requirements for revocation were met.
- 4.11** Section 123N(2) of the Transport Act 2000 states: "(2) The authority or authorities may revoke the scheme only if they are satisfied that— (a) local services in the area to which the scheme relates are likely to be better if the scheme did not apply, (b) the continued operation of the scheme is likely to cause financial difficulties for the authority or any of the authorities, or (c) the burdens of continuing with the scheme are likely to outweigh the benefits of doing so."
- 4.12** Should Cabinet agree to support the proposal from SYMCA to commission an assessment of the Bus Franchising operating model (per recommendation 2.1) the MCA will need to undertake extensive financial modelling and risk analysis activities as part of that assessment. This will need to include wider consideration/modelling of what that is likely to mean in terms of impact on the four constituent SY Local Authorities.
- 4.13** It should also be noted that all the extra costs that are set out above are only to provide the existing service and that any service improvements will require significant additional funding. The funding of the Bus Service Improvement Plan and subsequent failed bid to the Levelling Up fund will be considerable (LU bid was valued at £50Million to simply improve existing infrastructure and significantly more would be required to develop a fit-for-purpose infrastructure. This will be the case for either scenario – Enhanced Partnership or franchising. Both require significant investment to deliver the bus network and improvements required.

Further reports will be submitted to Cabinet to explore and evaluate these impacts should the proposal to commence the assessment of the franchising proposal be approved.

5. CONSIDERATION OF ALTERNATIVE APPROACHES

- 5.1** The following alternative approaches have been considered:

Do nothing: The NBS effectively removed the choice of either retaining the status quo/doing nothing and forced the hands of Combined authority to adopt either the EP or the bus franchising route.

Retain the EBP and not explore franchising as an option: The EP has already been set up and will run the buses from April 2022 onwards. However, towards the

end of 2021, DfT advised SYMCA that the national BSIP funding available (to replace Covid Bus Service Support grant SSG) would be much less sizeable than originally suggested. This would have an impact on the viability of delivering the key measures mapped out in the BSIP. In November, the Spending Review informed SYMCA that the Levelling Up Fund bid (totalling £50 million) to support Bus Infrastructure improvements bid was not successful. This led to significant and late revisions in the early delivery commitments under the BSIP. It is likely that SYMCA will resubmit the BSIP improvements scheme under Levelling Up Round 2, should it be announced in budget process in March 2022. The BP will continue to operate from April 2022 onwards.

Further explore the franchising option: This proposal enables the MCA and Local authorities to gather detailed information and analysis on the benefits and disadvantages of a franchising model, as well as understanding the full financial and legal implications of the model. The preparation of a franchising assessment will determine whether the full suite of benefits in the BSIP can be delivered through a franchising model and will also model the costs. It is essential to consider this as an alternative to the BP model which will operate from April 2022.

6. IMPLICATIONS FOR LOCAL PEOPLE/SERVICE USERS

6.1 The vision for the bus network in SY was mapped out in the BSIP and would mean a transport network which would:

- Meeting the customers' fundamental transport needs
- Providing a reliable and attractive alternative to the car
- Offering value for money
- Supporting inclusive and sustainable economic growth
- Being accessible, integrated, simple and efficient
- Leading to a Net Zero system
- Using technology and data to improve connectivity, quality, and resilience
- Positively attitudes towards
- Grow patronage a financially and stable Learn Give buses Mechanism to achieve it

6.2 The BSIP also mapped out 40 measures required to deliver the vision for bus travel in South Yorkshire to ensure buses work for local places and people.

Potential Benefits if the BSIP was to be delivered would be:

- Greater stability of the bus network;
- Better transport connectivity, especially to rural and employment areas;
- Greater accessibility for disabled, young people, apprentices and the elderly;
- Less congestion on highway;
- Improved punctuality and reliability of services, with better frequencies;
- Improved and simplified Passenger Information;
- Expansion of the Travel Master Ticket;
- More Low Emission Buses;
- Maximum Fares for given routes or services.

- 6.3** It should be noted that most of the 40 measures within the BSIP can be delivered through an Enhanced Partnership, without the need for Franchising. The DLA Piper report highlighted the 40 measures and RAG-rated them to determine which would be capable of implementation under each model in order to compare them. Eight of the measures for the Enhanced Partnership are rated yellow where there are minor deliverability concerns; 6 are rated Amber; where elements of the activity can be delivered but there is a material risk of non-delivery of elements of the activity. It should be noted that there are no red ratings.
- 6.4** The DLA Piper report also states “The key point to note that there are none of the BSIP Prioritised Activities which we believe are wholly unable to be implemented under either option. However, there are several areas where partnership does not deliver as much and/or have as much certainty of delivery as franchising, and only limited areas where franchising would not be capable of delivering the BSIP with greater certainty.”

“The ability of franchising to be able to deliver more BSIP Prioritised Activities and/or deliver them better, needs to be balanced against the extent to which such delivery could be delayed or paused by legal challenge risk, as well as the long timescale for initial implementation which arises from the statutory process that is required to be followed”

7. FINANCIAL IMPLICATIONS

- 7.1** Consultations have taken place with representatives of the Service Director – Finance (S151 Officer).
- 7.2** There are no direct financial asks of the Council arising from the specific recommendations included in this report – with the estimated £5M cost of developing a bus franchising model / undertaking a formal assessment to be funded by the MCA.
- 7.3** The detailed assessment will identify the potential short and long-term financial implications for the MCA / constituent authorities of moving to a bus franchising model [as compared to maintaining an Enhanced Bus Partnership].
- 7.4** However, Members should be aware that within the current context of bus service operations across South Yorkshire [e.g., declining patronage at al] and the basic principle that both control and risk of running bus services will transfer to the MCA under a franchising model, then it follows that there is a significantly increased financial risk to both the MCA / constituent authorities of doing so.
- 7.5** The not insignificant financial risk is summarised at paragraphs 7.10 to 7.12 with further background and context provided below.

Context

- 7.6** The Council currently pays the MCA a transport levy of £9.5M per annum [including an amount to pay for bus tendered services [commercially unviable routes].
- 7.7** There is an expectation that regardless of the adoption of a franchising model that the levy will need to increase in future years to address current and ongoing issues in delivering bus services:

- Likely reduction / ending of Government financial support to address operator revenue shortfalls due to the impact of COVID.
- Uncertainty as to whether passenger numbers will recover to pre-pandemic levels and the long-term impact of declining patronage on the financial viability of routes / services.
- Insufficient CRSTS / BSIP funding allocations to improve bus services.
- Significant cost inflation pressures within the bus system (salaries, fuel, fare rises, etc).
- Problems in maintaining current levels of service provision, noting that local operators are currently expressing their intent to begin rationalising existing services.

7.8 Indeed, if there is no continuation of Government financial support in the current financial year, it is likely that the MCA will need to provide additional financial assistance [perhaps in the region of £25 Million + in the next financial year], to prevent a widespread diminution in bus services across South Yorkshire.

Franchising Option

7.9 Under a franchising scheme, overall control, and balance of financial risk for bus services will transfer to the MCA [constituent authorities]. This is particularly important within the context of the current risks and issues facing bus services as outlined at paragraph 7.7.

7.10 Once complete the detailed assessment will set out the key cost and financial risks to the MCA of moving to a bus franchising model. In the meantime, the key areas of risk are as follows:

i) Scheme Development costs

The cost of developing a franchising model is estimated at £5M and will be funded from resources set aside within the MCA's financial plans. There is no immediate cost implication for the Council, although any escalation in that cost could result in a funding ask from district councils and / or more likely the opportunity cost foregone of diverting additional MCA resources from other investment opportunities.

ii) Transition Phase

Franchising models are complex, can take several years to develop and consequently may involve significant costs to transition from existing delivery models.

For example, implementing a franchising model at Transport for Greater Manchester involved costs of £134M+ to support their transition activities, including a £17.8M contribution from their 10 constituent local authorities.

Any transition costs will be determined by the detailed assessment of the model proposed for South Yorkshire, though it is possible that this will create a significant cost implication for the MCA / constituent authorities [see paragraph 7.11 – 7.13].

iii) Scheme Delivery

Under a franchising model routes, route frequencies, and the setting of fares become the responsibility of the MCA. Therefore, the ability of the scheme to raise sufficient farebox income to pay for commissioned services becomes a direct financial risk to the MCA.

Under a franchising scheme, shortfalls in farebox income and the potential impact on bus services would need to be addressed by the MCA from a combination of:

- a possible reduction in the size of the network / service frequency – which effectively means that any such decisions rest with the MCA / elected representatives rather than with commercial operators.
- Increased fares – again, this would effectively be a decision of the MCA rather than commercial operators.
- Increasing the level of public subsidy to operators to maintain services – would become an increased financial risk to the MCA and, within the context of declining patronage and other issues, could lead to significant additional financial pressure for the MCA / constituent authorities in the future.

iv) Capital Infrastructure Improvements / Bus Services Improvement Plan

The Bus Service Improvement Plan included over 40 measures to improve bus services / infrastructure across South Yorkshire with the initial programme of work estimated to cost circa £56 Million, this being the subject of an unsuccessful Levelling Up Fund bid:

<u>Programme Area</u>	Base Cost (£000's, Q1 2021 prices)
	£M
Travel Corridor Enhancement Programme	£22.8
Passenger Journey Improvement Programme	£29.1
Sustainable Transport Programme	£3.9
TOTAL	£55.8

Summary: Overall Financial Risk and Funding Issues

- 7.11 The following table outlines the scale of the potential financial implications of moving to a franchising model [based on estimates from TfGM / elsewhere and used in advance of more precise costs which will be determined as part of the detailed assessment stage]:

Step	Est. Rev Cost (£M)	Est. Cap Cost (£M)	Notes
Scheme Development	£5M	n/a	Estimated cost of developing a franchising model [to be funded from MCA earmarked reserves]
Transition Costs	* £134M	<i>NB: capital costs included within the overall £134M.</i>	* Estimate based on Transport for Greater Manchester to cover all revenue & capital expenditure, for example, [a] operating surplus / deficit over the 5-year transition period [b] risk provision [c] assets [including depots and other company assets] [d] implementation and technology e.g., bus equipment & branding, electronic ticket machines and operational staffing / transition team resources.
Bus Service Improvements / Capital Infrastructure		£56M	Initial phase of infrastructure improvement measures [does not provide for the full investment required to cover the cost of all 40 improvement measures].
Maintaining Existing Service Delivery	£25M+		Based on estimate of current funding shortfall to maintain existing services in 22/23.
TOTAL	£184M	£56M	

- 7.12 Funding for the above broad estimate of cost would need to be identified and, in the absence of a devo deal along the lines of the one seen in TfGM, is likely to have far reaching consequences for both the MCA and SY councils.

7.13 The funding shortfall would need to be met from a combination of:

Potential Funding Source	Possible impact on MCA	Possible impact on SY councils	Notes
<u>MCA</u>			
Mayoral Precept / Tax	Income to be raised via the levying of a new South Yorkshire wide council tax precept.	None directly though would likely be a significant increase in local Council Tax Bills – which could impact local collection rates.	
Increasing fares	Potentially increased income subject to demand forecasts.	None directly though social and economic impact of increased local fares.	
Reductions in Bus Services	Possible cost savings but social, economic, and reputational impact.	Social, economic, and reputational impact.	Reduction in routes, frequency, services, planned improvements.
Diverting other MCA resources	Reduction in resource to meet other MCA / district priorities	Reduction in resource to meet other council priorities.	
<u>DISTRICTS</u>			
Increased PTE Levy / Council Contributions	Income from additional contributions from District Councils	Likely impact: <ol style="list-style-type: none"> 1. Significant increase in PTE levy / local contributions 2. Local Council Tax rises 3. Cuts to local services 4. Reduction in reserves 5. Combination of above. 	In the absence of a TfGM devo deal there is the potential for a significant additional ask from SY councils e.g., £78 million of the £134m transition costs in TfGM came from the devo deal [£18m came from constituent authorities during the transition phase].

8. EMPLOYEE IMPLICATIONS

8.1 There are no direct employee implications from this proposal

9. LEGAL IMPLICATIONS

- 9.1 Section 123B requires the authority (in this case SYMCA) that proposes to make a franchising scheme covering the whole or any part of their area to prepare an assessment of the proposed scheme. Before it can undertake an assessment that authority must publish, in such manner as they consider appropriate, a notice stating that they intend to prepare such an assessment. In undertaking the assessment, the authority would have to comply with the provisions of s.123B and any statutory guidance issued.
- 9.2 If the Council does agree to support SYMCA in preparing an assessment under s123B that assessment must look at several prescribed matters, but other matters can also be included (see s123b extract below):

Section 123B...

(2) The assessment must—

- (a) describe the effects that the proposed scheme is likely to produce, and
- (b) compare making the proposed scheme to one or more other courses of action.

(3) The assessment must also include consideration of—

- (a) whether the proposed scheme would contribute to the implementation of—
 - (i) the authority's or authorities' policies under [section 108\(1\)\(a\)](#), [i.e. [local transport plan](#)] and
 - (ii) other policies affecting local services that the authority or authorities have adopted and published,
- (b) whether the proposed scheme would contribute to the implementation by neighbouring relevant local authorities of—
 - (i) those authorities' policies under [section 108\(1\)\(a\)](#), and
 - (ii) other policies affecting local services that those authorities have adopted and published,
- (c) how the authority or authorities would make and operate the proposed scheme,
- (d) whether the authority or authorities would be able to afford to make and operate the scheme,
- (e) whether the proposed scheme would represent value for money, and
- (f) the extent to which the authority or authorities are likely to be able to secure that local services are operated under local service contracts.

(4) Subsections (2) and (3) do not prevent inclusion of other matters.

- 9.3 Should the Council agree to SYMCA preparing an assessment under s123B, it is recommended that the Council have the opportunity to influence what the assessment considers, either specifically within the prescribed requirements or have “other matters” included. Recommendation 2.3 requests of SYMCA that BRNSLEY Council be formally consulted on the scope and terms of the assessment.
- 9.4 The initial proposal from SYMCA is for the formal assessment process to start by serving the legal notice under section 123C of the Transport act 2000. This does not categorically commit the Council/mayoral authority to a franchise model, only the first stage - formal assessment of the franchise model for South Yorkshire’s BSIP. The costs (and time) of the formal assessment would be saved if a decision not to proceed was taken at this stage. However, proceeding to undertake a formal assessment would give a greater detail about the costs and benefits as a whole which would make for a more informed decision on the impacts for Barnsley, including any legal impacts. if SYMCA do proceed the franchise model could still be ruled out at various later points in the process e.g., once the assessment report has been considered.
- 9.5 The proposed timescales seem potentially optimistic. GM first resolved to serve the assessment notice (what the Council is being asked to do in this report) in June 2017. It announced the decision to franchise this year and expects its first services to start in 2023 and be fully operational in 2024/5. This doesn’t take into account any further delay that may arise following the outcome of the current judicial review court proceedings.
- 9.6 There is a greater risk of legal challenge with a decision to franchise since bus contracts whose terms may be dictated by SYMCA in a franchise model may be more unfavourable to operators than the enhanced partnership model, where plans have to be agreed with certain percentages of operators – there may be a greater incentive for operators to challenge. The GM decision to franchise is currently the subject of a judicial review. This may increase costs, delay, and certainty of delivery
- 9.7 Given that SYMCA have committed to a statutory Enhanced Partnership in their decision in November 2021 there does not appear to be a risk to funding if a decision to start the franchise assessment process is delayed for further consideration. Nor does there appear to be a legal imperative to make the decision to start the formal assessment in the timescale the MCA has set.
- 9.8 It is recommended that the Council takes its own independent detailed legal advice on the initial assessment made by DLA Piper and the consequent proposal to franchise. Should this recommendation be adopted, it is suggested that external lawyers should be procured for this work since public transport is not an area the Council’s legal services have expertise in
- 9.9 To ensure any legal advice is focused, it would be important to identify in the Brief the particular areas of concern and objectives for the council. E.g., are there particular priorities for the Council amongst the BSIP priorities; are we most concerned about speed of implementation, flexibility to change terms according to market /policy changes, reducing costs to the authority SYMCA to maximise gainshare; effect on Glassworks and town centre; potential impacts on principal

towns; level of control over buses; legal and commercial risks and consequences of failure of franchise; decision making processes.

10. CUSTOMER AND DIGITAL IMPLICATIONS

- 10.1 The BSIP has been drafted to map out how bus services to customers across SY could be improved and enhanced. This assessment will begin a process to determine how these improvements can be best delivered – either through the Enhanced partnership or the franchising model. Customers need to be at the heart of this assessment.
- 10.2 Should a Smart Ticketing option be introduced either through BP or Franchise model, this would require new hard and soft digital infrastructure. This would need to be funded by SYMCA and the bus operators themselves.

11. COMMUNICATIONS IMPLICATIONS

- 11.1 Bus franchising is a significant political issue for Mayoral Combined authorities and is a subject of political debate and lobbying in the Mayoral election on 5 May 2022. To take the decision to make a franchise involves a complex set of considerations and the purpose of the assessment will not be universally understood by the public, so a carefully measured communications plan would need to be developed around this with the SYMCA, with an eye to the wider political environment in South Yorkshire. This has been flagged with our Communications team and initial discussions around the handling of this have commenced.

12. CONSULTATIONS

- 12.1 No consultations are proposed at this stage.
- 12.2 If a decision is made to audit the franchising assessment and make a Franchising Scheme, there will be a period of public consultation in late 2023 or early 2024 following a period of statutory consultation with bus operators, which will require the support of the SYMCA and Local authority Communication and Marketing teams.

Further resource would be required by SYMCA to support the public consultation phase of the activity to drive engagement and participation

13. THE CORPORATE PLAN AND THE COUNCIL'S PERFORMANCE MANAGEMENT FRAMEWORK

- 13.1 The commissioning of this assessment would potentially move South Yorkshire towards an improved bus service with better connectivity between our principal towns, town centre and the cities of Leeds and Sheffield. If franchising were determined to be the suitable delivery model, a well-managed scheme could contribute to Barnsley being a 'place of possibilities', support our Barnsley 2030 vision and a more equitable and inclusive economy, giving more people access to opportunities across the borough and in the region.

As there are seven steps in the franchising process and it can be halted at any of the stages, it is unlikely that the process would be completed within the timeframe of the current corporate plan, so the Council would need to adopt a long-term view of

this process. However, an excellent bus service and improved, affordable connectivity would support our key outcomes for B2030, including:

Healthy Barnsley:

- People can access the right support, at the right time and place and are able to tackle problems early.

Learning Barnsley:

- Children and young people aim high and achieve their full potential with improved educational achievement and attainment.
- Everyone has the opportunity to create wider social connections and enjoy cultural experiences.
- Lifelong learning is promoted and encouraged, with an increase in opportunities that will enable people get into, progress at and stay in work.
- Everyone fulfils their learning potential, with more people completing higher-level skills studies than ever before.

Growing Barnsley:

- Local businesses are thriving through early-stage support and opportunities to grow.

Barnsley is known as a great place to invest, where businesses and organisations provide diverse and secure employment opportunities, contributing to an economy that benefits everyone.

Sustainable Barnsley:

- People live in sustainable communities with reduced carbon emissions and increased access to affordable and sustainable energy sources.
- People can get around in Barnsley easier than ever, with an increase in cycle routes and better connections across the borough

14. PROMOTING EQUALITY, DIVERSITY AND SOCIAL INCLUSION

- 14.1 A full EIA would need to be carried out as part of the Franchise assessment process. However, a well-designed affordable bus network and infrastructure across the borough would likely begin to address geographical exclusion and transport poverty.

15. TACKLING THE IMPACT OF POVERTY

- 15.1 Improved bus services would enable SYMCA to tackle transport poverty. This proposed assessment will enable the SYMCA to explore the optimal operating model to do this and the potential impacts on Barnsley.

16. TACKLING HEALTH INEQUALITIES

- 16.1 Improved bus services would have a positive impact on health inequalities. A full Health Impact Assessment would be required as part of the franchising Assessment

17. REDUCTION OF CRIME AND DISORDER

- 17.1 A well-managed bus service and bus infrastructure is essential to maintaining safe bus routes and travel for residents. The SYMCA assessment will go some way to

determining whether the Bus Service Improvement Plans proposed 40 improvement measures can be best delivered.

18. RISK MANAGEMENT ISSUES

18.1 Key risks attached to a bus franchising scheme are as follows:

- **Duration:** Any decision taken to enter into franchising is subject to a 'Five stage' Green Book assessment process which can take a significant period of time. In GM the proposed timescale was 3 years which was accelerated by the Mayor to 2 years, which many feel is not deliverable in the timescale. The delivery timescale for London was 9 years, although the complexity and scale of the network was a contributory factor in this instance.

- **Initial Implementation timescale:**

One of the key risks associated with franchising relate to the initial implementation of a franchising scheme. The DLA Piper report spells this out as follows:

"In particular, the statutory process required to make a franchising scheme, and the timescales then required to implement franchise contracts means that initial delivery of benefits under franchising scheme will take a number of years, and during this period the MCA would be dependent upon its existing partnerships to deliver benefits. The risk of transition continues through the introduction of franchising, and how this risk is managed may affect the outcomes. Finally, once in a franchise scheme, formal variation processes apply to services which means that whilst overall the MCA will have greater control over services, there may not be the same flexibility over more rapid service changes due to the need to follow consultation processes to effect change. Provided that this is implemented effectively however, this may be aligned with the BSIP requirements, in particular around limiting change."...

"Any decision to introduce franchising will therefore need to take into account how to manage the transition period both in terms of cost and service impact, and whether the benefits of the end state in terms of more effective and certain delivery of a number of requirements of the BSIP outweigh the immediate implementation risks."...

- **Delay:**

There is the possibility that bus operators can challenge decisions taken around franchising via requesting a Judicial Review. The Mayor of Greater Manchester with his cabinet approved a franchising scheme for Greater Manchester in March 2021, but Bus operators Stagecoach and Rotala are challenging the decision-making behind the £134.5m scheme in a judicial review hearing at the High Court. The bus companies claim the GMCA 'conducted an unlawful process and a flawed consultation' which failed to properly account for 'fundamental changes' brought about by the pandemic. The outcome of this JR is yet to be determined and has inevitably caused a delay in the process.

- **Transfer of Risk:**

An overarching risk to the MCA in pursuing franchising is the revenue risk transfer from commercial operators to the public sector. For example, if it is not possible to grow patronage or reduce operating costs to make the system sustainable, decisions

around changes in the level of service provision and associated policies become those of the MCA Board.

- **Continued decline of Bus Patronage and Super Tram:**

There is also a risk that as the bus market and Super Tram patronage continues to decline during the statutory process and transition period, which could mean that the subsidy cost at the point of making the franchising scheme is higher than anticipated at the start of the statutory process.

- **Political Risk:**

Given that any significant changes to the operation of the network are decided through a formal process via the SYMCA under a franchising model, this effectively makes Local Authority Leaders responsible for any changes to the network. Given the unpredictability of bus patronage in the next three years post-pandemic, it is possible that unpalatable decisions (such as reduction in bus routes, increase in parking charges to discourage car use, increase in Council Tax) may need to be made around local bus provision exposing political leaders to political fallout from local residents.

18.2 It could be argued that carrying out a full Assessment of the viability of Bus franchising for South Yorkshire would enable BMBC to have a full overview of the full range of risks and mitigations if Bus Franchising were to be adopted.

18.3 The 'Five-Stage' process for franchising would also support a measured approach to Risk

18.4 The Council would also develop its own Risk Register for franchising, which would detail all risks and mitigations for the Council

19. HEALTH, SAFETY AND EMERGENCY RESILIENCE ISSUES

19.1 Connectivity between people and places supports positive mental health and wellbeing, so the outcome of the assessment could potentially have an impact on health inequalities. A full Health Impacts Assessment would need to be carried out on both the EP and Franchising models by SYMCA, with due regard to the Health and Wellbeing strategies of the constituent local authorities.

20. COMPATIBILITY WITH THE EUROPEAN CONVENTION ON HUMAN RIGHTS

20.1 Not applicable in this instance

21. CONSERVATION OF BIODIVERSITY

21.1 The use of electric buses in the fleet as laid out in the BSIP would have a positive impact on air quality and increase biodiversity levels across the Borough

22. GLOSSARY

Not applicable

23. LIST OF APPENDICES

Appendix A: Transition example to Bus franchising - costs

Appendix B: SYMCA paper presented to MCA Board 24 Jan 2022

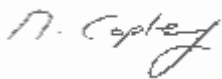
24. BACKGROUND PAPERS

- Timeline for Bus Improvements in South Yorkshire
- DLA Piper report (currently confidential)
- South Yorkshire Bus Review, 2020
- 'Bus Even Better' National Bus Strategy, March 2021
- South Yorkshire Route Analysis report (Mott Mc Donald), Summer 2021
- Bus Improvement Plan for South Yorkshire, October 2021
- Enhanced Bus Partnership Plan, Nov 2021
- Enhanced Bus Partnership Scheme, Nov 2021
- Bus Service Improvement Plan paper approved by Cabinet, 25 November 2021
- DfT refreshed Guidance to Enhanced Bus Partnership -
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1002507/national-bus-strategy.pdf

If you would like to inspect background papers for this report, please email governance@barnsley.gov.uk so that appropriate arrangements can be made

Report author: Kathy McArdle, Service Director Regeneration and Culture

Financial Implications/Consultation



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(To be signed by senior Financial Services officer
where no financial implications)