

REVIEW OF DENOMINATIONAL TRANSPORT

REPORT BY DIRECTOR OF CHILDREN'S SERVICES

CABINET

23RD JUNE, 2005

Wards Affected

County-wide

Purpose

To receive a report on the outcome of the consultations on the future of denominational transport, to advise on policy options, and to recommend a policy to adopt in the future.

Key Decision

This is a Key Decision because it is significant in terms of its effect on communities living or working in an area comprising one or more wards. It was included in the forward plan published on 1st May, 2005.

Recommendation

THAT:

- (a) the Council adopts a policy which provides transport for pupils occupying genuine denominational places on the basis that parents contribute;**
- (b) the new policy should be effective from September, 2006; and**
- (c) pupils currently benefiting from free transport will retain that benefit for the duration of their attendance at their current school, i.e. if pupils currently benefiting from free transport then change their school for whatever reason, that entitlement is to cease.**

Reasons

The status quo is not an option, and needs to be replaced with a policy that is fair to all and is not discriminatory. Four options are discussed each with advantages and disadvantages, and a recommendation is made on the option which maximises the advantages and minimises the disadvantages.

Considerations

1. Since its inception in 1998 this council has adopted a policy of offering free transport to those pupils in all the 25 aided schools who 'occupy a genuine denominational place' and who live further than the statutory walking distance from school.

Further information on the subject of this report is available from
George Salmon, Head Of Policy And Resources on 01432 260802

2. A concern was raised that the Council's transport policy could be applied unfairly as it depends on the admission policies of the 25 aided schools to define 'denominational place' which then determines who should be offered free transport. The DfES prospectus for the school transport bill which is likely to be incorporated in the Education Bill published in June 2005 emphasises the need to consider the religious, philosophical and linguistic preference parents express. An extract from this is as follows:

'Some parents choose to send their children to schools with a particular ethos because they adhere to a particular faith or philosophy, or as a result of a linguistic preference. In many cases these schools may not be the nearest school, and parents may incur substantial transport costs in sending their children to these schools. LEAs should pay careful attention to the impact of any charges on low income families whose parents adhere to a particular faith or philosophy, and who have expressed a preference for a particular school as a result of their religious or their philosophical beliefs (or in Wales because of the language of instruction). In our view, it is possible that these categories of pupils may be discriminated against if they are treated differently from other pupils from low income families, unless the different treatment can be objectively justified, for example on grounds of excessive journey length, or having a detrimental impact on the child's education. The obligation not to discriminate in Article 14 ECHR requires that where transport provision is made for pupils travelling to denominational schools it must be made for pupils travelling to non-denominational schools to be educated in accordance with their parents' secular convictions, and vice versa. We think that wherever possible, LEAs should ensure that transport arrangements support the religious, philosophical or linguistic preference parents express'.

3. The legal position is that the Council has a duty to provide free home/school transport to children who do not live within walking distance of their nearest suitable school. 'Walking distance' is two miles for a child under eight and three miles for a child over eight. Apart from this legal duty, the Council has a discretion to arrange free or subsidised transport for other children, including the child of a parent who wishes a child to attend a school which provides a religious education which is the same as the religion or denomination of the parent. There is no duty to make these arrangements, but there is a clear discretion. As with any discretionary policy the Council must ensure that its home/school transport policy is reasonable, non-discretionary, complies with the provisions of the Human Rights Act 1998 and pays regard to any Government Guidance. Before changing its discretionary policy the Council must consult with the parents and schools affected.
4. The consultation document, included in Appendix 1, was issued to parents of children in the 83 primary schools in the county (13,000) and to 750 parents who benefit from the free entitlement. These parents were selected as they were seen to be the ones who could be most affected by any change. In addition responses were invited from all schools, the two dioceses, the Learning and Skills Council, Council members, Dyson Perrins High School in Malvern and surrounding LEAs.
5. By the end of the consultation period 776 responses had been received. Of these 753 wished the current arrangements to be maintained arguing:
 - the importance of maintaining access to a Christian based education for all pupils wherever they live in the County;
 - the potential of the two high schools losing their comprehensive nature, with only parents able to afford transport being able to access these two schools;
 - Herefordshire Council is unique in reviewing this discretionary policy;

- the risk in encouraging more parents to use their own vehicles with the associated road traffic congestion and environmental problems;
- the fear that children currently attending the two schools would be forced to find places in schools nearer their homes, disrupting their education and involving the authority in alternative transport costs;
- a review of transport arrangements should be done in the context of an overall review of high schools in light of falling rolls;
- That the saving to the Council would not equal the gross expenditure as children may require transport to other schools, and the Council would still be obliged to transport children who qualify to the nearest appropriate school.

More details of the responses are given in the Appendix to this report. Similar points were also made in a meeting in the Town Hall attended by 250 people.

There were 23 responses arguing that a change should be made.

Those in favour of change argue that the current provision is not fair and it is unreasonable for Council taxpayers to pay the costs of travel for some pupils. Some note that the system is open to abuse. A number suggest that, rather than abandon the system completely, parents should be invited to contribute in part or in full.

6. The consultation period in the main highlighted the issues that were identified by the 2004 review of all discretionary transport policies. That review culminated in a view taken by the Education Scrutiny Committee (June, 2004) and subsequently a decision by the Cabinet (September, 2004) that there should be no change.
7. Since that decision, criticism of the current transport policy being potentially discriminatory instigated the need for a further review. In this, other developments since September 2004 also need to be taken into account, i.e.:
 - the DfES approval that the Steiner School should proceed to feasibility stage as a City Academy;
 - the Government's intention expressed in the Queen's speech of more diverse education provision;
 - the outcome of the Autumn consultation over the budget.

8. **Alternative Options**

The maintenance of the status quo is not an option as the current policy is potentially discriminatory. The options set out below are offered for consideration. Whatever option is preferred, it is recommended that existing beneficiaries retain that benefit and changed arrangements apply only to pupils entering school in September, 2006 in Years R and 7.

Alternative Option 1

The continuation of free transport for those children occupying a denominational place in an aided school as a result of parental preference based on genuine denominational belief.

Alternative Option 2

The extension of free transport to all who have a place at an aided school, and qualify on distance criteria.

Alternative Option 3

As Option 1 except that most parents will make a contribution as to cost.

Alternative Option 4

Ceasing to provide free denominational transport for pupils admitted to Yr R and Yr 7 in schools in September 2006 onwards.

These options are described in more detail in the appendix with an assessment of the associated advantages and disadvantages.

Recommendation

The conflicting arguments presented during the consultation period have been considered. There is no option which will satisfy all the points. However, it is felt that Option 3 is the best way forward in that:

- it overcomes the risk of discrimination;
- the payment of a contribution by those who can afford to is fairer to the whole community;
- low income families who express a preference for denominational education will not be disadvantaged;
- Council's support for denominational education is maintained and the DfES guidance that parental preferences on religious grounds should be considered is met;
- there is no reason for the character of the schools to change;
- the contribution would be in line with the charge made for vacant seats and therefore there is parity in cost (where there is transport) with parents expressing other preferences;
- the maintenance of denominational transport should not affect adversely road congestion and the environment.

This option has also been 'rural proofed'. The combination of maintaining denominational transport and having a standard charge should ensure that pupils, wherever they live in the County, continue to have access to denominational education.

Risk Management

The purpose of the review is to reduce the risk of a challenge to the current transport policy. Because the meaning of "suitable school" in the relevant legislation and case law is still unresolved, it is not possible to eliminate this risk entirely. A judgement has been made on the options to balance the need to have a fair transport policy, the desire to maintain the comprehensive nature of all schools, and to minimise any impact on the road system around schools.

Consultees

All existing parents of children receiving denominational transport, all parents of children in primary schools, all Herefordshire schools, all surrounding LEAs, Diocesan Education Authorities, all Members of Herefordshire Council, and both Members of Parliament have been informed of the review and invited to send comments.

Background Papers

1. Proposed Change to Home to School Transport from school year 2006/7: Consultation Document.