

<b>Decision maker:</b>	<b>Cabinet member Infrastructure and transport</b>
<b>Decision date:</b>	<b>19<sup>th</sup> February 2020</b>
<b>Title of report:</b>	<b>Passenger Service Vehicle Accessibility Regulations 2000 (PSVAR) - implications for school and college transport 2020</b>
<b>Report by:</b>	<b>Process and Procurement Manager</b>

## **Classification**

Open

## **Decision type**

Key

## **Wards affected**

(All Wards);

## **Purpose and summary**

To confirm how the implementation of the Public Service Vehicle Accessibility Regulations 2000 (PSVAR) will be managed and its long term implications for home to school and college transport in the County.

The council provides statutory free transport services for entitled mainstream school pupils in accordance with the [school transport policy](#). A vacant seats scheme is also offered that enables pupils who are not entitled to free transport to pay to travel on the coach. This is a discretionary service and parents/guardians are notified that seats can be withdrawn with a minimum of one week's notice. Additionally discretionary services are provided to college students, and students attending faith schools in return for payment of an annual fare charge. All students travelling using a paid scheme pay the same annual charge.

Since 1 January 2020 school and college students paying a fare have had to be transported on buses and coaches compliant with the PSVAR, a compliant vehicle being one which is fully wheelchair accessible. Services carrying only entitled students traveling for free are exempt. Although it is the individual operators' responsibility to ensure compliance with the PSVAR, as the commissioner, the council has a duty to ensure that the services it commissions are operated legally and in accordance with all applicable regulations.

Extensive work was undertaken to ensure compliance with legislation by 1<sup>st</sup> January 2020 however it was not possible to make all services compliant or seek appropriate exemptions by this date and there remained 252 passengers traveling on 7 different services who would have been traveling on non-compliant services on the 1<sup>st</sup> January 2020. Of the remaining in scope services 23 have been confirmed as being compliant and a further 8 have been granted a 2 year exemption certificate from 1<sup>st</sup> January 2020. As an interim measure a decision was taken in December 2019 to provide free transport to these students for the Spring academic term, January to April 2020. This follow up report sets out options for managing services for the Summer academic term 2020 and longer term.

Details of the previous decision taken can be viewed [here](#). It is proposed that free travel be extended to include the summer term 2020 such that where it has not been possible to move to compliant services or seek an exemption, students' education will not be disrupted in the final term of the academic year. This comprises up to 252 students travelling on 7 services. However, further retendering of non-compliant services during the spring term is likely to significantly reduce these numbers and the financial implications resulting from lost fares.

It is proposed that the vacant seats scheme and other discretionary transport where a fare is charged is withdrawn from September 2020 where services remain non-compliant. Advance notice will be provided before the end of the current academic year such that parents, schools and colleges will have sufficient time to make alternative arrangements for access school.

## Recommendation(s)

That:

- a) **the process set out at paragraph 16 of this report is agreed for managing the full implementation of the PSVAR for school and college transport, and authority is delegated to the Assistant Director Highways & Transport to:**
  - I. **retender and award contracts for school transport up to a value of £500,000**
  - II. **Allow fare paying passengers to travel for free for the Summer term on services that will not be PSVAR compliant or exempt on 20th April 2020**
  - III. **Withdraw vacant seats from sale to fare paying passengers on services that will not be PSVAR compliant or exempt for the new academic year commencing in September 2020**

## Alternative options

1. Withdraw transport for fare paying students travelling on non PSVAR compliant vehicles at the end of the current spring term. This is not advised as this would cause disruption to students in the final term of the school year, some of whom will be in year 11 and taking exams. It is possible that in some cases parents may not be able to find alternative public transport for these journeys to school.
2. Withdraw transport for all fare paying students whether they are traveling on a PSVAR compliant vehicle or not. This would ensure equal treatment for all but would mean that we were withdrawing transport on services that are legally compliant. It is not recommended for this reason and it would increase the number of affected students to 782 and the potential loss of income to the council in the 2020/21 financial year to £178,000, compared to £57,000 for the recommended option. This would cause significant disruption to students and parents at short notice, who would need to make alternative travel arrangements for their child, It is possible that in some cases parents may not be able to find alternative public transport for these journeys to school. This would be an increased budget pressure for the council.

3. Provide free transport to all fare paying students whether they are traveling on a PSVAR compliant vehicle or not. This would ensure equal treatment for all but would mean that we were not charging on services that are legally compliant. It is not recommended for this reason. It would increase the loss of income to £178,000 in the 2020/21 financial year compared to £57,000 for the recommended option. This would be an increased budget pressure for the council.
4. Assist operators with funding to purchase PSVAR compliant vehicles. This option for future mitigation will be considered but cannot currently be progressed as budget is not available at this time. In addition the lead times involved in procurement and vehicle build would require 18 months to progress this option.

## Key considerations

### Background

5. The regulations that govern access to service buses and coaches are known as the Public Service Vehicle Accessibility Regulations (PSVAR). The PSVAR have been applied to all new buses and coaches which carry more than 22 passengers and are used on local or scheduled bus services. The PSVAR has been subject to a national phased introduction to provide operators time to replace their fleets with compliant vehicles, vehicles that are fully wheelchair accessible
  - a. All full size single deck buses over 7.5 tonnes used on registered bus services have been compliant since January 2016
  - b. All double deck buses on registered bus services have been compliant since 2017
  - c. **Coaches used on local/scheduled services are required to be fully accessible and compliant from January 2020.**
6. Although it was known that coaches used on registered local bus services would need to be PSVAR compliant by January 2020 it had been commonly assumed by commissioning authorities that closed school and college contracts would be exempt. DfT has clarified these contracts are not exempt where a fare is taken or a fare is paid in advance. This clarification has followed a legal challenge made against North Yorkshire District Council in 2019. Following lobbying by the Association of Transport Coordinating Officers (ATCO) the DfT has confirmed a 2 year exemption period for school and college coaches so long as no more than 20% of the passengers are not required to pay a fare. Use of the exemption since 1<sup>st</sup> January 2020 has assisted in reducing the overall number of affected students but cannot be applied to all affected services.
7. It is the individual operators' responsibility to ensure compliance with the PSVAR however, as the commissioning body the council has a duty to ensure that the services it commissions are operated legally, and in accordance with all applicable regulations
8. The council provides statutory free transport services for around 2,500 entitled mainstream school pupils in accordance with the [school transport policy](#). In addition, the vacant seats scheme enables pupils who are not entitled to free transport to pay to travel on the coach. This is a discretionary service and parents/guardians are notified that seats can be withdrawn with a minimum of one week's notice. The council also arranges transport to faith schools on a discretionary basis with a contribution required which is in line with the vacant seats scheme.
9. Transport for college students is provided on a discretionary basis and this also requires a contribution in line with the vacant seats scheme. A large proportion of access to college transport is provided through the purchase of rail and bus passes but the council also contracts

coach services specifically for students attending county colleges. A large proportion of these students are out of county (83%) and, ultimately, support for their transport requirements is the responsibility of their council.

### Potential impacts for Herefordshire home to school/college transport services

10. There are 38 school and college transport services carrying fare paying passengers, 23 of these are confirmed as being compliant with the PSVAR, and 8 of which have been granted a 2 year exemption certificate from 1<sup>st</sup> January 2020. The remaining 7 contracts carry 252 paying passengers (alongside entitled riders travelling for free) and are operated using coaches that would not have been compliant with the PSVAR from 1<sup>st</sup> January 2020 and are not eligible for the exemption. Free transport was granted to these students for the spring academic term to ensure that these services could continue to operate legally by only carrying passengers traveling for free. Details of the decision confirming this can be viewed [here](#).
11. The 252 passengers are traveling to 7 different schools and colleges and comprise:
  - a. 71 traveling under the council's vacant seat scheme
  - b. 37 traveling paying for travel on denominational grounds
  - c. 144 post-16 college studentsnone of the riders are entitled to free travel
12. The full year income the council receives from these passengers is £204,000. The loss of income from free transport being provided for one term - the summer term will cause a budget pressure in passenger transport of up to £57,000 in the 2020/21 financial year.
13. Operators have been contacted to assess the potential costs of upgrading vehicles used to wheelchair accessible vehicles which would be compliant with the PSVAR. This clarified that there are insufficient vehicles within the current private sector fleet for all contracts to become compliant and that compliance would need to be phased in over 18-24 months with a total estimated cost, which would be passed on to the council through contract fees, of around £1.6m.
14. A capital funding request has been submitted to purchase PSVAR compliant vehicles for use on educational transport. Should this be agreed and external grant funding is secured the number of students affected by the introduction of the PSVAR may decrease over the medium to long term.
15. A process has been undertaken to make as many services compliant as possible prior to 1 January 2020. This has included making alternative travel arrangements for affected students, and where possible arranging for contractors to use PSVAR compliant vehicles at no extra cost to the council. Some services will also be made compliant by using the 2 year exemption period confirmed by DfT. No further mitigation is possible without implementing the recommendations of this report.
16. The following approach is proposed:
  - a. Retendering will be undertaken via the Passenger Transport Dynamic Purchasing System to ascertain if an alternative operator would be able to supply a compliant vehicle and deliver the service. If received bids offer the most economically advantageous solution contracting arrangements will be progressed in accordance with the council's contract procedure rules.

- b. In the case of college only out of county contracts which are subsidised by Herefordshire colleges, and are cost neutral to the council, colleges would be consulted on whether they wish to continue these services at additional cost where applicable.
  - c. Where it is not possible to secure PSVAR compliant contracts for April 2020 students would be allowed to continue to travel free of charge for the summer term of 2020
  - d. Where it is not possible to secure PSVAR compliant contracts for the 2020/21 academic year commencing September 2020 vacant seats would be withdrawn from sale to fare paying students to enable the exemption to apply. Parents would be notified of this by 1<sup>st</sup> June 2020 to allow them time to make alternative travel arrangements for September 2020.
  - e. Transport operators would be notified of any contract terminations by 1<sup>st</sup> June 2020 which would allow the required contractual notice periods to be maintained.
  - f. Cabinet members and affected schools and colleges would be notified of the final outcome of this process in May 2020
17. All affected schools and colleges will be advised of the content of this report and the decision taken by the cabinet member and communications issued to update parents of the likely impacts and changes from April 2020.

### Policies relating to the riders

18. The council's vacant seat payment scheme policy clarifies that it is discretionary provision and is only provided where there are spare seats on services for entitled riders. The policy confirms that provision may be withdrawn with one week's notice, if an entitled passenger requires it.
19. Transport for students to school on denominational grounds is statutory in the case of students meeting low income criteria. For students not meeting the low income criteria the council has committed to providing transport in return for a parental contribution. The policy does not clarify that this may be withdrawn.
20. The provision of post-16 transport is discretionary, the council's published policy confirms that there is no automatic entitlement to free home to school transport for learners aged over 16 years old. There is a commitment to ensuring that an appropriate level of assistance is provided for those who need it most and is supportive of Government guidance which promotes access to education for all.

## **Community impact**

21. The implementation of the PSVAR and its likely implications as outlined in this report will have impacts which are relevant to the council's corporate priorities.
22. **Keep children safe and give them a great start in life.** The report includes an option which would allow for provision to be maintained for the summer term to minimise disruption to students in the current academic year. Longer term the recommendations in this report could have a negative impact on students who are not able to find an alternative method of traveling to their preferred school.
23. **Secure better services, quality of life and value for money.** Whilst the current services, operated using non-compliant coaches do represent the lowest market cost the council now needs to review these services with regard to the PSVAR legislation and determine whether or not the cost of providing a compliant service (allowing the council to take fares from paying riders in addition to supplying free travel for entitled riders) provides better value for money than continuing these services without fares meaning that they will be exempt. In the event that some of the non-compliant services can be upgraded such that they comply with the

PSVAR (either as a contract variation or through re-tendering) it is likely that this will include an increase in the quality of the service as a result of a newer, more accessible vehicle being used.

24. The **local transport plan** is seeking to increase more sustainable and active travel modes including the use of public transport where this can replace private car based journeys. It is likely that the application of the PSVAR will adversely impact these aims (either in the short or long term) removing school transport options for non-entitled riders meaning that future journeys may need to be made by car.

## Equality duty

25. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
26. In seeking to implement changes as required in response to the PSVAR, the council is ensuring that its school and college transport services will be compliant with regulations which relate to disabled access. In reviewing the alternative arrangements which may be available for ensuring compliance with the PSVAR efforts will be made to secure appropriately accessible vehicles rather than opting for exempt status where this is financially viable.
27. This report does not have any implications for looked after children currently. Any looked after children wishing to purchase a seat in future would be prioritised in accordance with the [school transport policy](#). The Priority order for selling vacant seats is shown below:
- Children with an Educational, Health & Care Plan that names the school
  - Looked after children
  - Year 11 pupils
  - Siblings of pupils currently receiving assisted transport on that service
  - Pupils nearest to the school
28. Students affected by the outcome of this report will be positively impacted in the short term as they will not be required to pay for transport for the spring term. Longer term they could be negatively impacted if they are not able to find an alternative method of traveling to their preferred school. Should free travel be provided to some students an inequality would be created as some students would be paying and others would be traveling for free. This would be short term and would not negatively affect the paying students as there would be no change to their current arrangements.

## Resource implications

29. The cost of £57k has been planned for when setting budgets for the 20/21 financial year. .

## Legal implications

30. Section 175 of the Equality Act 2010 makes the breach of the regulations a criminal offence and states that:

A person commits an offence by

- contravening a provision of the PSVAR;
- using on a road a regulated public service vehicle which does not conform with a provision of the regulations with which it is required to conform;
- causing or permitting such a regulated public service vehicle to be used on a road.

If convicted, a person will face a fine not exceeding level 4 on the standard scale (£2,500). The legislation also provides:

- 1) If an offence under this section committed by a body corporate is committed with the consent or connivance of, or is attributable to neglect on the part of, a responsible person, the responsible person as well as the body corporate is guilty of the offence.
  - 2) In subsection (3) a responsible person, in relation to a body corporate, is—
    - a) a director, manager, secretary or similar officer;
    - b) a person purporting to act in the capacity of a person mentioned in paragraph (a);
    - c) in the case of a body corporate whose affairs are managed by its members, a member.
31. The operator and the council could be at risk of prosecution. If the council stopped charging for vacant seats, then the requirement for vehicles to be PSVAR compliant in terms of accessibility will no longer apply
32. School transport services provided free of charge are considered to be exempt from the PSVAR and therefore if vacant seats on services are not paid for services would not be subject to the requirements of the PSVAR.
33. Following the legal challenge made against North Yorkshire County Council legal advice is that to ensure compliance with the Equality Act 2010 and the PSVAR at this time charging for vacant seats should be suspended until the legal position and interpretation of the PSVAR is settled.
34. Implementing a decision to withdraw only those charges for 252 pupils on non PSVAR compliant vehicles may lead to a legal challenge against the council by way of judicial review of its decision from parents of pupils who are continuing to be charged for transport on PSVAR compliant vehicles (particularly on the same routes) on the basis that the council's decision was unreasonable given that pupils were not being treated equally. It is felt that the likelihood of challenge is minimal. No such challenge has been received to date since the previous decision was taken to award free transport for the Spring Term.
35. It is the responsibility of the vehicle operator to ensure that its vehicles are compliant with PSVAR. Care needs to be taken that any proposed financial assistance to private operators to enable them to purchase PSVAR compliant vehicles does not breach EU State Aid Rules in that it distorts competition in the market place.

## Risk management

36. The key risks associated with the PSVAR and proposed mitigation are summarised below.

Risk / Opportunity	Mitigation
The council is at risk of commissioning services that cannot be legally delivered as defined by the PSVAR	The period of free travel recommended by this report will allow the council to continue to be compliant with PSVAR from 20 <sup>th</sup> April 2020 and for further work to be completed to ensure ongoing compliance.
The move to compliant or exempt services will either increase contract costs and/or result in significant reductions in income which will create a financial pressure.	The approach to assessing alternative compliant or exempt travel arrangements for affected riders followed by assessment of contracting options has, and will continue to reduce the financial impacts of the implementation of the PSVAR.
There is a risk that the implementation of the PSVAR will impact the council's reputation.	Some decisions affect the reputation of the council and have a negative impact on other services. In such instances the justification for the action needs to be clearly explained and communicated.
Risk of legal challenge from parents of pupils who are continuing to be charged for transport on PSVAR compliant vehicles	It is felt that the likelihood of challenge is minimal. No such challenge has been received to date since the previous decision was taken to award free transport for the Spring Term. The communication plan set out in paragraph 16 of this report will ensure that the risk is managed as far as possible.
It should also be noted that three contracts transporting out of county students to the Hereford Colleges receive top-up funding from the colleges of £15,600 to ensure full cost recovery. It is possible that in light of transport being provided free of charge the colleges may also wish not to provide funding for the Summer term	This risk will be managed through discussions with the colleges, and by joint working on future support options. Following the decision to provide free transport for the Spring term the Colleges confirmed that they are willing to continue to pay top-up funding, The level of risk is therefore minimal, it is in the colleges interests for transport to be provided that enables student attendance.

## Consultees

37. Transport suppliers who are contracted by Herefordshire Council to provide mainstream transport. A summary of the responses received can be seen in paragraph 13.
38. Affected schools and colleges were consulted on the release of the previous report concerning PSVAR and will continue to be updated.
39. Affected families were notified of the previous decision to provide free transport and were advised that a further update on future provision would be provided in early 2020.



40. The report has been subject to a political groups consultation, no comments were received.

## **Appendices**

None

## **Background papers**

None

## **Glossary of abbreviations:**

PSVAR – Public Service Vehicle Accessibility Regulations 2000

DfT – Department for Transport

ATCO - Association of Transport Coordinating Officers