



SCRUTINY COMMISSION – 26 MARCH 2014

**JOINT REPORT OF THE DIRECTOR OF CHILDREN AND FAMILY SERVICES, THE
DIRECTOR OF ENVIRONMENT AND TRANSPORT AND THE COUNTY SOLICITOR**

CONSIDERATION OF OPTIONS FOR HOME TO SCHOOL TRANSPORT POLICY

Purpose of Report

1. The purpose of this report is to report on the consideration of options for the Home to School Transport policy that were presented at the meeting of the Commission on 26th February.

Background

2. At the meeting held on 26th February, two submissions were made to the Scrutiny Commission setting out alternative proposals for addressing the proposed changes to the policy on Home to School Transport. The proposals tabled were entitled *Exploring an Alternative Policy* and *Subcontracting Transport to Schools*. Each was proposed as an alternative to the *Nearest School Only* policy that was consulted on up to 12th March.
3. This report reviews each suggestion against the tests of how likely it might be to lay open the County Council to legal challenge and its potential financial implications.

Timetable for Decisions

4. The Scrutiny Commission is scheduled to consider the outcome of the consultation process and the final proposals for a new policy for Home to School Transport at its meeting on 30 April.
5. The Cabinet will consider the outcome of the consultation process and the final proposals at its meeting on 6 May 2014, alongside any comments the Commission may wish to make at its meeting on 30 April.
6. Any agreed policy would be implemented in September 2014 and take effect from September 2015.

Exploring an Alternative Policy

7. *Exploring an Alternative Policy* is a 12 page document which sets out how a Home to School Transport policy might be developed that was less disruptive to the established and long-standing system that applied until the end of May 2012, when the transport policy was frozen. The document accepts the need for change but sets out a number of implications that arise from a *Nearest School Only* policy. These include splitting up classmates, sending students outside of the County, damage to feeder school relationships, a shake-up of school transport provision and unpredictability for parents.

8. The alternative policy proposed is described as “Affiliation”. In this model, primary schools can affiliate to secondary schools, much in the manner of present feeder and catchment arrangements, even though the affiliated school may be further from the child’s home than an alternative school. The policy provides for nearest or affiliated schools as being eligible for free transport. The paper suggests benefits for this policy as fully supporting feeder school relationships, providing the schools and council with some control, keeping classmates together, keeping Leicestershire students within the county, stability for schools and predictability for parents.
9. The document does acknowledge that there may be challenges around developing a transport policy based on affiliation and sets these out as including admissions policy, the requirement for a minimum term on affiliations, issues around fairness for upper schools that have changed age ranges and hence have no established affiliation with a potential feeder school, split catchments/dual affiliation and, finally, a potential, albeit limited, for some very long distance affiliations. There are also considerations about how a child might benefit from affiliation status of their local primary school and whether or not it should be “affiliated school only”.

Commentary

10. The affiliated schools proposal is clearly designed to enable continuity of the former policy of catchment areas and the feeder primary schools. The proposal effectively seeks to bind schools together for an unspecified period of time in order to provide continuity and certainty. This has to be seen in a context of age-range changes that are already happening and an emphasis from government of there being free competition between schools based on educational performance.
11. The principal difficulty with this arrangement is that it is potentially anti-competitive and is therefore open to challenge. Offering effectively an exclusive deal to particular schools would serve to prejudice the prospects of schools seeking to enter the market, and either entirely new schools or established schools wishing to change age ranges. In addition, some secondary schools are already cutting off some existing feeder primary schools in order to accommodate age range changes they wish to make. The advice in this case might be that the affiliation idea could be offered but it certainly could not preclude offering transport as an alternative to the nearest school, which is a statutory obligation, but also to schools nearer than the affiliated school but not the nearest. This therefore creates multiple eligibility for transport and hence complication and cost.
12. A significant factor in evaluating this proposal is also the concept of the affiliation being by the primary school. Transport eligibility is based on where the child is normally resident, not where they went to school. The paper does recognise the problem of children moving in to an area but, as parental choice applies to primary schools as well as secondary schools, parents may seek to get their child to a particular feeder primary solely for the purpose of affecting transport to the affiliated secondary.
13. Finally, affiliation arrangements could not be given any legal force and there could be no sanction applied by the County Council if schools elected to change those affiliation arrangements. The proposal raises a range of practical difficulties in relation to changing affiliations , multiple affiliations and the position of schools with no affiliation.

14. In conclusion, any offer can be made above the statutory minimum of nearest school but such offers always are prey to increasing costs. The offer also has to be fair to all schools and has to be applied consistently across the county. It is difficult to see how an affiliated schools policy could be given force and be proof against challenge in a landscape of changing schools provision.

Legal advice in relation to the affiliated school proposal has been given as follows:-

“Once transport is arranged for a student the council has discharged its duty under the Act but it does raise issues about fairness and equity in that arrangements for schools that affiliate may result in a longer transport journey being provided for those pupils than for pupils at schools who do not affiliate or are not able to do so. I would suggest that this would be likely to produce complaints from schools who are adversely affected and parents who will have not had an opportunity to influence the affiliation arrangements or who chose not to participate in that process.

The other issue is that transport to an affiliated school is rather like the current transport to a catchment school and in our current arrangements we offer catchment or nearer school so in effect giving a choice. Consideration would have to be given to whether to replicate that as otherwise parents may feel that they are getting a worse offer. Presumably, there will be a number of parents who for the sake of convenience or simple preference will wish to go the nearest school (rather than the affiliated school) and will feel a sense of injustice if transport is not provided. In effect, this could be seen as demoting ‘choice’ in favour of affiliation. I think it is also important to bear in mind that in a rural county like ours the transport offer may be the real determinant for parents whereas the school admission legislative framework provides that parental preference for a particular school must be taken into account by the LA/AA and is in a sense the main driver. In other words we need to be careful that transport does not become the main driver and in effect usurp parental preferences.

There is also a potential admissions point here. The Admissions Code refers to named feeder schools – if the affiliated schools are not named feeders, it might be a bit unfair to have transport arrangements for them and even if they are feeders, there is still the fact that we would be allowing exceptions to a policy which can always leave an authority open to claims that there ought be other exceptions too. The lack of congruence between a feeder and an affiliated school would be potentially problematic in that you have a transport policy that does not reflect the admissions policy or the position of schools on the ground - that is why we are seeking to change the policy now to manage the gap between what schools are doing (changing age ranges and catchments) and what the current policy provides.

I appreciate that there is a lot of detail to be developed and it may be that many of the issues that I have identified can be addressed as your proposals evolve. It is difficult to predict the likelihood of challenge but I would say that this will be high for the reasons I have outlined but if it were possible to address all of these issues then there is no reason in principle that a transport offer based in part on affiliation of schools would be unlawful. I do have serious doubts about whether such a policy would be practical and sustainable over time as affiliations change. If it became unworkable or full of inconsistencies that could mean that it would become unlawful as being irrational or unreasonable, but that is not something that can be easily foreseen at present.”

Subcontracting Transport to Schools

15. A proposal was made that schools could be subcontracted to provide transport, based on a payment made to the school per pupil. This payment would represent the amount of money that it would cost to send the child to their nearest school. The school would be contractually obliged to provide transport for those students and would be liable to pay the County Council if it failed to provide appropriate transport. The proposal paper acknowledges that the County Council cannot pass on its statutory duty to provide transport to school, where appropriate.
16. Similar suggestions around delegating transport costs and responsibilities were made in presentations by head teachers to the Commission

Commentary

17. This proposal would place a considerable cost and administrative burden on schools. There are a number of cases where the nearest school is actually within walking distance, so no money would be due to the school. In all cases where transport to the school in question is further from the pupil's home than the nearest school, the cost to the school would be higher than the amount passed on. There are practical issues about what actual money would be passed on, as the cost of transporting students is only known once a tender has been let. If the basis upon which money would be allocated to schools were to be the existing provision based on catchment area, the difficulties with the current system which have led to this review would not be resolved and be open to challenge.
18. Secondly, schools are not expert in contracting for transport; they do not have access to the County Council's e-tendering system and they do not have the resources to design cost-effective routes, gain efficiencies through economies of scale, monitor contract performance and the use or abuse of passes.
19. Finally, in the event of failure to provide transport, the duty remains with the County Council and it would be less well-placed than now to institute remedial action and could incur additional costs in the event that the County Council has to arrange for transport to be provided.
20. It is concluded that this proposal is impractical and should not be pursued.

Other Suggestions

21. At the February meeting of the Commission, suggestions were made about the available space requirement being for the whole cohort. This strays into the admissions policy of schools, where parents seek to send their children and how "cohort" is defined and whether it is linked to an individual primary or high school or a family of schools. It is unlikely to be workable in practice.
22. A suggestion was made in presentation to the Commission to allow variations to the policy in exceptional circumstances. This was not defined and is unlikely to be equitable if it is seen as favouring one school over another.

Recommendation

23. The Commission is asked to consider the contents of the report.

Background Papers

Cabinet Report, Consultation on Mainstream Home to School Transport, 20th November 2013, Agenda item 7

Scrutiny Commission minutes of the meeting on 26th February 2014

Circulation under the Local Issues Alert Procedure

None.

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List of Appendices

Appendix A – Liberal Democrat Group Report on Affiliation Policy proposal submitted to Scrutiny Commission on 26th February 2014

Appendix B – Liberal Democrat Group Report on Subcontracting School Transport to Schools proposal submitted to the Scrutiny Commission on 26th February 2014

Equal Opportunities Implications

24. The proposed policy will impact on parents/guardians of pupils of school age. It is subject to an EHRIA which will be taken into account by the decision-makers at the appropriate point. There are provisions in the Statutory Guidance for providing for low income families.

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