

Date 08/02/2020  
Our PT/RG/IPTU/825  
Ref:  
V...

Essex County Council  
Highways and Transportation  
Integrated Passenger Transport Unit  
County Hall  
CHELMSFORD  
Essex CM1 1QH

Dear Operator,

**Re: Essex County Council English National Concessionary Travel Scheme 2021/2022.**

**Subject to formal decision and a change in the law**

As you will be aware, during 2020/21 Essex County Council has, in line with the request from the Department for Transport, continued to make concessionary fare payments to bus operators in line with pre Covid 19 reimbursement levels and, despite the severe impact Covid 19 has had on local authority revenue during the year (and which is likely to continue into 2021/22), it will continue to do so until the end of March 2021.

The County Council issued its default scheme for 2021/22 on 1<sup>st</sup> December 2020. Following our usual practice this is for a DfT calculator-based scheme where the level of reimbursement paid will reflect the actual value of the gross revenue foregone, with the intention of leaving bus operators no better or no worse off than they would have been had the scheme not existed. It is recognised that given the impact on passenger numbers of the Covid 19 outbreak and subsequent lockdown measures this would lead to a significant reduction in the level of reimbursement being paid and that this would be likely to have an impact on the viability of bus services across the network.

You will also be aware that in its supplementary guidance for the 2021/22 ENCTS scheme, the DfT asked Local Transport Authorities (LTAs) to maintain the level of concessionary fare reimbursement at pre Covid level. However, it also recognised that local authorities had justifiable concerns over the legality of this approach due to state aid issues and recommended that LTAs took legal advice on the matter. On this basis ECC's legal advisors have reviewed the position and have come to the conclusion that as the law stands, it would not be legal for the County Council to make payments to bus operators other than through a calculator scheme aimed at maintaining the no better/no worse off position based on actual passenger use. However, the DfT has also announced that they are undertaking a review of legislation, with the aim of issuing a new Statutory Instrument (SI) that would make it

legal to maintain payments to operators at the pre Covid19 level. At the time of writing the new SI has not been issued and the County Council is left in a position of considerable uncertainty.

**To address this, ECC has decided to enter into negotiations with bus operators over continuing a fixed pot arrangement shaped around the DfT supplementary guidance, but only on the clear understanding that it will only be able to enact an agreement of this type if the Government changes the legal basis of the scheme through the proposed SI before it needs to issue a final scheme on 4<sup>th</sup> March 2021.**

**Failing this, the calculator scheme issued on 1<sup>st</sup> December 2021 will be the Council's final scheme.** It is recognised that operators would be within their rights to challenge elements within such a calculator scheme and the County Council is willing to enter discussions as allowed for in the legislation, should this eventuality occur.

If the expected legislative changes are made to allow reimbursement to reflect pre Covid levels, then the County Council would prefer to continue with a fixed pot arrangement as it has in previous years, as this helps manage the risks and uncertainty faced by both the Council and the Operators, which are particularly important given the much higher level of uncertainty in 2021/22 than in previous years due to the Covid 19 outbreak.

For 2020/21, the Council agreed (prior to Covid 19 outbreak) a fixed pot agreement with bus operators at a value of £17.649m. As noted above it has maintained this level of payment despite the impact of Covid 19 on bus passenger use. In its supplementary guidance, the DfT asks LTA's to continue funding bus operators based on pre Covid levels of funding but sets out several factors that an authority can consider when doing so. These are:

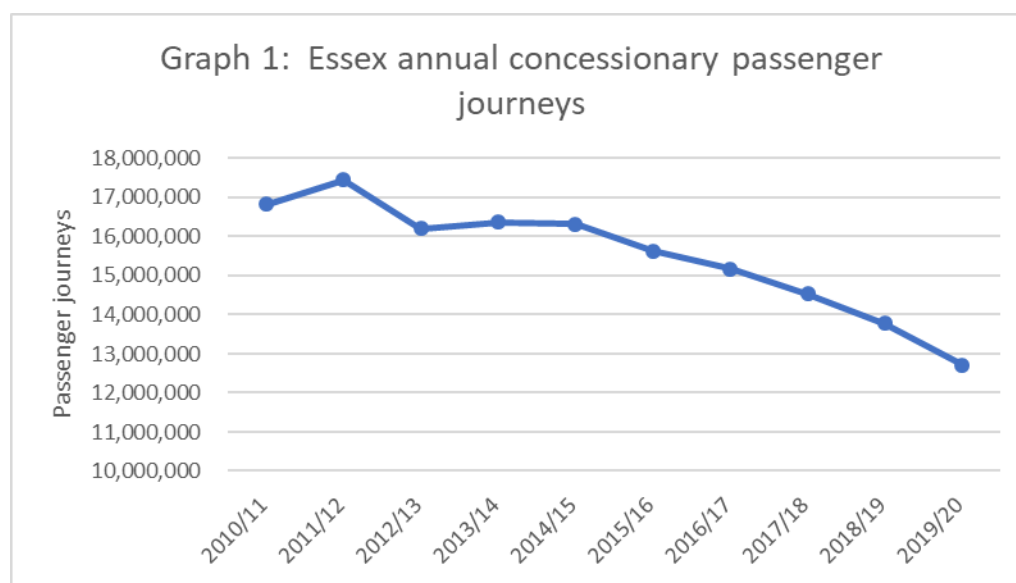
1. Seasonality of services – (some authorities have adopted approaches to cover this, for example, averaging two lower winter and two higher summer payment methods).
2. Decline in concessionary patronage - (total concessionary bus journeys fell by 2.5% in England in 2018/19, however, this may vary across local areas)
3. Decline in patronage.
4. Operators may have ceased trading/some services.
5. Operators may have started trading/new services.
6. Operators may have varied their services to increase/decrease the frequency/length of journey - (If For instance, if an operator was providing 90% service levels, TCAs may consider providing 90% concessionary fare funding.)
7. TCAs may also take into consideration any other factor they consider to be significantly relevant in calculating pre-COVID level payments, however, the above six principles should create the framework for producing the methodology required.
8. How this funding is calculated should be determined by the TCA, and DfT does not have a preferred methodology for this.

The County Council has considered each of these factors carefully. A number would appear to have limited effect in the Essex situation. For example, factors for seasonality have already been allowed for in our previous concessionary fare negotiations. Similarly, only one small local bus service operator has left the industry in Essex since March 2020 and no purely commercial operators have entered the Essex market and an small adjustment can be made for this.

The more important factors are therefore the pre-Covid decline trend in both concessionary bus travel and overall bus travel, plus the impact of changes in the proportion of the local bus network being run. An important point to remember is that it is likely that many of the current restrictions will be relaxed or removed during 2021/22. The Council has therefore had to consider how these proposals will affect both the current and potential post Covid period.

In principle, it makes sense that a significant reduction in the percentage (by mileage) of the bus network run would result in a reduced level of concessionary bus passenger use. However, it would require a review process at different points through the year. These would result in changes to the payments being made, thereby increasing the level of uncertainty for both sides. It would also require a significant amount of additional administration by both the County Council and the operators to manage. The Council also wishes to encourage bus operators to retain as much of the existing network as possible over the year (which is the point of the DfT supplementary guidance's request to maintain pre Covid 19 levels of payment). On this basis the Council has decide not to pursue this approach directly.

However, long term passenger use trends are important and would have had an impact on the level of concessionary fare reimbursement even in the absence of the Covid 19 outbreak. Graph 1 below shows the trend in concessionary bus passenger use since 2011/12.



While the 2019/2020 passenger outturn was affected by the impact of COVID and national lockdown in March 2020, we have adjusted the March 2020 figures to allow for this and model the continuation of the falling passenger trend without COVID

impacts over 2020/21. The average annual decline between 2011 and 2019 was 2.4% (although, as can be seen in the graph, since 2014/15, this trajectory has declined more steeply at an average annual rate of 3.3%).

Given that the current fixed pot was set for 2019/20 at £17.649m, extending the average decline rate over 2020/21 and into 2021/22 would suggest a fall in passenger numbers of around 6.6%.

In addition, it can be argued that the annual trend of reduction in overall passenger numbers travelling (not just those with concessionary fares), noted by the DfT as being around 5% nationally, could have an impact on costs as it suggests that increased spare capacity is available to carry (off peak) concessionary passengers, somewhat reducing the need to incur additional capacity costs.

In addition, studies (for example that undertaken by Systra in 2020) have suggested that passengers will not immediately return to pre Covid level of bus use after the immediate restrictions are lifted, with changes to travel patterns and needs during lockdown and concerns over safety being cited as reasons. Industry soundings have also suggested that this fall off may be as high as 20 %. While this may not reflect the impact on the level of concessionary bus pass use (for example a proportion of the overall passenger effect will be due to more people working at home, not a major factor for concessionary travel) it is still likely to have an effect.

As noted above there are likely to be implications for the size and scope of the network, with the real possibility of service withdrawals and frequency reductions over 2021/22 that would reduce the opportunity for travel by-pass holders, reducing pass use. While we do not propose to directly measure this impact, we do need to consider the potential impacts when looking at any settlement.

Against this it could be argued that other factors apply. These would include:

- Increases in fares (blocked in 2020/21 by the rules applying to Covid bus Service Support Grant (CBSSG) claims, but without Covid these would have occurred).
- Potential impacts on marginal cost ratios of lower passenger numbers – for example some costs of service provision are 'semi fixed' as resource use is not incurred on a passenger-by-passenger basis but in larger fixed blocks (i.e. an extra bus would only need to be added to the network if demand exceeds the current capacity and vice versa). This could result in a higher per passenger marginal cost rate until demand falls below the next capacity unit.
- Increases in the cost of providing services such as increased insurance and training costs, i.e., Industry inflation.

Having carefully considered these factors and balanced off the need to maintain an accessible and functional transport network during the Covid 19 outbreak against the need to demonstrate value for public money, the County Council is proposing a reduction in the value of any fixed pot for 2021/22 of 4% (subject to the resolution of the legal issues as set out above). These figures are set out below:

2020/21 Fixed Pot	£17,649,000
Reduction of 4%	-£705,960
Proposed fixed pot for 2021/22	£16,943,040

This would work on the following basis: -

- A fixed pot scheme where operators are required to collect full information about use of concessionary fares in the normal way.
- We propose a fixed pot of 4% below the 2019/20 fixed pot. This is based on modelling of long-term trends in reduction in the number of concessionary fare journeys as allowed for in the DfT guidance.
- The proposal for redistribution of the fixed pot would be to allocate each operator the same percentage of the fixed pot as they received in 2019/20, subject to adjustment for operators who enter or leave the market before 31 March 2022.
- The adjustment for entering operators would see the new operator being allocated a sum based on modelling what we believe they would have achieved in 2019/20 had they been in operation for the same part of 2019/20 as they were for 2021/22 with the same network. That sum will be collected from other operators on a pro rata basis.
- The adjustment for exiting operators will be by removing their allocation for the proportion of the financial year during which they are not operating and allocating this to remaining operators on a pro rata basis

To reiterate it will only be possible for the County Council to make an offer on this basis if the DfT make the expected alterations to the legislation required to resolve the legal issues set out above. If this does not occur, or if the County and the operators are not able to mutually agree a level of reimbursement, then the calculator scheme issued on 1<sup>st</sup> December 2020 will come into effect. This would perforce reimburse operators on the basis of actual passenger use and even allowing for appeals over particular elements of the calculator such as marginal cost would almost certainly result in a significantly lower level of payment being made than set out above.

The Council recognises that any settlement would need to be mutually agreed between us and therefore invites you to respond. Given the time constraints involved, I would be grateful if you could respond to the proposals by 15<sup>th</sup> February 2021. If we do not hear from you by that date, we shall assume agreement to the above proposal.

Yours sincerely

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ECC fully comply with information legislation. For full details on how we use personal data, please go to [www.essex.gov.uk/privacy](http://www.essex.gov.uk/privacy) or call 03457 430430.



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