

Baugh, Ben

From: [REDACTED]
Sent: 12 January 2014 11:44
To: Baugh, Ben
Cc: epjharvey@herefordhsire.gov.uk; Millar, Jeremy (Cllr); Seldon, Alan (Cllr); jkenyon@herefordshire.co.uk
Subject: Fw: Comments for scrutiny committee re sen transport

Dear All,

Please see comments below re charging for SEN post-16 transport. Due to lack of notice and having to prepare most of this while on a train without internet access in order to submit it before the Friday 5pm deadline, this should not be considered a complete, fully evidenced response. The highlighted section I have added today and I believe it may be a key point so I would ask that this be considered if this process is to be worthwhile.

Sincerely,
 [REDACTED]

From: [REDACTED]
Sent: 10 January 2014 16:33
To: 'bbaugh@herefordshire.gov.uk'
Subject: Comments for scrutiny committee re sen transport

Dear Ben,

Further to our conversation earlier, I will start this email in the hope that I can get internet access at some point before 5 although I will not have had the opportunity to prepare it adequately given the lack of notice given. This is likely to be incomplete and I still hope to write fully and submit it over the weekend.

I understand that any comments/questions should relate to the stated reasons for call-in and I would particularly like to address:

Point b: Consult properly

Point c: Consider equality, diversity and human rights

Consultation:

I am the parent of a 17 year old with profound and multiple learning disabilities who attends Barrs Court School. A small number of parents heard (mostly by chance) that there was a consultation about proposed charging for school transport for post-16 SEN young people in April. This was during a school holiday so school could not inform parents, there was little notice and the link did not work initially. I know that several parents, including both my husband and I, did put a lot of time into this and commented extensively. When a further consultation was announced, I checked and was told that previous comments would be included. From the documents presented at the cabinet meeting in December, it is clear that this did not happen and that some important points were apparently not considered. I would ask the committee to bear in mind that many parents of children with SEN are struggling to meet their daily needs and cannot find time to contribute to one consultation, let alone two. Some parents are cynical about the influence they can have – understandable when the first consultation said the decision had been made and the consultation was about impact of this decision. The date for the December meeting was again announced at short notice making it difficult for people to attend. This further opportunity to contribute to the scrutiny committee review was also communicated so late that once again there is very little time to prepare a considered, researched response.

Equality etc:

I am not a lawyer and, as you know, I have not been able to access the internet to research this fully today. However, I would like to raise a couple of points for consideration as it would appear that this decision is at least unfair and may leave the council open to legal challenge.

The equality Act 2010 defines several types of discrimination. Of relevance here are discrimination arising from disability, indirect discrimination and discrimination by association. Further, people with disabilities are protected from discriminatory treatment by the imposition of a duty to make reasonable adjustments.

Discrimination arising from disability:

A child with a disability may experience a detriment arising from his disability if required to pay for school transport. To illustrate this, I would like to compare the situation with my older non-disabled daughter and my disabled son. We live near Whitchurch and both children have attended post-16 education in Hereford as the best or, in [REDACTED] case, the only option. We did not need to pay for transport for our daughter as she only occasionally had to take a bus. If I was working in Hereford, I could drop her early and she could look after herself before classes started. Similarly, in the afternoon, she could look after herself and meet me after work. She had options of lifts with friends and neighbours, staying over, taking the occasional bus. She could have attended 6th form at a closer school. Our son, on the other hand, needs specialised transport with trained, experienced escorts. As Barrs Ct is the only option for many children with SEN, people come from all over the county so there are no neighbours going to the same school. If there were, we'd struggle to support each other as our children have such diverse and complex needs. [REDACTED] most certainly can't stroll up to my office at the end of the day – indeed he cannot be left unattended. No amount of travel training will change this. Even for more able youngsters who may be able to develop some independence, provision of travel training has been reduced.

The DfE guidance states that local authorities must give special consideration to the circumstances of disabled children and families on low income before making charges for transport, but instead, Hfcs Council plans to charge all families the same in order to be 'fair and equal'. It might be 'fair and equal' if the families and their situations were the same. It is not equality to charge such a child the same as a non-disabled child. Their needs are not the same and their families do not have the same possibilities of reducing the cost.

Is charging 'a proportionate means of achieving a legitimate aim'? (Section 15, (1), (a) and (b)). A service provider who is simply aiming to reduce costs 'cannot hope to satisfy the test' for legitimate aim – part 3, code of practice, 6.20. Financial considerations alone cannot render treatment proportionate. (a/a, 6.24). I would lie to comment on whether this is a proportionate means of achieving an aim. Imposing a charge has implications for all families but particularly for those with children with disabilities. This was partially discussed during the December meeting and I summarise my concerns about the financial impact below, under 'reasonable adjustments'. I would particularly like to address a further impact of imposing a charge which is possibly more serious and which is not referred to in the documentation I have seen. Councillors will be aware of the numbers of children with disabilities who are 'looked after' as their birth parents have been unable to continue to care for their child. There is not enough time for me to provide the evidence that these families are the tip of the iceberg and that there are far more who are just coping, on the cliff edge. You should know that a decision like this makes 'just coping' families feel more vulnerable, that the principle of state support for children in need is threatened, that the safety net has gone and that we are on our own. This needs to sound emotive as it is about how I know many parents feel. Whether we are right to feel that all state support is at risk is irrelevant - the fear and anxiety that many of us are experiencing (even the few for whom paying a transport bill may not be a great burden) is enough to push some of us over the edge. I believe that this impact is potentially more important than the financial impact and should influence opinions on whether this is a 'proportionate means' and whether charging will even achieve the aim of saving money. How many more 'looked after children' would wipe out all the 'savings' resulting from imposing this charge? I do not believe I am exaggerating.

Discrimination by association:

Forcing families to pay who don't have the same options to reduce costs as a result of their child's disability is discrimination by association.

Indirect discrimination:

The following is quoted from Disabled children: a legal handbook, Broach, Clements and Read with reference to section 19 of the Equality Act. ‘Indirect discrimination occurs if a person applies a ‘provision, criterion or practice’ which is discriminatory in relation to a person’s disability. A 4-stage test is set out to determine whether a particular ‘provision.....’ is discriminatory.....

- It applies, or would apply, to people who are not disabled (as post-16 transport charging does)
- It puts, or would put, disabled people ‘at a particular disadvantage’ when compared with non-disabled people (as outlined above and also discriminates against families by association).
- It puts, or would put, the individual disabled child at a disadvantage
- The person applying or operating the provision..... cannot show it to be a proportionate means of achieving a legitimate aim (see comments above re proportionate means and legitimate aim .’

Reasonable adjustments:

Failure to make reasonable adjustments will amount to discrimination. One of the elements of the reasonable adjustment duty is:

‘a requirement, where a provision..... puts a disabled person at a substantial disadvantage in comparison with persons who are not disabled, to take such steps as is reasonable to avoid the disadvantage’. As noted above, many young people with disabilities do not have the options open to their non-disabled peers to minimise the cost of transport. It is well known that those families with disabled children already experience higher rates of unemployment, poverty, stress and family breakdown. Their earning power is less because of the time spent caring for their children (and fighting for their basic rights and for adequate services) but their costs are far higher because of the needs of their children. Charging would save the council a relatively small sum of money but increase the financial burden of families already paying the price of disability. What sort of society do we want to be that doesn’t share the cost but allows families to sink?

There is reference in the papers to using school bursary to pay: I understand, there is a guaranteed £1200 bursary for looked after children and for those who receive DLA and ESA. However, many families would be worse off if the young person claimed ESA as they could lose tax credits, council tax, housing and child benefits and income support therefore many might be advised not to claim ESA thus not being eligible for the bursary either. There may be a discretionary award of £500 for those on free school meals, subject to the amount allocated to the school and the number of eligible children. This would not cover the transport cost and I understand that the school can use this money as they see fit ie it could be used to meet an educational need in the school rather than disbursed to individual children. At present, the bursary can be used to buy expensive equipment needed to support learning in those with severe disabilities. If it is all used for transport, that possibility will be lost impacting on their education, communication and life chances. At least in the initial information published on-line, the transport officer suggested that DLA could be used to fund transport. This is in conflict with the Dept for Education’s guidance which states that DLA must not be used to fund school transport. For many families, the mobility component of the DLA is used to pay for more expensive adapted vehicles, wheelchairs and mobility aids and is simply not available to pay for school transport.

As my husband has not had the opportunity to contribute/comment on this, I am sending this solely from me but I know he would have wanted to add more evidence on the rights of disabled children.

I trust I can send this to you in time and that some of the contents can be given due consideration.

Yours sincerely,



