

Concessionary travel: call for evidence

Your details

Q1. Your (used for contact purposes only):

name? Thomas Ellerton

email? tom.ellerton@urbantransportgroup.org

Organisation details

Q2. Your organisation's name is?

Urban Transport Group

Q3. Your organisation is a:

travel concession authority (TCA)?

TCA pre-COVID-19 concessionary payments

Q5. Are you continuing to pay out pre-COVID-19 concessionary payments?

Yes

2021 to 2022 budget

Q7. Does your 2021 to 2022 budget include sufficient funds for paying out concessionary travel, at pre-COVID-19 levels, for the entire financial year?

Yes

Q8. Are you willing to continue to pay out concessionary payments to bus operators at pre-COVID-19 levels for the remainder of this financial year?

Yes

Speculative appeals

Q10. How much do you agree or disagree with this statement?

Strongly agree

Why?

Our members have received an increasing number of speculative appeals over recent years. In some areas we are now at a point where operators appear to be lodging appeals as the default option.

Speculative appeals appear to be used as a bargaining tactic, with operators using them to try and get a favourable concessionary reimbursement settlement. Many of these appeals are withdrawn well before a formal procedure, but they still consume a considerable amount of local authority time and effort.

Local authorities can be left in a difficult position, having to decide whether to proceed to the formal appeals process and risk having to pay the full operator claim, or whether to do a deal to limit the potential financial impact. Concessionary reimbursement consumes a significant proportion of local authority revenue budgets with any slight changes to payments having a significant impact on other service areas.

A non-trivial amount of time and resource is also spent by our members in responding to this gaming of the system by operators. This has been particularly frustrating during the national emergency triggered by the pandemic and at a time when the bus industry is even more highly subsidised than normal and when the operators are extolling the virtues of their close partnership working with authorities.

Discouraging speculative appeals

Q11. How do you think speculative appeals could be better managed?

We believe there is a role for DfT in ensuring that the appeals system is a clear and transparent process.

A first step to managing speculative appeals would be to have clear guidance over what operators can appeal and DfT ensuring that this is upheld. Operators should have to state what they are appealing against rather than being able to give a vague generic description. DfT should have a role in adjudicating whether the appeal is valid at this early stage to prevent speculative appeals from progressing. DfT could also use other channels at its disposal to communicate to operators that speculative appeals are unacceptable.

TCA appeals

Q12. How many appeals on average does your TCA deal with each year (pre-COVID-19) that are:

a withdrawn appeal?	Up to one appeal from each major operators present in each area.
an appeal ending in a determination letter?	Very few

Q13. Have the amount of appeals, on average, you are receiving each year:

increased?

Appeals percentage change

Q18. By what percentage have the number of appeals changed?

The number of appeals received has increased over the last couple of years. Going back 10 years there were years where our members would not get a single appeal lodged. Now, most of the major operators lodge an appeal in most of our member areas every year.

Recovery guidance

Q19. You believe it would be most useful to publish the concessionary travel recovery guidance:

before the publication of the updated reimbursement guidance and calculator?

Q20. Do you have any concerns about the recovery strategy as sent?

Yes

Recovery guidance concerns

Q21. Rank the order of your concerns, using 1 as high concerned to 5 as low concern, with the proposed recovery strategy.

- It is too complicated a system?** -
- It will take too long to transition back to actual patronage levels?** -
- It will be too fast to transition back to actual patronage levels?** -
- It will may create problems when interacting alongside the current reimbursement guidance and calculator?** -
- Another issue?** -

Explain your reasoning.

Despite ENCTS being nationally specified, we have previously stated that the link between funding and reimbursement rates has been broken. Therefore we believe a much wider review of concessionary travel funding is required. We are disappointed that this consultation does not cover the wider aspects of concessionary reimbursement.

Analysis undertaken by the North East Combined Authority suggested that funding and expenditure matched as recently as 2010, but that the gap has grown ever wider since this point, with government funding now covering less than half the cost of the scheme .

In 2019 the LGA argued that the ENCTS faced a funding shortfall of £652 million each year. The proposals in the recovery strategy do not address the funding shortfall.

There is also the issue of how concessionary travel funding from Government is routed. At present it is lost in the wider MHCLG formula grant on the basis of relatively crude assumptions. In the city regions the link between the cost of the scheme and government funding for it is further obscured by the fact that it is routed to Districts rather than to City Region level body that is responsible for reimbursing operators.

These are obviously critical and relevant factors to any potential reform of concessionary travel but yet they are not touched on in this consultation.

In addition travel patterns have been severely disrupted by the Covid-19 pandemic and the bus market will remain in a dynamic state in the period ahead. During this dynamic period, setting concessionary reimbursement rates with operators will be difficult due to the constantly changing nature of the market and uncertainty around variables in the reimbursement guidance.

On these grounds we welcome a recovery strategy to provide some certainty to financial budgets but have concerns over elements of the strategy.

The strategy may be overly simplistic in focusing on patronage and pre-Covid payments. With patronage being only one part of the reimbursement calculator, this will only take us so far towards achieving 'actual' payments. To achieve this the current reimbursement calculator will need to be suspended whilst the strategy is in place.

We also have concerns about what will happen once we have moved back towards payment by 'actuals'. The timescales of the recovery strategy mean that this is likely to occur whilst the bus market is still recovering from Covid-19. The new travel patterns will impact on all parts of the reimbursement equation, and as yet authorities are uncertain as to what impact these changes will have. With the market in a dynamic state there will likely be complications in agreeing reimbursement rates with operators, potentially leading to a high level of appeals. This will be further complicated by the dynamic state of the market meaning that any value agreed will quickly be out of date.

We believe that DfT will have to review the reimbursement guidance and calculations to ensure that the different parts of the calculation still function. TCA's will also require strong guidance from DfT as to how this will be used to help prevent multiple challenges from operators.

Recovery guidance

Q22. What else would be useful to see contained within the recovery guidance?

The recovery strategy should contain clearer timescales for when we are expected to get back to 'actual' payments and how this process will be managed.

Guidance on what will happen if TCAs and operators cannot agree a reimbursement rate would also be welcome.

Q23. Any other comments on recovery strategy or guidance?

We have concerns over the length of time that we are being asked to pay for concessionary journeys that are not being made as part of the DfT's wider inefficient and increasingly byzantine patch and mend approach to maintaining broadly the same structure of bus funding that was delivering patronage decline prior to the pandemic. The additional money that will be paid to operators is money which cannot be reinvested in other areas, such as supporting light rail systems which currently have no additional funding for the 2022/23 financial year.

It is also disappointing that there is zero read across between this consultation and the urgent need for wider reform of the way in which bus services are funded in general in order to arrive at a consolidated, simplified and devolved format for bus funding so that it can be best targeted locally.

We are also concerned by DfT's potentially optimistic assumptions over the length of the recovery period and the stage at which we will transition back to using the calculator to pay actual reimbursement levels. The bus market is likely to be in flux / depressed for the next two to three years, making the transition back to using reimbursement guidance and calculator based on the assumption of a return to 'normality' challenging. We believe that DfT will have to issue strong guidance around the reintroduction of the calculator and any changes to the reimbursement parameters once the recovery strategy period is over. This action should be taken centrally rather than each TCA having to go through the process. This will be an important part of managing appeals as we move back to paying actuals.

Reimbursement guidance**Q24. How much do you agree or disagree with this statement?**

Strongly agree

Why?

As already stated in question 16, the link between ENCTS funding and costs is broken. For this reason, reform needs to go much further than the reimbursement guidance to cover how the scheme is funded.

Covid-19 has significantly altered travel patterns which will in turn impact on different elements of the reimbursement guidance. Pre-Covid data is no longer appropriate and post-Covid data is still very fluid, meaning it will be hard to arrive at a solution that is acceptable for both TCAs and bus operators. The bus market is also likely to remain in a dynamic state of change for the coming 2-3 years as we recover from Covid-19.

The dynamic state of the bus market raises the question of the right time to return to using the calculator and how this process needs to be managed. Changes to the guidance will be required to ensure a fair level of reimbursement is paid in line with the principle of "no better or no worse off", and to help limit the number of appeals from operators over the different elements of the reimbursement guidance.

It is likely that changes to the bus market will necessitate further interim reviews by DfT as patronage recovery impacts on different parts of the calculator.

Q25. What are the areas of the reimbursement guidance that you believe need to be changed to allow it to work correctly in the present day situation and why?

ENCTS reimbursement can be explained to the following:

$(\text{Passengers} * \text{reimbursement factor} * \text{average fare}) + (\text{Passenger} * (1 - \text{reimbursement factor}) * \text{marginal costs})$

This is in place to make operators "no better or worse off" because of the existence of concessionary travel schemes.

Several parameters impact on this equation:

- Passengers
- Reimbursement factor
- Average fare
- Marginal costs

Covid-19 impacts each of these parameters to the extent that now, without doubt, the current DfT Reimbursement Guidance is invalidated. We believe that DfT will have to undertake a review of the parameters to ensure that the reimbursement calculator is able to deliver on the principle of no better or worse off. Without this, reimbursement levels will be open to challenge following the recovery strategy period.

This is further complicated by the dynamic nature of the bus market, which will constantly impact on the parameters and their relative values.

Q26. What are the areas of the reimbursement guidance that you believe need to be changed to allow it to work correctly with the proposed recovery strategy as sent and why?

The recovery strategy has a focus on paying a percentage of pre-Covid-19 reimbursement levels in line with the patronage recovery. In this sense we are unclear as to how the recovery strategy sits alongside the reimbursement guidance.

Q27. Any other comments on the reimbursement guidance?

As recognised in the guidance, the timing of calculations will be critical to the level of reimbursement that is due to operators. This point is particularly acute given the impact of Covid-19 on the bus market and the changes in patronage through the ongoing recovery period.

The guidance is designed to work in a stable market, where we can predict demand and understand the nature of the market, such as the number of generated trips. It is likely that the bus market will remain in a dynamic state for a period of time, making it complicated to agree an acceptable reimbursement level for both operators and TCAs.

Reimbursement calculator

Q28. How much do you agree or disagree with this statement?

Strongly agree

Why?

The concessionary reimbursement calculator is the mechanism to apply the concessionary reimbursement guidance. Therefore, and changes that are made to the calculator need to be linked to the guidance.

Pre-Covid, members were already having difficulty in agreeing different variables with operators. The dynamic nature of the bus market and the significant changes to travel patters will only exacerbate this issue.

Before moving back to using the calculator we believe that DfT need to conduct a thorough review of the different elements and their suitability given the impact of Covid on the bus market.

Calculator improvement

Q29. How do you believe the calculator could be improved?

The calculator is the method of implementing the concessionary travel guidance. Any changes to the calculator should be in line with the changes to the guidance.

Any review should seek to simplify use of the calculator.

Reimbursement calculator

Q30. Any other comments on reimbursement calculator?

We believe that the values in the concessionary reimbursement calculator will need to be reviewed centrally at regular intervals until the bus market has stabilised following the recovery from the Covid-19 pandemic.

Applications to the Secretary of State appeals

Q31. How much do you agree or disagree with this statement?

Strongly agree

Appeals improvement

Q32. How do you believe the appeals system could be improved?

We would like to see an early and robust assessment of whether an appeal is valid. This would help to prevent speculative appeals that are purely intended as a bargaining tool.

There should also be greater clarity as to the timescales of DfT's responses, ensuring that all parties have clarity over the time periods for different stages of the process.

Appeals process cost

Q33. How much do you agree or disagree with this statement?

Strongly agree

Why?

Members can expect to spend around £10,000 to defend an appeal that goes all the way through the process. This is in addition to the staff resource involved which could be far better spent on other more productive activities (especially during a national emergency).

Appeals process administration

Q34. You believe the existing administrative burden of appeals is:

very high?

Why?

The appeals process consumes a considerable amount of internal and external resource for TCAs. Each appeal is very time consuming to administer, with uncertain time scales adding to the burden. As the number of appeals has increased, this burden has become considerably greater.

Appeals process improvement

Q35. How you think this administrative burden could be alleviated?

A first step would be for DfT to put a system in place to reduce speculative appeals, reducing TCAs exposure to the appeals process.