

## LOCAL BUS SERVICES IN SCOTLAND - IMPROVING THE FRAMEWORK FOR DELIVERY: CONSULTATION

### Response by Chartered Institution of Highways & Transportation, Scottish Policy Forum

The Chartered Institution of Highways and Transportation (“CIHT”) is a membership organisation representing over 14,000 people who work in the highways and transportation sector. CIHT members plan, design, build, operate and maintain best-in-class transport systems and infrastructure, whilst respecting the imperatives improving safety, ensuring economic competitiveness and minimising environmental impact.

CIHT Scotland embraces both public and private sectors across the whole geography of the nation and welcomes the opportunity to comment on this consultation which seeks views on practical aspects to improve bus services in Scotland, and thus to increase their use.

We welcome the opportunity to respond and offer our comments on each of the questions below.

## CONSULTATION QUESTIONS

### Partnerships

#### **1. Do you think that legislation (either via the existing sQP model or another) is required to secure the benefits of partnership working?**

There is evidence that voluntary and statutory quality partnerships have in some cases delivered improved bus services and patronage growth (see for example Wallis and van de Velde, 2013). However, successful partnership working – whether in a statutory or voluntary context – will occur when there is a benefit to both parties that outweighs the disbenefits and not because there happens to be enabling legislation and in this respect the question is slightly wrongly framed. For local transport authorities there is almost always a benefit to partnership working, since in the current regulatory framework they have almost no control over local bus services, and partnership working may give them some influence. For local bus operators, normally part of large multinational companies, the benefits are less clear; they are asked to invest in improved vehicles, staff training and so on that come at a cost and these possible investments are weighed against other competing priorities at group or company level. Resources are then allocated where the company judges there to be the greatest potential for growth, and the least risk that the publicly

delivered parts of the partnership will not be delivered. Thus partnership working is not the result of the existence of legislation but primarily the result of profit-motivated decisions by operators about where best to invest for maximum return and for least risk. Thus there is a great danger that new enabling legislation on a new kind of partnership working (essentially, it seems, akin to a sQP but without the requirement on the transport authority to invest in infrastructure) will also go relatively un-used.

Operators will however be more keen to enter into partnership where there is a threat that the current regulatory framework will change – this is a major reason why National Express West Midlands have entered into a stronger and stronger partnership with transport authorities there, unlike their subsidiary in Dundee (see Hrelja, Rye and Mullen, 2017). They do so because they do not want to lose a deregulated market as it gives them a higher level of profitability than a franchised model (in this respect it is unfortunate that the consultation paper does not include profit margins for operators in franchised markets, but is the case that profit margins in Denmark, Sweden, Norway and London (all franchised markets) are considerably lower than the 8.6% enjoyed by Scottish operators last year, which was itself a low one historically).

In summary it is mistaken to believe that partnership working failing to happen is primarily a result of the enabling legislation. It is a product of a major difference in the incentives for operators and authorities to involve themselves in partnerships and enabling legislation will not alter this substantially; it is the regulatory situation that will (and for this reason we welcome the proposal for the legal possibility of franchising).

## **2. Do you feel that statutory Quality Partnerships as defined in the Transport (Scotland) Act 2001 provide the right framework for partnership working?**

No.

## **3. Do you agree with our proposals for Service Improvement Partnerships as outlined in pages 32-35?**

We agree with many of the objectives that Service Improvement Partnerships aim to achieve including the flexibility on what the transport authority is required to implement and extending the range of standards beyond that included in the sQP to include service frequency and maximum fare levels. However, we do not necessarily feel that the absence of these positive steps was the reason for the failure to date to establish sQPs. English legislation on SQPs underwent similar changes via the 2008 Local Transport Act, but there has been little increase in partnership working since (see Rye and Wretstrand, 2014). In particular we are aware of only one English SQ partnership which has regulated fare levels, and one or two which have regulated frequencies. The reasons are as outlined in our response to Q1.

SIPs could be made more common if any bus operator which operates a number or frequency of commercial services above a specific threshold were required to sign up to one, but it is still not clear from the consultation what exactly is the status of an Improvement Scheme once formally “made” and what recourse there would be available and through what channels for any party signed up to the Improvement Scheme should one or more parties default.

**4. If a new form of statutory Partnership is introduced, do you agree that statutory Quality Partnerships as defined in the Transport (Scotland) Act 2001 should be replaced (i.e. they would no longer be available as a tool for LTAs)?**

Yes. Rather than add to the legislative framework, CIHT would support the replacement of sQP with a more comprehensive and flexible approach provided that the proposed Improvement Plans address some of the issues raised above.

### **Local Franchising**

**5. Do you think that local authorities should have the power to franchise bus services (either via Quality Contract or another system)?**

Yes, it is essential that transport authorities have this power for the following reasons:

- It will increase competition in areas where there is currently a monopoly private operator.
- It will ensure that the public money that goes into bus services, currently around half of total operator revenue, can be spent in a way that directly supports public objectives.
- It will ensure that a smaller proportion of this public money goes into operators' currently excess profits (as defined and quantified by the Competition Commission 2011 report).
- It will make it easier to deliver other outcomes such as clean vehicles and integrated ticketing since these aspects can be specified in contracts.
- It does not have to be more expensive on a public spending per passenger basis than the current deregulated model, as shown by a recent comparison with Scandinavian data (UTG, 2017).
- As noted in Q1, even if franchising is not used, the threat of it will act as an incentive to operators to engage more actively in partnership working.

**6. Do you think that the existing Quality Contracts require change to make franchising a more viable option?**

Yes. See answer to previous question. The current QC legislation needs to be replaced.

**7. Considering the information on our proposal on pages 38-42:**

**7a. Do you think that there should be any consent mechanism for an authority to begin the process of assessment for franchising?**

No. An authority should have the authority to begin this process if it sees fit.

**7b. Do you think that there should be a requirement for independent audit of the business case for franchising?**

An audit is desirable but there is a difficulty in making it independent. Consultants retained by the transport authority would be working for a client that wanted franchising; consultants retained by the operators or CPT, for one that did not. The position of the Traffic Commissioner is unclear. A

possible solution could be for both sides to pay for an audit and for auditors to be selected from a pool from outwith the UK, since the bus industry within the UK is a small one with many interconnections.

A much larger issue is that of access to data. It is extremely difficult for a transport authority to build a sound business case (and for an auditor to assess it) if it does not have access to data on the existing market. This data is in the hands of private operators who will almost certainly oppose franchising, for reasons as outlined in Q1. The inability of Nexus to obtain actual market data from operators was a key cause of the weakness in its business case for a Quality Contract in Tyne and Wear and thus ultimately of the failure of its attempt (McTigue, 2018). Thus the legislation should require operators to provide this data to an independent third party (see above) who can anonymise it and pass it to the transport authority so that it can construct a sound business case.

**7c. Do you think that there should be an approval process beyond that of the local authority itself, before franchising can take place? Including (if yes) what kind of approval process?**

If a transport authority decides to take up franchising, it is taking a financial risk and a risk that the service provided will be substandard, compared to the current situation. However, transport authorities take many similar decisions on major investments, prudential borrowing and provision of equally significant services without the necessity of approval by any organisation beyond the authority itself. The same should be the case for franchising. Moreover, other European countries operate franchising for local bus services and the decisions on the award of contracts are taken at the transport authority level and not referred upwards.

### **Transport Authority Run Bus Services**

**8a. Do you think that transport authorities (including ‘model III’ RTPs) should be able to directly run bus services?**

A transport authority should be able to directly operate bus services. The method each authority chooses to manage this will be subject to their own circumstances and advice and therefore an arm’s length option may be appropriate. On the point that only Model III RTPs could play a role in this we would be inclined to a view that this is overly prescriptive. Model I and II RTPs can offer a framework that could enable cross-boundary service operation by a directly operated bus service enabling operation by a bus operation owned by one local authority to operate in another local authority area where the two local authorities are within the same RTP area. This could be a useful mechanism and highlights the “light touch” opportunity RTPs offer for greater regional collaboration on the delivery of transport services which retains local accountability and good governance.

**8b. Please describe the circumstances in which this might be appropriate:**

A transport authority PSV operator should be able to tender for any socially necessary local bus service sought by the relevant body. It should also be able to provide a service directly in areas where there is no commercial alternative or likelihood of one being provided.

**8c. What, if any, safeguards do you think should be put in place to ensure that no operator has an unfair advantage in a deregulated market?**

If submitting a tender in a competitive process against the commercial sector, the transport authority operator should be required to provide full and transparent costings which could be subject to scrutiny to ensure there is no unfair advantage gained from its public sector status.

**9a. Do you think that transport authorities (including ‘model III’ RTPs) should be able to set up arm’s length bus companies to operate local bus services?**

See response to Q8(a).

**9b. Please describe the circumstances in which this might be appropriate:**

See response to Q8(b).

**9c. What if any safeguards do you think should be put in place to ensure that no operator has an unfair advantage in a deregulated market?**

See response to Q8(c).

**9d. What, if any, checks and balances do you think should be put in place for a transport authority looking to set up an arms’ length company to run buses? Please explain your answer to this question.**

To initiate the establishment of a “bus company”, each authority will require to present a business case through its own governance structure to ensure it is the preferred option to address the needs in its area. This business case must have a clear and transparent rationale that is fully auditable to ensure that the preferred option is value for money and meets the various legislative requirements. A key requirement is that the company must not be permitted to receive direct operating subsidy from the public authority.

### **Open Data**

**10. Do you agree with our proposals to require the operators of local services to release open data on routes, timetables, punctuality and fares in a specified format?**

Yes. Access to accurate and current information is essential for all users of the public transport network. Usage levels will only increase if this data is freely available and of a quality that can be trusted. Delivery of information through new technology will continue to develop at speed and will rely on open data sources.

Currently operators only need to submit paper registrations of their routes and are not obliged to use NAPTAN codes for their timetable stops and the route information supplied is invariably either absent or of a quality where it is impossible for anyone without detailed knowledge of the service to ascertain how and where it operates. If we are serious about improving the level of information available to the public these basic elements need to be addressed. CIHT proposes that either it becomes incumbent on every registration to be submitted electronically using a common database or format such as EBSR. If the operator is unable to do this then they should have to make allowance for this service to be provided by either the local authority or Regional Transport Partnership. Basic timetable and route information should only be entered once (and once only) and it should be the responsibility of the operator to ensure that it is correct. Re-entry of this

information and errors in its undertaking are the primary reason for the poor quality of information being provided to the public.

**11a. Do you think that data provided by operators should be stored in a central data hub?**

Yes. One repository for data which ensures the consistency of quality and format is preferable to many sources with no quality control.

**11b. If you do not support the use of a central data hub how do you think data should be stored/ made available?**

Not applicable.

**12. Do you support proposals for transport authorities to have the power to obtain, information about revenue and patronage of services being deregistered, and where appropriate disclose this as part of a tendering process?**

CIHT supports the suggested powers to obtain information about revenue and patronage of services being deregistered. It is understood that operators are generally willing to share this information on a voluntary basis. However, without this power as back-up, a transport authority may not have the information it requires to frame and provide the necessary replacement services and ensure fair competition.

**Other**

**13. Please provide any other comments or proposals around the regulation of bus services in Scotland that were not covered in the above questions.**

The ability to franchise services will permit cross-subsidy from profitable to unprofitable routes and reduce the amount of public money currently put into bus services that is taken out as operator excess profit. This will permit more services to be run in low demand areas, helping to combat social exclusion.

See also the following, part of our answer to the question on the business case for franchising, but repeated here.

A much larger issue is that of access to data. It is extremely difficult for a transport authority to build a sound business case (and for an auditor to assess it) if it does not have access to data on the existing market. This data is in the hands of private operators who will almost certainly oppose franchising, for reasons as outlined in Q1. The inability of Nexus to obtain actual market data from operators was a key cause of the weakness in its business case for a Quality Contract in Tyne and Wear and thus ultimately of the failure of its attempt (McTigue, 2018). Thus the legislation should require operators to provide this data to an independent third party (see above) who can anonymise it and pass it to the transport authority so that it can construct a sound business case.

**14. Are there any likely impacts the proposals contained within this consultation may have on particular groups of people, with reference to the 'protected characteristics' listed above?**

Yes. The availability of high quality and reliable information can be an important barrier to accessing public transport and in particular for those with a disability or other vulnerable individuals. See answer to Q13 regarding social inclusion and network extent.

**15. Do you think the proposals contained within this consultation may have any additional implications on the safety of children and young people? If yes, what would these implications be?**

No.

**16. Do you think the proposals contained in this consultation are likely to increase or reduce the costs and burdens placed on any sector?**

Possibly. There is a risk of an increase and/or decrease across all sectors. However, with appropriate use of the tools these proposals, with accompanying built in robust check processes, should reduce some of this risk. The risk is worth taking because the current framework is not delivering.

**17. Are there any likely impacts the proposals contained in this consultation may have upon the privacy of individuals?**

No.

**18. Are there any likely impacts the proposals contained in this consultation may have upon the environment?**

Yes. Any proposal that is successful in encouraging greater use of public transport will have a positive impact on the environment. Franchising makes it easier to change bus emissions specifications more quickly.

## **References**

Hrelja, R., Rye, T. and Mullen, C. (2017) Partnerships between operators and public transport authorities. Working practices in relational contracting and collaborative partnerships. Paper to 15<sup>th</sup> Biennial Conference on Competition and Ownership in Land Passenger Transport, Stockholm, August 2017.

McTigue, C (2018) *The Implementation of Local Bus Policy*. PhD Thesis, Edinburgh Napier University. Contains a detailed document and interview based case study of the QC application by NEXUS in Tyne and Wear.

Rye, Tom, and Anders Wretstrand. "Converging structures? Recent regulatory change in bus-based local public transport in Sweden and England." *Research in Transportation Economics* 48 (2014): 24-32.

van de Velde, Didier, and Ian Wallis. "'Regulated deregulation' of local bus services—An appraisal of international developments." *Research in Transportation Economics* 39.1 (2013): 21-33.