

Summary of 2011/12 Concessionary Travel Appeal Determinations

Introduction

1. Eligible older and disabled people are entitled to free local bus travel at off-peak times anywhere in England. Bus operators should be left 'no better, no worse off' as a result of the existence of concessionary travel schemes. This ensures that operators are fully compensated for the service they provide but do not receive any hidden subsidy.
2. In the event of a disagreement between an operator and a Travel Concession Authority (TCA) as to the reimbursement arrangements offered by the TCA, there is a mechanism provided under sections 98(2) and 99(2) of the Transport Act 1985 and section 150(3) of the Transport Act 2000, by which the Operator can apply to the Secretary of State for Transport for cancellation, variation or modification of the arrangements.
3. This note summarises the outcome of the applications lodged against 2011/12 reimbursement arrangements in travel concession schemes and it provides some information about the issues that were under dispute.

Number of applications

4. Twenty eight applications by bus operators to the Secretary of State were lodged in May 2011 regarding concessionary travel reimbursement for 2011/12 (compared with 26 applications in 2010/11). Of these, 21 were subsequently withdrawn at various times during the year and 7 were determined. Of the seven applications which continued to determination, two were dismissed and the remaining five cases were upheld.

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|--------------------------------------|-----------|
| Appeals submitted | 28 |
| ○ of which non-compliant (rejected) | 0 |
| ○ of which withdrawn | 21 |
| Appeals determined and issued | 7 |
| ○ of which upheld | 5 |
| ○ of which dismissed | 2 |

5. Two independent decision makers were appointed to determine bus operator applications on behalf of the Secretary of State. Two determinations were issued in December 2011, one in January 2012 and four in February.

Summary of the issues

6. In determining 2011/12 applications by bus operators, the independent decision makers appointed on behalf of the Secretary of State applied the law relating to compensation of bus operators and were guided by the DfT reimbursement guidance for 2011/12 schemes (published on 16 February 2011) but also by additional evidence supplied by parties as part of the application process¹.

Grounds for appeal

7. Application notices lodged under the Transport Act 2000 refer to “special reasons” why the reimbursement arrangements made by the TCA are inappropriate to the services provided by the operator. These included a combination of grounds as shown below:

| Grounds | 2011/12 |
|---|---------|
| Reimbursement factor | |
| o Change in nominal fares between 2005/06 and 2011/12 | 3 |
| o Use of PTE/Non-PTE demand curves | 2 |
| Average fare forgone (Discount Fare Method) | 3 |
| Marginal Capacity Costs (MCC) | |
| o Data inputs into the DfT Calculator | 5 |
| o Service elasticity | 2 |
| Marginal Operating Costs (MOC) | 2 |
| Scheme wording | 2 |

Issues

Appeal submissions

8. Parties must set out their grounds of appeal clearly in the Application Notice and submit as much information as possible in the data Pro-forma issued by DfT so that each independent decision maker has sufficient information to assess each application. Legislation provides that a decision maker may, at his discretion, request further information.

¹ Further information on the application process can be found at <http://www.dft.gov.uk/publications/concessionary-bus-travel-application-guide/> and the latest DfT reimbursement guidance can be found at <http://www.dft.gov.uk/publications/reimbursing-bus-operators-for-concessionary-travel/>

- In particular, submissions should include detailed supporting evidence and data on how elements of reimbursement have been calculated. Spreadsheets containing underlying data/analyses should be clearly labelled and easy to follow and the approach taken clearly explained.
- In particular, detailed information should be provided on local methodologies where they differ from those proposed in the DfT guidance.

Reimbursement Factor – change in nominal fares between 2005/06 and 2011/12

9. The estimation of the change in nominal fares is likely to be based on a sample of routes and a sample period. However, given the sensitivity of the Revenue Reimbursement Rate to the change in nominal fares, it is desirable for the calculation to be based on as large a sample of routes as possible and avoid restricting the sample period to the first few months of the year (especially since the results are likely to be skewed by the inclusion of Easter).

Reimbursement Factor – use of the PTE/Non-PTE demand curve

10. Within an area designated as 'PTE-like' in the DfT guidance, it is reasonable that all concessionary journeys made by residents are reimbursed using the PTE demand curve while return journeys made by non-residents back to non-PTE-like areas should be reimbursed using the non-PTE demand curve. This reflects the fact that the demand curve relates to the inherent characteristics of residents within an area.

11. The DfT guidance identifies these areas whose car availability among those aged 60 is closer to PTEs. The criteria are not expected to be applied to all areas irrespective of their size of administrative responsibility (e.g. wards).

Average fare forgone

12. It is preferable to include a wide range of 'cash' fares in the calculation of the average fare forgone where these exist – in particular, carnets (e.g. ten trip tickets) should be included in line with DfT guidance.

Data inputs to MOC/MOC calculator

13. The DfT guidance is based on a network approach and stresses the importance of using the MCC Calculator for all routes and not a selected sample that could bias any results. Parties should therefore demonstrate clearly that the input values to the MCC Calculator have been estimated using data covering all the routes subject to reimbursement.

14. The MCC variables should be consistent with each other. For instance, the estimation of the average commercial fare and proportion of commercial journeys should cover the same time periods and passengers.

15. It is reasonable to weight input values for each route by the number of concessionary boardings on that route as a proportion of all concessions in the Scheme area to reflect the relative importance of each route in the overall network. Applying a further weighting to adjust for cross-border trips would seem to undermine the underlying assumptions regarding journey characteristics of concessionary passengers and is not self-evidently necessary.

16. It is important to ensure that the definition of the percentage of commercial journeys and the average commercial fare are consistent.

17. It is preferable, where possible, to base calculations of the MCC input values on one full financial year of data, making appropriate adjustments for seasonal oddities such as the Easter period falling twice in one financial year, to avoid the perception of favourable selection of data. Where it is not feasible, or disproportionately costly to provide one full financial year of data, it is important the sample of data chosen is demonstrated to be sufficiently reliable for users of the data to have confidence that the data being used is representative of the actual operator specific values.

- A mix of default and local input values should not be used in the DfT MCC Calculator as there is a risk that relationships between variables may be distorted and this may lead to spurious results. The DfT Calculator must be used with either all default or all local values for those values which are not fixed in the DfT Calculator.
- The DfT guidance includes the presumption that marginal capacity costs could potentially apply to all routes within a network and should therefore be assessed on all routes (this does not mean that they will not necessarily be zero).
- The assumption that average journey length is 50 per cent of average route length may not be appropriate for long inter-urban routes.

Service elasticity (MCCs)

18. The Department for Transport's Reimbursement Guidance recommends that a long run service elasticity of 0.66 is used as a default value in the MCC Calculator unless there is very good evidence to the contrary. This value is based on a report published in 2004, entitled "The demand for public transport: a practical guide" and more commonly referred to as TRL Report 593 or the "Black Book".

19. In developing evidence to support a different service elasticity, the following points should be borne in mind:

- It is important to ensure that the sample of routes chosen does not include an implicit selection bias (i.e. are the services chosen representative or are they reflective of services where service elasticity is likely to be lower because of the type of

services or areas?) In addition, there may be a number of external factors that affect bus passenger demand which have not been controlled for and therefore the calculation may not be estimating the impact of a change in bus service intervals only: for example, changes in the cost of alternative modes of transport. Use of econometric techniques to control for external factors should be considered. These may also permit a larger sample of routes to be included and over a longer period of time.

- The statutory concession includes journeys from 09:30 until 23:00hrs on weekdays and all journeys at weekends. The sample data should therefore cover the whole concession time period. Although the level of patronage is lower in the evenings and at weekends, one would expect the inclusion of these services to increase the (weighted) value of the service elasticity, all other things being equal.
- The elasticity used in DfT guidance is a long-run elasticity. The analysis should therefore not exclusively focus on the short run and should seek to measure more directly changes over a longer period of time in order to estimate long term behavioural change.

Scheme wording

20. Schemes should not include clauses which seek to restrict the timeframe for additional cost claims or the number of claims per year as such clauses may not comply with the Limitation Act 1980. Under that Act an action to recover any sum shall not be brought after the relevant limitation period has expired from the date on which the cause of action accrued. This means that the applicable limitation period for claims by bus operators for reimbursement under the Transport Act 2000 and the Transport Act 1985 for the provision of concessionary bus travel is six years from the date of entitlement to payment under the applicable scheme.

21. Scheme documents should show an explicit scheme end date. In many schemes this will be 31st March of the following year, although some schemes run over a longer period (e.g. three years in some large urban areas). Legislation provides a limited time window of 56 days for operators to lodge an application from the date of commencement of a new scheme.
