

<b>Report title: Agreement of Concessionary Fare Scheme for 2020/21</b>	
<b>Report to:</b> Councillor Ray Gooding, Cabinet Member for Education and Skills	
<b>Report author: Andrew Cook Director for Highways and Transportation</b>	
<b>Date:</b> 1st March 2020	<b>For:</b> Decision
<b>Enquiries to:</b> Richard Gravatt, IPTU Strategy, Growth, Infrastructure & Integration Manager.	
<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**NOT FOR PUBLICATION**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.

**1 Purpose of report**

- 1.1 This report asks the Cabinet Member to authorise the publication of a final concessionary fares scheme for the financial year 2020/21 following negotiations with Essex bus operators.

**2 Recommendations**

- 2.1 To publish a fixed pot concessionary fares reimbursement scheme with a value of £17.649m for 2020/21. This is within the Medium-Term Resource Strategy (MTRS) financial envelope for 2020/21.
- 2.2 That the Cabinet Member authorises the Director for Highways and Transportation to agree the fixed pot reimbursement payments for the service providers as set out in Appendix 3 and to any new producers who join the scheme during 2020/21

**3 Summary of issue**

**3.1 Background**

- 3.2 The Concessionary Bus Travel Act 2007 requires each authority responsible for a concessionary travel scheme (known as a 'Travel Concession Authority' or TCA) to compensate operators who carry Concessionary Pass Holders with the broad aim of offering a level of reimbursement such that the operators are neither better or worse off than they would have been had the scheme not existed. The aim is not to subsidise bus operators, but to

compensate them for the revenue they have foregone by not charging pass holders and to pay for any increased costs that they have incurred.

- 3.3 Essex County Council (the Council) is the TCA with responsibility for the English National Concessionary Travel Scheme for the administrative area of Essex. There are two main approaches to delivering a scheme. These are variable or calculator schemes and fixed pot schemes

#### **Variable or Calculator Schemes**

- 3.4 The Department of Transport (DfT) has issued a 'Reimbursement Calculator' spreadsheet for working out each individual operator's level of reimbursement. Schemes employing the calculator (which is the DfT's recommended method) are referred to as 'Calculator Schemes'. The reimbursement is directly related to the number of passengers travelling – hence it varies across the year.
- 3.5 TCA's and operators have to agree a range of variable factors which can affect the level of reimbursement offered through a calculator. These variable factors include; those incurred directly by carrying additional passengers such as increased fuel, insurance and maintenance cost, plus additional peak vehicle requirements costs. The parties are not obliged to accept the validity of each other's figures and can dispute them, based on their own evidence and assessments. However, if the dispute is not resolved, there will be appeals to the Secretary of State or a Judicial review. This said, Essex has successfully reached a fixed pot reimbursement agreement with bus operators since 2011 and there have been no judicial reviews or appeals against the Essex Scheme since 2008/9.
- 3.6 Some potential costs are not covered by the formal calculator scheme. These include network capacity costs, whereby operators are entitled to ask for compensation for the capital investment they have had to invest to deal with the travel generated by the scheme – the argument being that they would have had a smaller less costly network if fewer passengers were travelling - including a market return on their investment. The level of such claims must be agreed by negotiation, or if no agreement is reached, by an appeal to the Secretary of State or a Judicial Review.
- 3.7 There is therefore a significant degree of uncertainty about the outcome of a calculator scheme. The County Council does not know how much the scheme will cost during the year. The operators will not know what revenue they will receive. This could lead to commercial service withdrawals.

#### **Fixed Pot Schemes.**

- 3.8 An alternate method is for the TCA and the Operators to voluntarily agree a 'Fixed Pot' scheme, whereby a fixed amount is paid into the scheme pot by the TCA and allocated by an agreed method between the operators. This is the approach that has been agreed between the Council and the bus operators since the Council assumed responsibility for the scheme in 2011.

This offers increased certainty with the TCA and operators both knowing what the overall outcome of the scheme will be. It also has a lower administrative burden. A fixed pot scheme cannot be unilaterally imposed on all operators by the TCA due to the statutory guidance issued by DfT and subsequent case law.

- 3.9 The 2019/20 agreement (current scheme year) is a one-year scheme (covering the financial year 2019/20) based on a 'fixed pot' of £18.2m for that year. This scheme ends on 31 March 2020.
- 3.10 However, the situation in 2020 is complicated by the ECC's decision to end the discretionary use of older person free concessionary travel on the County Council's contracted park and ride services from 1st April 2020. The County Council also uses its discretionary powers to allow extended travel times between 09:00 and 23:00 on weekdays and to offer companion passes to people with severe disabilities. There are *no* plans to alter these latter two discretionary elements of the scheme during 2020/2021
- 3.11 Updated calculations indicate that this will have an estimated value in 2019/20 of some £551,000, once an allowance has been made for continued use of disability based concessionary bus passes (based on 5% of concessionary passes being held on disability grounds). Disability passes will continue to be valid on park and ride services and as noted above an allowance of £29,000 has been made within the calculations for the value of these fares based on the proportion of disability passes issued in Essex in 2019/20 (5% of the total).
- 3.12 As ECC currently retains this revenue as the operator of the park and ride services, the removal of this element from the fixed pot will have no adverse impact on operators.
- 3.13 By law each TCA must issue a default scheme by 1<sup>st</sup> December of each year and then enter into negotiations with bus operators over the outcome. Essex issued its default scheme, which is a calculator scheme on 1<sup>st</sup> December 2019. It then entered into negotiations with bus operators to see if agreement could be reached on continuing the fixed pot arrangement into 2020/21.
- 3.14 In Cabinet decision: FP/517/09/19 the Cabinet gave authorisation to officers to negotiate an agreement for reimbursing operators for the 2020/21 concessionary fares scheme and empowered the Cabinet Member for Education and Skills to agree a scheme within the parameters set out in the report and as set out in the confidential financial appendix.
- 3.15 Following a group negotiation on 22 January 2019 and subsequent discussions between the operators and ECC around the economic outlook, uncertainties, inflation and potentially higher fares, ECC made a final offer of **£17.649m** to retain the fixed pot scheme for 2020/21. This is proportionately (allowing for the removal of the £551,000 relating to older persons bus pass

use on park and ride services) the same level of reimbursement as for 2019/20 This is the maximum amount that ECC can justify paying under a voluntary arrangement allowing for the various factors involved, while respecting the no better and no worse off aim.

- 3.16 This offer has been accepted by the operators. This allows a new fixed pot scheme to be issued for 2020/21, to replace the default calculator scheme issued on 1<sup>st</sup> December 2019.

## **4 Options:**

### **4.1 Option 1: Do nothing**

- 4.1.1 The Council has a statutory duty to provide a concessionary bus pass scheme as outlined above. It cannot therefore avoid offering a scheme. If no formal decision is made the default calculator scheme would come into effect from 1<sup>st</sup> April 2020. If the County Council issued a scheme based on the national default variable cost factors, it would almost certainly be challenged by bus operators who would produce their own local cost factors.

### **4.2 Option 2: Formally adopt a fixed pot scheme for 2020/21 with a value of £17.649m over the year.**

- 4.2.1 That the Cabinet member formally issue a revised fixed pot scheme of £17.649m for the financial year 2020/21 giving the formal notice period to the operators of its introduction. Given that this scheme offer was reached in agreement with the bus operators following formal negotiations means that it is unlikely to be challenged by them.

## **5 Policy context**

- 5.1 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.
- 5.2 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 and/or launch a Judicial Review challenging the Council's assumptions regarding the use of default values for the calculator.

## **6 6.0 Issues for consideration**

### **6.1 Financial implications**

- 6.1.1 The financial commitment of £17.649m is within the Medium-Term Resource Strategy (MTRS) financial envelope for the IPTU 2020/21. Full consideration

of the financial implications are set out in the attached Confidential Financial Appendix.

## **6.2 Legal Implications**

- 6.2.1 The Council as the Travel Concession Authority is required to (and did) issue a proposed scheme by 1 December 2019. The proposed scheme can be amended – but only in a way which is more favourable to operators - no later than 1 April 2020, when the scheme takes effect. The operators can appeal to the Secretary of State no later than 27 May 2020, 56 days after the commencement date. In practice Operators will not, however, appeal if a scheme is agreed with them.
- 6.3
- 6.4 The Council is required by law to make arrangements which ensure that every operator:
- 6.4.1 is financially no better and no worse off as a result of providing a concession; and
- 6.4.2 receives appropriate reimbursement for providing concessions to the persons eligible.
- 6.5 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.
- 6.6 An agreed ‘fixed pot’, if it can be achieved, reduces the likelihood of any legal challenges. The legislation also allows for individual operator agreements and hybrid schemes, allowing some operators to voluntarily take part in a fixed pot scheme while other work through the calculator process.
- 6.7 It should be noted that the Council cannot bind itself to a scheme for a fixed period of time. In particular, Regulation 10 of the Mandatory Travel Concession (England) Regulations 2011 requires the Council to review the basis of calculation of reimbursement at least every 12 months.

## **7 Equality and Diversity implications**

- 7.1 In making this decision ECC must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act 2010, i.e. 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.
- 7.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

- 7.3 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.
- 7.4 By providing the English National Concessionary Travel Scheme, the County Council meets its requirements under legislation to provide a concessionary travel scheme.
- 7.5 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.
- 7.6 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.

## 8 List of appendices

- 8.1 Appendix 1 - Confidential appendix (not for publication)
- 8.2 Appendix 2 - Equality Impact Assessment
- 8.3 Appendix 3 List of bus operators receiving reimbursement at 1<sup>st</sup> April 2020

## 9 List of background papers

Cabinet paper : FP/517/09/19

I approve the above recommendations set out above for the reasons set out in the report.	
Councillor Ray Gooding Cabinet Member for Education and Skills	8 <sup>th</sup> April 2020

### In consultation with:

Role	Date
<b>Andrew Cook Director for Highways and Transportation</b>	20 <sup>th</sup> March 2020
<b>Executive Director for Corporate and Customer Services (S151 Officer)</b> Stephanie Mitchener on behalf of Nicole Wood,	05 March 2020
<b>Director, Legal and Assurance (Monitoring Officer)</b> Susan Moussa on behalf of Paul Turner	27 <sup>th</sup> March 2020