

**CABINET – 1<sup>ST</sup> APRIL 2014**

**APPROVAL FOR FURTHER CONSULTATION ON MAINSTREAM HOME  
TO SCHOOL TRANSPORT POLICY**

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

**PART A**

**Purpose of Report**

1. The purpose of this report is to seek approval from Cabinet to undertake a further round of consultation on the Mainstream Home to School Transport Policy, following the statement made by the Cabinet Lead Member for Highways and Transportation at the Scrutiny Commission meeting on 26<sup>th</sup> March 2014.
2. In the light of the considerable public interest in this issue and the need for further consultation before a decision can be taken, it is considered that this issue requires consideration by the Cabinet as a matter of urgency.

**Recommendation**

3. The Cabinet is recommended to -
  - (a) Agree to a further round of consultation on a revised home to school transport proposal as follows:
    - Transport to the nearest available school providing education for the appropriate age range transfer; and/or
    - Transport to the nearest qualifying Leicestershire School with available places;
  - (b) Note, if the further consultation is agreed, that consultation is likely to commence on this and complementary post-16 transport arrangements immediately after the Easter school break on Monday 28<sup>th</sup> April and run through to Sunday 15<sup>th</sup> June 2014, and that the results of this consultation and a revised Mainstream Home to School Transport Policy will be reported to the Cabinet meeting on Tuesday 15<sup>th</sup> July 2014.

### **Reason for Recommendation**

4. A consultation exercise on the earlier policy proposals closed on 12<sup>th</sup> March 2014. Just over 2,000 responses to the consultation were received along with a number of alternative policy suggestions.
5. It was clear from the consultation responses that there were concerns about appropriate transport being provided at age range transfers and that Leicestershire residents wanted the ability to express a preference for their traditional catchment school instead of the nearest school which could be in a neighbouring local authority.

### **Timetable for Decisions (including Scrutiny)**

6. If the further consultation is agreed then Scrutiny Commission could reconsider the proposals both during the consultation and shortly before the Cabinet meeting in July and make any comments and recommendations to the Cabinet arising from that further consultation.
7. The Scrutiny Commission has discussed the previous policy proposals in relation to Home to School Transport at its meetings on 26<sup>th</sup> February and 26<sup>th</sup> March 2014.

### **Policy Framework and Previous Decisions**

8. The Cabinet agreed to a consultation on Home to School Transport proposals on 20<sup>th</sup> November 2013.
9. There is a statutory duty on the County Council to provide free transport to schools for eligible children. Current practice is based on the former catchment areas for schools and was confirmed by a statement to County Council on 31st May 2012. The Cabinet revised the policy on the non-statutory elements of Home to School Transport at its meeting on 9th July 2013.

### **Resources Implications**

10. The Director of Corporate Resources has been consulted on the contents of this report.
11. The further consultation would be delivered within existing staffing levels and budgets.

### **Circulation under Local Alert Issues Procedure**

A copy of this report will be sent to all Members of the Council under the Members' News in Brief service.

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## **PART B**

### **Background**

12. The Education Act 1996 places a duty on Local Authorities to provide free transport to school for eligible children. The statutory framework defines eligible children as:
  - Those who are unable to walk to school because of their Special Educational Needs, disability or mobility problems.
  - Those who are unable to walk to school in reasonable safety because of the nature of the route.
  - Those who live outside of the statutory walking distance of 2 miles for children aged under 8 and 3 miles for children aged 8 or over which are the distances which children or young people are deemed to be able to walk to school accompanied as necessary by an adult, provided a suitable walking route is available.
  - Those whose parents are in receipt of certain specified benefits.
13. Whilst schools were predominantly maintained and under the control of the County Council, admissions catchment areas were defined by the Council as the Admissions Authority to balance numbers and provide continuity of education within communities. Transport was provided for all eligible pupils who attended the catchment area school for their home address (or other nearer school).
14. When a school attains Academy status, the County Council no longer has any role in setting either the catchment area or the age range of pupils admitted to the school and whilst the County Council is entitled to be consulted on changes proposed by Academies, the decision to approve such changes is vested in the Education Funding Agency on behalf of the Secretary of State. Academies have effectively become businesses competing in the market place for students and catchment areas will be set by the Academy to suit its needs, with no requirement to have reference to the impact on the traditional pattern of transport provision.
15. A consultation exercise was held on the proposal only to provide statutory free transport to the nearest school with available spaces and this ended on 12<sup>th</sup> March 2014. The key concerns emerging during the consultation were issues about:
  - the educational impact of transfer at aged 10+ (year 6) from some primary schools and the potential educational impact of transfer at 14 (year 9) to an 11-16 or 11-19 school,
  - the desire to retain existing school links and the expectation that as a 'ratepayer' in the county the Council should provide transport to a Leicestershire school.
16. There were a number of other concerns in terms of siblings, parental preference (choice), cost, not attending the long standing traditional catchment school and breaking family of schools links.
17. During the consultation a number of alternative suggestion suggestions were put forward which were reported on at the Scrutiny Commission meeting on 26<sup>th</sup> March. The report to the Commission set out that there would be additional risks and difficulties in implementing these alternatives. The proposals now being put forward for consultation seek to address the concerns that those alternative suggestions sought to address.

## **Developing a New Policy**

18. The context for developing a new policy is that schools that were once under the control of the County Council have already changed or are looking, as Academies, to change age ranges and admission catchment areas. Government policy also encourages the formation of new schools, such as free schools and studio schools, which will set their own admission catchment areas.
19. Under the previous regime, admission catchment areas in the main did not overlap, therefore there was no ambiguity as to which school a pupil would be given statutory free transport. In practice, there were instances where the catchment school was further from the child's home than another school and the policy for transport was catchment or nearer school. In certain instances, the nearer school is outside the County.
20. Overlap of admission catchment areas creates dual or multiple eligibility for free home to school transport, if all admission catchment areas are deemed valid for transport entitlement purposes. These are likely to change year on year and result in a complex and confusing policy on Home to School Transport which will be more expensive to deliver. A straightforward and unambiguous policy will protect the County Council's position into the future as well as providing clarity to both parents and education providers.
21. Reference has already been made to the Academies being competing businesses. Legal advice is that the County Council is at risk of challenge if it implements a policy which may have the effect of favouring one business over another or one type of provision over another by, for example, providing free transport to a traditional admissions catchment area school but not to a nearer Academy or school. Academy Trusts are not required to take into account existing catchment areas nor respect administrative boundaries when determining their own admission catchment areas.
22. In order to provide clarity and consistency for the policy on Home to School Transport and to protect the budget, multiple eligibility for transport needs to be avoided. In addition, potential challenge over favouring one Academy over another must be avoided.
23. The originally proposed policy that follows from this is that transport is provided only to the nearest school (with available space) from the pupil's home address. This proposal had the benefit of being simple and legally sound while adopting an objective means of assessing eligibility to free school transport.

## **Implications of the first Consultation Proposal**

24. There can be no doubt that the change proposed represented a radical shift from that which applied before. Certain factors will need to be accounted for, namely:
  - Traditional admission catchment areas no longer apply
  - Feeder primary school arrangements can and will be broken
  - The nearest school will not necessarily be in Leicestershire
  - The opening of studio or free schools may change transport eligibility patterns from one year to the next

- There will be a need to decide on continuity of eligibility and any transition arrangements
- Detailed procedures and rules will be needed

### **Implications of the further Consultation Proposal**

25. The further consultation around age appropriate transfer arrangements and the nearest Leicestershire School added to nearest school with available spaces will address concerns raised about the suitability of transport arrangements to schools where the age of transfer is not generally from primary to secondary stages of education at age 11 (year 7), and where local education provision is made via remaining high and upper schools in secondary education. This proposal would provide for transport links at appropriate age range transfers over the statutory walking distance of 2 and 3 miles. This proposal is not expected to incur additional costs to the Council. The impact of this proposal will require careful evaluation in the light of the need to adopt equitable, appropriate and lawful policy criteria.
26. The addition of a nearest Leicestershire school would allow parents to express a preference for a school within Leicestershire during the normal admission round and attract free home to school transport if the school was the nearest Leicestershire school over the statutory walking distance of 2 miles and 3 miles. This is a discretionary addition to the legal minimum requirement in the original consultation proposal. This addition is not expected to incur additional costs to the Council but as noted in previous Cabinet papers is open to challenge by other Academies where they may feel it skews competition by offering transport to a school further away, thus abstracting pupils they may have expected to attend as the nearest school.
27. Similar consultation proposals would need to be made for post-16 transport to 6<sup>th</sup> Form and Further Education Colleges to reflect these further proposals for the mainstream home to school transport policy

### **Next steps**

28. A further consultation will be undertaken with schools and parents/guardians. Careful consideration will be given to the implications of the public sector equality duty and an equality impact assessment (EqIA) will be completed.
29. It is intended that the results of this consultation will be reported to the Cabinet in July 2014. The agreed policy would need to be published no later than 12th September 2014 for it to become effective from September 2015. Parents/pupils would be advised of school place and transport eligibility decisions from March/April 2015.
30. There will be a need to design appropriate phasing and transitional arrangements. It is likely that the only practical transitional arrangements would be to guarantee existing transport arrangements for pupils already part way through their educational career path in their current school. Therefore any policy change from September 2015 will only affect new intake pupils or pupils transferring to a different school.
31. New application processes will need to be designed to deliver transparent transport eligibility application and decisions linked to available space in the nearest school for the age range of the pupil for whom transport is being applied.

### **Equal Opportunities Implications**

An amended EqIA will be published as part of the further consultation.

## **Background Papers**

Cabinet Report on Home to School Transport 9th July 2013

[http://politics.leics.gov.uk/Published/C00000135/M00003857/AI00035016/\\$5ResultsofConsultationonChangestoHometoSchoolTransportPolicyandCharging.docA.ps.pdf](http://politics.leics.gov.uk/Published/C00000135/M00003857/AI00035016/$5ResultsofConsultationonChangestoHometoSchoolTransportPolicyandCharging.docA.ps.pdf)

Cabinet Report 20<sup>th</sup> November 2013

[http://politics.leics.gov.uk/Published/C00000135/M00003636/AI00036272/\\$7hometoschooltransportpolicy.docA.ps.pdf](http://politics.leics.gov.uk/Published/C00000135/M00003636/AI00036272/$7hometoschooltransportpolicy.docA.ps.pdf)

Scrutiny Commission minute 26<sup>th</sup> February 2014

[http://politics.leics.gov.uk/Published/C00000137/M00003933/\\$\\$Minutes.doc.pdf](http://politics.leics.gov.uk/Published/C00000137/M00003933/$$Minutes.doc.pdf)

Scrutiny Commission report 26<sup>th</sup> March 2014

[http://politics.leics.gov.uk/Published/C00000137/M00003934/AI00037744/\\$ConsiderationofOptionsforHometoSchoolTransportPolicy.docxA.ps.pdf](http://politics.leics.gov.uk/Published/C00000137/M00003934/AI00037744/$ConsiderationofOptionsforHometoSchoolTransportPolicy.docxA.ps.pdf)

Home to School Travel and Transport Guidance – Department for Education and Skills (2007)

<http://webarchive.nationalarchives.gov.uk/20130401151715/https://www.education.gov.uk/publications/eOrderingDownload/DFES-00373-2007.pdf>

Consultation on New home to school travel and transport guidance – Department for Education (March 2014)

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/295189/Home\\_to\\_School\\_Transport\\_Consultation\\_Document.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/295189/Home_to_School_Transport_Consultation_Document.pdf)

Mainstream Home-School/College Transport Policy (July 2013)

[http://www.leics.gov.uk/index/highways/passenger\\_transport/school\\_college\\_transport/school\\_and\\_college\\_transport\\_entitlement\\_policy.htm](http://www.leics.gov.uk/index/highways/passenger_transport/school_college_transport/school_and_college_transport_entitlement_policy.htm)

Your guide to Primary Education in Leicestershire 2014/15

[http://www.leics.gov.uk/web\\_primary\\_guide\\_2014-15\\_first\\_section\\_6.pdf](http://www.leics.gov.uk/web_primary_guide_2014-15_first_section_6.pdf)

Your guide to Secondary Education in Leicestershire 2014/15

[http://www.leics.gov.uk/web\\_secondary\\_guide\\_2014-15\\_first\\_section\\_6-2.pdf](http://www.leics.gov.uk/web_secondary_guide_2014-15_first_section_6-2.pdf)

Statutory Guidance on the Participation of Young People in Education, Employment or Training (March 2013)

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/268972/participation\\_of\\_young\\_people\\_-\\_statutory\\_guidanceev3.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/268972/participation_of_young_people_-_statutory_guidanceev3.pdf)

Post-16 transport to education and training – Department for Education (February 2014)

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/277016/Post-16\\_Transport\\_Guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/277016/Post-16_Transport_Guidance.pdf)