

DERBYSHIRE COUNTY COUNCIL

CABINET

11 March 2021

Report of the Director – Economy, Transport and Environment

TEMPORARY PAYMENT ARRANGEMENTS TO BUS, COACH AND TAXI OPERATORS FOR CONTRACTED TRANSPORT SERVICES AND CONCESSIONARY FARES REIMBURSEMENT DUE TO THE ONGOING IMPACT OF CORONAVIRUS (HIGHWAYS, TRANSPORT AND INFRASTRUCTURE)

(1) **Purpose of Report** To update the Cabinet Member on current Coronavirus (COVID-19) related public transport issues and seek approval for flexible payment arrangements for bus, coach and taxi operators providing contracted Council transport services and for concessionary fares reimbursement after the current provision ends on 31 March 2021.

(2) **Information and Analysis**

Background

On 20 March 2020, following the worsening health situation and the Government's more specific advice to avoid travel by public transport, it became clear that urgent action was required to secure the short term future of the Council's contracted transport services and public bus services in Derbyshire more generally. The Executive Director - Economy, Transport and Environment therefore made an emergency decision to maintain normal contract payments to transport providers who operated the following services for the Council:

- Adult Social Care and Health (ASCH) Transport Services.
- Contracted Local Bus Services.
- 'Derbyshire Connect' Services.
- Mainstream Home to School Transport Services.
- Special Education Needs and Disabilities (SEND) Home to School Transport.
- Swimming services for primary schools (normally recharged to schools, but during the initial lockdown from March 2020 to July 2020 this cost was absorbed by Children's Services).

At the same time, the Executive Director also agreed to maintain payments to bus operators for accepting English National Concessionary Travel Scheme (ENCTS) cards, known as Gold Card in Derbyshire, based on the level of travel before the pandemic. Both of these arrangements were to continue until 30 June 2020.

This urgent decision was the subject of an Officer Decision Record (ODR) agreed by Gold CMT on 20 March 2020. It was also reinforced with a Cabinet Office 'Procurement Policy Note' 02/20 (PPN) about supplier relief. The Cabinet Office guidance advised public bodies to issue a memorandum of understanding to suppliers about terms of payment relief to allow for them to undertake other civic duties in the national emergency. A variation of contract notice was issued and agreed by all transport providers in Derbyshire.

Maintaining contract and concessionary payments ensured that service providers were able to continue to operate Council services, where required to do so. It also ensured they were able to undertake alternative activities such as taking food or medical supplies to people without access to any other transport, when the normal contracted services were not required, for example, due to the closure of schools or day centres. Maintaining normal payments also allowed the network of public bus services to continue to operate, providing key workers with travel options and learners with access to schools and colleges. These payments also gave the various operators some certainty about their short term financial stability and allowed them to be available to resume full services when required.

On 25 March 2020, the Department for Transport (DfT) issued guidance to all English local transport authorities that they needed to take the same actions in their own areas; this reinforced the actions and decisions taken by the Council. At the same time, the DfT also provided emergency direct funding to bus companies to allow them to continue to operate their commercial services.

On 4 June 2020, the Executive Director - Economy, Transport and Environment made a further emergency decision to continue with the contract and concessionary payment arrangements until 31 October 2020 due to continued uncertainty around future transport requirements as a result of the COVID-19 pandemic. This decision was subsequently confirmed at the Cabinet Member - Highway, Transport and Infrastructure at the meeting on 9 July 2020 (Minute No. 34/20 refers) and reflected a further Government PPN 04/20 which provided advice to public bodies about continued payment and transitional relief arrangements.

Following the easing of lock down restrictions in mid-June 2020 and the opening of non-essential shops and hospitality venues in July 2020, demand for public transport services slowly began to increase. Most commercial and Council supported conventional bus services returned to their pre-COVID-19

timetables and passenger numbers rose from the low of 10%-15% level of patronage experienced in lockdown to a high of 55%-60% of normal use. Leisure-related travel was reported as being particularly important as commuter usage remained lower than normal due to the numbers of people continuing to work from home. Rail services saw a similar increase in demand with a rise from 10%-15% in lockdown one, to approximately 35%-40% during the school summer holiday period. The fact that these increases took place whilst the DfT was continuing to advise people to avoid unnecessary use of public transport shows the importance of these services to a significant number of residents and visitors.

In September 2020, schools and colleges reopened fully for the first time since March 2020. As a result, the Council's mainstream and special educational needs and disability (SEND) home to school transport services resumed. Because of the need to maintain social distancing and support year group bubble arrangements, additional services were introduced in some areas using grant funding provided by Government. At the same time, bus operators reported an increase in commuter traffic as people began returning to their normal workplaces rather than working from home. Demand also began to return closer to normal on more specialist, Council funded, transport services, with the reopening of some ASCH day centres to provide for emergency placed clients. The Derbyshire Connect shopping bus service, which mainly caters for the needs of elderly and disabled residents, also saw passenger numbers increase to 70% of pre-COVID-19 levels by the end of October 2020.

As part of the Council's responsive approach to service provision, on 22 October 2020, the Director – Economy, Transport and Environment made a further emergency decision that took account of changes in the impact of the COVID-19 pandemic at the time and the need for ongoing support to facilitate the recovery of transport services in Derbyshire. A schedule of revised payment arrangements were agreed effective from 1 November 2020:

- Payments for Adult Care transport were reduced to 75% of the contracted levels for those services which continued not to operate due to the closure of the day care centre concerned.
- Payments for Contracted Local Bus Services to remain at 100% of contract levels as services were now operating.
- Payments for Derbyshire Connect Services to remain at 100% as services were now operating.
- Payments for Mainstream Home to School Transport Services to remain at 100% as services were now operating.
- Payments for SEND Home to School Transport remain at 100% as services were now operating.
- Payments for swimming transport services during the autumn term from September 2020 to December 2020 to be reduced to 0% of contracted costs. The existing contractual arrangements were however to remain in

place in the anticipation that services would resume as normal at the start of the new school term in January 2021.

Concessionary Fares payments continue to be made based on the level of bus travel before the pandemic.

In addition, it was decided that:

- Should local lockdown arrangements be introduced that required the withdrawal of any local bus, Derbyshire Connect, mainstream or SEND home to school transport services or adult care services in the affected area, then payments would be reduced to 75% of the contracted levels for those services until such time as normal services could be reintroduced.
- Should a transport operator be unable to fulfil a contracted service due to instruction by an authorised body (such as NHS Test and Trace) that a driver or passenger assistant must self-isolate, then the operator should find a replacement member of staff to cover that service. However, in the extreme circumstance that an entire company needed to self-isolate and therefore was unable to provide any contracted services, then payments would be reduced to 75% of the contracted level until such time as normal services could be resumed.

This decision was subsequently confirmed by Cabinet at the meeting on 19 November 2020 (Minute No. 194/20 refers).

At the time these decisions were made, it had been hoped that the introduction of the tiering restrictions, and the more limited four week lockdown in November 2020 where many schools remained open, would negate the need for a further national lockdown. Unfortunately, this did not prove to be the case and a further national lockdown was introduced on 5 January 2021. This led to the closure of most non-essential businesses and shops with schools only remaining open for children of key workers and vulnerable pupils. At the same time, the DfT reinforced the message not to use bus and train services unless absolutely necessary and advised operators and councils to reduce frequencies on their commercial and supported bus and rail service networks.

As a result of this sequence of advice, the public bus network is operating around 75%-85% of normal mileage with passenger use around 25%-35% of pre-COVID-19 use. The rail network is operating approximately 75% of the standard timetable with passenger numbers around 10%-15% of ordinary levels.

Achievements and Impacts

Since the beginning of the first national lockdown in March 2020, Derbyshire County Council has continued to provide vital financial support for transport

services in the County and the transport companies who provide a variety of services on behalf of the Council. Transport companies have, in turn, demonstrated resilience, community spirit and a willingness to respond to the local COVID-19 efforts. Despite the worsening picture at times, all operators have remained active and many have reacted positively to requests from the Council to adapt or change the services they provide. This has only been possible due to the ongoing support from the Council and, in particular, the Council's action from the outset maintaining payments to transport providers for contracted services and Gold Card concessions. The resulting achievements and impacts over the last 11 months:

- Maintained payments to local bus operators for over 80 contracted services (budget £3.9 million) and Gold Card concessions (budget £9.1 million) across all public bus services. These payments have been vital and have allowed a network of services to be maintained in Derbyshire, ensuring key workers and care staff can continue to get to work, as well as enabling other essential journeys such as food shopping.
- Maintained payments to operators providing 169 mainstream home to school transport services (budget £4.5m) and for 665 special needs transport services (budget £10.5m).
- Maintained payments to operators providing 108 adult care transport services (budget £3.5m).
- Coach and taxi operators have maintained vital services to schools to ensure vulnerable children, and those of key workers, are able to attend.
- Operators have worked constructively with Council officers to deliver adapted or additional services to enable greater social distancing and safer travel for children, adults and the wider travelling public.
- Minibus operators have provided short notice transport for adults with disabilities requiring emergency support.
- Taxi and minibus companies have delivered food hampers and supplies to foster families and looked after children.
- Taxis have assisted by transporting care workers on late night shifts.

To continue to safeguard the services that the Council requires, the funding arrangements need to reflect the on-going pandemic requirements alongside the continued support of transport companies whilst ensuring value for the public purse.

Going Forward

The roll out of the national COVID vaccination programme now provides hope that the end of the pandemic is in sight. Based on the Prime Minister's 'roadmap' announcement on 22 February, key dates for the lifting of restrictions are now becoming clearer. For example, it seems likely that schools will begin reopening on 8 March with other parts of the economy - non essential retail, hospitality sector and leisure industries - following over the coming months to June. That said, the wider impacts of the pandemic are

anticipated to impact the economy and public transport sector over the medium to long term.

Research carried out for the Council in autumn 2020 reported that operators anticipate passenger numbers and revenue on their commercial networks would only reach 70%-80% of pre-COVID-19 levels 12 months after all lockdown restrictions were removed. The same research showed there was a considerable risk that a large number of commercial routes would either be withdrawn or see significant reductions in service frequencies if the current Government and Council funding support was removed too quickly.

The experience of how bus passenger numbers recovered after the first lockdown restrictions eased does, however, provide some optimism. Even during the period from October 2020 to December 2020 when the tiering arrangements were in place and a second lockdown was introduced, bus passenger numbers continued to rise slowly.

The Government's new National Bus Strategy is due to be published in the Spring and is likely to have a significant effect on the longer term direction of the industry. Details of the proposed Strategy are awaited but from information received via informal discussions, it would appear that Government will be expecting councils to take on a greater role in influencing/directing the current commercial bus network. The Strategy is likely to see the introduction of 'recovery partnerships' between councils and bus companies this summer, followed by formal, compulsory enhanced partnership agreements and perhaps even franchising across the whole commercial network from spring 2022. It is anticipated that the National Bus Strategy will set out how these arrangements will be implemented and funded. Due to the uncertainty on the exact content and implications of the Strategy, it is proposed that a further report be submitted for Member consideration later in the year setting out the detail of any new responsibilities for the Council and a plan for how this will be achieved.

The formal end of the franchise system, under which train services have operated since the mid-1990s, took place in September 2020. Rail services are now being provided under Emergency Recovery Management Agreements (ERMAs) between the DfT and the train operators. ERMA's are expected to be a transitional arrangement which will last for up to two years. It seems likely this will then be replaced by a concession-based model as already operated by Merseyrail and Transport for London rail services. This would see all aspects of the service set by the DfT, with each operation run by a private company who would receive a fee under a management contract.

Proposals

With the continued uncertainty about the impact of COVID-19 on the long term demand for public transport services and wider Government policy changes in

the commercial bus sector, the Council needs to maintain a level of flexibility and responsiveness in the way bus services are supported, managed and commissioned until the way ahead becomes clearer; in any event, statutory mainstream school and SEND services are still required. Transport to ASCH day centres will also be required along with the need to continue making payments for journeys made by concessionary card holders, although the current scheme may well be reformed by Government.

The financial support provided by the Council to the transport operators throughout the pandemic has been invaluable in stabilising the sector and safeguarding the contracted services for the residents of Derbyshire. This work has been further enhanced by involvement of the sector in the formal recovery workstreams and in regular operator liaison meetings.

The outputs of these discussions are reflected in the Derbyshire Economic Recovery Strategy and demonstrate the critical role that public transport has to play in enabling full and inclusive recovery to the business, retail, learning and visitor sectors across the County. In particular, the potential impact on 'honey pot communities' and the local highway network is being actively considered prior to Government announcing the formal lifting of restrictions and prior to the predicted peak in 'staycations during 2021. Thinking/planning around the role of public transport in ameliorating this impact is being developed already and it. It is therefore essential that a good network of local bus services remains available to provide an alternative means of travel for leisure trips and to promote recovery.

Many of the fundamental concerns which led to the Director's emergency decision in October 2020 continue to be valid, including:

- The continued probability that transport operators will go out of business without some support.
- The limited availability of Public Service Vehicle drivers.
- The lack of alternative capacity in the market to allow other operators to pick up additional business within a short timescale.
- The continued costs being faced by bus operators to maintain their 'O Licence' which includes maintaining 'financial standing' in their bank account, vehicle insurance and vehicle maintenance.
- Self-employed nature of many taxi drivers which mean they are very vulnerable to the economic shock of COVID-19.

There is, however, an expectation that as Derbyshire begins to move into a recovery phase from April 2021, there will need to be flexibility to alter the current payment arrangements, to take account of changing local circumstances, new national guidance and any modifications to the Government's existing emergency funding arrangements. The following arrangements are therefore proposed for payments from 1 April 2021:

- Payments for adult care transport to remain at 75% of the contracted levels for those services which continue not to operate due to the closure of the day care centre concerned.
- Payments for adult care transport, contracted local bus, Derbyshire Connect, mainstream home to school and SEND services which continue to operate normally to remain at 100% of contract levels.
- Payments for swimming transport services to remain at 0% of contracted costs until services can resume, which is not anticipated to be until the new school year begins in September 2021.
- Concessionary fares payments to continue to be made based on the level of bus travel before the pandemic, subject to any changes which may be needed in response to updated DfT advice.

Due to the dynamic nature of the virus, the potential need to introduce local restrictions to take account of this and further changes in Government guidance or policy it is proposed that:

- Should local lockdown arrangements be introduced that require the withdrawal of any local bus, Derbyshire Connect, mainstream or SEND home to school transport services or adult care services in the affected area, then payments would be reduced to 75% of the contracted levels for those services until such time as normal services could be reintroduced or until it is determined that transport requirements have changed and alternative recommendations are made, whichever is soonest
- Should a transport operator be unable to fulfil a contracted service due to instruction by an authorised body (such as NHS Test and Trace) that a driver or passenger assistant must self-isolate, then the operator should find a replacement member of staff to cover that service. However, in the extreme circumstance that an entire company has to self-isolate and therefore is unable to provide any contracted services, then payments will be reduced to 75% of the contracted level until such time as normal services are resumed.
- Any increase in Council legal responsibilities in relation to how the current commercial bus networks are funded and specified as a result of the national bus strategy are incorporated into the payment arrangement proposed in this report.

It is anticipated that future transport requirements for SEND, mainstream school, adult care services, local bus and Derbyshire Connect transport will be reassessed and reviewed in 2021, and most notably following publication of National Bus Strategy. It is therefore proposed that these payment arrangements should remain in place until 31 December 2021, or until the assessment of ongoing requirements is completed and alternative recommendations are made, whichever is soonest.

Alternative Options

In considering the most appropriate way forward, a number of issues have been taken into account and other options assessed.

The Council is firmly and clearly committed to ensuring value for money in everything it does and this means not normally paying for goods and services that are not due to be received. However, the exceptional circumstances that are being faced nationally, the ongoing advice from Government, the precarious nature of the external market for transport operators, and the changing/unclear forward demands of customers such as schools and day care centres, means that competing issues have to be balanced and a view taken on how best to protect not only the public purse in the short term, but the economic and social wellbeing of local residents and businesses, as well as retaining a competitive market place for the Council's long term bought in transport needs.

With this in mind, another funding/support option have been considered and this is set out below:

- Do nothing and remove all payments for services not operating from 1 April 2021 and revert to concessionary fares payment based on actual travel at the same time. This is not considered an appropriate option given the significance of the economic and social impact on passengers and local businesses, the difficulties that would be faced in resuming full operations once the crisis has passed and the impact on the bus network caused by the loss of most concessionary fares income straight away. It is also contrary to DfT advice (PPN 04/20).

On balance, it is therefore considered that the 'Proposals', as set out above, represent the most appropriate way forward. It is clear what services are being paid for and why, and efforts have been made to ensure there is no 'double compensation' being paid, i.e. by the Council and any other party, e.g. the Government paying towards 'furlough'. It is hoped that it will be possible to return to pre-COVID-19 arrangements sooner than the end of this year, but the extension until 31 December 2021 provides flexibility if this proves not to be the case.

(3) Financial Considerations The Council has a total of around £35m committed expenditure per annum across all transport services. This includes around £10m of concessionary fare payments which is a statutory duty. The proposals contained in this report do not incur any additional expenditure beyond planned expenditure in the absence of the COVID-19 pandemic. Any saving against this planned expenditure would be 'windfall', but a wider consideration is the social and economic value of helping bus operators and transport contractors to survive this period of uncertainty so that service provision can immediately be resumed, when required, as the lockdown/local

restrictions are eased. The source of demand, such as schools or Adult Care centres, cannot sustain any lengthy time delays.

(4) **Legal Considerations** Section 63(1) of the Transport Act 1985 places a duty on Derbyshire County Council to secure the provision of '*such passenger transport services as the Council considers appropriate to meet any public transport requirement within Derbyshire which would not, in its view, be met, apart from any action taken by them for that purpose*'.

Under Section 63(8) of the Act, the Council also has a duty to have regard to the transport needs of members of the public who are elderly and disabled when exercising the Section 63(1) duty referred to above.

Under Section 508B and Schedule 35B of the Education Act 1996, local authorities are under a duty to provide free school transport to 'eligible children', and under Section 508A of the Education Act 1996.

(5) **Equality and Diversity Considerations** Ordinarily, changes relating to home to school transport, SEND transport, adult care transport and local bus service provision are usually the subject of public consultation. However, these temporary measures are considered urgent due to the unprecedented situation caused by the COVID-19 pandemic and its impact on the resumption of safe passenger travel. In addition, the proposals set out in this report seek to maintain and protect services as much as possible so any detrimental impact to protected groups is mitigated.

(6) **Human Resources Considerations** The workforce which undertakes these contracted transport services are drivers and passenger assistants who are either employees or sub-contractors of external providers. It should be noted there may be local difficulties with some companies where a number of their driving personnel remain unable to work due to COVID-19 shielding measures. Suppliers have been asked to make the transport teams aware of any difficulties in fulfilling the terms of their contracts due to personnel shortages and this has not presented any insurmountable issues to date.

(7) **Environmental and Health Considerations** Whilst making the contractual and concessionary fare payments does not present practical environmental or health considerations, there are significant concerns from a transport operational perspective in responding to the Government directive. These concerns fall into the following categories:

- Social distancing (school transport and local bus services) – reduced provision due to social distancing requirements.

- Social distancing (SEND) and ASCH services – necessary to reduce capacity to one student and passenger assistant in one taxi and 2-3 students on a 16 seat minibus (depending if one travels in a wheelchair).
- Capacity of vehicles – the market does not have the drivers or vehicles to supply a large amount of additional routes.
- Operator concerns – age/gender profile of many drivers (older males); driver availability as some remain shielded, higher risk profile of some drivers (ethnicity), handling of cash, risk of transmission, enforcement of mask wearing and adherence to social distancing by students, limiting numbers alighting the vehicle at bus stops, etc.
- Personal Protective Equipment (PPE) availability and conformity – particularly relevant for the transport of SEND students who typically travel in smaller vehicles, such as taxis with an accompanying passenger assistant. Some SEND children have challenging behaviours (such as spitting, touching) and some require personal contact during the journey to school.

(8) **Social Value Considerations** The Council issues free bus passes to students who have a statutory entitlement to travel assistance to enable them to travel to school on the contracted school bus network. The Gold Card concessionary pass system also allows older people and those with specific disabilities to use bus services at no charge.

It should be noted that the transport suppliers and many of the operators impacted by the proposals in this report are local small and medium enterprises (SMEs). Continuing with the payments will thereby help to protect jobs and the local economy, at least for the immediate future.

(9) **Other Considerations**

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, property and transport considerations.

(10) **Key Decision** Yes.

(11) **Call-In** Is it required that call-in be waived in respect of the decisions proposed in the report? No.

(12) **Background Papers** None.

(13) **OFFICER'S RECOMMENDATIONS** That Cabinet:

13.1 Notes the current situation with regard to public transport services in the County and the need to maintain flexibility and responsiveness in the adopted approaches.

- 13.2 Approves the proposed payment arrangements to bus, coach and taxi operators for contracted Council transport services and concessionary fares reimbursement from 1 April 2021 until the 31 December 2021 or until the completion of the assessment of ongoing transport requirements is completed and alternative recommendations made or until changes in Government guidance if this is earlier.
- 13.3 Agrees to receive a further report later in the year which will set out any changes in the Council responsibilities regarding bus services and funding following the publishing of the new National Bus Strategy.

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