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| <b>MEETING :</b>          | <b>CABINET</b>  |
| <b>DATE:</b>              | <b>19<sup>TH</sup> DECEMBER 2013</b>                                |
| <b>TITLE OF REPORT:</b>   | <b>CHANGES TO HEREFORDSHIRE SCHOOL AND POST 16 TRANSPORT POLICY</b> |
| <b>REPORT BY:</b>         | <b>HEAD OF SUFFICIENCY AND CAPITAL COMMISSIONING</b>                |
| <b>CABINET PORTFOLIO:</b> | <b>CHILDREN'S WELLBEING</b>   |

### **1. Classification**

Open.

### **2. Key Decision**

This is a Key Decision because it is likely to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates:

AND

This is a Key Decision because it is likely to be significant in terms of its effect on communities living or working in an area comprising one or more wards in the County.

Notice has been served in accordance with Part 3, Section 9 (Publicity in connection with key decisions) of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

### **3. Wards Affected**

County-wide.

### **4. Purpose**

- 1) To consider in light of the responses to the public consultation, changes to the Council's home to school transport policy such that it provides the statutory minimum requirement of free transport; and
- 2) To consider in light of the responses to the public consultation changes to the Council's school transport policy such that the subsidy for post 16 special educational needs (SEN) students is withdrawn and they pay the same charge as all other students.

## **5. Recommendation(s)**

**THAT: Cabinet consider whether or not to agree to amend or remove the discretionary transport policies with effect from 1 September 2014 as detailed in this report, as follows:**

- (a) To withdraw the Herefordshire free home to school transport policy eligibility based upon nearest and catchment school and replace with eligibility based upon:
  - i) nearest suitable school with places,**
  - ii) in England;****
- (b) Continue to provide the Herefordshire free home to school transport policy eligibility based upon nearest and catchment school only for those pupils entering Y10 or in Y11 at their current school on 1 September 2014 so they may complete their study programmes;**
- (c) To continue to charge parents for a seat on a school bus (because the child is not eligible for free transport) but reduce the Council's subsidy by increasing annual charge by £60 (£1.58 a week) from £660 to £720 (£17.36 - £ 18.95) in September 2014 and to annually review the subsidy each September thereafter to take account of operating costs;**
- (d) To continue to charge post 16 transport but to reduce the Council's subsidy by increasing the annual charge by £60 (from £660 to £720) in September 2014 and to annually review the subsidy each September thereafter to take account of operating costs;**
- (e) To withdraw free transport for Herefordshire post 16 years with SEN and replace with the requirement to meet the annual charge of £720 from April 2014. This is to be annually reviewed each September thereafter to take account of operating costs; and**
- (f) The implications of these policy changes be reviewed annually or sooner in the event that the impact of the proposed changes is materially worse than anticipated.**

## **6. Key Points Summary**

- The Council's financial position is such that to enable essential services for its most vulnerable residents to be maintained it can only deliver the statutory minimum required unless there are clear reasons to do otherwise.
- There has been extensive consultation on the proposed changes to Herefordshire educational transport policies, with a high response rate including petitions and presentations to officers and members.
- There are a number of uncertainties about how parents/carers may respond to the proposed changes to policy. The impact on schools and the actual financial savings are therefore hard to forecast precisely. There will be a saving as the distances the Council is statutorily required to transport children and young people will be shorter.

- Some schools and parents expressed concern that the policy changes would adversely affect the numbers of pupils in some schools and therefore the finances available. Some parents expressed concern that these changes would affect their choice and break long standing patterns of admission.
- The consultation has identified there is good reason to provide, for those whose nearest school is in Wales, free transport to the nearest school in England.
- The consultation has identified there is good reason to delay implementation of nearest only school for those in or entering key stage 4.
- The Council is subsidising the cost of the transport it makes a charge for because the child or student is not eligible. To cover the full cost would require 29% rise or an additional £5 a school week. The proposed increase is a 9% rise or an additional £1.50 a school week.
- The change in relation to post 16 SEN transport will mean withdrawing a benefit targeted at students with a disability. As such this change may adversely impact upon a group sharing a protected characteristic under the public sector equality duty and cabinet will need to have due regard to this impact when taking their decision.
- Other local authorities have already made similar changes to their educational transport policies.
- The integration of the transport planning functions across the Council has the potential to provide a better more efficient service for the residents of Herefordshire.
- Herefordshire has a duty to provide transport for pupils who live beyond a certain distance, or who would have a hazardous walking route to school. This does not preclude parents, carers and schools themselves, either individually or collectively, making local arrangements that would meet their needs in a better way for them.

## **7. Alternative Options**

- 7.1 No change. The Council would continue to provide more than is the statutory obligation, requiring greater savings to be made elsewhere.
- 7.2 Do not introduce the charge for SEN post 16 young people. The council would be providing more than it is obliged to and would not gain the additional revenue, requiring greater savings to be made elsewhere.
- 7.3 Introduce a policy of providing free transport to the nearest school only for all pupils. The Council would provide free transport to a school in Wales if this was the nearest school. The curriculum and teaching approaches are different in the two countries. There is good reason therefore for the Council to provide free transport for eligible children to their nearest English school. Parents will of course still be able to exercise their preference to attend a Welsh school should they wish to.
- 7.4 Introduce a policy such that all residents of Herefordshire who were entitled to transport could get transport to their nearest Herefordshire school, rather than one in another authority. This would realise only a third of the savings and would disadvantage schools with no borders to neighbouring authorities. Neighbouring local authorities have not adopted this approach when introducing nearest school only policies.
- 7.5 Introduce the policy changes to nearest school for all year groups from September 2014.

Whilst this change in transport policy does not mean that children are required to change school, some families may feel they have to change school because of the logistics and costs of making their own arrangements for transport. This would mean some pupils, at a key point of their education, might be disrupted.

- 7.6 Introduce the policy changes to nearest school as the pupil's transition in YR or Y7 or change school. This would phase the budget savings in over at least five years, make route planning more complex and create confusion for operators and parents.
- 7.7 Introduce the nearest school transport policy with effect from April 2014. This would not give parents and other organisations time to make alternative arrangements and could be disruptive mid-year.
- 7.8 Introduce full cost recovery for post 16 SEN students. Many SEN students require specially adapted vehicles which are more costly to run and maintain (and can cost up to £8000 a year). To expect the students to fund the full cost would be considered unreasonable under equality legislation.
- 7.9 Increase the vacant seat payment scheme and post 16 transport costs to the current overall full cost recovery figure of £850 from September 2014. The vacant seat payment is set annually and the last increase, in September 2013, was from £514 to £660; which represents a 28% increase. An increase, to the current full cost recovery of £850, would be a 29% rise. A £60 per annum represents a 9% annual increase, which, although significant, is more reasonable in the current economic climate.

## **8. Reasons for Recommendations**

- 8.1 The Council is seeking to provide only the statutory minimum service it is required to do unless there is good reason to do otherwise. The council also has adopted a policy of full cost recovery unless there is good reason not to. There is good reason to make exceptions over the nearest school being in Wales and seeking not to cause potential disruption to key stage 4 pupils, as set out above.
- 8.2 Post 16 students, apart from those with SEN, make a contribution to transport if they use it. The council may choose to require post 16 students with SEN to make the same contribution to transport. In taking their decision the cabinet will need to have due regard to any impact of on this group sharing the protected characteristic of disability. All post 16 students have opportunities to access funding through bursaries. The awarding bodies have to have due regard for those with a protected characteristic. The transport used by students with SEN is modified according to their needs.

## **9. Introduction and Background**

- 9.1 The Council keeps all services and functions under review. In looking at arrangements for transport across the County a number ways of improving efficiency and reducing costs were identified. Changes in the home to school transport policy were identified as potential opportunities to reduce costs as the current policy is in excess of what the Council is statutorily required to do.

## **10. Key Considerations**

- 10.1 The Council has agreed that to achieve its priorities it must:

- Encourage individuals, communities and organizations to do more for themselves and for their local area;
- Radically reduce the costs, breadth and level of services we provide;
- Ensure the services that we do provide are cost effective.

- 10.2 The Cabinet agreed to consult widely on proposed changes to the County's home to school transport policy. Detailed consultations were posted on the Council's website and people who may be affected were encouraged to engage with it or make other representation through attending meetings, writing in or telephoning officers.
- 10.3 There were 512 responses to the nearest school only proposals and 39 to the post 16 SEN. Additionally officers met with head teachers, parent groups in Brimfield and Credenhill. The nearest school proposals were raised in Herefordshire Schools Forum, two petitions were submitted to the Cabinet Member for Children's Services, BBC Hereford and Worcester discussed the idea and 27 children wrote in along with five Parish Councils and other local authority areas.
- 10.4 The majority of the respondents were against the Council making the changes and most were from parents who were in receipt of free transport. There was some recognition from some respondents that the Council needed to make savings. Cabinet's attention is drawn specifically to the view expressed on post 16 SEN transport funding that it may result in a student leaving education. Were this to happen it would seriously affect the life chances of a person with the protected characteristic of disability. Detailed analysis of all the consultation responses to both proposed policy changes is attached.
- 10.5 The potential impact on Herefordshire schools is a concern with respondents feeling it could reduce the numbers of pupils at some schools (and therefore their funding, and the total funding coming into the Herefordshire education system) such that it made them unviable. There are 21,400 school children in Herefordshire. Of these 3600 are eligible for free home to school transport. Analysis shows that the proposed changes would affect some 850 pupils (24% of the total number transported) as they live in the catchment area of a school, get free transport but have a nearer school (270 primary and 580 secondary). 160 of these pupils live in Herefordshire but their nearest school is in Wales. 180 pupils live in Herefordshire but their nearest school is in an English local authority area. The remainder have a different nearer school within Herefordshire.
- 10.6 There will still be choices for parents/carers. Some parents will prioritise their choice of school for quality and perception reasons and pay for transport, provided by the Council or other parties, like school or consortia of parents, if they are no longer entitled. Others may make different choices about their school. Currently 43% of parents are choosing to have their child attend a school other than their catchment one which suggests parents will prioritise their choice of school on factors other than transport. It is unclear and difficult to predict what parents of children affected by this change will choose to do and how this in turn will affect choices in the future.
- 10.7 Some respondents expressed concerns at the ability of parents to pay if they have more than one child. In implementing this policy change, it is proposed that the Council identify how parents can spread the cost through more frequent payments than is currently available, as well as ensuring that parents are well informed about bursaries and extended rights to free transport. The integrated transport unit will also be working with providers and schools to identify more cost effective ways of providing home to school transport, which may also reduce costs to families.
- 10.8 The estimated savings of £250,000 a year for the nearest school only policy and £50,000 a

year for the post 16 SEN contribution were questioned in detail during the consultation. Calculating the precise financial impact is exceptionally difficult as it is dependent on choices parents/carers make and how the offer of transport develops. This lack of precision has been criticised in the consultation. However, if 850 pupils are no longer entitled to free transport, due to the change in policy to nearest school, and using the average cost of home to school transport of approximately £800 per year, if no child changed school and all transport was withdrawn for all those non-entitled pupils, then the maximum cost saving could be in the region of £680K per annum.

- 10.9 However assuming that 60% (500) of those affected moved to their nearest (and non catchment) school and therefore remained entitled to free transport at an annual cost of £408K, 20% (175) pay for a Vacant Seat at £660 per annum (i.e. a net subsidy of £140 per pupil per annum) at a net cost of £24K and the remaining 20% (175) make their own arrangements or use those provided by schools then the potential annual cost saving equates to  $£680K - £408K - £24K = £248K$  hence the indicative saving of £250K per annum.
- 10.10 The consultation responses also raised concerns about the ability of parents to pay, particularly those on low incomes. The Council's transport policy will continue to include extended rights to free transport for students from disadvantaged backgrounds and this will mitigate effects for those students eligible for this support.
- 10.11 The timing of the introduction and approach to the proposed policy changes was a significant issue for many of those responding to the consultation. Introducing the changes from September 2014 provides opportunity for those affected to either make alternative arrangements through commercial schemes or other provision. Given that the policy changes may mean some parents choose to have their child attend a different school this could be highly significant for those studying GCSE courses.
- 10.12 Post 16 young people with SEN are already supported through independent travel training where appropriate having regard to their needs. This training improves independence and self-confidence. Significant reductions in transport spend has been achieved by successfully training and supporting young people with disabilities to use public transport. This will continue, although some people pointed out that reductions on the public service network may themselves cause an increase in spend in this area. As with all post 16 young people, financial bursaries are available to them to support access to education opportunities. In granting bursaries the awarding bodies should have a public sector equality duty to those with the protected characteristic of disability. These may be applied for in person or through the further education provider.
- 10.13 Some schools responded expressing significant concern that this change may cause so many parents to move their children or elect not to send their children to their schools in future, that their school would become unviable. Some other schools raised concerns that this would affect long-standing cluster arrangements. As stated earlier, it is difficult to predict what decisions parents may make. It is important that this policy change is kept under close review to ensure that any unintended consequences are identified early. As well as the changes to the proposal in response to the consultation set out above, there are other steps schools can take to mitigate further any possible negative effect. For example, a number of secondary schools already run or support the coordination of transport for their pupils as a way of enhancing or protecting their numbers and responding to parental choice.
- 10.14. Whilst the Local Authority cannot delegate the budget for home to school transport to schools; if schools were to ask the local authority to devolve funding, an arrangement may be made that secured travel for those entitled. This may enable more financially viable models of transport for parents and/or schools to develop.

- 10.15 While the recommendations are to provide the free transport to those entitled to a school in England, parents, whose nearest school was in Wales would be given free transport if they choose to send their child to the school in Wales.

## **11. Community Impact**

- 11.1 The integration of the Council's transport functions, which include statutory duties, should assist in the provision of a more comprehensive and cohesive public transport network. Rural schools and their communities feel they may be disadvantaged by these policy changes but as many parents already prefer to send their children to schools other than their catchment or nearest school the impact is difficult to determine. It is unlikely that changes to transport policy will be the sole determinant as to whether a school becomes unviable or not. The Council's priority areas are, within the resource available to us, to keep children and young people safe, and give them a great start in life, enable residents to live safe, healthy and independent lives, and invest in projects to improve roads, create jobs and build more homes.

## **12. Equality and Human Rights**

- 12.1 The impact of the proposed changes to nearest school on any group of children/young people with protected characteristics under the 2010 Equalities Act has been examined carefully through an equalities impact assessment. There is roughly similar number of boys to girls. Children and young people with disabilities travelling to schools are supported through SEN legislation and will receive transport.
- 12.2 The changes to post 16 SEN entitlement may adversely affect students with the protected characteristic of disability. In taking the decision on post 16 SEN transport, the Cabinet must have due regard to this impact. This is fully explained in the legal implications below. The consequences of implementing the proposed changes will be monitored. In the event that the changes result in a material decrease in the number of post 16 students with SEN in education the policy will be reviewed by the head of service as a matter of urgency.
- 12.3 The Council, in no longer making this provision, may disadvantage young people with a disability. However, there are reasonable alternative arrangements that can be put in place. There are also reasons to propose the change as the council needs to make savings, not provide more than it statutorily has to. Mitigation is dependent on each individual circumstance but there are financial bursaries available. Additionally some may be in receipt of additional benefits and support associated with their disability that could be used to make the contribution.

## **13. Financial Implications**

- 13.1 The proposals should reduce costs for the Council. The net overall annual expenditure on home to school transport is circa £3.5m. The policy change to nearest school is estimated to realise £250,000. Introducing the nearest English school provides an estimated full year saving of £190,000. As stated above, it is however extremely difficult to model this with any certainty.
- 13.2 The protection to key stage 4 students is estimated to cost £188,000 in year reducing the 14/15 saving to £62,000. The 2015/16 cost is £93,000 resulting in a saving of £157,000.
- 13.3 The contribution of £660 for post 16 SEN students should realise approximately £74,000 which is additional to the £250,000. There are 110 students affected; some will make their

own arrangements, others will be supported through independent travel training.

- 13.4 An increase in the post 16, vacant seat, and denominational scheme from £660 to £720 is estimated to bring an additional £75,000 full year benefit.
- 13.5 If children attend a school other than a Herefordshire school, the Dedicated Schools Grant will not receive funding for those children. There is therefore a risk that pupil numbers will reduce. However, Herefordshire currently has more children from other authorities attending Herefordshire schools than Herefordshire children leaving to go to other authority schools. Until this policy is implemented with all possible mitigations, it is impossible to know whether there will be any impact of any significant scale.

## **14. Legal Implications**

- 14.1 In considering the recommendations, Members must have regard to the statutory guidance “Home to School Travel and Transport Guidance, 2007”, take into account the responses from the public consultation and consider the equality impact assessment and the potential effect on those with protected characteristics.
- 14.2 Section 508B of the Education Act 1996 (“the Act”) places a statutory duty on the Council to make and provide free of charge, such home to school travel arrangements as they consider necessary in order to facilitate attendance at school of an “eligible child.” “Eligible children” are defined in Schedule 35B of the Act. The recommendations in this meet this statutory obligation.
- 14.3 The recommendation for free home to school transport includes reference to a suitable school. The guidance gives advice as to what can and cannot be regarded as a suitable. The maximum recommended travel times are 45 minutes each way for primary school age children and 75 minutes each way for secondary school age children. But the special educational needs or disability of a child might indicate that the maximum journey time should be lower than this. In addition to the length of the journey, the suitability of the arrangements will be judged against a number of factors, such as: the age of the child, the child’s individual needs, the number of vehicle changes the child is required to make, the distance the child is required to walk at each end of the journey and the nature of the route. Travel arrangements must allow the eligible child to travel in reasonable comfort and safety. They can be considered suitable only if they do so and they enable the child to reach school without such stress, strain or difficulty that they would be prevented from benefiting from the education provided.
- 14.4 Any policy should also enable local authorities to recognise and remedy anomalies. A discretion should remain within any policy so as to avoid a challenge; that by excluding the exercise of discretion in exceptional cases an authority has fettered its discretion. Also to enable wishes of parents to be considered where there is due regard required in the legislation for example under Section 509AD of the Act in relation to the parents religion or belief. Or in other circumstances which warrant further consideration. Discretion is retained in the policy.
- 14.5 Whilst post 16 pupils are outside the definition of “eligible children” there is a duty to prepare an annual post 16 transport policy. There is a power to charge for this discretionary service under section 93 of the Local Government Act 2003 so long as the income does not exceed the costs of the provision (section 93(5)).
- 14.6 Section 149 of the Equality Act 2010 imposes a duty on local authorities ‘when exercising public functions’ to ‘have due regard to’ the need to: eliminate discrimination and advance



equality of opportunity (and foster good relations) between persons who share a relevant protected characteristic and persons who do not. This is generally referred to as the Public Sector Equality Duty (PSED). The nine 'protected characteristics' are: age; disability; gender reassignment; pregnancy and maternity; marriage and civil partnership; race; religion or belief; sex; and sexual orientation). SEN students are likely to share the 'relevant protected characteristic' of disability.

- 14.7 The concept of due regard requires a proper and conscientious focus on what the public sector equality duty requires. The decision maker must be clear precisely what the equality implications are when they put them in the balance. The decision-maker must recognise the desirability of addressing the equality implications, but ultimately it is for them to decide what weight they should be given in the light of all relevant factors.
- 14.8 In certain situations a local authority may conclude that other considerations outweigh the equality ones. This could include, for example, local priorities or available resources. However, the weight given to countervailing factors by the decision maker can be challenged in court if the decision is irrational or based on irrelevant considerations or facts.
- 14.9 The courts have established the following principles which a body subject to the PSED should take into account in making decisions to which the duty applies:
- The duty means that the potential impact of a decision on people with different protected characteristics is always taken into account
  - Where large numbers of vulnerable people – very many of whom share a relevant protected characteristic – are affected consideration of the matters set out in the duty must be very high.
  - However, even if the number of people affected by a particular decision may be small, the seriousness or extent of discrimination and harassment might be great. The weight given to the aims of the duty is not necessarily less when the number of people affected is small.
- 14.10 The courts have made it clear that decision makers must have due regard to the PSED implications when they take their decision. Councils cannot try to justify decisions retrospectively if they are challenged.

## **15. Risk Management**

- 15.1 Parents express a preference to change schools to nearest and there are insufficient places. There are significant surplus places in schools which would be able to absorb these changes without incurring additional cost. In addition, should the council not be able to secure places at the nearest school, free transport would be provided to the next nearest school with places.
- 15.2 The integrated transport network may not be able make suitable or sufficient provision for those choosing a school, other than their nearest. The Councils integrated transport unit will liaise with the full spectrum of transport providers, including schools and community groups to ensure there is sufficient capacity.
- 15.3. Post 16 SEN students choose not to attend a place in education or training. Attendance levels will be monitored. The Council will seek to ensure there is sufficient independent advice and guidance (IAG) to young people so they make positive choices and working with providers will seek to ensure there are sufficient suitable courses ( including those for young people with SEN) available within reasonable travelling distance of their home.

## **16. Consultees**

- 16.1 Consultation on the proposed policy changes was posted on the Council website. Meetings were held with the Schools Forum which includes Head teachers, Governors and Diocesan education representatives; Head Teachers, Councillors and members of the community.

The Director of Children's Wellbeing, the cabinet member for children's services met with different groups of head teachers concerned about the implications for the numbers on roll at their school.

The Schools Forum was concerned about the wider financial implications the perceived lack of detailed evidence and modelling. As explained above this is difficult to forecast with precision.

Parents/carers who get free transport because they live in the catchment area of a school and have a nearer school were concerned about having to change schools.

Head- teachers were concerned about the impact on pupil numbers at their schools and along with the school forum

## **17. Appendices**

- 17.1 Appendix one: Equalities Impact Assessment (EIA)

Appendix two: Frequently Asked Questions (FAQs)

Appendix three: Summary of consultation responses.

## **18. Background Papers**

- 18.1 Detail of all consultation responses – Head of Service, Office Blackfriars.