

CHESHIRE EAST COUNCIL

Cabinet

Date of Meeting:	4 February 2014
Report of:	Lorraine Butcher, Executive Director of Strategic Commissioning
Subject/Title:	English National Concessionary Travel Scheme 2014 - 2016
Portfolio Holder:	Cllr D Topping, Environment

1.0 Report Summary

- 1.1 The English National Concessionary Travel Scheme provides free travel on local bus services to qualifying concessionaires. Local bus services that operate must by law offer free travel to a qualifying person. In return, local authorities must reimburse local bus operators so that they are left financially no better or no worse off from the concession.
- 1.2 Cheshire East Council – being the travel concession authority for the area – is responsible for accepting applications for concessionary passes, issuing such passes, and ensuring bus operators are reimbursed for the journeys they undertake free at the point of use.
- 1.3 In addition to local bus services, Cheshire East residents also have the opportunity to make use of the Flexible Demand Responsive Transport Service available in both the North and South of the borough. Passengers on this pre-bookable service are also entitled to travel within the concessionary fare scheme as a discretionary enhancement offered by Cheshire East.
- 1.4 The current reimbursement scheme is due to expire on 31 March 2014. By law, a scheme must be published in advance of the date of implementation setting out the way that the TCA intends to reimburse operators. This reports sets out the recommendation of officers to adopt a revised scheme for the period 1 April 2014 – 31 March 2016.
- 1.5 The reimbursement rate for operators is 62% in Cheshire East. This is based on a calculation of the average adult fare foregone through the free concession. Recent analysis has shown this to be excessive and a more realistic rate is 53% -

this also being more in line with reimbursement rates known nationally.

2.0 Recommendations

That Cabinet:

- 2.1 Agree the revised reimbursement calculation for 2014-2016, which is likely to deliver an annual reduction of around £400,000 gross in annual reimbursement to bus companies;
- 2.2 Note the likely impact on bus services and individual bus companies that may result from the changes in reimbursement calculation;
- 2.3 Delegate to the Transport Manager, in consultation with the Portfolio Holders for Environment and Finance, the detailed arrangements for scheme publication and administration, with day to day operation delivered on behalf of the council by Cheshire West and Chester Council;
- 2.4 Delegate to the Portfolio Holder for Environment the authority to approve changes to expenditure on local bus support in light of any deregistrations of local bus services that may result.

3.0 Reasons for Recommendations

- 3.1 The ENCTS is a statutory scheme that all TCAs are required to fund. There are a variety of other statutory requirements relating to concessionary travel, including scheme publication arrangements.
- 3.2 The council must guard against unlawful state aid that may result from “over-reimbursing” bus operators who accept the concessionary pass and provide journeys free at the point of use.
- 3.3 It is likely – although not inevitable – that the level of reduction in reimbursement will lead to de-registrations of local bus routes in some areas. Some of these deregistrations may be for highly valued services, and the council may wish to retain these services through entering into tendered contracts.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

5.1 All

6.0 Policy Implications

6.1 Cheshire East Council has adopted rural proofing as a means of ensuring access to services for residents in our rural areas. In all decisions concerning transport availability rural proofing will be positively considered.

7.0 Financial Implications

7.1 Current expenditure on concessionary reimbursement is estimated to be £3.50m in 2013/14. In the absence of any other actions, it is likely this will increase in line with fare changes and volume increases.

7.2 The current proposed scheme would reimbursement by approximately £400,000 a year once the impact of the change on “minimum subsidy” contracted bus routes is taken into account. It is not known whether the reduction in concessionary reimbursement will result in deregistrations of commercially operated routes. It is therefore impossible to accurately project the final saving that will result since the costs of restoring bus services that are deemed necessary to support are not known. However, it is likely that the net reduction in overall expenditure will be of the order of £300,000 a year.

8.0 Legal Implications

8.1 The Council in its capacity as a TCA has a statutory duty to administer and fund the ENCTS under the Transport Act 2000 as amended by the Concessionary Bus Travel Act 2010. Eligibility for mandatory concessionary travel is dependent on age (this is tied to the pensionable age of women) or to 7 categories of disability set out section 146 of the Transport Act 2000. It is a statutory requirement that mandatory concessionary travel is allowed at any time on Saturdays, Sundays and Bank Holidays and between the hours of 9.30am and 11pm on all other days.

8.2 TCA's are required to reimburse transport operators for carrying concessionary travel schemes, on the principle that the operators are “no better or no worse off” by taking part in the concessionary travel schemes. The aim is not to subsidise bus operators (this has state aid implications) but to pay for any increased costs that they have incurred. Articles

11 and 12 of Regulation 1191/69 details how compensation for operating a compulsory travel concession should be calculated.

- 8.3 In the event of a disagreement between the transport operator and the TCA as to the reimbursement arrangements there is a mechanism provided under section 98(2) and 99(2) of the 1985 Act and section 150(3) of the 2000 Act by which the transport operator can apply to the Secretary of State for Transport for cancellation, variation or modification of the arrangements.
- 8.4 The ENCTS affects both disabled and older people and therefore engages the public sector equality duty (PSED) under s.149 Equality Act 2010. A failure to consider this duty when considering making changes to this scheme would constitute maladministration and arguably leaves the resulting decision open to challenge via Judicial Review on the basis of procedural impropriety. The Council is required to have 'due regard' to the PSED before and at the time a particular policy is under consideration/ decisions are being taken. The Council must be able to demonstrate due regard to its s.149 duty in respect of this cabinet report.
- 8.5 In addition to the Transport Act 2000 the Council is able to make use of other powers provided by the Transport Act 1985 to offer discretionary travel benefits to locals who are not eligible for the ENCTS. The Council offers discretionary travel benefits that this Report recommends continue. In the event that the Council makes any changes or amendments to the benefits it must keep stakeholders suitably informed and be mindful of the any impact that removal will have on local residents and other stakeholders.

9.0 Risk Management

- 9.1 None

10.0 Background and Options

- 10.1 All travel concession authorities (broadly, all local authorities in England) are required to issue a smartcard pass to persons of pensionable age or who have one or more of nine listed disabilities. The concession allows free travel on any registered local bus service in England from 09.30 to 23.00 on weekdays and unlimited on weekends and bank holidays. TCAs are given discretion to enhance the national minimum concession with locally agreed enhancements, such as free or discounted travel before 09.30.

- 10.2 The government has decided to increase the qualifying age in phases until 2020 so that only those aged 65 and over will be entitled to the concession on age grounds. This will help moderate the impact of demographic change and the increasing numbers of older residents within Cheshire East. Nevertheless, there is continuing pressure on the concessionary budget as it is demand led, is affected by fare changes implemented by bus operators and the council has no option but to reimburse operators to put them in a position where they are no better/no worse off.
- 10.3 Cheshire East forms a part of a consortium with Cheshire West and Chester, Halton and Warrington Councils. The most recent scheme entered into by this consortium is due to expire on 31 March 2014, and a replacement must be published in accordance with statutory timetables. Over the last 5 months, significant analytical work has been undertaken by the four councils to establish whether operators are no better / no worse off.
- 10.4 The Department for Transport has published revised guidance for local authorities in the life of the current scheme (November 2011). By reviewing this guidance, it is apparent that the 4 authorities could significantly reduce the average level of reimbursement. Members should note that the cost of reimbursement in Cheshire East is already one of the lowest in England, and that if the recommendations are adopted the cost per capita would fall to around £8.63 per person per year. This would ensure that Cheshire East Council remains in the lowest expenditure quartile of all English authorities.
- 10.5 Generated journeys are those that take place solely because of the concession. To ensure the operator is no better off, reimbursement is calculated on the basis of revenue foregone from non-generated journeys. Currently, the rate of reimbursement is set at 62% of the average adult fare foregone through the free concession. The most recent calculations show that this is excessive, and that a rate of 53% is more appropriate.
- 10.6 After protracted discussions with bus industry leaders across Cheshire, the council consortium's calculations have been broadly accepted. Whilst it is fair to say that the industry does not welcome the reduction in the rate of reimbursement, they have suggested that the rate would not see a significant number of appeals to the Secretary of State. Cabinet should note that this is not a binding commitment and that operators may yet decide to submit appeals. Should this arise, it is

clear that the council has a robust defence to such appeals and would be able to withstand challenge.

- 10.7 Cabinet should be aware that reimbursement of operators for concessionary travel can represent a significant element of income on individual routes. By reducing the reimbursement, there is a risk that routes that are only marginally profitable to operate may become unprofitable. Clearly, unprofitable routes cannot be sustained indefinitely and there may be amalgamations, route / timetable changes or even route deregistrations. Should any of these changes occur, clearly there will be public pressure to restore the loss of service, in turn putting strain on the public transport support budget. For this reason, it is proposed that Cabinet authorise the transport manager (in consultation with the Portfolio Holder for Environment) to consider the impact of any route changes over the coming twelve months and where necessary tender services where thought appropriate.
- 10.8 Concessionary travel schemes must be appropriately publicised, including the discretionary enhancements to the national scheme that each TCA desire to implement. In Cheshire East, there are three key discretionary enhancements:
- 50% discount to full fare for travel before 09.30
 - People qualifying for a concessionary pass on the grounds of blindness can travel for free at all times
 - Travel with a significant amenity element is authorised in some circumstances, notably demand-responsive flexible transport
- 10.9 Having reviewed these discretionary enhancements, Cabinet are advised to continue to offer them in the next scheme period. The pre-09.30 concession – if withdrawn – would be likely to see a fall in the number of people paying the reduced fare, and instead an increase in the number of passengers delaying travel until after 09.30. This would reduce the cash fares paid, and increase the overall concessionary reimbursement. The ability to use a concessionary pass on demand responsive transport is highly valued by users and has previously been considered and agreed by Cabinet.
- 10.10 The concession for blind people to travel free at any time is currently of uncertain sustainability. A local authority has received a challenge that suggests it is inequitable that only blind people can travel at all times, but that other disabled people cannot. Whilst the local authority in question is challenging the assertion that it is unfair, clearly Cheshire

East would need to abide by any court ruling should it be the subject of formal proceedings.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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