
Executive

27th March 2007

Report of the Director of City Strategy

**Concessionary Travel Scheme for Elderly and Disabled Persons –
Implications of Appeal by First York**

Purposes of Report

1. To advise Members of the outcome of an appeal made by First York to the Department for Transport for additional reimbursement payments in respect of bus travel concessions enjoyed by eligible residents of York & North Yorkshire.
2. To consider the likely implications for the Travel Concession Scheme in 2006/07 and 2007/08 arising from the appeal decision.

Background

3. The Government introduced changes to Concessionary Fares legislation in April 2006, under the Travel Concessions (Extension of Entitlement)(England) Order 2005. The changes increased the discount to bus pass holders under the Concessionary Fares Schemes from 50% to 100% so that no fares were payable by pass holders. Time restrictions on the availability of Concessionary Fares remained unchanged as did Local Authorities' discretionary powers to enhance the statutory scheme and provide additional alternative concessions.
4. Local Authorities were required to implement the changes within their own local area. The Government provided £350 million in 2006/7 through the Local Government Funding Settlement to help local authorities meet the additional costs. This amount had been calculated as an estimate of the amount needed to top up existing provision to free fares. The allocation for City of York Council totalled £850k.
5. The Council's Executive on 17 January 2006 considered a Report, detailing action already taken and further action proposed to establish the revised arrangements as an Interim Scheme. The Interim Scheme continued the North Yorkshire Concessionary Fares Partnership, facilitating concessionary travel for pass holders throughout North Yorkshire and on unbroken journeys into neighbouring administrative areas. It also retained the alternative National Transport Tokens concessions available to York residents as an alternative to a bus pass.
6. In April 2004, City of York Council had used its discretionary powers to establish flat concessionary fares of 25p single and 50p all day travel, for

York residents travelling within York, to enhance the then 50% statutory minimum concession. This led to the negotiation of fixed reimbursement payments with First York Ltd. and Top Line Travel of York Ltd., superseding the trip based formula used by the Concessionary Fares Partnership. Reimbursements to other operators were revised by agreed supplements to payments made using the standard reimbursement formula.

7. First York and Top Line were unwilling to continue with negotiated fixed reimbursement payments from April 2006, as both companies felt that the passage of time had made the payments less well aligned with the guiding principle of Concessionary Travel Schemes; that operation of a Scheme should leave bus service operators no better or worse off financially.
8. The Concessionary Fares Partnership Standard Method of Reimbursement from April 2006 uses 2005/6 reimbursement payments to operators as the base from which 2006/7 payments are calculated. This was not acceptable to the two York operators. It was their opinion that the 2005/6 fixed payments were no longer a fair reflection of their entitlement. Consequently, payments were negotiated and agreed with First York and Top Line on the basis of forecast growth in patronage arising from the increased concession from April 2006. These negotiations were guided using a "toolkit" provided by central government, to assist in predicting the customer response to free travel.
9. On 21 April 2006, First York gave the Council seven days notice of its intention to appeal to the Secretary of State against the negotiated reimbursement arrangements. The appeal was subsequently submitted to the Department for Transport on 27 April 2006, detailing a number of aspects of the Reimbursement Arrangements which the Company considered to be flawed. There were subsequent exchanges of correspondence between the Company and the Department of Transport and between the Council and the Department of Transport, in which each party supported its position.
10. The appeal decision was received from the Department for Transport on 19 February 2007. It summarises the submissions by the two parties before considering them and announcing the decision, which is binding on both parties. The main part of the decision is attached to this report as Confidential Annex A. In summary, the decision maker accepted some, but not all, of First York's claims but also supported some of the Council's arguments. As a result, the Council has been directed to pay increased reimbursement amounts to First York in 2006/7 and successive years. The amounts are however less than had been sought by the Company.

Analysis of the Appeal Decision

11. Data provided to the Council by First York for the first quarter of 2006/7 shows significantly more concessionary trips than were forecast when the reimbursement figures were agreed. Data capture problems together with seasonal and other factors, make accurate extrapolation of this to an annualised figure difficult. It is likely, however that trips over the year will be at least 15% more than the original forecast. To the extent that this represents transfers from payment of full fares with either cash or National

Transport Tokens, First's claim for additional reimbursement was considered valid by the Appeal decision maker.

12. The combined take up of bus passes and tokens amongst the elderly population at the end of March 2006 was 86%. This consisted of 14,500 bus pass holders and 21,000 token claimants. In addition 1,400 bus passes and 200 lots of tokens were issued on grounds of disability. The size of the eligible population of Disabled Persons is not known.
13. By the end of February 2007, take up has risen to 93%, with around 22,250 bus passes issued to elderly persons and around 15,750 token claimants. Around 1500 passes issued on grounds of disability are now in circulation, with 150 disabled persons claiming tokens.
14. The Council's position that the "Average Fare", which pass holders would have paid in the absence of the Scheme, should be determined as a weighted average of a range of available ticket types was agreed by the appeal decision maker.
15. Because the appeal related to negotiated reimbursement arrangements which are different to the standard method adopted by the Concessionary Fares Partnership, the decision is understood to only affect payments to First York. Consequential additional payments to other bus service operators are therefore not expected to arise.
16. Payments for 2006/7 and 2007/8 will be affected by the appeal decision. The Chancellor of the Exchequer announced in his 2007 Budget speech that free concessionary travel would be further modified from April 2008 so that passes are valid throughout England, rather than locally as at present. Legislation to effect this is currently progressing through Parliament and consideration is being given at national level to implementation issues. At present, the full implications (financial or practical) of this development for local authorities is by no means clear and it is likely to be towards the end of 2007 before the revised Scheme is finalised.
17. There are a number of other issues which still need to be resolved, which could have a modest effect on the Council's Concessionary Fares Budget. These include a review of recharges between York and Harrogate Councils (as Lead Authority for the Partnership) in respect of reimbursement payments made by each authority to operators on the other's behalf, and settlement of outstanding claims from two operator's for additional costs arising from extra travel generated by changes to the Concessionary Fares Scheme.

Financial Implications

18. The table below show the changes to the budgets since 2003/04 when CYC was operating the statutory minimum half price scheme.

Fin Year	Bus Pass £'000	Tokens £'000	Total £'000	Comments
2003/04	562	580	1,142	£26 tokens, half price bus pass
2004/05	922	1,080	1,992	£50 tokens or 50p journey with pass
2005/06	936	865	1,791	£40 tokens or 50p journey with pass
2006/07 Budget	1,710	865	2,565	£40 tokens or free journey with pass
2006/07 Projected	2,149	615	2,764	£40 tokens or free journey with pass

19. Members will see from the above that the budgeted increase in the costs of the bus pass reimbursements has increased from £562k in 2003/04 to £1,710k in 2006/07. This represents the additional cost in moving from the statutory minimum scheme of half price bus pass to free travel. This is an increase of £1,148k. Allowing 5% per annum for inflation means the increase in real terms has been c £1,050k. This has been funded by
- a) the decision to move to a 50p flat fare in 2004/05 £350k
 - b) the allocation from Government for the free scheme £850k
 - c) saving due to the fact CYC operated improved scheme -£150k
20. Following the appeal it is anticipated that the cost of reimbursements for bus pass use will rise to £2,149k (an increase of £439k over budget). This is partly offset by saving due to a reduced take up of bus tokens (£-250k) however this leaves a budget gap of £189k.
21. Prior to the result of the appeal it was assumed that the cost of concessionary fares and bus tokens budget combined would be within budget. At Monitor 2 it was anticipated that the bus tokens budget would underspend by £250k however, this would be offset by a corresponding overspend on bus pass reimbursements. This included known commitments re the fixed price agreement and a contingency sum available of £85k to deal with any additional cost claims. The result of the appeal means that an additional sum of £274k has to be paid to First York and that taking into account the uncommitted budget this leaves a budget deficit of £189k.
22. Whilst at Monitor 2 the City Strategy budget was forecasting an underspend of £52k it is not considered possible that at this late stage in the year the additional costs resulting from this appeal can be met from the City Strategy

budget. It is therefore requested that the Executive approve a call on reserves for £189k to fund the additional cost.

23. The Council has reserves that can be used to fund non-recurring expenditure, which will leave the contingency available to fund recurring items. CPA recommend that a minimum level of revenue reserves is held, and for 2006/07 the minimum recommended level is £4.95m. At the Corporate Monitor 2 report taken to Executive 16th January 2007 it was estimated that there will be approximately £5.52m of revenue reserves available. The balance available, if this application is approved will be £5.331m. The 2007/08 budget report forecast reserve balances over the years 2007/08 to 2009/10. This showed a “headroom in reserves” of £809k in 2007/08 rising to £935k in 2008/09 before dropping to £544k in 2009/10. The application of these reserves will adjust the three year figures to £620k, £746k and £355k.
24. The appeal decision suggests that the 2007/08 budget should be estimated on the basis of the 2006/07 reimbursement, with an addition to reflect the effect of increase over the year in adult bus fares. However this would need to be reviewed following analysis of updated usage data. If the reimbursement of £2m to First York is uplifted for inflation this would mean that there will be a projected budget shortfall in 2007/08 of between £250k and £300k. As part of setting the Council’s budget for 2007/08 it was recognised that the council may be required to fund additional costs relating to the bus pass scheme and a sum of £200k was set aside in the contingency. The General Contingency for 2007/08 was set at £800k. Potential areas that might require recurring funding during the year were identified as part of the budget process, and totalled £1.025m. A further £500k of one-off costs were identified. It is too early to know yet how many of the identified areas of financial pressure will come to fruition. The key pressures where there may still be a need for additional funding, which were included within the £1.025m, are the costs of meeting the demand and complexity of social care needs and possible cost of the pay award.
25. It is recommended that officers need to further analyse information provided by First York to ascertain actual increase in passenger trips. The impact of the fare increase announced in January will also need to be taken into account to derive the average fare and potential yield adjustment. It will be necessary to report back to Members as part of the ongoing monitoring arrangements when this is determined to seek a release from the council contingency. At that time there will also be a clearer view of the other potential calls on contingency so a more informed decision can be made.
26. **Other Implications**
 - **Legal** – The appeal decision maker appointed by the Secretary of State has exercised legal powers vested in the Secretary of State to direct the Council’s action. The Council is bound to comply with this direction
 - **Others** – There are no Human Resource, Resource, Equalities, Crime and Disorder, Information Technology, Property, or Sustainability Implications arising from matters considered in this report.

Risk Management

27. The majority of the risks relating to this report are financial. The result of the appeal coming so late in the year has meant that it is not possible to mitigate fully the effect of the additional expenditure in 2006/07. It is also too late to incorporate full year cost implications into the 2007/08 budget that was set at Full Council February 2007. Included in the budget report however was a recognition that there was a risk that the appeal may not go fully in our favour and that additional costs were possible.
28. A further risk is that as a result of this appeal further claims by bus operators may be made to the council. This position will have to be managed with all claims being considered on an individual basis with any future liabilities reported to Members in the monitoring reports following the management cycle arrangements.

Recommendations

29. It is recommended that the Executive consider the release of reserves to fund the projected overspend of £189k arising from result of the concessionary fares appeal.

Reason – the Executive is the responsible body for the release of this provision.

It is recommended that officers undertake further analysis of the usage data and determine an appropriate reimbursement methodology for 2007-08 reporting back to members when the full financial impact is clear.

Reason - to ensure proper financial management of council funds.

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Annexes

Annex A - Appeal decision (extract)

Background Papers

Correspondence between City of York Council, First York Ltd. and Department for Transport between January 2006 and February 2007.

Department for Transport Concessionary Bus Travel Bulletin (19 February 2007)