

Committee: Cabinet

Date of meeting: 18 November 2021

**Title of Report: The English National Concessionary Travel Scheme –
The Cumbria Scheme 2022/23**

**Report by: Angela Jones, Executive Director - Economy and
Infrastructure**

**Cabinet Member: Keith Little, Cabinet Member - Highways and
Transport**

What is the report about? (Executive Summary)

1. This report sets out proposals for the Cumbria Scheme for 2022/23 including the reimbursement rate to be paid to transport operators. The draft Cumbria Concessionary Travel Scheme for 2022/23 is attached at Appendix 1.

Recommendation of the Executive Director

It is recommended that Cabinet

2. Approve publication, of the 2022/23 Cumbria Concessionary Travel Scheme as set out in Appendix 1 which maintains the English National Concessionary Travel Scheme (ENCTS) basic reimbursement rate at 58%.
3. Agree to publish the 2022/23 Scheme with the same Eligibility Criteria as the current scheme.
4. Agree that following publication of the 2022/23 scheme any non-substantial amendments can be approved by the Executive Director - Economy and Infrastructure in consultation with the Cabinet Member for Highways and Transport, the Leader of the Council and the Deputy Leader of the Council.

Background to the proposals

5. A mandatory national bus concession for older and disabled people has been in place since 2001. The concession has gradually been extended since its introduction and since April 2008 has provided free off-peak local bus travel to eligible older and disabled people
6. The ENCTS covers anyone who has an ENCTS pass who travels on an eligible journey on an eligible service. An eligible journey is a public service bus between 09:30 and 23:00 on weekdays and any time bank holidays and weekends.

7. The Council's scheme covers the Mandatory elements and also includes Discretionary elements. The proposed scheme is the same as the current 2021/22 scheme for 2022/23.
8. The County Council has been responsible for the reimbursement of transport operators and the administration of the ENCTS since 01 April 2011. The legislation that governs the scheme requires the operator to be no better or worse off for carrying concessionary fare passengers.
9. The 'Mandatory Travel Concession (England) Regulations 2011' detail the criteria on how a Transport Concession Authority (TCA), published ENCTS can be changed – the regulations determine a process by which the reimbursement rate can be calculated. Reducing the reimbursement rate specifically on cost saving grounds to the TCA is not one of the criteria described. It should be noted that the same legislation provides for the Right of Appeal to the Secretary of State by bus operators should they believe any modification of the reimbursement rate is detrimental to them in respect of no better or worse off when delivering the ENCTS. Under regulation 9(4) of the 'Mandatory Travel Concession (England) Regulations 2011' there is a power to have an ad-hoc arrangement with an operator in lieu of the official Scheme reimbursement rate. For the 2021/22 financial year the Council agreed an ad-hoc reimbursement rate with 3 community transport operators.
10. The Council is required to publish the scheme each year. Legislation provides a mandatory process by which the scheme should be reviewed each year, including the requirement to negotiate the reimbursement rate with requisite transport operators. This paper and the resulting approved Scheme is part of that consultation process.

Reimbursement Rate

11. Legislation sets out the method by which bus operators are reimbursed for ENCTS passengers; the aim is to ensure that operators are 'no better and no worse off' for participating in the Scheme. Cumbria applies a reimbursement rate of 58% of the full fare equivalent (shadow fare).

The ENCTS Cumbria Scheme 2022/23

12. It is proposed that the current 2021/22 scheme be continued as the scheme for 2022/23. The proposed scheme is required to be published (on the Council's website and sent to Cumbria Bus Operators) by 01 December 2021 in order to meet the statutory requirements to notify operators regarding any changes and to enter into negotiations, with the Scheme to go live on 01 April 2022. The following table sets a minimum time frame for negotiation with Bus Operators to achieve an implementation date of 01 April 2022.

Date	Event
1 December 2021	A TCA must publish reimbursement proposals in as much detail as possible to allow for meaningful negotiation, MINUS 4 MONTHS before final publication date – in our case that will mean publication on or before 01 December 2021.
1 March 2022	A TCA to determine final reimbursement arrangements MINUS 28 DAYS before final publication date – in our case that means 01 March 2022.
June 2022	Last date for bus operators to appeal to the Secretary of State (pRIORITY notice must be given to the TCA) is PLUS 56 DAYS from final publication date – end of June 2022.

Options considered and risks identified

Option (a)

- Cabinet approves the Scheme at Appendix 1 (which is effectively the current 2021/22 Scheme) as the 2022/23 scheme, with the basic reimbursement rate being maintained at 58% and retain the current discretionary elements.

Option (b)

- Cabinet does not accept the Scheme at Appendix 1 and recommends amendments.

13. Risks – The Council is a Concessionary Transport Authority it has a duty to make the National Concessionary Travel Arrangements for the residents in its area and those visiting its area, not to make the arrangements would be a breach of its duty and the reputational risk would be substantial.

Reasons for the recommendation/key benefits

14. The Council has a legal duty to make the arrangements as a Concessionary Travel Authority and comply with the statutory Consultation Process and Timeline. The scheme as described will fulfil the Council's obligations as a Concessionary Authority for 2022/23.

Financial – What resources will be needed and how will it be funded?

15. The recommendation of this report is that Cabinet approve the publication of 2022/23 Cumbria Concessionary Travel Scheme effective from 1 April 2022 as set out in Appendix 1 of this report and that the basic reimbursement rate of 58% is maintained along with the same Eligibility Criteria.
16. Assuming passenger numbers and fares return to pre-COVID levels by 1 April 2022, the scheme would continue to be funded through the existing ENCTS budget within Economy and Infrastructure.

17. If Cabinet choose not to approve the recommendations, it could result in the Council, as a Concessionary Transport Authority, failing to meet its duty to make the necessary travel arrangements, which could have a significant reputational impact.

Legal Aspects – What needs to be considered?

18. The County Council is the statutory travel concessionary authority. Guidance from the Department for Transport makes it clear that reimbursement should be calculated so that bus operators are “no better off and no worse off” by taking part in concessionary travel schemes. The “no better, no worse off” test is applied in relation to what the situation would have been in the absence of the scheme.
19. The concessionary travel schemes must not be used to provide hidden subsidy (or state aid) to bus operators, as this would be unlawful.
20. Travel concession authorities are free to use the methodology of their choice in calculating reimbursement of bus operations, provided that they comply with English law that governs concessionary travel reimbursement. Which as a consequence of Brexit now includes the following regulations: Regulation (EC) no 1370/2007 (Public Service Obligations in Transport) (Amendment) (EU Exit) Regulations 2020). These regulations came into force on 01 January 2021 to ensure that the European legislative framework for the award of Public Service Obligations in transport (rail franchises and bus services concessions) remains legally operable in the UK. Operators may challenge the reimbursement rate by way of appeal to the Secretary of State (and possibly judicial review).
21. Any substantial amendments to the final scheme would require a further report to Cabinet for their approval.

Health and Safety Aspects – What needs to be considered?

22. The County Council has a responsibility under the Health & Safety at Work Act 1974 and associated Management of Health & Safety at Work Regulations to ensure as far as is reasonably practicable that there are arrangements in place to ensure a healthy and safe working environment for all services for which it has responsibility.
23. If Cabinet approves publication of the 2021/22 Cumbria Concessionary travel Scheme as set out in Appendix 1 and maintains the ENCTS basic reimbursement rate at 58%, there are no increased risks identified in terms of health and safety management responsibilities.

Council Plan Priority – How do the proposals contribute to the delivery of the Council’s stated objectives?

- People in Cumbria are Healthy and Safe.
- Places in Cumbria are well connected and thriving.
- The economy in Cumbria is growing and benefits everyone.

What is the impact of the decision on health inequalities and equality and diversity issues?

24. The 1985 and 2000 Transport Acts require that a statutory minimum concessionary travel scheme be offered to people of retirement age, and eligible people with disabilities, to free off peak travel on scheduled bus services. In 2008 the Concessionary Bus Travel Act extended this to allow eligible passengers to use this concession on all local bus services in England.
25. The scheme is specifically aimed at older people and people with disabilities. However, because the availability of scheduled services is considered less in the rural areas the benefits will accrue to a greater degree in the urban areas. Where there are no scheduled services, access to the key service centres is facilitated through demand responsive schemes such as rural wheels, village wheels and voluntary car schemes. These types of schemes are not scheduled bus services and consequently the Council is not required to enable concessionary pass holders to travel free of charge.
26. An Equality Impact Assessment was undertaken in 2011. Since this time there have been no changes to the reimbursement rate process. It will be reviewed in 2022 and if appropriate published with the 2023 ENCTS Cabinet Report

Appendices and background documents

Appendix 1 – Cumbria Concessionary Travel Scheme 2022/23.

Key Facts

Electoral Division(s): All

Executive Decision	Key Decision included in the Forward Plan	Exempt from call in	Exemption agreed by Scrutiny Chair	Considered by Scrutiny, if so, detail below	Environmental or sustainability assessment undertaken	Equality impact assessment undertaken
Yes	Yes	No	N/A	N/A	N/A	Yes

Approved by Cabinet Member/s on 28 October 2021

Previous relevant Council or Executive decisions

Cabinet 12 November 2020

Consideration by Overview & Scrutiny

Not considered by Overview and Scrutiny

Background Papers

No background Papers

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