

TRANSPORT FOR WEST MIDLANDS

TRANSPORT ACT 1985

Women's Concessionary Travel (Bus) Scheme Reimbursement Arrangements

To be valid

From 7th July 2019

WEST MIDLANDS COMBINED AUTHORITY

**1985 ACT WOMEN'S CONCESSIONARY TRAVEL (BUS) SCHEME
REIMBURSEMENT ARRANGEMENTS**

7TH JULY 2019

The Arrangements

1. These Women's Concessionary Travel (Bus) Scheme Reimbursement Arrangements subsequently referred to as "the Arrangements" have been established by the West Midlands Combined Authority ("the Authority"), 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 Women's Concessionary Travel (Bus) Scheme ("the Scheme") established by the West Midlands Combined Authority ("the Authority").
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 7th July 2019 and will be in operation until 4th November 2020 (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 the Authority 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, the Authority 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, the Authority 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, the Authority 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 the Authority to meet the objective set out in paragraph 5.

Data

10. When an operator commences the operation of eligible services within the principal area, it shall supply to the Authority, 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 the Authority 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 the Authority 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 the Authority 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 the Authority that any Scheme Service is or has been subject to material disruption, or has not been operated in accordance with the registered timetable, then the Authority 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 March 2020 the Authority 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 the Authority that the amount of reimbursement paid during the Scheme duration should have been higher, the Authority shall pay the difference to the operator within 3 months of completion of the review.
18. If following the review it is determined by the Authority that the amount of reimbursement paid during the Scheme duration should have been less, the Authority 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 the Authority 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 the Authority under the Arrangements shall be provided to the following contact point (or such other contact point as may be nominated by the Authority 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

21. When an operator is first admitted to the Scheme, they shall provide to the Authority 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 the Authority 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 the Authority of such an official contact, then the Authority 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. The Authority will determine its reimbursement payments to the operator on the basis of the smartcard journey transactions reported to the Authority by the operator.
2. The Authority reserves the right to fully audit the smartcard transactions declared by the operator through its back office management systems. Where a difference occurs, the Authority will contact the operator to seek an explanation. If no suitable explanation can be given, the Authority will revert to the passenger journey data detailed in the Host Operating Processing System (HOPS).

Non Smart Transactions

3. If the smartcard or smartcard reader fails when in use or the operator does not have the facility to read the card smartly, the respective journey should be recorded manually in an auditable manner¹. Each period the operator must also submit to the Authority any manual transactions it has recorded for permit holders (as defined in the 1985 Transport Act Women's Concessionary Travel (Bus) Scheme).
4. The Authority reserves the right to fully audit all manual recordings of concessionary passenger journeys. Submissions of manual recordings will be assessed against an average and all outliers will be investigated further.

Estimates to be made in the absence of information from the operator

5. In the event that the operator fails to provide sufficient information, or, in the Authority's reasonable opinion, not sufficiently reliable information, the Authority may at its discretion make such estimates as it thinks fit of the concessionary journeys carried by the operator, subject to correction as and when better information becomes available.

¹ This should be an electronically time stamped transaction recorded on an ETM or any other method pre agreed with "the Authority"

Schedule 2

STANDARD METHOD OF DETERMINING FARES VALUES

The Average Fare Forgone

1. This Schedule describes the method that will be used by the Authority to estimate the average fare that would be paid by eligible permit holders for each journey made using the relevant concession (as defined in the Scheme, Schedule 1) on the operator's eligible services.
2. In accordance with the principles set out in the TCSR and any subsequent applicable regulations 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. This value will be calculated for the operator at least once in each period of 12 months that 'the Scheme' is in operation or upon request. The true AFF applicable to the financial year will be calculated as part of the year-end review and used when determining the balance calculation.
3. The default methodology recommended by the DfT in calculating the Average Commercial Fare for the English National Concessionary Fares Scheme in regards to the Marginal Capacity Cost Rate calculation, as set out in The Authority's Transport Act 2000 Travel Concession Reimbursement Arrangements ("2000 Act Arrangements"), will be adopted as default AFF, except it will only be based on the equivalent fares paid by non-concessionary adult passengers and will exclude child or student fares.

Schedule 3

Standard Method of Determining Reimbursement

1. The Authority 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.

Non-Generated Journeys (NGJ)

3. The number of journeys that would have been made by passengers in the absence of a scheme and who would otherwise have paid for a (full fare or discounted) ticket to travel. Reimbursement for these passengers will be determined using the "AFF" as defined in Schedule 2.

Generated Journeys (GJ)

4. The number of journeys that would not have been made by passengers in the absence of a scheme and therefore no payment for travel would have been made. Reimbursement for these passengers will be determined using the "ACR" as defined in Schedule 4.

Calculating Generated (GJ) and Non-Generated Journeys (NGJ)

5. For the purposes of these Arrangements, the number of NGJ will be capped at 60 per permit holder. This is consistent with the National Travel Survey (NTS) data for this eligible demographic (as defined in the Scheme, Schedule 1). Any journey above this cap per permit holder will be deemed a GJ.
6. The Authority will take account of other data where it can be demonstrated to be more appropriate or accurate.

Reimbursement calculation

7. In the case of Non-Generated Journeys (NGJ), the reimbursement calculation will be undertaken according to the following methodology:

$$7.1. \text{Reimbursement} = (\text{NGJ} * \text{AFF})$$

8. In the case of Generated Journeys (GJ), the reimbursement calculation will be undertaken according to the following methodology:

$$8.1. \text{Reimbursement} = (\text{GJ} * \text{ACR})$$

8.2. Where ACR = Additional Costs Rate (see Schedule 4)

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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. The Authority will calculate the reimbursement for additional costs that it estimates the operator will be due per Generated Journey ("GJ") by setting an Additional Costs Rate ("ACR").

Additional Costs Rate ("ACR")

3. The ACR will be calculated by using the summed value of the Marginal Operating Cost Rate and Marginal Capacity Cost Rate determined by values generated for each operator for the payment of the English National Concessionary Fares Scheme as set out in The Authority's Transport Act 2000 Travel Concession Reimbursement Arrangements ("2000 Act Arrangements").
4. No Marginal Capacity Costs are paid on subsidised services, as these costs are reimbursed through the contract so additional capacity costs do not apply. For subsidised services the ACR will be calculated with a Marginal Capacity Cost Rate set to zero.
5. The Authority will take account of operator-supplied data where it can be demonstrated to be more appropriate or accurate.

Other Additional Costs

6. The Authority will consider claims for reimbursement for other additional costs where these would not otherwise be reimbursed, potentially including administration costs and peak vehicle costs.
7. Any operator claiming additional reimbursement payments shall, in making such a claim, provide the Authority with sufficient information supporting their claim.
8. For claims involving additional costs for increases in the capacity or number of vehicles, the information required includes, but is not limited to:
 - (a) details of the additional number or capacity of vehicles used in providing eligible services as a result of concessions being available;
 - (b) 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;
 - (c) 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

- (d) 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;
9. Should an operator seek reimbursement for administration costs, above and beyond that which is paid as part of the Marginal Operating Cost, their claim must meet the following criteria to be considered by The Authority:
- (a) in accordance with Regulation 5 of the TCSR, consideration of claims will only be accepted if they are 'necessarily incurred' by the operator due to the existence of the scheme. Costs which did not have to be incurred as a direct result of the scheme are not admissible;
 - (b) costs must be for the allocation of generated passengers only. Costs which would still have been incurred in the absence of the scheme are not admissible;
 - (c) costs that are not cited in the DfT Guidance cannot be claimed for without prior discussion with and consent of The Authority to ensure it is a 'necessary incurred' cost and that it has been procured cost-effectively;
 - (d) costs must be demonstrably marginal, not fixed costs, that vary with the number of generated journeys taken. Evidence must be provided demonstrating that costs increase above those that would exist in the absence of the scheme in line with the number of generated journeys.
10. The Authority shall use all data provided by the operator in conjunction with any further information that the Authority 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.
11. Payment of additional reimbursement under this Schedule shall be paid as agreed by the Authority 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 the Authority in accordance with Regulation 5 of TCSR.

Schedule 5

Data Provision

1. Every operator claiming reimbursement under these Arrangements is required to submit to the Authority 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 smartcard concessionary journeys from passengers boarding within the principal area on the operators services on which concessions are at any time available during the preceding payment period.
 - ii. the total number of non-smartcard (manually recorded) concessionary journeys from passengers boarding within the principal area on the operators services on which concessions are at any time available during the preceding payment period.
2. Every operator claiming reimbursement shall provide in a timely manner such additional information as the Authority may require in order to allow the Authority to calculate the average fare foregone in accordance with the provisions of Schedule 2.
3. the Authority 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.
4. 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, the Authority 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.
5. The Authority currently collects the information required utilising form OP1 as set out above. The Authority 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 the Authority 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 the Authority 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 the Authority 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) the Authority 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 July 2019 - Nov 2020</u>			
<u>Month</u>	Deadline for Concession OP1 to WMCA	Concessionary Pay Date	
July	Wed 14-08-2019	Wed	21-Aug-19
August	Fri 13-09-2019	Fri	20-Sep-19
September	Mon 14-10-2019	Mon	21-Oct-19
October	Thurs 14-11-2019	Thurs	21-Nov-19
November	Fri 13-12-2019	Fri	20-Dec-19
December	Tues 14-01-2020	Tues	21-Jan-20
January	Fri 14-02-2020	Fri	21-Feb-20
February	Fri 13-03-2020	Fri	20-Mar-20
March	Tues 14-04-2020	Tues	21-Apr-20
April	Thurs 14-05-2020	Thurs	21-May-20
May	Mon 15-06-2020	Mon	22-Jun-20
June	Tues 14-07-2020	Tues	21-Jul-20
July	Fri 14-08-2020	Fri	21-Aug-20
August	Mon 14-09-2020	Mon	21-Sep-20
September	Wed 14-10-2020	Wed	21-Oct-20
October	Fri 13-11-2020	Fri	20-Nov-20
November	Mon 14-12-2020	Mon	21-Dec-20