**The London Concessionary Bus Scheme 2019-20-DRAFT**

**LONDON COUNCILS**

**TRANSPORT ACT 2000**

**Travel Concession Reimbursement Arrangements for local bus services operated under London Service Permits**

**To be valid**

**From 1 April 2019**

**LONDON COUNCILS**

**TRANSPORT ACT 2000 TRAVEL CONCESSION REIMBURSEMENT ARRANGEMENTS**

**1 APRIL 2019**

**The Arrangements**

1. These Travel Concession reimbursement arrangements (subsequently referred to as “the Arrangements”) are made under the provisions of the Transport Act 2000 (“2000 Act”) by London Councils Transport and Environment Committee for and on behalf of itself and the 32 London Borough Councils and the Common Council of the City of London (“London Councils”).
2. In drafting the Arrangements due regard has been given to the Concessionary travel for older and disabled people: Guidance on reimbursing bus operators (England) issued on the 1 November 2011, updated on the 28 September 2017 which applies to England apart from the Transport for London bus network.

3. The Arrangements cover reimbursement arrangements for the mandatory concessions to be provided by operators under section 145A of the 2000 Act as amended by the Concessionary Bus Travel Act 2007. The concessions are detailed in paragraph 9 below.

4. Unless otherwise defined in the Arrangements words or terms used in the Arrangements shall have the same meaning as given to such words or terms in the 2000 Act.

**Operative Date**

5. The Arrangements shall come into operation in their entirety on 1 April 2019.

**Principal Area**

6. The principal area covered by the Arrangements is Greater London, which consists of the administrative areas of the 32 London Borough Councils and the Common Council of the City of London (“Principal Area”).

**Services to which the Arrangements Apply**

7. In respect of the mandatory travel concessions under the 2000 Act the Arrangements shall apply to each eligible journey (as defined in section 145A of the 2000 Act) by an eligible person (as defined in Schedule 1) on an eligible service (as defined in section 146 of the 2000 Act) beginning in the Principal Area. It should be stressed that this does not include journeys beginning on the London bus network, nor does it apply to services specifically excluded by the Department for Transport (see Schedule 1).

8. For the purpose of the Arrangements “journey” means a trip between two points without a change of vehicle or service.

**Nature of Concession**

9. On services to which the Arrangements apply operators participating in the Arrangements will be required to provide the travel concessions specified in Schedule 1 to any eligible person.

10. London Councils may from time to time vary the Arrangements by notice and where relevant such notice should comply with the provisions of section 150 of the 2000 Act.

**Payment Periods and Dates**

11. The “payment periods” under the Arrangements are as set out in Schedule 2 or as notified to the operators from time to time by London Councils in writing.

12. Subject to paragraph 20, London Councils will, if required by the operator, make a payment to operators not later than the day which is half-way between the first and last days of each payment period, equal to not less than 85% of the sum London Councils estimates to be due to the operator in that period.

13. Subject to paragraph 20, London Councils will make a further payment to operators, not later than 3 months after the end of the relevant payment period, equal to the difference (if any) between:

(i) The sum already paid to the operator for the relevant payment period as set out in Paragraph 12 and,

(ii) The actual amount calculated as due to the operator for that relevant payment period.

If the amount paid under paragraph 12 above exceeds the amount calculated under paragraph 13(ii) such that London Councils has made an over payment for the relevant period it shall either:

(a) deduct the level of such overpayment from the next or any subsequent payment; or

(b) if no such further payment is likely to become due or to be insufficient to recover such overpayment, demand such overpayment by notice in writing to the operator who shall repay the same within 14 days of demand being made.

If no payment is made under paragraph 12, London Councils will seek to make payment as soon as possible after it receives the necessary information to validate the claim.

**Standard Method of Determining the Reimbursement Payment**

14. An overview of the method for calculating the cost of the reimbursement is set out in Schedule 3. The method for assessing the total number of journeys made by eligible persons under the Arrangements is set out in Schedule 4. The standard method for assessing the fares value to be attributed to those journeys is set out in Schedule 5. The basis of agreeing the reimbursement rate is described in Schedule 6. In calculating the reimbursement due to the operator, London Councils 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 London Councils to meet the objective for reimbursement that operators are financially no better and no worse off as a result of participation in the scheme.

15. By agreement between the operator and London Councils the standard method need not be applied in respect of calculating the reimbursement of that operator if any one of the following conditions are satisfied:-

1. the vehicles normally used by the operator in providing services on which concessions are available have 8 or less seats available for fare-paying passengers;
2. the mileage run by vehicles is less than 150,000 miles per annum within the area covered by the Arrangements during the times at which concessions are available;
3. except during the first 3 months of operation of the Arrangements, there has not expired a period of 3 months commencing with the date on which the operator commences participation in the Arrangements in respect of a service.

16. London Councils reserves the right in calculating the reimbursement of an operator to:

1. divide the area covered by the scheme into a number of separate parts; and
2. take into account the carrying capacity provided for passengers in different vehicles or classes of vehicles used by the operator;

and, in each case, calculate reimbursement in accordance with the standard method, but by reference to each separate area and/or class of vehicle, where London Councils considers this appropriate to ensure that it meets the objective that the operator is financially no better and no worse off as a result of participation in the scheme.

17. In order to ensure that the reimbursement paid to an operator accords with the general principle that operators both individually and collectively are no better and no worse off financially than they would be if they did not provide mandatory travel concessions, London Councils reserves the right to apply the standard methodology for calculating reimbursement to any individual service where London Councils, acting reasonably, believes that the nature of that service or the fares charged on that service do or could distort the general application of the standard methodology as applied to the operator’s other services.

**Data**

18. When an operator commences the operation of services to which the Arrangements apply, it shall supply to London Councils, within 7 days:

(a) a list of such services to be operated by that operator;

(b) all relevant fares and fare tables and a list of the ticket types valid for travel on such services; and

(c) the running boards/drivers duties applicable to such services;

to enable surveys to be scheduled and assessment of its entitlement to reimbursement.

19. The operator shall inform London Councils of the introduction or cessation of any services to which the Arrangements apply, changes to the times at which and routes on which such services operate and any circumstances leading to the temporary cessation or major disruptions to such services within 7 days of such event occurring.

20. The operator shall provide data to London Councils in accordance with the provisions of Table 1 in Schedule 5 for the purpose of calculating the average fare.

21. If the operator fails to provide such information or data as is referred to above, or to allow such access for surveys as is required pursuant to Schedule 7 then London Councils 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.

22. Where it becomes apparent to London Councils that any service to which the Arrangements apply is or has been subject to material disruption, or has not been operated in accordance with the registered timetable, then London Councils 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.

**Recalculation of Reimbursement**

23. At the end of each financial year London Councils shall review the reimbursement calculations made in accordance with these reimbursement arrangements during the previous financial year. Such review shall be concluded within 3 months.

If following the review it is determined by London Councils that the amount of reimbursement paid during the previous financial year should have been higher London Councils shall pay the difference to the operator within 3 months of the date of recalculation.

If following the review it is determined by London Councils that the amount of reimbursement paid during the previous financial year should have been less London Councils shall either:

(a) deduct by equal instalments the amount of over-reimbursement from the next three payments to be made under paragraph 12 above; and/or

(b) if such next three payments are not or will not be sufficient to re-pay such over-reimbursement, demand such over-reimbursement from the operator by notice in writing, and the operator shall be obliged to make such repayment within 14 days of receiving such demand.

24. If, following the review of the reimbursement calculations in accordance with the provisions of paragraph 23 above, there is a dispute between an operator and London Councils in respect of the level of reimbursement paid to that operator then if such dispute relates to either:-

(a) the fares value to be attributed to journeys by eligible persons on the operator’s services to which the Arrangements apply;

(b) the total number of non-generated journeys made by eligible persons on the operator's services to which the Arrangements apply; or

(c) the number of additional journeys generated on the operator's services to which the Arrangements apply in consequence of the availability of such concessions;

then such dispute shall be the subject of the dispute resolution procedure set out in Schedule 8

**Survey Facilities**

25. The provisions of Schedule 7 shall apply in respect of surveys.

**Additional Costs**

26. An operator shall be entitled to additional reimbursement payments where the operator demonstrates (in accordance with paragraph 27 below) to London Councils:-

(a) that the operator has necessarily incurred costs additional to basic operating costs and attributable to an increase in the number or the capacity of the vehicles used in providing services on which concessions are available in order to meet the extra demand created by the availability of those concessions; and

(b) that those costs are such that they will not be met by reimbursement payments made in accordance with the standard method during the year in which the costs are incurred or during the 3 months immediately following the end of that year.

27. Any operator claiming additional reimbursement payments pursuant to paragraph

26 above (increase in the capacity or number of vehicles) shall, in making such

a claim, provide London Councils with sufficient information supporting their

claim for additional costs to satisfy the criteria set out in paragraph 26(a) and

26(b), including, but not limited to:

## details of the additional number or capacity of vehicles used in providing eligible services as a result of concessions being available;

## 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;

## 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

## 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.

**28.** London Councils shall use all data provided by the operator in conjunction with

any further information that London Councils 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.

29. Additional reimbursement payments shall be paid within 3 months of the date of calculation by London Councils under paragraph 28.

**Other Requirements of the Arrangements**

30. All operators participating in the Arrangements shall display on each of their participating vehicles any sign, supplied by London Councils, for the purpose of showing that concessions are available on those vehicles.

31. Operators shall not discriminate against eligible persons or any class of eligible persons in the provision of services to which the Arrangements apply or associated services and facilities in comparison with fare-paying passengers.

**Contact for Communications**

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

Freedom Pass Scheme, London Councils,

59½ Southwark Street, London SE1 0AL

T: 02079349661

[LSP.Unit@londoncouncils.gov.uk](mailto:LSP.Unit@londoncouncils.gov.uk)

33. On commencing the provision of services to which the Arrangements apply, the operator shall provide to London Councils 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 London Councils of any changes to the same.

34. Any notice or communication sent to the last such address, e-mail address or fax number 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 London Councils of such an official contact, then London Councils 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**

**Eligible Persons**

“Eligible person” means any person to whom a current statutory travel concession permit (as defined in section 145A of the 2000 Act) has been issued. It should be stressed that this definition includes a person who has been issued with a current Freedom Pass showing the symbol of the statutory national travel concession; which includes:

* An older person who has reached the age at which becomes eligible to receive the State Pension; and
* People with a qualifying disability, in accordance with the legislation and Department for Transport guidance.

It does not include a person who holds a:

* Discretionary Disabled Freedom Pass (“London only” Freedom Pass)

**[](http://www.londoncouncils.gov.uk/services/freedompass/applying/discretionary.htm)**

* 60+ London Oyster Pass

[](http://www.tfl.gov.uk/60pluslondon)

* And the Companion of the ENCTS Disabled Pass holder.

**Nature of Concessions**

On production of a current statutory travel concession permit any eligible person shall be carried without charge on services to which the Arrangements apply, provided that the actual time of boarding falls between the following hours:

(a) Any time on a Saturday or Sunday or on any day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971; or

(b) 09:30 to 23:00 on any other day.

**Bus services which are not eligible**

The Department for Transport has issued an amendment to the Travel Concessions (Eligible Services) Order 2002 which is summarised below:

***4.-(1)*** *A service is not an eligible service under section 146 of the Transport Act 2000 if –*

1. *More than half the accommodation on the vehicle by means of which the service is provided can be reserved by members of the general public in advance of travel;*
2. *It is intended to operate for less than six consecutive weeks;*
3. *It is operated primarily for the purposes of tourism or because of the historical interest of the vehicle;*
4. *It is a bus substitution service; or*
5. *The fare for the service includes a special amenity element.*

**Schedule 2**

**Payment Periods**

|  |  |
| --- | --- |
| Payment Period | Latest date on which payment will be made under paragraph 12 |
|  |  |
| 1 April – 30 June | 15 May |
| 1 July – 30 September | 15 August |
| 1 October – 31 December | 15 November |
| 1 January – 31 March | 15 February |

**Schedule 3**

**Overview of Calculating the Reimbursement Payment.**

London Councils will calculate reimbursement payments so that the operator is financially no better and no worse off due to participation in the concessionary fares scheme.

London Councils is proposing to remain at the existing fixed negotiated Reimbursement Rate, which derived from an outcome of the 2013/14 DFT calculator by using the local data and operators’ parameters.

Total Reimbursement = Observed Journeys \* Average Fare \* Reimbursement Rate

Where:

* The estimation of the number of observed journeys made by the concessionary travellers is outlined in Schedule 4.
* The estimation of the Average Fare is defined in Schedule 5.
* The Reimbursement Rate is described in Schedule 6.

The Additional Cost for carrying additional passengers is counted in the

Reimbursement Rate.

**Schedule 4**

**Standard Method of Determining Passenger Journeys**

**1. Estimate of concessionary journeys**

1.1. London Councils will determine its reimbursement payments to the operator on the basis of the estimates it makes of the total number of passenger journeys made by eligible persons using the relevant concession on the operator’s services to which the Arrangements apply (“concessionary journeys”).

1.2 The operator will be asked every end of each quarter to provide information on the number of concessionary journeys with a rationale as to how that information was obtained.

1.3 When an initial estimate of concessionary journeys has been agreed by London Councils with the operator, payments will be based on this estimate until the estimate is updated by London Councils.

1.4 Estimates of concessionary journeys can be updated via a combination of the number of journeys recorded by the operator as certified by the operator’s Director of Finance, surveys undertaken by the operator, surveys carried out on behalf of London Councils and any other relevant information which becomes available.

1.5 The operator is required to provide the concessionary journey break down by route, pass type, stage and the local authority of the stage.

1.6 If the updated estimate of concessionary journeys is not agreed by both the operator and London Councils then the dispute resolution process outlined in Schedule 8 will be invoked.

1.7 Once the estimate of concessionary journeys has been updated, it will be retrospectively applied to reimbursement calculations for the previous quarter period or the period extending back to the date when the estimate was last updated (whichever is more recent).

1.8 If this results in an over-reimbursement having been made by London Councils such over-reimbursement shall be recovered under the provisions of paragraph 23 (a) or (b).

1.9 Any underpayment by London Councils will be made by equal instalments added to the amount of reimbursement from the next three payments to be made.

**2. Estimates to be made in the absence of information from the operator**

2.1 In the event that the operator fails to provide sufficient information London Councils 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.

**Schedule 5**

**Standard Method of Determining the Average Fare**

1.1 London Councils will determine its reimbursement payments to the operator on the basis of the estimates it makes of the average commercial adult fare that would be paid by eligible persons using the relevant concession on the operator’s eligible or relevant services in the absence of the scheme. This quantity will be calculated for each payment period set out in Schedule 2.

1.2 London Councils and the operator may agree the methodology for calculating the Average Fare using the Basket of Fares Method, which allows estimating the effective discount rate by calculating a weighted average fare per journey from assumed usage of different commercial ticket types. The network average fare will be weighted by the proportion of concession passengers travelling across network

1.3 Where the Basket of Fares method described in paragraph 1.2 is not used, the Discount Factor Method as defined by the DfT will be used. The Discount Factor Method applies a discount factor (D) to the estimated average adult cash fare (Fcash )

F = Fcash x (1-D)

i) Fcash represents the average fare of the cash tickets (single, PAYG, carnet and return). This will be estimated by using data provided by the operator and survey data.

ii) The Discount Factor (D) reflects the likelihood that in the absence of the concession, a proportion of concessionary passengers’ journeys would be made using different mix of ticket type.

* 1. The main inputs into the DfT calculator to estimate D are the average daily ticket price and the weekly ticket price, which will be calculated from the fare information provided by the operator.
  2. The operator is required to provide a list of the ticket type available to all passenger types and the types of the tickets’ products as tabled below.

**Table 1**

|  |  |
| --- | --- |
| **Ticket Type** | **Types of ticket product** |
| Cash fares | Single, Return, Pay As You Go (equivalent to TfL buses), Carnet or Saver ticket offering finite number of journeys for a given price |
| Daily tickets | Tickets offering unlimited number of journeys within a day |
| Weekly tickets | Tickets offering unlimited number of journeys within a week |

* 1. For each of the tabled ticket types the operator is required to provide the following

information:

* Bus route number
* Stage's code/number/name
* Stage's Local Authority
* Description of the ticket type
* Number of sales
* Revenue obtained from sales
  1. Operators are also required to supply for each route and each ticket type (Single return, weekly, monthly) the fare tables by stages or distance travelled. This will help to estimate number of journeys made by each ticket type.

**Schedule 6**

**1. Calculation of the Reimbursement Rate**

* 1. The Reimbursement Rate (RR) has derived from the results of the DfT calculator used on the 2013/14 data and was agreed to be retained up to 2018/19 financial year

RR = Total Reimbursement/ Observed Concessionary Journeys/ Average Fare

Forgone

Where, Total Reimbursement = Revenue Foregone + Additional Cost

* 1. London Councils is proposing to use the same Reimbursement Rate for the 2019/20 financial year. Should London Councils or any operator wish to review the calculation of the reimbursement rate for the 2020/21, notice is to be given by 30 September 2019

**Schedule 7**

**Survey Facilities**

1. An operator shall allow London Councils officers, servants or agents to have access to (including the right to travel free of charge on) the vehicles of the operator on which concessions are available for the purpose of:-

(a) surveying or counting or estimating the number of passengers (whether generally or of any particular description) and the fares paid by those passengers; and

(b) obtaining information on other matters relating to the journeys made by passengers who are eligible to receive concessions and necessary to the calculation by London Councils of reimbursement payments.

2. The survey data will be utilised by London Councils in calculating the reimbursement payable to the operator and/or validating the data supplied by the operator for the purpose of enabling London Councils to calculate the reimbursement due to the operator.

3. Without prejudice to the generality of 1 above, the information to be obtained from passengers may include the following:-

(a) whether or not the passenger is an eligible person;

(b) if the passenger is an eligible person, whether their statutory travel concession permit was issued by a London Authority, i.e. is a Freedom Pass;

(c) if the passenger is an eligible person, what category of concessionary passenger he or she is (i.e. elderly or disabled);

(d) whether the passenger is an adult, a child or an elderly person;

(e) if the passenger has paid on-bus or is using a pre-paid ticket;

(f) if the passenger has paid on-bus, the fare paid and the type of ticket bought;

(g) if the passenger is using a pre-paid ticket, the type of ticket and the cost of that ticket;

(h) the stage or stop at which the passenger boarded the bus and the stage or stop at which the passenger is to alight from the bus;

(i) permit or ticket fraud or miss-use or fare evasion on the relevant services; and

(j) such other information as London Councils may from time to time reasonably consider it necessary or desirable to obtain in order to enable London Councils to reimburse each operator in accordance with the Arrangements.

4. Each operator is requested to procure that each driver of its vehicles will make available to any survey staff who request the same, the total value of cash fares shown, on the relevant vehicle’s electronic ticketing machine, to have been collected on any journey surveyed by such surveyor together with ticket machine data regarding tickets issued for the journey surveyed by such surveyor.

**Schedule 8**

**Dispute Resolution Procedure**

1. In the event of any dispute arising in connection with any matter arising from the Arrangements which cannot be resolved by agreement between the parties representatives within 5 working days of the dispute arising, senior representatives of the parties shall, within 5 working days of a written request from either party to the other, meet in good faith to attempt to resolve the dispute.

2. If the dispute is not resolved as a result of such meeting, either London Councils or the operator may (at such meeting or within 5 working days of its conclusion) propose to the other in writing that the dispute be referred to an independent expert (“Independent Expert”)

3. 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 within 5 working days from the date of the proposal to appoint an Independent Expert or within a further 5 working days of notice to either party that he or she is unable or unwilling to act, apply to the Department for Transport to appoint an Independent Expert.

4. 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 4, on a basis that is fair and reasonable in all respects as between the operator and London Councils 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) London Councils 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 he shall decide that one party has acted unreasonably (in which case his fees shall be borne as he shall direct).