



Committee report

Committee	CABINET
Date	TUESDAY, 13 DECEMBER 2011
Title	HOME TO EDUCATION TRANSPORT POLICY
Report of	COUNCILLOR DAVID PUGH, LEADER AND CABINET MEMBER FOR RESOURCES AND COUNCILLOR DAWN COUSINS, CABINET MEMBER FOR CHILDREN'S SERVICES

EXECUTIVE SUMMARY

1. Following the Cabinet meeting on 16th August 2011 and the decision to go to a further period of representation, this paper is to receive the outcomes regarding the revised home to education transport policy.
2. The policy review seeks to provide equity in its application to all persons including removing the disparity of non-faith families not being eligible for free travel compared to those faith families that have the same circumstances who do benefit due to their choice of faith school.
3. The Cabinet report of 16th August required a further round of consultation on the proposed home to education transport policy. Following the consultation a number of changes are proposed for cabinet consideration. These are that any loss of concessionary travel only applies to new pupils attending a faith school which is not their nearest school; post 16 travel will only apply to those students resident on the Isle of Wight and a section on behaviour has been added.
4. If the recommendations are approved the new arrangements for home to education transport will commence in September 2012 for new students. Post 16 travel arrangements commenced in September 2011. Students who currently receive free transport are not affected by this decision unless their circumstances change such that they would not have been entitled to free transport under the current policy.
5. For those students with Special Educational Need ("SEN") and Disability who attend Medina House and St Georges or whose SEN statement requires them to be transported from home to school, they will continue to receive free transport and are unaffected by the policy review. This is because the council has a statutory obligation to provide support.

6. For those students who are eligible for Free School Meals or maximum level of Working Tax Credit there remains a statutory obligation for free home to education transport and therefore they are also unaffected by this policy change.

BACKGROUND

7. Following extensive public consultation during the spring and summer of 2011 and the range of issues and concerns raised, it was recognised that there was a need to review the whole of the current home to education transport policy rather than just specific aspects of it. The consultation feedback demonstrated the need for greater clarity on aspects of the policy and the associated subsidies and concessions for travel to all education establishments. Furthermore, it was also considered appropriate to use the opportunity to bring school (pre-16) and Post-16 transport arrangements together in one comprehensive document.
8. Therefore Cabinet approved (16 August 2011) a draft of the home to education transport policy for consultation. This was to ensure that there were clear principles understood by all which were sufficiently robust to stand the test of time recognising that, as from September 2011, the education system changed to a two-tier system. The proposed policy encompassed all aspects including:
 - Primary school pupils (4-11 year olds)
 - Secondary school pupils (11-16 year olds)
 - Post-16 students in Sixth Forms and Further Education (16-19 year olds)
 - Children (4-16 year olds) with Special Educational Needs and Disabilities
 - Transitional arrangements
 - Exceptional circumstances

The intention was to have a policy that is fair and equitable and addresses a number of anomalies that have developed through custom and practice, some of which were highlighted during the initial consultation exercise.

9. Cabinet approved a further period of representation from 6th September 2011 for 28 days to seek views on the proposed policy. This process has enabled the council to revise the current home to education transport policy and will be implemented for new pupils (entrants) from September 2012. This revised policy does not have an impact on pupils already attending a faith school.

STRATEGIC CONTEXT

10. At the beginning of each phase of education parents are able to express a preference for the school they wish their child(ren) to attend. This is not a choice as such although the high levels of first preference currently secured on the Isle of Wight often lead people to consider it a choice. The Island's rural character with villages and hamlets spread across particularly the south and west of the island (many of whom have no local provision of their own) mean that pupils are not able to access education without the use of public transport. In some cases the routes are deemed unsafe for walking or cycling.
11. There is a statutory duty on the authority to ensure that suitable travel arrangements are made, where necessary to facilitate a child's attendance at school. The

statutory requirement to provide free home to education transport applies to only those children that meet the defined criteria. The criteria are as set out within Appendix C. Traditionally, the Council has provided free and subsidised transport above and beyond these statutory requirements. As part of the wider budget review of expenditure the council is continuing to examine all the services it provides to ensure that its costs are kept within the available budget. Expenditure on home to education transport is one area where potential savings could to be considered especially in light of the fact that our local provision is above and beyond statutory requirements. While the Council contracts with a range of public transport providers there is only one major provider who is able to meet the Island wide demand. The existing contract with Southern Vectis will continue for a further academic year, subject to some variation, with a new contract being secured for September 2012 onwards.

12. The proposed revised policy is found at Appendix A to this report. The main components of the revised policy were highlighted in Paper C of the August 2011 cabinet meeting www.iwight.com/council/committees/cabinet/16-8-11/agenda.pdf?496361751
13. An Introduction and a new Section 7.1 & Frequently Asked Questions have been inserted that clearly state that the policy for Post-16 students relates only to those living on the island (NB For those students living on the mainland and wishing to attend education on the island, eligible costs will be covered by their home authority)
14. Issues around behaviour have now been included in the main body of the policy and can be seen in section 10 Appendix 1 (Frequently Asked Questions - Page 18 Behaviour - "What happens when pupils misbehave on school transport" and Appendix 3 page 24 - "Protocol in respect of misbehaviour on school transport." It is important to note that the behaviour of pupils when travelling to and from school is one where there is shared responsibility between the council, schools and parents.

CONSULTATION

15. There has been a further period of representation on the draft Home to Education Transport policy to which the following parties have contributed:
 - all 14 to 19 Providers;
 - parents and carers;
 - young people (pupils and students)
 - Youth Council
 - Teachers and lecturers
 - governing bodies
 - members of the public;
 - the Catholic & Church of England local dioceses
 - Member of Parliament for the Isle of Wight
 - Town and parish councils
 - local transport operator – Southern Vectis
 - Trade Unions

16. The period of representation concluded on the 14th October 2011. Please refer to Page 23 of the Equality Impact Assessment (Appendix B of this report) for more detail regarding the consultation programme.
17. A summary of the consultation responses is provided in Appendix B in section 2.1. The number of respondents was low, with many of not in favour of any change. Some respondents' comments related to changes only being introduced to new students from 2012.
18. Three schools also wrote in asking for the following suggested amendments to be considered.

The suggestions were:

- Make reference to children living in “option zones” and their entitlement (see paragraph 5.1 of the revised policy in Appendix A
- Where free transport is limited to a bus pass only, qualify the situation regarding primary school pupils (see page 19 of the revised policy in the Frequently Asked Questions section ‘Will my child travel to school on a dedicated school bus?’
- Frequently Asked Questions – amend statement regarding where transport is provided from to read, “this will be provided from the nearest designated bus stop or other agreed location where a primary aged child lives in a rural area some distance from the nearest bus stop (see page 18 of the revised policy Frequently Asked Questions ‘Where will the free or subsidised transport be provided from?’
- Extension of provision for pupils wishing to take part in extended school activities – how will the LA make provision for primary aged pupils? Extended activities are a school responsibility although arrangements can be made for pupils to obtain a pass from the school provided the school has let the council transport division aware that such a need exists
- Carry out a risk assessment to ensure that the walking route from the Floating Bridge to Cowes Enterprise College is safe. A risk assessment has been carried out on this route by the Council’s Road Safety officer and the route is deemed to be safe for pupils to walk along.

These comments / questions, as identified above, have been incorporated into the revised policy document including that the new criteria will only apply to new pupils. Pupils that currently receive free home to school transport will continue to do so unless their circumstances change such that they would not have been entitled under the current policy.

19. A meeting was held on 1 December with Chair of Governors, Principal and Assistant Principal of Christ the King College with Cllr Cousins and the Chief Executive. This meeting was to consider key points arising from the College governing Body’s response to the consultation and the council’s proposed policy revisions. The College representatives wished to record that the revised policy if implemented immediately would adversely affect 45% of the current school roll. However, it was recognised that the proposed decision to defer implementation of the revised policy for existing pupils was a positive step. The College’s preferred position continues to be the retention of the existing policy (2005) but additionally, they brought to the

council's attention the situation regarding the pupils who attend the school living in the Bembridge area. The College's proposition is that as potential pupils living in this area are also outside the 3 mile 'catchment' for secondary schools in the East Wight that their 'entitlement' of free transport to Ryde / Sandown be transferred to apply to Christ the King College. This would reflect then discretionary position the council is proposing to take with regard to pupils from the south and west Wight areas. This suggestion has been given serious consideration (recognising that for existing pupils this free transport will be available for statutory age education and that those that otherwise qualify due to low income or special education needs will continue to receive free transport) and also the request that this might apply to siblings of exiting pupils if not generally. The council believes that the discretion to provide transport above the statutory minimum to pupils living in the south and west Wight is justified due to the minimal financial costs to the authority due to the fact that Christ the King College is within the close vicinity of their nearest school. This means that the additional transport costs are minimal as the same bus that would have taken the students to Carisbrooke would take the students to Christ the King. However this would not apply in the case of pupils living in Bembridge and dedicated travel arrangements would have to be made for these pupils. Currently there are 8 students that live in the east Wight area that if they were starting Christ the King College next year would be affected. It is difficult to provide an exact figure of how many this might affect but given the current pupil numbers it is probable that the number might be less than this from next year as the current numbers represent all year levels at Christ the King. The Council has taken account of the impact this may have on the potential for future students in the east Wight area to attend faith schools through the consultation and feedback received. The council recognise that there may be an impact upon those particular students in that area. The cost of providing this dedicated bus service is considered to be disproportionately high. This proposal is therefore not recommended for inclusion in the revised policy.

FINANCIAL BUDGET IMPLICATIONS

20. The overall cost of home to education transport in the 2010/11 academic year was £2.55m and the indicative budget for 2011/12 is £2.83m.
21. Currently, 13 contract buses provide transport to Christ the King College. There is one bus that transports 15 pupils who attend St Francis Primary School in Ventnor. These journeys are funded by the council. There are four students at Holy Cross who travel in a school minibus but this is at no cost to the council.
22. However, it should be noted that based on figures from the last academic year, approximately two thirds of the students attending denominational schools and currently receiving home-to-school transport would continue to be entitled to statutory subsidised travel on the basis of distance and they are unaffected by the proposed new policy.
23. Of the 640 pupils, 220 pupils (approximately a third) live within three miles of their neighbourhood school and so free home to school transport will be removed for any new entrants, but will be retained for existing pupils. The majority (approximately two thirds) would retain free home to school transport. This would save over time approximately £212K based on last year's figures. Any immediate saving will be offset by the commitment to maintain free transport for existing pupils.

24. The decision to amalgamate school journeys (i.e. not to provide separate buses for different schools from the same starting point) will contribute to a cost reduction although this cannot be quantified at this stage. From September 2012 savings will come from the reduction in the number of contracted buses used although as the contract is annually renewed this amount cannot be quantified at this time. The council plans to review the current Southern Vectis contract and reschedule the bus routes for the new academic year starting in September 2012.
25. Some immediate reduction in cost to the council has been achieved through the increased cost of the termly travel pass for Post-16 students. Based on the 2010/11 figures this is estimated to be £62,640.

LEGAL IMPLICATIONS

26. Education 1996 Act requires local education authorities in England to have regard to the religion or belief of parents in exercising their travel functions. A local education authority must have regard to any wish of a parent of a child, student of sixth form age or adult learner, for that person to be provided with education or training at a particular school, institution or other place, where that wish is based on the parent's religion or belief. Section 76 of the Education and Inspection Act 2006 requires the council to promote sustainable travel and transport for the school journey. This involves assessing travel and transport needs against the provision of footpaths, cycle tracks and public transport etc. The council's has adopted policies on sustainable travel as set out in the background papers.
27. When considering individual requests for travel arrangements the authority will have regard to the requirements to consider individual arrangements for pupils with particular needs, such a disabilities and Special Educational Needs. The policy has been drafted to reflect that whilst cost can be taken into account, the authority is still under a duty to ensure that the stated needs are met.
28. When the Council carries out a period of representation, it is required to be meaningful, reasonable and proportionate. It must be carried out at the formative stage of policy changes and must give sufficient reasons for proposed changes so those consulted are able to give informed consideration to them and respond accordingly. The consultation outcomes should then be considered with an open mind and be taken into account in the decision making.
29. Under the Equality Act 2010 decision makers must have due regard to the elimination of discrimination, advancing equalities and fostering good relations between different groups protected under the Act. An Equality Impact assessment has been carried out to assist in the exercise of this duty and is attached at appendix B. This includes the outcomes of the further period of representation, to ensure the equality duty can be met.

Human Rights Act 1998

30. With regard to Human Rights a number of responses expressed a view that the review would breach the human rights of those who currently receive free school travel to denominational schools under the current discretionary arrangements. This

view was expressed most strongly in the response received from the Roman Catholic Diocese of Portsmouth.

31. The Human rights Act 1998 states under Article 2 – Protocol 1 of the Human Rights Act 1998 that: *No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the rights of parents to ensure that education and teaching in conformity with their own religious and philosophical convictions.*'
32. The Human Rights Act does qualify this right to education in so far as it recognises that pupils are to be educated in accordance with the wishes of their parents so far as that is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure'. This means that whilst there is a right to education under article 2, as above, for the parents right to have account taken of their religious or philosophical convictions, a balance must be struck in some cases between the convictions of parents and what is educationally sound and affordable. Consequently, it is appropriate for the Local Authorities to consider the cost of providing such discretionary transport in deciding whether or not it should be provided. It is clear that human rights law does not give parents an absolute right to free home to school transport provided for them if they choose to send their children to a faith school.

EQUALITY AND DIVERSITY

32. An equality impact assessment report was carried out prior to consultation and it has now been reviewed following the period of representation. The latest version is attached as Appendix B to this report.
33. The consultation was open to all identified in paragraph 14 and arrangements were put in place to allow all to contribute.
34. The Education Act 1996, as amended by the Education and Inspections Act 2006, places a statutory duty on local authorities to secure 'diversity and choice' in the provision of primary and secondary schools in their local area.
35. The council considers that the review and its proposals are in compliance with its duty to secure diversity and choice. The review does not reduce the number of denominational schools in the areas, or the number of places available within them. Neither does the review prevent parents from expressing a preference for denominational schools. Moreover, the safeguards provided to low income families by the Education and Inspections Act 2006 ensures that the cost of home to school travel will not be a barrier to them choosing a denominational school.
36. Section 29 of the Equality Act 2010 places a duty on local authorities not to discriminate in the provision of public services. However, Schedule 3 of the Act states that:

Section 29, so far as relating to religious or belief-related discrimination, does not apply in relation to anything done in connection with:

- a) *the curriculum of the school*
 - b) *admission to a school which has a religious ethos*
 - c) *acts of worship or other religious observance organised by or on behalf of a school (whether or not forming part of the curriculum)*
 - d) *the responsible body of a school which has a religious ethos*
 - e) ***transport to and from school***
 - f) *the establishment, alteration or closure of schools.*
37. This exemption is required so that current arrangements for local authorities to provide discretionary transport to students attending denominational schools remains legal following the introduction of the 2010 Act.
38. Therefore, the council does not consider the impact of these proposed changes on the faith community of the Isle of Wight is disproportionate in light of the desire to be fair and equitable.
39. The Council does not consider that any other groups will be adversely affected by these proposed changes in fact the opposite will now apply as the policy seeks to provide equity across home to education transport provision.

OPTIONS

40. As a result of the period of representation the Cabinet are invited to consider the following options:

OPTION 1 - to note the outcomes of the recent period of representation and to agree to adopt the revised Home to Education transport policy

OPTION 2 - to reject the revised policy and continue to apply the existing policy (2005).

RISK MANAGEMENT

41. In terms of risk management the revised policy represents an opportunity to manage both financial and reputational risks that we are exposed to currently by having a number of disjointed, complex and costly arrangements.
42. The revised policy will provide clarity and transparency regarding the provision of free transport. It is necessary to have clarity and transparency regarding the provision of free transport particularly where the council is providing additional discretionary elements in addition to that required by national regulation.
43. The adoption of the revised policy will negatively impact on some pupils and parents. However, if the proposed revised policy is not adopted there is risk of legal and discriminatory challenge against the council from parents who opt for a non-denominational school.

EVALUATION

OPTION 1:

44. This option provides an equitable base for all students irrespective of faith but also recognises that for some students the home to school journey is essentially the same whether a faith or non faith school is attended. This will mean the loss of opportunity of future free transport for some pupils and this will be regarded negatively but provides some protection for the council from potential claims that the current policy is inequitable against.

OPTION 2:

45. If the existing policy is left in place with the current additional provision there is the risk that those parents who opt for a non-denominational school may claim that the council is being inequitable in its policy by providing free transport to those who attend faith schools. The revised policy does accommodate those for whom their catchment school and their choice of faith school is in the same vicinity.

RECOMMENDATION

OPTION 1

To note the outcomes of the recent period of representation and agree and adopt the revised Home to Education Transport Policy.

APPENDICES ATTACHED

[APPENDIX A](#) – Home to Education Transport Policy - Draft

[APPENDIX B](#) – Equality Impact Assessment

[APPENDIX C](#) – statutory responsibilities for home to school transport

BACKGROUND PAPERS

Cabinet paper 16 August 2011

www.iwight.com/council/committees/cabinet/16-8-11/agenda.pdf?496361751

Sustainable strategy policy

- www.iwight.com/living_here/environment/Transport_Strategies/images/2SustainableTraveltoSchoolStrategy.pdf
- www.iwight.com/living_here/environment/Transport_strategies/apr/images/AnnexF-SchoolTravelPlanStrategy.pdf

Admission Information which can be found at

- <http://eduwight.iow.gov.uk/parent/admissions>

Home to school transport current arrangements can be found at

- http://eduwight.iow.gov.uk/parent/my_child/transpor.asp

Post-16 transport current policy which can be found at

- http://eduwight.iow.gov.uk/the_lea/policies_plans/images/transportpolicypost162010-2011final.pdf

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