

<b>Report title: Negotiation of Concessionary Fare Scheme for 2017/18</b>	
<b>Report to:</b> Cabinet	
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<b>Date:</b> 18 October 2016	<b>For:</b> Decision
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<b>County Divisions affected:</b> All Essex	

**NOT FOR PUBLICATION**

This report includes an appendix which is exempt from publication by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended in that it contains information about the financial affairs of the Council. There is a high degree of public interest in publishing information about public finances. However the report should not be published because this public interest is outweighed by the public interest in not disclosing the Council's negotiating position. The Council is about to conduct a negotiation with bus operators and their representatives which would be prejudiced if the operators were to know the council's position.

**1. Purpose of report**

- 1.1. The English National Concessionary Travel Scheme legislation requires each Concessionary Travel Authority to have a concessionary bus pass scheme in place by 1 March before the start of each financial year.
- 1.2. Given the scale and scope of the concessionary fare agreement, authority to negotiate and agree a scheme with bus operators is required from Cabinet.
- 1.3. This report outlines the options for a scheme of reimbursement including any legal challenges that might arise and requests that the Cabinet Member for Highways and Transport in association with the Director for Commissioning: Connectivity is given authority by Cabinet to negotiate and agree a final scheme.

**2. Recommendations**

- 2.1. Authorise the Director for Commissioning: Connectivity to negotiate on behalf of Essex County Council over the 2017/18 English National Concessionary Travel Scheme within the parameters laid out in the confidential appendix to this report.

- 2.2. Authorise the Cabinet Member for Highways and Transport to approve the final scheme, provided any settlement falls within the upper limit as set out in the confidential appendix.
- 2.3. Authorise the Director for Commissioning: Connectivity to publish a default scheme on or before 1 December 2016.

### **3. Summary of issue**

#### **Background**

- 3.1. Essex County Council has responsibility for the English National Concessionary Travel Scheme in the administrative area of Essex.
- 3.2. The legislation for the Scheme requires that each authority responsible for a concessionary travel scheme (known as a Travel Concession Authority or TCA) must compensate operators who carry Concessionary Pass Holders (the customers) with a level of reimbursement such that they are neither better or worse off than they would have been had the scheme not existed.

#### **Policy context**

- 3.3. Operating a Concessionary Fare Scheme is a statutory duty placed on the County Council by the Transport Acts 1985 and 2000 and the Concessionary Bus Travel Act 2007.
- 3.4. A Vision for Essex 2013-17 sets out the Council's Corporate Plan. A key aim is to spend taxpayers' money wisely. Although we have no option but to provide the mandatory concession, this report sets out how we can seek to achieve best value in concessionary fares in order to minimise risk for the Council.
- 3.5. The Concessionary fares scheme and its discretionary elements also help achieve the aims of
  - developing and maintaining the infrastructure that enables our residents to travel and our businesses to grow
  - improving public health and wellbeing across Essex
  - safeguarding vulnerable people of all ages
  - respecting Essex's environment
- 3.6. The decision contributes to the Local Bus Service Priority Policy 2015 to 2020 by supporting the following outcomes:
  - Providing access to schools, colleges, and training, work, health and leisure services.
  - Providing access to health services, shopping, leisure activities, employment, reducing isolation and increasing independence.
  - Providing access to learning and training opportunities, supplier workforce training and apprenticeships.

- Providing access to care services and providing safe transport for access to health, education, work and leisure services, reducing the number of people killed or seriously injured (KSIs).
- Attracting inward investment by offering improved connectivity, access to work and leisure opportunities and reducing congestion.
- Reducing congestion, air quality and CO2 emissions.
- Enabling access to key services, improving community involvement.

### **About the Current Concessionary Fares Scheme**

- 3.7. The mandatory scheme requires provision of free travel for eligible older and disabled people between the hours of 0930 and 2300 Monday to Friday and all day at weekends and on bank holidays. The Current ECC 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 24:00 Monday to Friday
  - Provision of a companion pass for those disabled pass holders who require additional support when travelling.
- 3.8. There is no proposal to change the discretionary elements of the scheme. Changing the start time of the concession could lead to bulge in passengers at 0930 which could result in claims from operators for the cost of introducing extra capacity.
- 3.9. The 2016/17 agreement (current scheme year) is for a base fixed cost of £18.3m. There is no allowance for additional funding relating to increased passenger patronage within this offer. At present passenger numbers have decreased by 3.22% for the first quarter due to a number of factors, including bus service reliability and weather. This is not considered to be likely to be a continuing trend as it is likely to have been at least in part a consequence of the relatively poor weather during the spring/summer of 2016.

### **Reimbursement of costs**

- 3.10. The Council is required to publish draft reimbursement arrangements at least four months before the start of the financial year. The principle of reimbursement is that bus operators must be neither better nor worse off than they would have been had the scheme not existed. The Council determines the scheme and how reimbursement arrangements will operate, but in doing so it must work within statutory parameters and follow the statutory process. Operators have a statutory right to appeal to the Secretary of State for Transport if they feel that the scheme does not adequately reimburse them. They can also seek a judicial review directly through the high court if they feel that the Council has acted unlawfully in setting the reimbursement arrangements if an appeal could not remedy this. Operators can also agree the scheme with the Council. ECC has managed to reach successful agreement with operators every year since assuming responsibility in 2011.
- 3.11. Operators are entitled to receive payments calculated on according to the following formula:

Payment = Gross revenue forgone – (generated revenue + additional costs)

- 3.12. There are two main variables which affect the cost of the scheme:
1. The number of additional passenger journeys generated by the scheme (because passenger numbers are larger when people do not have to pay) and operators should not be better off because of the scheme. This factor affects the 'revenue foregone' element of the formula; and
  2. The additional network capacity costs resulting from the scheme – in effect how many additional buses and how much other infrastructure (depot space etc.) is required to cope with the increased passenger numbers.
- 3.13. Any reimbursement scheme is complex and must make allowances for:
- The number of additional journeys which are generated by the scheme (ie people travelling by bus just because they can travel for free)
  - Current passenger journey figures
  - Current pass holder numbers
  - Operators' cost pressures and fares increases
  - Anticipated weather for the year
  - Anticipated passenger growth
  - Possible changes to the network
  - Any major schemes to promote the use of public transport
  - Large scale developments in the County proposed for the period of the agreement.
- 3.14. The Secretary of State has issued guidance on reimbursement schemes. Appeals are in general decided in accordance with the scheme. This guidance is important because an operator who disagrees with the Council's scheme can appeal to the Secretary of State.

### **Process**

- 3.15. The Council is required to publish a default scheme by **1 December 2016** and publish a final scheme, preferably one agreed with bus operators, by **1 March 2017**.

### **Options**

- 3.16. The Council has 2 primary options when setting the reimbursement arrangements:

<b><u>Option 1:</u></b>	<b>DfT Calculator Scheme (with or without a hybrid option of fixed payments to single operators)</b>
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- 3.17 This would follow the Guidance set by the Secretary of State (through the Department for Transport – DfT) with reimbursement being directly related to passenger numbers and fares foregone. This option is often referred to as the ‘floating scheme’. The advantage is that the Council would fully benefit if activity levels are less than anticipated. The disadvantage is that if activity levels exceed those anticipated then the costs can increase without limit. This model is set out in the Department for Transport’s reimbursement calculator and is the principal basis used by some other county authorities (including Southend and Suffolk). It is also the basis that the Secretary of State is likely to follow if one or more operator submits an appeal. Councils who use this scheme are also at risk of additional cost claims being submitted by bus operators. Final costs are unlikely to be known before July of the following financial year.
- 3.18 Should a Calculator Scheme be implemented, the authority must continue to negotiate with bus operators individually to agree elements that can be adjusted within the calculator, such as Marginal Operating Costs and Fare Calculation (national or local values). This can lead to additional administrative and officer resource costs.

<b>Option 2: Fixed Total Reimbursement Scheme (with or without risk share)</b>
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- 3.19 This would be based on similar principles to a floating scheme except that the overall cost of the scheme would be capped. The fixed reimbursement sum would be shared between participating operators based on activity levels and average fares. This means that the Council bears the risk that activity is less than anticipated and that operators bear the risk that activity exceeds their expectations.
- 3.20 Under this type of scheme bus operators also collectively bear any risk of cost increases if they need to provide additional capacity. This is because additional capacity claims also have to be met out of the fixed cost of the cap. In practice this may deter operators from providing additional capacity - since they are forgoing any additional capacity claims through the fixed reimbursement scheme. In turn ECC negates this by offering the 09:00-09:30 extension, which effectively spreads the morning concessionary pass peak travel (first journey) across the first hour of travel times.
- 3.21 A fixed total reimbursement scheme can also operate on the basis that some variances from the cap are shared between the council and the operator.
- 3.22 It appears from appeal decisions published by the Secretary of State that the Secretary of State would be unlikely to support any kind of fixed cost scheme on appeal, meaning that in practice this type of scheme can only be achieved if there is agreement between operators and the Council.
- 3.23 The current scheme operates on the basis of a fixed total reimbursement scheme.

## **Recommendation**

- 3.24 It is recommended that we adopt a fixed total reimbursement agreement approach for all operators. The final scheme would be agreed by the Cabinet Member unless it falls outside of the parameters agreed by Cabinet (the proposed parameters are set out in the Confidential Appendix). Meanwhile, pending the conclusion of the negotiations, a default scheme will be published on or before 1 December 2016. The default scheme will be prepared with the aim of minimising any increase as far as is consistent with the Department for Transport Guidance and maintaining the discretionary elements.
- 3.25 Due to uncertainties in the current economic climate, falling fuel costs and reasonably small passenger growth it is recommended that the County Council remains agile in its commissioning approach and only makes an agreement covering the year 2017/18. This is consistent with the current agreement covering 2016/17. In previous years, the bus operators had offered multi-year agreements to the County Council.
- 3.26 The Council has undertaken a comprehensive review of the subsidised network for 2016/17 which is now implemented. It is not considered that this will have a significant impact on cost of concessionary fares.

## **4. Financial Implications**

- 4.1. The organisation is statutorily required to negotiate and provide a scheme each year. The recommended scheme and the estimated budgetary requirement are detailed in the Confidential Appendix to this report.

## **5. Legal Implications**

- 5.1. Essex County Council as the Travel Concession Authority is required to issue a proposed scheme by 1 December 2016. The proposed scheme can be amended – but only in a way which is more favourable to operators - no later than 1 April 2017, when the scheme takes effect. The operators can appeal to the Secretary of State no later than 27 May 2017, 56 days after the commencement date. Operators will not, however, appeal if a scheme is agreed with them.
- 5.2 The Council is required by law to make arrangements which ensure that every operator:
- (a) is financially no better and no worse off as a result of providing a concession; and
  - (b) receives appropriate reimbursement for providing concessions to the persons eligible.
- 5.3 Failure to negotiate means that the operators can appeal to the Secretary of State, who can then impose a scheme. This would result in significant legal

costs being incurred and, if the operators were successful, would result in a scheme which is more expensive.

- 5.4 An agreed 'fixed pot', if it can be achieved, reduces the likelihood of any legal challenges.

## **6. Equality and Diversity implications**

- 6.1. In making this decision ECC must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act 2010, ie have due regard to the need to: A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act. 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.
- 6.2. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 6.3. The PSED is a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149, is only one factor that needs to be considered, and may be balanced against other relevant factors.
- 6.4. By providing the English National Concessionary Travel Scheme, the County Council meets its requirements under legislation to provide a concessionary travel scheme.
- 6.5. In addition to this, the County Council also provides discretionary elements to the scheme including extended start and finish times and companion passes for disabled people who require assistance with their journey due to their disability.
- 6.6. An equality impact assessment has been undertaken. No adverse impact has been identified on any protected group by the current scheme which is similar to that which has been in force since 2010. It is proposed to continue with a similar scheme for a further year.

## **7. List of appendices**

Confidential appendix (not for publication)  
Equality Impact Assessment

## **8. List of background papers**

None