



Department
for Transport

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To Travel Concession Authority concessionary
bus travel officials

20 November 2020

via email

Dear colleague,

Concessionary Bus Travel

I am writing to provide an update on concessionary travel reimbursement arrangements, including how DfT is advising Travel Concession Authorities (TCAs) to reimburse bus operators for 2021-22 concessionary travel schemes.

Alongside this supplementary guidance letter, DfT have also published the 2021-22 reimbursement calculator and core guidance. There are no material changes in either for this year.

Maintaining statutory concessionary travel reimbursement payments at pre-COVID levels

DfT remains grateful to those authorities that have continued to maintain concessionary reimbursement payments at pre-COVID levels to bus operators. Combined with funding from DfT, this support has worked together to ensure the continued operation of local bus services across the country.

In order to continue high service levels throughout the remainder of the COVID-19 pandemic, the Government is providing continued support to the bus sector at an unprecedented level through the COVID-19 Bus Service Support Grant (CBSSG) Restart scheme. The budget, agreed with HM Treasury, for the CBSSG Restart scheme, including the Local Transport Authority (LTA) component, has been calculated on the basis that these concessionary reimbursement payments at pre-COVID levels continue to be made. In addition, DfT is maintaining Bus Service Operator Grant (BSOG) payments to bus operators and LTAs at pre-COVID levels. However, it is important to note that most bus operators are not making profits - and whilst in receipt of CBSSG are prohibited from doing so.

CBSSG reconciliation exercises undertaken by DfT aim to address any losses incurred by operators in providing service levels of up to 100%. Should any of these payments from the public sector reduce, there is a risk that bus services will reduce if the CBSSG budget is insufficient to meet the losses made by operators. We are therefore asking you to continue to provide concessionary fare funding at pre-Covid levels.

Cabinet Office PPN 02/20 and PPN 04/20

We understand that, when dealing with contracted services, some Section 151 officers have been relying on PPN02/20 and PPN04/20 published by the Cabinet Office to justify maintaining concessionary fare reimbursement payments at pre-COVID levels.

PPN02/20 was relied on by TCAs to be able to continue to pay out concessionary fare reimbursement payments to bus operators at pre-COVID levels and expired on 30 June 2020. PPN04/20 superseded PPN02/20 and set out how contracting authorities should put in place transition plans with their suppliers to exit any contractual relief due to COVID. As you are aware, PPN04/20 expired on 31 October 2020, and will not be extended.

We since received additional commercial guidance from the Cabinet Office, specifying that whilst PPN04/20, which we understand has been used by TCAs as justification for concessionary fare payments, has expired the considerations and principles underlying it remain valid beyond October 2020.

Transition Plan

The Cabinet Office guidance states that, where possible, transition plans with an exit date for this transitional period should be developed, so that the principles in PPN04/20 continue to be met. In addition to this, we appreciate that TCAs are generally concerned about when the current arrangements will come to an end.

We will be issuing further guidance on clear transitional plans in line with this transition phase within the National Bus Strategy, where recovery packages are being explored. It is envisaged that this will fulfil the principles from the transition away from PPN04/20, and that it will seek to provide reassurance to TCAs who continue to pay out concessionary fare reimbursement payments to operators at pre-COVID levels.

We recognise that, particularly in the current economic climate, concessionary reimbursement payments are an essential part of bus funding while also being a significant share of wider local authority funding. It is a DfT priority that, as we move into the recovery phase of COVID, we will, as quickly as possible, ensure that any future concessionary support from TCAs is placed on a sustainable long-term footing. We expect to be able to review our approach in tandem with exiting from emergency CBSSG Restart funding. Our approach will ensure that funding from central and local government remains sufficient to maintain bus services across the country, while recognising the numerous other funding pressures on local authority budgets and that, fundamentally, we cannot ask TCAs to bear this cost indefinitely.

Concessionary reimbursement budgets

Funding for concessionary fares is included in the annual Local Government Finance Settlement (LGFS), and councils' core spending power rose by over £2.9 billion in 2020-21.

COVID-19 has created a number of pressures on local authority budgets, which Government has committed more than £7.2 billion in additional funding so far in this

pandemic, including £4.6 billion of un-ringfenced funding, recognising local authorities are best placed to decide how to meet the major COVID-19 service pressures in their local area.

As part of this year's Spending Review, we have worked with the Ministry of Housing, Communities and Local Government in order to ensure local government's funding requirements have been considered in the round, which includes funding for concessionary fares.

The local bus network is crucial in supporting essential services and moving key workers. Therefore, on the above basis, and alongside the introduction of the CBSSG scheme and our commitment to maintaining BSOG payments at pre-COVID levels, we continue to ask TCAs to pay concessionary fare payments at pre-COVID levels.

Approaches to calculating pre-COVID levels

We are aware that TCAs are calculating pre-COVID level reimbursement payments to operators in a number of different ways. In line with feedback from TCAs, DfT does not wish to prescribe an approach to calculating reimbursement. However, we would like to outline factors that TCA's may wish to have regard to.

TCAs may consider the following principles when developing their methodology:-

- 1. Seasonality of services** – (some authorities have adopted approaches to cover this, for example, averaging two lower winter and two higher summer payment methods)
- 2. Decline in concessionary patronage** - (total concessionary bus journeys fell by 2.5% in England in 2018/19, however, this may vary across local areas)
- 3. Decline in patronage as a whole**
- 4. Operators may have ceased trading/some services**
- 5. Operators may have started trading/new services**
- 6. Operators may have varied their services to increase/decrease the frequency/length of journey** - (If TCAs decide to consider this principle, we urge TCAs to only reduce concessionary fare reimbursement funding to the level of service that operators are providing them with. For instance, if an operator was providing 90% service levels, TCAs may consider providing 90% concessionary fare funding.)

TCAs may also take into consideration any other factor they consider to be significantly relevant in calculating pre-COVID level payments, however, the above six principles should create the framework for producing the methodology required. How this funding is calculated should be determined by the TCA, and DfT does not have a preferred methodology for this.

State Aid

We recognise that there are concerns that reimbursing concessionary fares at pre-COVID levels when the number of journeys taken on concessionary fares is lower than this level might be perceived as state aid.

TCAs will need to obtain their own legal advice if they have concerns about their particular circumstances. However, we can confirm that the principal terms of the original CBSSG scheme were notified to the European Commission (and the correspondence referred to maintaining concessionary fares at pre-pandemic levels). In response, the Commission expressed the (preliminary) view that the aid fell within article 5(5) of EU regulation 1370/2007, being an emergency measure as a result of a disruption in services, and therefore that it did not constitute unlawful state aid. DfT will continue to keep the position under review as the circumstances in connection with the pandemic evolve.

Applications to the Secretary of State - 'the appeals process'

As you are aware, bus operators should financially be “no better and no worse off”. As a result of TCA's providing concessionary fare reimbursement payments at pre-COVID levels, it can be argued that bus operators are therefore “better off”.

From meetings with stakeholders, we are aware that it is considered normal practice for various operators to appeal and we appreciate that the appeals process is time-consuming. Although legislation allows operators to appeal, we would encourage operators to take a pragmatic approach to such appeals.

Currently, the funding provided by TCAs and the top-up provided by CBSSG, will ensure that bus operators break-even during this period. Additionally, as part of the overall support that bus operators are receiving, we would expect them to be in regular engagement with their LTA, as stated in the CBSSG terms and conditions. Therefore, any issues connected to the operation of services should be discussed and resolved between the operator and the LTA. Operators should note that if LTAs are incurring time and money dealing with appeals which do not have any real prospect of success, this could affect the ability of the LTA to continue to provide funding at current levels.

Peak Vehicle Requirements (PVR)

TCAs should already take into account all previous PVR claims, due to DfT's ask of their continuation to pay concessionary fare reimbursement payments at pre-COVID levels.

The expectation is that additional PVR claims will be exceptional, as we would not expect these to be widespread during the COVID-19 response, given the reduced demand for and capacity on services. Should an operator wish to claim additional PVR, then the operator must supply data and analysis to support such a claim, in line with DfT guidance.

Mandatory Travel Concession (England) Regulations 2011

We recognise that some TCAs have a concern that paying out concessionary fares at pre-COVID levels is not compatible with the provisions of the Mandatory Travel Concession (England) Regulations 2011. Whilst this is ultimately a matter for TCAs to determine for themselves, we can say that the risk of a challenge being brought seems low (as it is not immediately obvious who would want to challenge such a decision). In addition, however, we are looking to address the concerns that transport officers have by reviewing the legislation. We will update you shortly on these plans.

We are happy to answer your questions about concessionary travel. Please email the team at concessionaryfares@dft.gov.uk.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'M Crane', with a stylized, cursive script.

Matthew Crane

Deputy Director, Local Transport COVID-19 Response Division, Department for Transport