

Forward Plan reference number: FP/168/06/23

Report title: ENCTS reimbursement payments to bus service operators 2024/2025	
Report to: Cabinet	
Report author: Councillor Tom Cunningham, Cabinet Member for Highways, Infrastructure and Sustainable Transport.	
Date: 14 November 2023	For: Decision
Enquiries to: Mark Ash, Executive Director for Climate, Environment and Customer: email: mark.ash2@essex.gov.uk or Helen Morris, Head of Integrated Passenger Transport Unit, email : helen.morris@essex.gov.uk	
County Divisions affected: All Essex	

1. Everyone's Essex

- 1.1 The bus network is a core part of Everyone's Essex. It encourages public transport use which reduces carbon emissions and helps achieve our net zero ambitions. It also helps our residents to go about their daily lives in a sustainable way.
- 1.2 The use of concessionary bus passes supports the bus network by encouraging people to make more use of bus travel and improves accessibility for older people and people with disabilities to both the wider public transport network and to key services and amenities. It also complements our ambitions to improve public transport as part of the 'Bus Back Better' plans, including Essex's Bus Service Improvement Plan, which was published in October 2021. Concessionary bus journeys are also disproportionately made on local bus services that are supported by ECC.
- 1.3 This report sets out the process for how ECC will decide how much to pay bus operators for carrying those concessionary fare passengers in 2024/25. Passengers using the national concessionary fares have historically made up represent around a third of all bus journeys, so they provide a major part of bus operators' income. Concessionary fares also help improve health, wellbeing and independence for all ages.
- 1.4 Bus services are disproportionately used by older people, younger people, women, and those with a disability. Essex County Council's (ECC) support to the bus network through the concessionary bus pass scheme enables those who qualify on grounds of age or disability to travel free at certain times, with the costs of the revenue foregone by the bus operators met by taxpayers.
- 1.5 Bus operators in Essex are still carrying fewer overall and particularly concessionary bus pass users following the impact of the Covid 19 pandemic, with these at around 65% of pre-Pandemic levels as of August 2023. The Government has announced that it is currently reviewing the statutory

guidance and some aspects of the scheme, with updated guidance to be issued for November 2023. However, this is not expected to alter the fundamental process or the decision making needed for this paper.

2. Recommendations.

- 2.1 Agree that for 2024/25 ECC will keep the same discretionary scheme elements (relating to times of pass availability and companion passes) as for 2023/24
- 2.2 Authorise the publication of a draft reimbursement scheme for concessionary bus fares in 2024/25, based on the 2023/24 DfT Reimbursement Calculator and Guidance on or before 1 December 2023.
- 2.3 Authorise the Executive Director for Climate, Environment and Customer, in consultation with the Cabinet Member for Highways, Infrastructure and Sustainable Transport and the Section 151 officer to negotiate with operators to see if a scheme with bus operators can be agreed which is in the best interests of Essex Tax-Payers, such negotiations to be within the legal and financial parameters set out in **Option 2** below and taking into account (though not necessarily being bound by) any changes made to the DfT guidance and Reimbursement Calculator for 2024/25.
- 2.4 Authorise the Executive Director for Climate, Environment and Customer, in consultation with the Cabinet Member for Highways, Infrastructure and Sustainable Transport, The Chancellor of Essex and the Section 151 officer to issue the final scheme on or before 1 March 2024 which will either be:
 - (a) A calculator-based scheme; or
 - (b) A scheme which is within the taxpayers' best interests, agreed with operators and within the legal and financial parameters set out in **Option 2** below
- 2.5 Agree that if the negotiations result in a recommended scheme which is not within the financial parameters set out in **Option 2** then the decision to issue a final scheme will be made by the Cabinet or the Leader of the Council.

3. Background and Proposal

- 3.1 Operation of the National Concessionary Fare Scheme is a statutory duty placed on the County Council by the Transport Acts 1985 and 2000 as amended by the Concessionary Bus Travel Act 2007.
- 3.2 The normal legislation for the Scheme requires that each responsible local authority (known as a Travel Concession Authority or TCA) must compensate bus operators who carry Concessionary Pass Holders (the customers) with a level of reimbursement such that they are neither better nor worse off than they would have been had the scheme not existed. This part of the legislation

was suspended for three years because of the impacts of the covid pandemic, however, the DfT has now indicated that this will not be extended for 2024/25 and for this year, for the first we will need to ensure that bus operators are no better or worse off for carrying passengers with a concessionary pass.

3.3 Setting the reimbursement arrangements involves two formal stages:

- We publish a draft scheme no later than 1st December before the start of the relevant financial year.
- We then publish a final scheme no later than 28 days before the 1st of April of that year.

3.4 If bus operators are dissatisfied with the reimbursement arrangements, they have a statutory right to **appeal** to the Secretary of State for Transport or, in some circumstances, can seek a judicial review.

3.5 The department for transport has published a model scheme, referred to as a 'calculator scheme' which authorities can use. This means that operators receive a variable amount from ECC depending on activity levels. ECC does not have to use a 'calculator' scheme and can use any type of arrangement agreed with operators, subject to subsidy control rules.

3.6 In recent years ECC has set the reimbursement level by reference to an agreed 'Fixed Pot' arrangement whereby the level of payment for each year is agreed with the operators. This means that the costs and level of reimbursement are known at the start of the year, regardless of passenger numbers. This has managed risks for both the Council and for operators.

3.7 The fixed pot was historically set at our best estimate of the cost of the concession, but since the pandemic ECC has used temporary changes in the law to set it by reference to a percentage of pre-pandemic travel levels adjusted by reference to long term travel trends. This has become increasingly difficult because:

- Network changes mean that dividing the pre-covid share between operators is more and more artificial.
- The impact of covid means it has been harder to identify what longer term trends.
- The introduction of a subsidised £2 maximum fare until December 2024.

3.8 The decision to reimburse based on a percentage of pre-covid levels has broken the link between the level of reimbursement and passenger numbers. As a result, since 2019/20, while a funding cap has been adopted, it has not been directly related to the revenue foregone by bus operators in that year and concessionary fare reimbursement has been used to provide a subsidy to bus operators.

- 3.9 In March 2023 DfT announced they were undertaking a thorough review of their model calculator scheme to take into account apparent structural changes to bus pass use brought about by the impact of the Covid-19 pandemic. This has not yet been published but it will apply for the 2023/24 financial year.
- 3.10 When the current arrangements were set, in March 2023, it was apparently anticipated by DfT that it was still possible that at some point during 2023/24 the number of concessionary journeys would exceed the guaranteed minimum of pre-covid payment levels.
- 3.11 ENCTS passenger numbers have continued to recover, reaching around 65% of pre covid levels in March 2023, and the DfT have started a publicity campaign to encourage pass holders to travel. It now it seems certain that passenger numbers will not recover to full 2019/20 levels in 2023/24.
- 3.12 In addition, there have been significant alterations to the bus network, with fewer journey opportunities available to people due to reduction in the frequency of the services and some service withdrawals.
- 3.13 None of the above changes the underlying legal responsibilities of ECC and we still must publish a draft scheme by 1 December 2023 and a final scheme by 1 March 2024

Current level of concessionary reimbursements

- 3.14 The current best estimate based on Quarter 1 (Q1) outturns suggests that there has been a small upturn in passenger use over Q1. While there is still a considerable degree of uncertainty over the annual outcome, this indicates a level of reimbursement may be around £150k above the minimum base level for the year at £14.693m.

Current understanding of the DfT position for 2024/25

- 3.15 The Council must publish a draft scheme before 1 December 2023. Given the failure of the DfT to issue the revised guidance or model scheme before the publication of the Cabinet papers means that there is no meaningful way that we can adopt any revised DfT scheme even if it is published before 30 November. It is therefore proposed that for the 1 December 2023, ECC issues a draft scheme based on the parameters for reimbursement set out in the 2023/24 scheme guidance and model scheme calculator and then undertake negotiations with operators taking into account of the revised guidance and calculator once this is issued. This is a highly unsatisfactory situation but one which is entirely beyond the control of the County Council.
- 3.16 On the basis of the current scheme it seems likely that the forecast annual cost could be contained within the figure budgeted for in the 2023/24 MTRS for the 2024/25 financial year.
- 3.17 It should be noted that the DfT have set out the clear expectation that LTAs 'maintain our bus budgets from all sources'. This was confirmed by the issue

of the Memorandum of Understanding issued with respect to the £4.9m grant issued to the Council by the DfT in August 2023. Whilst the DfT expect LTAs maintain our overall bus budget, it doesn't mean they expect us to maintain concessionary fare spending at its current level – for example, money could be transferred for other areas of bus expenditure.

- 3.18 It may also be unlawful to maintain expenditure above the no better/no worse off position, as the change to the law which has been made annually applied since covid is not likely to be extended to 2024/25, meaning we would no longer be able to over-compensate operators using concessionary fare reimbursement.

Potential statutory changes to eligibility and continuation of scheme discretionary elements for 2024/25.

- 3.19 The mandatory scheme requires provision of free travel for eligible older and disabled people between the hours of 09:30 and 23:00 Monday to Friday and all day at weekends and on bank holidays. The DfT review mentioned above, includes a potential extension to the statutory entitlement for people holding passes on the grounds of disability.
- 3.20 Disability pass use represents 5% of concessionary pass use so the financial impact of this is not expected to be very significant and it is presumed that if any increase in entitlement is set out, the government will increase support funding to TCAs accordingly.
- 3.21 The current Essex County Council scheme covers the mandatory scheme but also provides:
- Concessionary travel between 09:00 and 09:30 Monday to Friday
 - Concessionary travel between 23:00 and 00:00 Monday to Friday
 - Provision of a companion pass for those disabled pass holders who require additional support when travelling.
- 3.22 It is proposed that there will be no change to the discretionary elements of the scheme offer. Changing the start time of the concessionary fares scheme (to 09:30 for example) could potentially lead to a sharp increase in passengers at 09:30 which could result in additional claims from operators for the cost of introducing extra capacity at that time under a calculator scheme.

Approach to setting the parameters of the reimbursement scheme.

- 3.23 As noted above, ECC now has several different factors which it must try to balance.
- 3.24 These factors include:
- To reimburse operators fairly for revenue foregone under the scheme.

- To consider the value for money taxpayers receive for their investment.
- To reflect changes in the bus network since 2019/20 (the last pre covid affected year) to allow for the impact of service reductions which may have reduced passenger use while continuing to support routes where passenger use is recovering more quickly.
- To allow us to subsequently reflect any DfT guidance issued either after this paper has been considered or after publication of the default scheme.

3.25 While there are several scheme types that might be adopted to achieve these outcomes, at this point, due to the failure of the DfT to issue significantly changed guidance and revised calculator for 2024/25, the impact of the changes cannot be assessed. As a result, our legal advice is that we issue a scheme based on the known values set out in the latest known guidance – which is that issued for 2023/24 and then carry out negotiations with bus operators, taking into account (though not necessarily being bound by) the 2024/25 guidance and model reimbursement calculator, once these have been issued and their impact assessed along with Quarter 2 2023/24 passenger trends. It is not possible at this time to set out a particular and fully realised scheme.

3.26 It is therefore proposed that **Option 2** set out below is adopted.

4. Links to our Strategic Ambitions.

- 4.1 Our bus network serves to support all areas of Everyone's Essex. Bus services offer access to education, employment, health and shopping and are heavily relied upon by those on lower incomes and more vulnerable residents. Bus services in rural areas can function as a focal point for community interactions and a good public transport network can help attract inward investment in Essex's economy, by making Essex a more attractive location for businesses and employees. Promoting bus use also helps to reduce the pressure on the road network for both existing and new communities.
- 4.2 The ENCTS Bus pass scheme supports the commercial viability and stability of the network by drawing more passenger on to it and in doing so also helps to reduce congestion.
- 4.3 Approving the recommendations in this report will have the following impact on the Council's ambition to be net carbon neutral by 2030: while it is not possible to quantify a direct impact, the bus pass scheme by giving taxpayer funded bus travel to a significant proportion of the population, encourages them to make use of bus journeys instead of making use of private car journeys. A journey made by bus is recognised as (on average) having a lower carbon emission level per person than an equivalent journey made by private car. As such, by promoting the use of bus services this proposal will help to reduce carbon emissions across the county. Additionally travel by bus

reduces congestion, ensuring those journeys that can only be made by car are done so more efficiently – also reducing carbon emissions.

4.4 This report links to the following strategic priorities in ‘Everyone’s Essex’:

- A strong, inclusive, and sustainable economy
- A high-quality environment
- Health wellbeing and independence for all ages
- A good place for children and families to grow.

5. Options

5.1 The Council has a statutory duty to issue a draft reimbursement arrangement by 1 December 2023. The Council has considered the following options:

Option 1:

Issue a scheme on 1 December 2023, to come into effect from April 2024 based on variable costs determined by actual numbers of passengers making use of the scheme (a ‘calculator’ scheme) using the 2023/24 guidance and calculator model from DfT and that the Director for Highways and Transportation is authorised to undertake the legally required negotiations with the bus operators for doing so. (Not the recommended option).

5.2 This model is set out in the Department for Transport’s 2023/24 model reimbursement calculator, but this option will be superseded by the 2024/25 model and guidance so, depending on the differences, any final scheme based on this would be very unlikely likely to survive any appeal or legal challenge and risk closing off a possible opportunity to negotiate a scheme which may be to the mutual benefit of operators and the council and avoid the costs and uncertainties of appeals or legal challenges.

5.3 Therefore, while it is recommended that a default calculator scheme is published on 1 December 2023, it is not currently recommended that this be adopted as the final scheme, although this may change after time.

Option 2: (Recommended Option).

(a) Issue an initial scheme for 2024/25 based on the 2023/24 DfT model Calculator scheme and guidance which would reimburse operators based on the value of journeys undertaken by actual numbers of passengers on 1 December 2023 and enter into negotiations with bus operators taking into account (but not necessarily being bound by) the new DfT guidance and calculator for 2024/25. If no agreement can be reached by 1 March 2024, then this scheme would come into effect

from 1 April 2024. This retains the full range of options open to ECC, including developing a fixed pot scheme if this was considered to be in tax payers' interest following the issue of the new guidance and model calculator scheme.

- (b) That the Cabinet authorises the Executive Director for Climate, Environment and Customer in consultation with the Cabinet Member for Highways, Infrastructure and Sustainable Transport to issue guidance and to delegate authority to officers to undertake negotiations with bus operators within the following parameters:
 - That the final scheme should take into account (but not necessarily be bound by) the revised Guidance and Reimbursement Calculator issued by DfT and similarly allow for Government policy on the level of reimbursement payments.
 - The scheme should be consistent with legislation or proposed changes to legislation made or committed to by DfT.
 - That the upper limit for negotiations is set at £16.049m. This would result in a total budget in line with 2023/24 original budget of £16.449m.
- (c) That if negotiations result in a proposed scheme that meets the parameters set out above, then the Cabinet Member for Highways, Infrastructure and Sustainable Transport is authorised to issue a final scheme for 1 March 2024 on that basis.
- (d) That if the negotiations cannot reach agreement within the financial parameters, but a potential agreed scheme, which is in taxpayers interest is on offer, then the final decision will be reverted to the Cabinet or Leader of the Council to make.

6. Financial Implications

- 6.1 The Medium-Term Resource Strategy (MTRS) for 2023/24 which was approved in February 2023 allocated a draft budget for concessionary fares for 2024/25 of £17.649m of which £17.249m is available to reimburse bus operators. When setting the final budget for 2024/25 this will reflect the latest known or expected reimbursements to bus operators. Given the 2024/25 MTRS will be approved by Full Council in February 2024, concessionary fares negotiations may not have concluded by this time and the value of the final agreed scheme may be different to the budget that is set. If the final agreed scheme is of a value higher than the agreed budget for 2024/25 a further decision will be required to approve additional funding to bridge the gap.
- 6.2 The budget for 2023/24 is £16.449m incorporating a £1.2m saving that was unlocked through the lower passenger journeys that were being experienced and continue to be experienced through the current financial year. Furthermore, decision paper FP/572/11/22 approved an appropriation of £1.404m to be

transferred to reserves pending the need to replace services identified as necessary should commercial withdrawals result from schemes adoption or where payments to bus operators increase due to increases to patronage beyond the minimum reimbursement levels planned for. The net impact of this is an adjusted 2023/24 budget of £15.045m. Whilst this adjusted budget is a starting point for setting the 2024/25 parameters for negotiation, consideration is given to the forecast movement on passenger journey numbers between 2022/23 and 2023/24. Data provided by Martlet Consultancy Limited (MCL – the Councils contracted service support providers for data analysis and negotiation) for Q1 FY 2023/24 indicates that passenger journeys are continuing to increase across 2021-2023 as shown in the tables below:

Table 1. ENCTS bus passenger numbers Quarter 1 FY 2023/24

	2022/23 Passenger Numbers	2023/24 Passenger Numbers	Increase
Month			
April	620,195	633,658	2.2%
May	668,546	683,240	2.2%
June	659,760	716,321	8.6%
Q1 Total	1,948,501	2,033,219	4.3%

This is supported by anecdotal data from bus operators, which suggest (at the individual operator level) that this trend is continuing in Q2, although no hard numbers are currently available.

- 6.3 Using the Q1 2023/24 figures to project passenger use for the whole year 2023/24 (which is far from certain given the inherent uncertainties set out above), it is possible to develop a very broad estimate for the overall change in passenger numbers from 2021/22 to 2023/24. As shown in Table 2 this suggests, passenger numbers would have grown by around 20% over this period and are increasing year on year.

Table 2 Projected ENCTS Essex passenger growth 2021/22 to 2023/4

	Actual 2021/22	Actual 2022/23	Estimated 2023/24
Passenger Journeys	6,836,632	7,828,961	8,132,876
% Increase		14.51%	3.88%

- 6.4 However, both central Government, ECC and operators continue to invest in schemes in an effort to increase the use of buses. Given the additional uncertainty surrounding the DfT Calculator scheme it is recommended that the reimbursement range for negotiation purposes is set at up to £16.1m

- 6.5 ECC had previously negotiated a fixed pot with bus operators of £16.943m in 2021/22 (FP/988/02/21). DfT guidance has allowed tapering of this due to post-pandemic passenger journeys being significantly lower than was previously the case and consequently a reimbursement range of £14.543m to £15.947m was agreed (FP/572/11/22) for 2023/24. This range allowed for higher reimbursements to be made should passenger journeys increase above those expected. Based on the latest information submitted to MCL by bus operators up to the end of September 2023 and forecast passenger journeys, the outturn for 2023/24 looks as if it may be in the region of £150,000 above the base minimum offer, forecasting the full year payment to operators at c.£14.693m, which lies within this range.

Option 1 – ‘Immediately adopt a calculator Scheme based on 2023/24’.

- 6.6 Option 1 is to apply the DfT Calculator scheme based on the Guidance and Reimbursement Calculator for 2023/24 as the DfT have failed to issue formal guidance for 2024/25 in time for this decision to be made. This will impact the range of reimbursement offered. In addition, ECC will not have direct control over the level of reimbursements to be made as it will be based on actual passenger journeys being made.
- 6.7 For reference, under a fixed pot arrangement in 2023/24, the indicative value of the reimbursements was in the range of £14.543m to £15.947m. Based on tapering down the previously agreed fixed pot of £16.453m over the course of the financial year from 100% to 70% of previous passenger journeys. This does not take into account any changes to the calculator and guidance proposed by the DfT, inflation or fare increases. Therefore, these figures may not be a fair representation of what the cost of a calculator scheme may be for 2024/25 using the 2024/25 scheme guidance and calculator.
- 6.8 It is possible that with reduced ENCTS income, some commercial routes and supported bus service routes will become unviable, with operators reducing timetables or ceasing the route in its entirety. ECC would be obliged to consider replacing or operating such routes differently. ECC is currently consulting on all supported bus service routes as some do not offer good value for money for the Taxpayer. It is not known how many routes are at risk, but a significant reduction in the ENCTS income for supported bus services could push more routes above the Council’s £5 cost per passenger journey threshold.
- 6.9 In addition, the Bus Service Improvement Plan Plus (BSIP+) funding allocation to ECC of £4.891m per annum for 2023/24 and 2024/25 is subject to ECC maintaining existing service levels or on measures that are consistent with Departmental guidance on BSIPs, that local authorities maintain their bus budgets from all sources and is additional to previously agreed council budgets (2023/24). This is not to say that the council cannot deliver any under spends where the budget has been maintained at a certain level to accommodate growth in passenger numbers, which have not or may not materialise.

Option 2 – issue default scheme and negotiate (Recommended)

- 6.10 Option 2, as with option one above, is to issue a calculator scheme on 1 December 2023 based on the 2023/24 Guidance and Reimbursement Calculator. Once DfT have issued revised guidance for 2024/25, ECC will then enter negotiations with operators to agree a final scheme taking it into account but not necessarily being bound by it.
- 6.11 The parameters for negotiation would be set within the MTRS envelope set out above. However, once the revised DfT guidance is issued ECC will consult with MCL to determine the potential implications of the DfT guidance and estimated reimbursement levels of implementing a Calculator scheme.
- 6.12 Negotiating such a scheme, based on local factors, would provide ECC with greater certainty that operators will run commercial routes until 31 March 2025.
- 6.13 This option authorises the authority to issue a draft calculator scheme before the statutory deadline for issuing a draft scheme of 1 December 2023.
- 6.14 If operators and ECC do not agree on local factors, authority is delegated to the Executive Director for Climate, Environment and Customer in consultation with the Cabinet Member to negotiate over a final scheme with operators, in accordance with DfT guidance, expected in November 2023.
- 6.15 Following negotiations, if a proposed settlement other than the adoption of the calculator approach set out in 6.10 above is proposed, a further paper will be written for the Cabinet Member for Highways, Infrastructure and Sustainable Transport to take a final decision as to whether the proposed calculator scheme or negotiated fixed pot is implemented.

7. Legal Implications

- 7.1 The recommended option complies with the law relating to concessionary fares reimbursement.
- 7.2 The Council must publish a draft scheme on or before 1 December 2023. This is usually based on a revised scheme issued by the Department for Transport in time for publication. This year the Department have signalled that they will make significant changes to the model scheme for 2024/25 but they have not published it in time for the Council to make any decisions about adoption before the statutory publication date. This leaves the Council with little option but to publish based on the 2023/24 version and work with operators to come up with a more viable alternative before the final scheme is published in March 2024.

8. Equality and Diversity Considerations

- 8.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:

- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful.
 - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 8.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).
- 8.3 The equality impact assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic. As the ENCTS (Bus Pass) scheme offers free travel to older people and people with disabilities, it has an overall beneficial impact on them and has a neutral impact on all other protected groups.

9. List of Appendices.

Appendix 1 – Equalities Comprehensive Impact Assessment.

10. List of Background papers.

None