

**Committee:** Scrutiny

**Agenda Item**

**Date:** 9<sup>th</sup> December 2008

**5**

**Title:** Concessionary Fares – Events around a proposal to extend scheme to include 9am start

**Author:** John Mitchell, Chief Executive

Item for decision

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## Summary

The Concessionary Fares scheme is administered on behalf of the Essex Districts and the County Council by MCL, who treat with the relevant bus companies. The statutory scheme operates from 9.30 am, although there is provision for Councils to extend the scheme to 9am at their own cost. On 17<sup>th</sup> June the Environment Committee considered a report which recommended that Members *consider* whether to extend the scheme to 9am. The Committee agreed to extend the scheme. The decision was considered ultra vires the following day, and the matter transferred to the Finance and Administration Committee. That Committee resolved not to permit an extension of hours but required the Environment Committee to find the funding from within its own budget. This report sets out the concerns of the Chairman of Scrutiny and responds to them.

## Recommendations

- 1 That all reports with financial implications are cleared with the Chief Finance Officer or equivalent person as he or she may nominate
- 2 That reports are not presented in such a way as to lead Committees to make “ultra Vires” decisions
- 3 Officers will not seek to unilaterally expedite procedure where a Committee decision is flawed.

## Background Papers

Reports to Environment Committee on 22<sup>nd</sup> January 2008 and 19<sup>th</sup> June 2008.  
Report to Finance and Administration Committee 26<sup>th</sup> June 2008.

## Impact

Communication/Consultation	See recommendation
Community Safety	None
Equalities	None

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Finance	See recommendation. Committees cannot vote to approve schemes that will increase their budgets
Human Rights	None
Legal implications	See recommendations
Sustainability	Increased bus usage for necessary journeys should be encouraged
Ward-specific impacts	all
Workforce/Workplace	none

### Situation

This report arises from a sequence of events relating to a proposal to increase the hours covered by the concessionary fares scheme. It is brought at the request of the Chairman but was not required under the minutes of the previous meeting.

The Chronology perceived by the Chairman, and the issues on which clarification is sought, are as follows:

1. "There was a report to Environment that recommended extending the scheme to start at 9 a.m. The report said that any extra cost would be 'small'.
2. The report did not contain detailed costs as these would not be certain in any detail and in fact the cost of the current scheme was unknown as it depended on take-up.
3. The committee resolved to go ahead and take the risk, knowing that the latest budget report showed a projected underspend for (I think) that line and certainly for the whole committee.
4. The next day (or so) the decision was declared ultra-vires by Michael Perry and John Mitchell. This ruling is disputed; its legitimacy has been challenged.
5. The decision list and the minutes of Environment contained statements about the decision that were not correct but supported the line officers had decided to take.
6. JM decided to refer the matter to the next F&A committee for 'decision'. It is disputed whether F&A has any jurisdiction over the Environment committee's delegated budget.
7. F&A decided to postpone any decision until September pending acquisition of more accurate costings.
8. There was a motion at Full Council but this was defeated.
9. In September officers decided in effect to implement the original decision on the back of a county wide scheme without further formal reference to members.
10. Was the original decision legitimate? Was the September action acknowledgement of this?

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11. What lessons are there to be learned about (i) financial reporting in support of service decisions, (ii) the democratic and governance process of this authority?"

### Officer Comment

To take these in order

1-3 It is considered that the report was flawed. It ought to have stipulated, or estimated robustly, what the extra cost would be and made it clear to the Committee that any extra cost would need to be borne from within its existing budget. It was far too early in the financial year to be sure whether spending was on course against the budget and in any event the fact that there might be a budget available is not in itself carte blanche to spend it. In any event, the effect of the decision was to increase the budget, not to take the unspecified expenditure out of existing budgets. The minute makes it clear that officers, and the Leader, advised caution.

4 The resolution of the Environment Committee was "that extra funding is secured to enable the Council to operate an addition to the national scheme..." Committees cannot authorise expenditure beyond their budgets and the decision was quite correctly declared ultra vires – ie null and void.

5 It is correct that the decision list was not a true record but this was rapidly amended and the position quickly clarified

6 The exceptional referral to Finance and Administration Committee was done not to over-rule the Environment Committee but to obtain a decision quickly that would enable the 9am start to go ahead. This could be done by delegating the decision to the Interim Chief Executive to vire the necessary funds from other budgets in the Environment Committee's portfolio.

7 The Finance and Administration Committee decided however not to make such a decision and as a result the matter would be considered at the September Environment Committee.

8 No comment

9 The September meeting of the Environment Committee considered, and agreed to, a new scheme for concessionary fares which extended the hours to 9am and 12 midnight. It is not an amendment to the current scheme but a completely new scheme. Since the meeting there have been further meetings between the various Councils and the bus operators and the scheme will in future be administered by Essex CC, who will, from 2011, manage all the financial arrangements.

10 The original decision was therefore not legitimate for the reasons set out. The September action was unrelated to the earlier request but did mean that there was no need to continue with the process

11 (i) In future all reports with any financial implications will need to be cleared by the Chief Financial Officer, or such person as he deems suitable, before being placed on an agenda. It will be the responsibility of the Lead Officer to ensure this happens, and for the report author to ensure the report is prepared in a timely manner. If deadlines are missed then reports will need to wait for the next cycle. (ii) Officers sought to refer the Concessionary fares item to the Finance and Administration Committee as a means of preventing a three month delay by waiting

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for the next Environment Committee to reconsider the matter. Given the procedural confusion which resulted, in future such discretion will not be exercised.

### Risk Analysis

<b>Risk</b>	<b>Likelihood</b>	<b>Impact</b>	<b>Mitigating actions</b>
That reports are presented to Committees with inadequate financial information	2. An infrequent occurrence	3. Committees can make inappropriate decisions with inadequate information	All reports with direct financial implications to be cleared with the Chief Financial Officer
That expedition of procedure under the provisions of the current constitution gives rise to confusion and perception that the democratic process has been bypassed	2 an infrequent occurrence	3 delays in decision making	Delays in decision making are considered preferable to perceptions of impropriety. Officers will no longer unilaterally seek to expedite procedure where a decision is flawed

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.