

# **TRANSPORT FOR WEST MIDLANDS**

## **TRANSPORT ACT 1985**

### **Child Travel (Bus) Concession Reimbursement Arrangements**

**To be valid**

**From 1<sup>st</sup> August 2018**

## **TRANSPORT FOR WEST MIDLANDS**

### **1985 ACT CHILD TRAVEL (BUS) CONCESSION REIMBURSEMENT ARRANGEMENTS**

**1<sup>ST</sup> August 2018**

#### **The Arrangements**

1. These Child Travel (Bus) Concession Reimbursement Arrangements subsequently referred to as “the Arrangements” have been established by Transport for West Midlands (“TfWM”) , in pursuance of its powers under:-
  - i. the Transport Act 1985 (as amended) (“1985 Act”);
  - ii. Travel Concession Scheme Regulations 1986 (“TCSR”);
  - iii. and all other relevant legislation.
2. The Arrangements cover reimbursement arrangements for the 1985 Act Child Travel (Bus) Concession Scheme (“the Scheme”) established by the West Midlands Combined Authority (“WMCA”).
3. Unless otherwise defined in these Arrangements words or terms used in the Arrangements shall have the same meaning as given to such words or terms in the 1985 Act, and TCSR.

#### **Operative Date**

4. The Arrangements shall come into operation in its entirety on 1<sup>st</sup> August 2018 and be in operation until 31<sup>st</sup> July 2019 (inclusive).

#### **Objective for Reimbursement of Operators**

5. The objective of the Arrangements (which is not a duty) in relation to reimbursement of operators under the 1985 Act is to provide that such operators both individually and collectively are no better and no worse off financially than they would be if they did not participate in the Scheme in accordance with the principles set out in the TCSR but WMCA and TfWM shall not be liable for any failure to achieve such objective.

#### **Payment Periods and Dates**

6. The “payment periods” under the Arrangements are as set out in Schedule 7. Operators will be paid for all concessionary journeys made by eligible persons on Scheme Services (as defined in the Scheme), on a calendar month or 4-weekly basis as shown in the Schedule.
7. If for any reason the amount of reimbursement paid for any given period should have been higher, TfWM shall pay the difference to the operator within 1 month of the date of recalculation.

8. If for any reason the amount of reimbursement paid for any given period should have been less, TfWM shall recover the overpayment by deduction against the next period's payment.

### **Standard Method of Determining Reimbursement**

9. The standard method for assessing the total number of journeys made by eligible persons under the Scheme is set out in Schedule 1. The standard method for assessing the fares value to be attributed to those journeys is set out in Schedule 2. The standard method for calculating the reimbursement due to the operator will be on the basis of the formula and parameters set out in Schedule 3. The standard method for calculating the additional costs due to the operator is set out in Schedule 4. In calculating the reimbursement due to the operator, TfWM will take into account any data supplied by the operator if it can be shown that the data supplied is more accurate than the standard method and is more likely to enable TfWM to meet the objective set out in paragraph 5.

### **Data**

10. When an operator first applies to participate in the Scheme, it shall supply to TfWM within 7 days:
  - (a) a list of Scheme Services to be operated by that operator; and
  - (b) all relevant proposed fares and a list of the ticket types valid for travel on such services.
11. The operator shall inform TfWM of the introduction or cessation of any Scheme Services, changes to the times at which and routes on which Scheme Services operate, changes to fares and ticket types valid for travel on such services and any circumstances leading to the temporary cessation or major disruptions to such services, within 7 days of such event occurring.
12. An operator shall provide data to TfWM in accordance with the provisions of Schedule 5 for the purpose of calculating reimbursement amounts.
13. If the operator fails to provide such information or data as is referred to above then TfWM may in its discretion either defer all or part of any payment otherwise due to the operator until such omission is fully rectified or reimburse the operator on the basis of such estimated reimbursement as it considers appropriate in the absence of such data or survey information.
14. Where it becomes apparent to TfWM that any Scheme Service is or has been subject to material disruption, or has not been operated in accordance with the registered timetable, then TfWM may, after giving the operator the opportunity to comment on the effects of the same on the journeys being taken by eligible persons on such services, make such adjustments to the reimbursement due to such operators as it considers necessary to reflect the effects of such disruption or non-operation.

### **Review of Reimbursement**

15. At the end of July 2019 TfWM shall review the reimbursement calculations made in accordance with these reimbursement arrangements during the Scheme duration. This review shall include consideration of any more accurate information that may have become available, which may result in a recalculation of reimbursement applicable to each operator. Such review shall be concluded within 3 months.
16. The review shall exclusively cover calculation of the operators' reimbursement and will not incorporate any changes to the method of determining reimbursement as specified in the Scheme.
17. If following the review it is determined by TfWM that the amount of reimbursement paid during the Scheme duration should have been higher, TfWM shall pay the difference to the operator within 3 months of completion of the review.
18. If following the review it is determined by TfWM that the amount of reimbursement paid during the Scheme duration should have been less, TfWM shall recover the overpayments from the operator within 3 months of completion of the review or at such time scale as agreed between the parties.

### **Dispute Resolution Procedure**

19. If, following the review of the reimbursement calculations in accordance with the provisions of paragraphs 15 to 18 above, there is a dispute between an operator and TfWM in respect of the level of reimbursement paid to that operator then if such dispute relates to:
  - (a) the fares value to be attributed to journeys by persons eligible to receive concessions on the operator's Scheme Services;
  - (b) the total number of concessionary journeys made by eligible persons on such services; or
  - (c) the number of additional journeys generated in consequence of the availability on such services of such concessions;

then such dispute shall be the subject of the dispute resolution procedure set out in Schedule 6.

### **Contact for Communications**

20. All notices, data and other information required to be given to TfWM under the Arrangements shall be provided to the following contact point (or such other contact point as may be nominated by TfWM to operators in writing from time to time):

Swift & Concessions Schemes Manager  
Transport for West Midlands  
16 Summer Lane  
Birmingham  
B19 3SD

telephone 0121 214 7006

email [paula.higgins@tfwm.org.uk](mailto:paula.higgins@tfwm.org.uk)

21. When an operator is first admitted to the Scheme, they shall provide to TfWM details of the name, address, telephone number and fax number of its official contact for communications in relation to these Arrangements, and shall by notice in writing inform TfWM of any changes to the same.
22. Any notice or communication sent to the last such address or, e-mail address as is referred to above shall be deemed to be duly served on the recipient. If an operator has failed to give notice in writing to TfWM of such an official contact, then TfWM may send any notice or other communication to any address set out in the most recent correspondence from the operator concerned, which shall be deemed to be its address for service.

## Schedule 1

### Standard Method of Determining Passenger Journeys

1. In the case of the concessions for children aged 5-15 and students and young people aged 16-18 (including children and students carried without charge under category (iv) of Schedule 1 of the Scheme), the number of concessionary journeys ("J") is taken from the operator's period OP1 submission, as described in Schedule 5. In any case where an operator's submission is unavailable, or, in TfWM's reasonable opinion, is not sufficiently reliable, survey or other appropriate estimates are used.

## Schedule 2

### Standard Method of Determining Fares Values

1. In the case of the concessions on cash fares for children and eligible students and young people, in accordance with the principles set out in the TCSR and any subsequent applicable regulations:
  - a. the value of the Average Fare Foregone ("AFF") will be based on the equivalent fares paid by non-concessionary adult passengers on a service or services provided by that operator (" $F_{adult}$ "), adjusted by a Commercial Discount Factor ("CDF"), which represents the likelihood that in the absence of the concession operators would modify the pricing relative to the current offer;
  - b. the value of  $F_{child}$  will be set at the actual concessionary fare paid.
  - c. the CDF will not be applied for young people carried under category (iii) of Schedule 1 of the Scheme.
2. In the case of concessions on ticket types under the Network West Midlands multi-operator ticketing schemes (e.g. 'n'Network Scholar passes, 'n'Bus and 'n'Network) for children and eligible students and young people, in accordance with the principles set out in the TCSR and any subsequent applicable regulations:
  - a. the total fares value ("FV") will be the value of the aggregate child ticket revenue for distribution relating to each respective ticketing scheme, adjusted by a Peak Adjustment Factor ("PAF"). The PAF is derived from the level of eligible peak travel recorded against these ticket types as a proportion of total travel reported to TfWM by operators in the Scheme Area;
  - b. the value of the revenue foregone will be set at twice the FV, adjusted by the CDF.
  - c. the CDF will not be applied for young people carried under category (iii) of Schedule 1 of the Scheme.

3. For children, students and young people carried without charge under category (iv) of Schedule 1 of the Scheme, the standard method for determining fares values is as set out in TfWM's Transport Act 2000 Travel Concession Reimbursement Arrangements ("2000 Act Arrangements").

## Schedule 3

### Standard Method of Determining Reimbursement

1. TfWM will calculate reimbursement payments in accordance with the principles set out in the TCSR and any subsequent applicable regulations. This Schedule describes the detailed implementation of those principles.
2. Calculation of the reimbursement due will be made in accordance with the payment periods and dates set out in paragraphs 6 to 8, and Schedule 7.

#### Reimbursement Factor (RF)

3. For the purposes of these Arrangements the value of the Reimbursement Factor will be set at a value of 1 for all journeys undertaken by holders of 'n'Network Scholars products, and at a value of 0.96 for all other specified product types.

#### Commercial Discount Factor (CDF)

4. For the purposes of these Arrangements the value of the Commercial Discount Factor will be set at 0.67. Operators should be aware that this figure will be subject to review at the end of these Arrangements. It will not be applied for young people carried under category (iii) of Schedule 1 of the Scheme.

#### Peak Adjustment Factor (PAF)

5. For the purposes of these Arrangements the value of the Peak Adjustment Factor will be set at 0.8 for 'n'Bus and 'n'Network products, except for 'n'Network Scholars products to which a PAF of 1 will apply.

#### Reimbursement calculation

6. In the case of cash fares, the reimbursement calculation for children and student journeys will be undertaken according to the following methodology:

$$\text{Reimbursement} = (J * \text{AFF} * \text{RF}) - (J * F_{\text{child}})$$

$$\text{where } \text{AFF} = F_{\text{adult}} * \text{CDF}$$

Journeys undertaken by young people carried under category (iii) of Schedule 1 of the Scheme the following methodology will be applied:

$$\text{Reimbursement} = (J * \text{AFF} * \text{RF}) - (J * F_{\text{child}})$$

$$\text{where } \text{AFF} = F_{\text{adult}}$$



7. For ticket types under the Network West Midlands multi-operator ticketing schemes (e.g. 'n'Bus and 'n'Network) the total reimbursement to be distributed under each respective scheme will be calculated for children and student journeys according to the following methodology:-

$$\text{Reimbursement} = ((FV * 2 * CDF) * RF) - FV.$$

Journeys undertaken by young people carried under category (iii) of Schedule 1 of the Scheme the following methodology will be applied:

$$\text{Reimbursement} = ((FV * 2) * RF) - FV.$$

This total reimbursement amount will be distributed to participating Network ticketing scheme operators in direct proportion to the relevant eligible (peak) journeys on that operator's Scheme Services, relative to the total for all operators. Reimbursement for the 'n'Bus and 'n'Network schemes will be calculated separately for the individual schemes.

8. For children and students carried without charge under category (iv) of Schedule 1 of the Scheme, the standard method for determining reimbursement is as set out in the 2000 Act Arrangements; operators should include these journeys in the *Holder of Free Concessionary Passes* figure on line (d) of their Operator Return ("OP1") form.
9. Any other ticket and fare types including but not limited to other pre-paid season tickets that are included under the Scheme may be reimbursed under these Arrangements subject to prior agreement between TfWM and the operator as to the level of any reimbursement to be made.

## **Schedule 4**

### **Reimbursement for Additional Costs**

1. An operator shall be entitled to additional reimbursement payments in accordance with Regulations 5 and 12 of the TCSR.
2. TfWM will calculate the reimbursement for additional costs that it estimates the operator is due from the following formula, which makes use of the Reimbursement Factor specified in Schedule 3, paragraph 3 above:

$$\text{Reimbursement for Additional Costs} = \text{volume} * (1 - RF) * C_t$$

where  $C_t$  is the standard rate for additional costs per generated passenger calculated by TfWM for period  $t$ . It is based on a standard value of 9.0 pence determined by the Decision Maker to appeals submitted to the Secretary of State for Transport during 2006/7, and which was increased to 9.6 pence for 2007/8 to reflect operator cost increases. It will be uplifted annually each August based on the most recent Consumer Price Index. For these Arrangements the forecast uplift is 2.2%, to 12.78 pence per generated journey.

3. TfWM will consider claims for reimbursement for additional costs where these would not otherwise be reimbursed, potentially including administration costs and peak vehicle costs.
4. Any operator claiming additional reimbursement payments shall, in making such a claim, provide TfWM with sufficient information supporting their claim.
5. For claims involving additional costs for increases in the capacity or number of vehicles, the information required includes, but is not limited to:
  - i. details of the additional number or capacity of vehicles used in providing eligible services as a result of concessions being available;
  - ii. information demonstrating that the additional capacity was required on those services, and is not spare capacity, and showing the extent to which the reason for requiring such additional capacity was due to the availability of concessionary travel;
  - iii. details of the cost of additional vehicles deployed (or provision of additional capacity) and details of how these have been utilised less any benefit realised by the operator from disposal (or other use) of vehicles previously used to provide such services and any other benefits e.g. generated commercial patronage; and
  - iv. any other information that the operator believes is relevant to its claim for additional reimbursement payments arising from providing additional vehicles or capacity to meet demand created by the availability of the concessions.
6. TfWM shall use all data provided by the operator in conjunction with any further information that TfWM may itself have (including, but not limited to survey data) to assess the additional costs incurred by the operator and assess the additional reimbursement payments to be made.
7. Payment of additional reimbursement under this Schedule shall be paid as agreed by TfWM and operator, or in the absence of agreement, on a calendar month basis starting from the payment date following the date of calculation of the costs additional to the basic operating costs carried out by TfWM in accordance with Regulations 5 and 12 of the TCSR.

## **Schedule 5**

### **Data Provision**

1. Every operator claiming reimbursement under these Arrangements is required to submit to TfWM a data statement ("OP1") in accordance with the "OP1 Submission Dates" specified in Schedule 7. The OP1 is to contain the following:
  - i. the total number of concessionary passenger journeys made on the operator's Scheme Services by eligible persons in each of the

concession categories set out in Schedule 1 of the Scheme during the preceding payment period.

- ii. the total amount of fares by ticket type received by the operator for the passengers referred to in (i) above (whether received on or off bus).
2. TfWM reserves the right to audit any item of information provided by bus operators that is used in or is relevant to the calculation of Concessionary Reimbursements. This information includes all data on the form OP1, related prime documents and documentation demonstrating that the information supplied only includes those services on which concessions are available.
3. Operators are required to retain this information in an appropriate and accessible form for at least 18 months after the end of the year to which it relates. In addition, TfWM reserves the right to require individual operators, where notified before the end of this time, to retain the information for a longer period, for example, in the case of a current or pending investigation.
4. TfWM currently collects the information required utilising form OP1 as set out above. TfWM may reissue form OP1 from time to time as necessary.

## **Schedule 6**

### **Dispute Resolution Procedure (paragraph 19)**

1. Any dispute in connection with any matter arising from these Arrangements must be formally notified to TfWM in writing within three months of the completion of the Review of Reimbursement as laid out in paragraph 19.
2. In the event of any such dispute which cannot be resolved by agreement between the parties representatives within 20 working days of the notification, senior representatives of the parties shall, within 20 working days of a further written request from either party to the other, meet in good faith to attempt to resolve the dispute.
3. If the dispute is not resolved as a result of such meeting, either TfWM or the Operator may propose to the other in writing that the dispute be referred to an independent expert ("Independent Expert")
4. If the parties are unable to agree on an Independent Expert or if the Independent Expert agreed upon is unable or unwilling to act then any party may apply to the President of the Law Society to appoint an Independent Expert.
5. If any matter is referred to the Independent Expert for determination in accordance with paragraph 3 above, then:
  - (a) the Independent Expert shall determine the matter, subject to the remaining provisions of this paragraph 5, on a basis that is fair and reasonable in all respects as between the Operator and TfWM and that takes into account all relevant factors and circumstances;

- (b) the Independent Expert shall act as an expert and not as an arbitrator and its determination of the dispute shall be final and binding on the parties (save in the case of manifest error);
- (c) TfWM and the Operator shall ensure that the Independent Expert has full access to all books, information and records in their possession or in the possession of their auditors and accountants that are relevant to the dispute and to his determination thereon; and
- (d) the Independent Expert's fees shall be borne equally by the parties unless the Independent Expert shall decide that one party has acted unreasonably (in which case their fees shall be borne as the Independent Expert shall direct).

Schedule 7

PAYMENT SCHEDULE

<u>Concessionary Calendar Monthly Payments 2018 - 2019</u>			
<u>Month</u>	<b>Deadline for Concession OP1 to Centro</b>	<b>Concessionary Pay Date</b>	
August	<b>Fri 14-09-2018</b>	Fri	21-Sep-18
September	<b>Mon 15-10-2018</b>	Mon	22-Oct-18
October	<b>Wed 14-11-2018</b>	Wed	21-Nov-18
November	<b>Fri 14-12-2018</b>	Fri	21-Dec-18
December	<b>Mon 14-01-2019</b>	Mon	21-Jan-19
January	<b>Thurs 14-02-2019</b>	Thurs	21-Feb-19
February	<b>Thurs 14-03-2019</b>	Thurs	21-Mar-19
March	<b>Mon 15-04-2019</b>	Mon	22-Apr-19
April	<b>Mon 15-05-2019</b>	Mon	22-May-19
May	<b>Fri 14-06-2019</b>	Fri	21-Jun-19
June	<b>Mon 15-07-2019</b>	Mon	22-Jul-19
July	<b>Wed 14-08-2019</b>	Wed	21-Aug-19

**Commercial Payment Calendar for 2018 - 2019**

	<u>Period</u>		<b>Deadline for Commercial OP1 to Centro</b>	<b>Commercial Pay Date</b>
5	01-Aug-18	to 18-Aug-18	<b>14-Sep-18</b>	Fri 28-Sep-18
6	19-Aug-18	to 15-Sep-18	<b>12-Oct-18</b>	Fri 26-Oct-18
7	16-Sep-18	to 13-Oct-18	<b>09-Nov-18</b>	Fri 23-Nov-18
8	14-Oct-18	to 10-Nov-18	<b>07-Dec-18</b>	Fri 21-Dec-18
9	11-Nov-18	to 08-Dec-18	<b>04-Jan-19</b>	Fri 18-Jan-19
10	09-Dec-18	to 05-Jan-19	<b>01-Feb-19</b>	Fri 15-Feb-19
11	06-Jan-19	to 02-Feb-19	<b>01-Mar-19</b>	Fri 15-Mar-19
12	03-Feb-19	to 02-Mar-19	<b>29-Mar-19</b>	Fri 12-Apr-19
13	03-Mar-19	to 30-Mar-19	<b>26-Apr-19</b>	Fri 10-May-19
1	31-Mar-19	27-Apr-19	<b>24-May-19</b>	Fri 07-Jun-19
2	28-Apr-19	25-May-19	<b>21-Jun-19</b>	Fri 05-Jul-19
3	26-May-19	22-Jun-19	<b>19-Jul-19</b>	Fri 02-Aug-19
4	23-Jun-19	20-Jul-19	<b>16-Aug-19</b>	Fri 30-Aug-19
5	21-Jul-19	31-Jul-19	<b>27-Aug-19</b>	Fri 27-Sep-19