

Salary Sacrifice Discounted Travel Pass Scheme – BSIP Funding (“the Project”)

Legal Comments

On 8 August 2022 the Department for transport confirmed funding for the Authority as part of the Bus Service Improvement Plan (BSIP) Programme. The Executive Board resolved on the 18th October 2022 to accept that funding and delegated authority to the Corporate Director of Growth and Development to enter into a Memorandum of Understanding/ Grant Agreement under section 31 of the Local Government Act 2003 (subsequently completed) for the acceptance of £11,167,414 (£3,306,699 for revenue purposes and £7,860,715 for capital purposes) between 2023 and 2025 with spend to be completed no later than 31.03.2025. The MoU specifies the terms and conditions also relating to the delivery, financial expenditure, agreed milestones, reporting and evaluation, communication and branding expectations between the Parties.

This funding was then supplemented by two further DfT BSIP allocations known as, Phase 2 BSIP (BSIP+) of £890,044 and up to £1.84 m known as “Network North: Phase 3 BSIP”, accepted under the same MoU terms and conditions. The later funding is to support the delivery of the Greater Nottingham Bus Service Improvement Plan in 2023/24 & 2024/25, adopted by the Authority, Nottinghamshire County Council, and the Bus Partnership Group.

It is understood the Authority has not used £304,000 of the Network North: Phase 3 BSIP funding and has the agreement of the DfT to re-purpose this funding for the Project (to benefit the ongoing delivery of the plan) completed in line with the Project Adjustment Requests (PAR) process in clause 7 of the MoU/ Grant Agreement and guidance at Annex 2 of the same (see the appendix to this decision).

In accordance with the MoU the Authority must only use the funding on the proposed scheme in compliance with the Subsidy Control Act 2022, where relevant. Accordingly, prior to the commencement of the Project, the Authority needs to ensure it assesses whether the discounting / subsidising of the travel pass costs comprises a subsidy applying the four-limb test in the Subsidy Act 2022, and where it does, whether any exemption applies or otherwise whether it’s a compliant subsidy in accordance with a principles assessment under the Subsidy Control Act 2022.

Should delivery not progress as agreed in the Project Adjustment Request, or the conditions of the MOU not be met (which include continuing reporting obligations), the DfT has the power if appropriate to, by notification in writing to the Authority, require the repayment (clawback) of the whole or any part of the grant and/or reduce, suspend or withhold future grant payments.

The Authority must ensure that it cascades relevant provisions from the MoU into any subsequent agreements between it and other third parties when utilising the funding on the proposed scheme, to minimise the financial risks to the Authority in the event of any clawback, reduction, suspension of funding etc by the DfT.

It is understood transport operators will, under the proposed scheme, be reimbursed on a monthly basis against their 12-month season ticket sales. The Authority will meet 30% of the cost of the scheme, with the Nottinghamshire County Council meeting the remaining 70% of the total cost of implementing it. A partnership agreement should be entered into to govern the utilisation/ spend of funding between the Authority, County Council and the third- party transport operators. As the fund is understood to be finite, prudent contractual and financial management by the Authority will be key to ensuring no overspend through over allocation of discounted travel passes against the financial resource. In addition to this, the funding

authorities, through the partnership arrangements with the transport operators, should ensure obligations/ scheme eligibility conditions are in place to ensure the operator and funders are informed should a beneficiary of the scheme leave employment/ cease to be entitled to the benefit through the applicable salary sacrifice schemes, so that the travel pass may be cancelled and financial benefit of the discount/ subsidy clawed back in a proportionate manner.

Richard Bines, Solicitor, Contracts and Commercial Team, 29.07.2024.