

Paper F

Meeting: Leaders' Rail Group
Date: 26 June 2015
From: Officers Rail Devolution Group
Subject: **Rail Devolution Governance**

Purpose of Report

1. To advise Leaders' Rail Group (LRG) that three options for the next phase of governance (from now until the signing of a Partnership Agreement with DfT) have been considered by Officers Rail Devolution Group (ORDG), and to make a recommendation as to the preferred option.

Recommendations

2. LRG are recommended to:
 - a) **Agree** to establish West Midlands Rail Limited (WMR Ltd) as a company limited by guarantee with LRG as its Board of Directors.
 - b) **Instruct** officers to seek formal approval from each WMR Partner Authority to become a member of WMR Ltd. by 4 December 2015.

Background

3. LRG aim to ensure that the region can demonstrate clear political intent and strong leadership in relation to the decentralisation of local rail services. This was originally intended to be through a "joint committee" of partner authorities which would exist until such time as WMR Ltd was established, marking the beginning of the longer term governance arrangements.
4. Subsequent legal advice indicated that the establishment of a formal joint committee would be inappropriate as no partner authority functions were proposed to be delegated to LRG and as such these proposals were not progressed.
5. However, to meet LRG's desire to demonstrate positive intent and unity between Partner Authorities, this paper outlines three options for giving greater formality to LRG in place of LRG continuing on a purely "shadow" basis pending the envisaged Partnership Agreement with the DfT.

Governance Overview

6. Discussions will soon commence with DfT to develop a formal 'Partnership Agreement' between West Midlands Rail (WMR) and the DfT. This will require the consent of the Secretary of State for Transport. It is expected that, subject to good progress being made, this is likely to be during 2016.

7. Work has been started by officers to define the proposed outcomes we will be seeking from a Partnership Agreement, including learning from the recent Rail North experience.
8. Between now and the Partnership Agreement being finalised, there will be an interim arrangement in place to formalise the relationship between WMR and the DfT. This interim arrangement will recognise the significant role that WMR will play in the development of the West Midlands franchise.
9. The principles of governance for West Midlands Rail (WMR) are now well established and the currently applicable governance arrangements are shown in Figure 1.
10. In advance of the Partnership Agreement being signed, there will be a further 'decision point' to enable each Partner Authority to confirm that they wish to continue their participation in WMR Ltd on the basis of that Agreement.

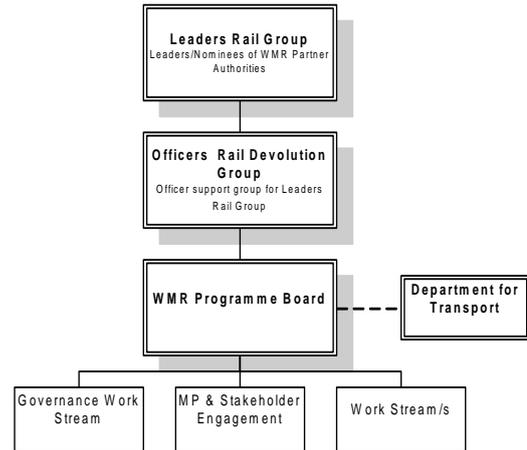


Figure 1 WMR existing outline governance arrangements

Governance Options Considered

11. Three possible options for local democratic governance are outlined in this paper:
 - A. **Establish WMR Limited with LRG as its Board of Directors**
This would set up in shadow form the governance arrangements appropriate for the Partnership Agreement when agreed (subject to any necessary refinement/amendment to the articles of association of WMR Ltd), and is the option recommended by ORDG.
 - B. **Constitute a WMR Association of Partner Authorities with LRG as its governing body**
The association would be a shadow WMR Board set up for the interim, period in advance of the Partnership Agreement being signed and WMR Ltd being established. It should be dissolved when replaced by WMR Ltd.
 - C. **Agree a Memorandum of Understanding between Partner Authorities**
This option maintains the status quo as indicated in the diagram with authorities agreeing to continue to explore/progress potential rail devolution.
12. A full assessment of each of the options has been undertaken and is included in the appendix.

Conclusion

13. Having reviewed the three options, ORDG recommend to LRG that Option A, the establishment of WMR Limited with LRG as its Board of Directors, is preferable and that steps are taken, including gaining the individual approval of each Partner Authority, to set up the new organisation by the December LRG meeting.

Appendix: Assessment of each of the three options

For each option, the following are considered:

- i. Constitution
- ii. Process
- iii. Legal considerations
- iv. Financial implications
- v. Political risks
- vi. Timing implications

Option A **Establishing WMR Limited early with LRG as its Board of Directors**

i. Constitution of WMR Limited:

- The Articles of Association would provide as follows:
 - The objects would be essentially the same as those envisaged for the Leaders Rail Group
 - The ITA and the Non-Metropolitan Authorities would be entitled to be full members of WMR Ltd and the Metropolitan Authorities would be entitled to become non-voting "associate members". No other members would be admitted unless agreed by 75% vote of the existing members. Only other local transport authorities would be entitled to be admitted as full members
 - The ITA would have seven votes at general meetings (which if agreed by the ITA could be cast individually by its seven members) and the Non-Metropolitan Authorities would have one vote each. Metropolitan Authorities would not have votes separate to those of the ITA
 - The Board of Directors of WMR Ltd would be appointed by each Metropolitan and Non-Metropolitan Authority (but not also the ITA) having the right to appoint its leader or other elected member nominee, or such other person as it sees fit, to the Board (i.e. the LRG could in effect become the Board of WMR)
 - Each Director could appoint another elected member from his/her authority, or such other person as he/she wishes, as an alternate director with the prior approval of that authority
 - The quorum for Board meetings would be a majority of Directors or their alternates – but remote participation in meetings would be permitted
 - Board decisions would be made by majority vote and would also be capable of being made by e-mail (also by simple majority)
 - A Chair and Vice Chair would be appointed (selected respectively from among the Metropolitan Authority and the Non-metropolitan Authority representatives, or vice versa) but the chair would not have a casting vote at Board/LRG meetings
 - The Board of Directors/LRG would generally meet quarterly – and any allowances or expenses payable for attendance would, in the case of elected members who are directors, be subject to the applicable restrictions in the Local Authorities (Companies) Order 1995
 - The Board of Directors/LRG would be able to invite representatives of other bodies to attend meetings on a non-voting basis and could choose

to hold its meetings in public (but would not be statutorily required to as it would not constitute a joint committee of Partner Authorities)

- The Board of Directors/LRG would not require member approval to any decisions except that entry by WMR into the envisaged Partnership Agreement with DfT (or any changes to it, once made) must be approved by a 75% vote. Any member authority that does not wish to continue to participate in WMR Ltd for any reason (including objection to the form of partnership agreement) will be able to resign as a member (or associate member in the case of the Metropolitan Authorities) of the company
- The Board of Directors/LRG would be able to delegate decisions/powers to individuals (e.g. employees or secondees within WMR Ltd) or to committees established for that purpose
- Administrative support for meetings of the Board would be as currently proposed for the Leaders Rail Group
- Financial support for WMR Limited (if not to remain dormant from a financial/trading perspective) would until otherwise agreed by the Partner Authorities be provided by member authorities on the same basis as the existing funding agreement for the WMR project

ii. Process

- Each Partner Authority will need formally to agree to become a member of the company and to appoint its leader/representative to the Board
- At the appropriate point in time (i.e. before entry into the envisaged Partnership Agreement with DfT) WMR Ltd.'s Articles/constitution would be reviewed and revised as appropriate in the light of the content of the Partnership Agreement and the role to be played by WMR Ltd in the devolution of local rail services – if appropriate the LRG would resign as Board members at that time and a new Board of Directors would be appointed pursuant to the revised Articles
- Those revisions to WMR Ltd.'s Articles would require approval by a 75% majority of WMR Ltd.'s member authorities

iii. Legal considerations

- All of the member authorities have the necessary powers to become members of WMR Ltd
- Member authorities' financial liabilities as company members would be limited to £1 or some other nominal amount
- The LRG as the Board of WMR Limited will have the statutory duties of company directors but given the expected role of WMR during the franchise development phase and that it is likely to remain dormant from a financial/trading perspective at this time, those duties would not be problematic. At the point the agreement between WMR Ltd and DfT is entered into the Board will need to be satisfied the agreement is in the best interests of WMR Limited but will rely on professional advice in reaching that decision.

iv. Financial implications

- Relatively modest additional legal and company administration costs in establishing WMR Ltd earlier

v. Political risks

- Risk that not all stakeholder authorities agree to join WMR Ltd (because they regard it as committing them to participate in as yet unknown devolution arrangements)
- Risk (presumably remote) that one of the stakeholder authorities as a member of WMR Ltd votes against the proposed partnership agreement with DfT and/or decides not to participate in WMR and this causes DfT to reconsider devolving responsibilities to WMR

vi. Timing implications

- The Articles for WMR Ltd will take time to develop/agree
- Authority approval procedures will take time (including review of Articles by authority legal departments)
- The December 2015 LRG is anticipated to be a reasonable timescale to allow this approach to be concluded

OPTION B Establish WMR as a Partner Authority Association (“WMR Association”) with LRG as its governing body

i. Constitution of WMR Association:

- Each of the Metropolitan and Non-Metropolitan Authorities would be entitled to join, as would the ITA
- The ITA would not have a vote
- The stated purpose/objects would be essentially the same as those envisaged for the Leaders Rail Group
- The governance arrangements would involve the establishment of a Leaders Rail Group with membership/voting/quorum arrangements essentially the same as envisaged for the existing Leaders Rail Group
- Administrative support for meetings of the Leaders Rail Group would be as currently proposed
- Financial support for the WMR Association would be provided by member authorities on the same basis as the existing funding agreement for the WMR project.
- A member authority could resign from WMR Association at any time on 7 days’ notice
- The constitution would be capable of amendment by a 75% majority vote of members
- The WMR Association could be dissolved by a simple majority vote of its members

ii. Process

- All member authorities will need formally to agree to become members of the WMR Association and to appoint the members of the LRG as its governing body
- At the appropriate point in time (i.e. when WMR Limited has been established and Partnership Agreement signed) the WMR Association would be dissolved

iii. Legal considerations

- All of the member authorities have the necessary powers to become members of the WMR Association
- The WMR Association would not be a separate legal entity and either its members (if they have given ostensible authority to the LRG to act for them) or, more probably, the LRG members themselves might theoretically be liable for decisions/actions of LRG as the governing body of the WMR Association (but this is no different to decisions/actions taken by the LRG currently)

iv. Financial implications

- Additional but relatively modest legal costs in preparing the constitution for the WMR Association in addition to the event establishment of WMR Ltd.

v. Political risks

- Risk that not all stakeholder authorities agree to join the WMR Association (because they regard it as committing them to participate in as yet unknown devolution arrangements)

- Risk of confusion/negative PR caused by WMR Association being dissolved at the end of the interim phase, or continuing to exist in parallel after WMR Ltd has been established

vi. Timing implications

- The constitution of WMR Association will take time to develop/agree (but less than for WMR Ltd Articles as it ought to be a much simpler document given the non-applicability of company law)
- Authority approval procedures will take time (but possibly less than for WMR Ltd membership)

OPTION C Agree a Memorandum of Understanding (MoU) between WMR and Partner Authorities

- i. Content/format of MoU
 - Broadly as for existing LRG terms of reference, including in respect of purpose/objects and governance arrangements
 - The ITA would be a party to the MoU, which would need to be signed by all partner authorities
- ii. Process
 - All partner authorities will need formally to agree to sign the MoU (subject to delegations in place that permit this without further approvals)
- iii. Legal considerations
 - No significantly different legal effects to existing LRG arrangements – there would be no meaningful contractual obligations imposed on partner authorities by agreeing to and signing the MoU
 - As with the WMR Association the LRG is not a separate legal entity and either the partner authorities (if they have given ostensible authority to the LRG to act for them) or, more probably, the LRG members themselves might theoretically be liable for decisions/actions of LRG
- iv. Financial implications
 - Same as with existing LRG arrangements
- v. Political risks
 - Risk that not all stakeholder authorities agree to sign the MoU (but presumably this is a relatively remote risk)
- vi. Timing implications
 - Subject to further partner authority approval requirements the MoU should not take long to put in place