

**BUS OPERATOR CONCESSIONARY FARE REIMBURSEMENT -  
RECOMMENDATION TO APPROVE THE CONCESSIONARY FARES  
PROCESS FOR THE 2016/17, 2017/18 AND 2018/19 FINANCIAL YEARS**

**Councillor Nigel North – Cabinet Member for Communities and  
Environment Capital**

**April 2016**

**Deadline date:** 25<sup>th</sup> April 2016

Cabinet portfolio holder:	Councillor Nigel North – Cabinet Member for Communities and Environment Capital
Responsible Director:	Simon Machen – Corporate Director of Growth and Regeneration
Is this a Key Decision?	YES If yes has it been included on the Forward Plan: Yes Unique Key decision Reference from Forward Plan: KEY/22FEB16/01
Is this decision eligible for call-in?	YES
Does this Public report have any annex that contains exempt information?	YES – Annex 1 This Annex should be treated as exempt under in accordance with paragraph 3 of Schedule 12A of Part 1 of the Local Government Act 1972, as it provides commercially sensitive information regarding reimbursements and agreements with specific operators. The information provided by operators to allow discussions to take place is commercially sensitive and has been provided to us on the understanding that it is exempt.
Is this a project and if so has it been registered on Verto?	NO

**RECOMMENDATIONS**

The Cabinet Member is recommended to approve that relevant officers can agree concessionary fares reimbursements rates to individual Bus Operators for the 2016/17, 2017/18 and 2018/19 budgets, to the total value of £3,438,000 per annum.

**1. SUMMARY OF MAIN ISSUES**

- 1.1 This report seeks approval from the Cabinet Member for Communities and Environment Capital with regard to the concessionary fares reimbursements rates due to bus operators during 2016/17, 2017/18 and 2018/19 (detailed in Annex 1).
- 1.2 Approval is being sought as the annual budget of £3.438 million exceeds £500k.

- 1.3 Peterborough City Council, as a Travel Concession Authority (TCA) is required, by law, to reimburse bus operators for carrying concessionary passengers.

## 2. PURPOSE OF THIS REPORT

- 2.1 This report is for the Cabinet Member for Communities and Environment Capital to consider exercising delegated authority under paragraph 3.4.3 and 3.4.6 of Part 3 of the constitution in accordance with the terms of their portfolio at paragraph (c).
- 2.2 The attached annex is not for publication in accordance with paragraph 3 of Schedule 12A of Part 1 of the Local Government Act 1972 in that it contains information relating to the financial or business affairs of particular companies (including the authority holding the information). The public interest test has been applied to the information contained within the exempt annex and it is considered that the need to retain the information as exempt outweighs the public interest in disclosing it as to do so due to would significantly weaken their position in a competitive environment by revealing market-sensitive information, or information of potential usefulness to competitors, giving them an unfair advantage. In addition the disclosure of the information does not provide any benefit regarding accountability.

## 3. TIMESCALE

Is this a Major Policy Item/Statutory Plan?	<b>NO</b>	If Yes, date for relevant Cabinet Meeting	<b>N/A</b>
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## 4. DETAILS OF DECISION REQUIRED

- 4.1 A decision is required to approve the agreement of concessionary fares reimbursements rates to individual Bus Operators for the 2016/17, 2017/18 and 2018/19 budgets (detailed in Annex 1), up to the total value of £3,438,000 per annum.
- 4.2 The Concessionary Bus Travel Act 2007 entitles eligible people who are resident in England to travel on any eligible service within England. Travel Concession Authorities (TCAs) are required by law to reimburse bus operators for carrying concessionary passengers. In respect of the mandatory concession, TCAs must reimburse bus operators for all concessionary journeys starting within their boundaries, regardless of where the concessionary pass-holder making the journey is resident.
- 4.2 Approving this will allow officers to complete agreements with Bus Operators to ensure compliance with the Concessionary Travel Act 2007.
- 4.3 The budget proposed will allow Peterborough, as a TCA, to reimburse operators in the area, at an appropriate level, for concessionary passenger carried, in accordance with the act.
- 4.4 Value to the Council, and budget stability, is being sought through agreeing rates, and capped or fixed payment amounts where appropriate, over a period of up to three years from April 2016.

## 5. CONSULTATION

- 5.1 Discussions and information sharing have been progressing, and suggested values in Annex 1 need to be approved before formal agreements on reimbursements can be reached with the operators.

- 5.2 The discussions reach mutual agreements between us and the operators concerned. It is important that we reach mutual agreements as otherwise we risk appeals being submitted and, ultimately, judicial review.

## **6. ANTICIPATED OUTCOMES**

- 6.1 Provision of Concessionary Fare Reimbursement to operators will ensure compliance with the Concessionary Travel Act 2007 and will permit free access to buses to those holding entitlements to Concessionary Travel.

## **7. REASONS FOR RECOMMENDATIONS & ANY RELEVANT BACKGROUND INFORMATION**

- 7.1 There is a statutory requirement for Travel Concession Authorities (TCAs) to reimburse bus operators for carrying concessionary passengers. Regulations relating to (a) State Aid and (b) Procurement have been considered in the context of this reimbursement and it has been advised that neither apply for the following reasons:

- (a) State Aid: State Aid occurs whenever state resources are used to provide assistance that gives one or more undertakings, which are engaged in economic activity, an advantage over others and distorts or has the potential to distort competition and affects trade between EU States. Such aid needs to be notified to and approved by the European Commission.

However, Regulation EC 1370/2007 recognises that compensation for public services may prove necessary in the inland passenger transport sector as a special category of services of general economic interest within the meaning of TFEU and therefore state aid given for these purposes is exempted from the usual rules of notification and approval.

The Concessionary Fares Reimbursement Scheme proposed by the Council as a Travel Concession Authority for years 2016-2019, falls within the express scope of Regulation 1370. Provided that the fare reimbursements are reimbursed in accordance with the provision of Rule 1370 (see Rule 1370 Annex 1) they are not subject to the usual rules relating to State Aid under the Treaty and the Scheme is permissible from this standpoint.

- (b) Public Procurement Regulations: As the Scheme does not constitute the award of contracts for services, but rather the discharge of a statutory obligation under the Concessionary Bus Travel Act 2007 (and other legislation), it would not be the subject of the Public Procurement Regulations 2015, which define “procurement” as “the acquisition by means of a public contract of works, supplies or services by one or more contracting authorities from economic operators.....”. In addition to this the “eligible” bus operators who can benefit from the scheme are predefined by Statute (Travel Concessions (Eligible Services) Order 2002/amended 2009. There is therefore no element of competition.

- 7.2 Provision for travel concessions in England is at present contained in five separate pieces of primary legislation (in addition to Regulation EC 1370/2007): the Transport Act 1985, the Greater London Authority Act 1999, the Transport Act 2000, the Travel Concession (Eligibility) Act 2002 and the Concessionary Bus Travel Act 2007, and the reimbursement of bus operators by TCAs for carrying concessionary passengers is governed by European regulation No 1370/2007 as well as the domestic legislation.

- 7.3 The reimbursement guidance produced by the Department for Transport (DfT) states that by requiring operators to use their assets to provide a free service for a proportion of the population, this constitutes a major market intervention, and that there is a fundamental requirement to provide adequate reimbursement to the operators.

- 7.4 The methodology used to calculate reimbursement with individual operators encompasses the DfT's preferred approach through a detailed and very technical calculator. It is based on a number of factors including route lengths and ticket types, to ensure that both councils and operators are paying/receiving a fair price. The calculator has been developed by DfT, economists and academics, and is reviewed regularly, taking into account changes in the economy to ensure that it continues to abide by the principles of the Act.
- 7.5 Legally, TCAs are free to use their choice of methodology in estimating reimbursement, and the DfT acknowledge that in specific certain circumstances it may be appropriate to deviate from them in order to give effect to the 'No better, no worse off' principle. This can include reaching fixed or capped agreements with operators. These options help provide budget stability for all parties concerned, as actual reimbursements can vary in accordance with numbers of concessionary pass holders carried.
- 7.6 The underlying principle which underpins reimbursement is set out in domestic Regulations which state that operators should be left 'no better and no worse off' as a result of the existence of concessionary travel schemes. The principle of 'No Better and no worse off' is in relation to what the situation would have been in the absence of the scheme.
- 7.7 This means that Travel Concession Authorities need to compensate operators for the revenue forgone – i.e. the revenue they would have received from those concessionary passengers who would otherwise have travelled and paid for a (full fare or discounted) ticket in the absence of a scheme
- 7.8 TCAs also need to pay operators any net additional costs they have incurred as a result of the scheme – this could for instance include the cost of carrying additional generated passengers (i.e. concessionary pass holders that would not have travelled in the absence of the scheme), operating, capacity and peak vehicle costs, or other costs that would not have been incurred in the absence of the concession such as scheme administration costs.
- 7.9 EU Regulation Number 1370/2007 states that an allowance for 'reasonable profit' must be made in the reimbursement of bus operators. There is an implicit allowance for operator profit within the revenue forgone element of reimbursement through the average fare forgone. In addition, the guidance recommends that a profit allowance be made, in the form of rate on return on capital employed for additional peak vehicle requirements.
- 7.10 In the event of appeals any by bus operators, the Secretary of State (or decision makers appointed on his behalf) will apply the law relating to the compensation of operators and will be guided by the DfT reimbursement guidance. The Secretary of State will also consider any additional evidence brought forward by parties when determining appeals.
- 7.11 Reimbursements to individual bus operators across the 2016/17 year will, cumulatively, be within the budgeted value of £3,438,000.
- 7.12 Reimbursements to individual bus operators across the 2017/18 year will, cumulatively, be within the budgeted value of £3,438,000.
- 7.13 Reimbursements to individual bus operators across the 2018/19 year will, cumulatively, be within the budgeted value of £3,438,000

## **8. ALTERNATIVE OPTIONS CONSIDERED**

- 8.1 Not to comply with the requirements of the Concessionary Travel Act 2007: Peterborough City Council would be in breach of the Act and would be subject of legal challenge.

- 8.2 To provide a smaller budget for the Concessionary Fares scheme: Peterborough City Council would be unable to reimburse operators at the appropriate rate encompassing the 'no better, no worse off' principle, and would be the subject of appeal and legal challenge. This would also have an adverse effect on public relations, and could potentially considerably disadvantage vulnerable members of the community.

## **9. IMPLICATIONS**

- 9.1 Failing to reimburse operators under the Concessionary Travel Act 2007 would result in legal challenge, and decisions regarding reimbursements would be imposed upon the Authority, in addition to costs associated with the legal challenge
- 9.2 This would then put other Council budgets for 2016/17, 2017/18, 2018/19 and beyond at risk, as the reimbursements would need to be paid to the bus operators.

## **10. DECLARATIONS / CONFLICTS OF INTEREST & DISPENSATIONS GRANTED**

None.

## **11. BACKGROUND DOCUMENTS**

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985) and The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

Department for Transport Concessionary travel for older and disabled people: guidance on reimbursing bus operators (England). – September 2015.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/478134/reimbursement-guidance-2016-17.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/478134/reimbursement-guidance-2016-17.pdf)