

DIOCESE OF SALFORD

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Your Ref:

Our Ref: KQ/AW

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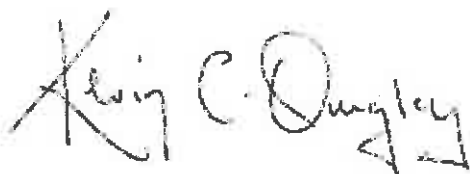
Miss R Stirk
Team Manager: School Management Services
Bury Council's Children's Services
Athenaeum House
Market Street
Bury
BL9 0BN

Dear Miss Stirk

PROPOSALS TO REVISE BURY'S HOME TO SCHOOL TRANSPORT POLICY

Please find enclosed the formal objection by the Diocese of Salford to the above proposals and it would be appreciated if this were included in full when an analysis of responses is put before the Council's Cabinet on 19th December 2012, given that the current consultation proforma does not lend itself to a detailed examination of the issues involved in this key decision.

Yours sincerely



Kevin Quigley
Director of Education

Enc

Cc Headteachers and Chairs of Governors at Bury Catholic Schools
Cc Mr M Carriline, Director of Children's Services

Kevin Quigley MEd MSc
Director of Education
Office for Education
E: kevin.quigley@dioceseofsalford.org.uk
T: 0161 817 2204
F: 0161 372 9991

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DIOCESE OF SALFORD

COMMENTARY ON PROPOSALS BY BURY COUNCIL TO END DISCRETIONARY TRANSPORT TO DENOMINATIONAL SCHOOLS PART ONE

For many years following the passage of the 1944 Act the overwhelming majority of Local Authorities have supported the costs of discretionary transport incurred by parents who for religious reasons have chosen a school of their religious persuasion at which their children are registered pupils and where the school is situated beyond the statutory walking distance.

The Diocese of Salford is dismayed to note that Bury Council is considering proposals to end its long standing policy of transport support for pupils accessing denominational schools. The Diocese believes the parents choosing such should have transport to the nearest denominational school in just the same way as those accessing the nearest schools from other categories. Within the generality of that assertion there is a strong case against ending the entitlement not only legally and in principle but because the proposal runs contrary to nationally and locally agreed policies, lacks clarity, is insufficiently informed and does not comply with protocols on consultation.

1. Looking first to education legislation, one would suggest consideration of the following:

- 1.1 In Clause 53 of the 1943 Education Bill later to rest as amended as Section 55 of the 1944 Education Act, the backing for discretionary transport support was unambiguous viz:

"A Local Education Authority shall make such arrangements for the provision of transport and otherwise as they consider necessary or as the Secretary of State may direct for the purpose of facilitating the attendance of pupils at schools or county colleges or at any course or class provided in pursuance of a scheme of further education in force for their area, and any transport provided in pursuance of a scheme of further education in force for their area, and any transport provided in pursuance of such arrangements shall be provided free of charge."

- 1.2 This was reinforced in Schedule 19, paragraph 15 of the 1993 Education Act and Section 509 of the 1996 Education Act. The latter states at 509(1) that "A Local Education Authority shall make such arrangements for the provision of transport and otherwise as they consider necessary, or as the Secretary of State may direct, for the purpose of facilitating the attendance of persons receiving education." Section 509(4) then looks to enlarge on the responsibilities of the Local Authority ... "In considering whether they are required by subsection (1) to make arrangements in relation to a particular person, a Local Education Authority shall have regard (amongst other things) –

- (a) to the age of the person and the nature of the route, or alternative routes, which he could reasonably be expected to take; and
- (b) to any wish of his parent for him to be provided with education at a school or institution in which the religious education provided is that of the religion or denomination to which his parent adheres."

Therefore once transport support to denominational schools was recognised by an Authority as necessary then it was to be provided free of charge and not withdrawn,

- 1.3 More recently the 2006 Education and Inspections Bill specifically aimed to reduce the impact of transport as a barrier to parents exercising their education preferences and also improved and extended the offer of free transport originally set out in the 1944 Education Act. As a result the Government is funding Local Authorities to provide secondary age pupils from low-income families with transport to the nearest school preferred on grounds of religion or belief where this is between 2 and 15 miles from the pupil's home.

1.4 If the proposals are implemented then children accessing their nearest non denominational school will continue with their present support whilst those looking to the nearest Catholic school may well be penalised and so subject to discrimination. An outcome which can by no means be deemed as equitable. Add to this that the parents who will be most heavily hit in Catholic schools are likely to be those just over the income thresholds and may well find expression of their preferences a financial impossibility especially in these difficult economic times. This discriminates unfairly against such parents on both religious and socio-economic grounds.

1.5 The maintenance of free transport where it currently exists is also reinforced via conventions developed by the United Nations on Human Rights (1948), Civil and Political Rights (1996) and the Rights of the Child (1989). All three have been ratified by the UK Government in 1951, 1976 and 1991 respectively. The European Convention on Human Rights, incorporated into UK Law in 1998, guarantees that the enjoyment of the rights and freedoms to education shall be secured without discrimination on religious grounds.

Whilst such conventions do not give enforceable rights to individuals they do impose obligations on signatory nations. Further, English law must now be compatible with, and interpreted subject to, the European Convention on Human Rights. Taken together this would suggest that discretionary transport to denominational schools cannot be set aside.

1.6 Returning to the 1996 Education Act, Section 444, a parent commits an offence if his child, being of compulsory school age and registered at a school, fails to attend regularly at that school. The parent however has a defence to that charge under sub-section (4), if, amongst other things:

- (a) ... the school at which the child is a registered pupil is not within walking distance of the child's home, and
- (b)... no suitable arrangements have been made by the Local Education Authority for ...
- (c) his transport to and from school

Where that parent has expressed a preference for the nearest school offering Collective Worship and Religious Education in accordance with the teachings, doctrines, disciplines and norms of the Roman Catholic Church can that parent nor argue that the Authority should have made such suitable transport arrangements to access that school as "they consider necessary", 1996 Education Act Section 509 (1), and as set out previously once that necessity is established the provision of free transport is mandatory.

1.7 Within Bury's proposals there is repeated reference to the nearest suitable qualifying school. As instanced above for parents looking to a specific Catholic content under Collective Worship, Religious Education and Ethos then the nearest suitable qualifying school is a Catholic school and so pupils there should retain transport support.

2. The principles underpinning discretionary transport support

2.1 From 1944 onwards ministerial support for the maintenance of discretionary transport to denominational schools has been consistent. The DfE Home to School Travel and Transport Guidance, referenced in Part Two of the Commentary, specifically supports such strongly and successive Secretaries of State have reserved to themselves the powers to direct Local Authorities on this issue. Most recently the DfE has assured parents in Cumbria County Council that the Government remains committed to parental choice and to Faith schools and is keen to identify and share the best practices of those Local Authorities who are maintaining discretionary support to these schools.

Nearer to home Jim Dobbin MP (Heywood and Middleton) asked the Prime Minister on Wednesday, 7 December 2011, to encourage Local Authorities to embrace the spirit of the 1944 Act re continued support for discretionary transport to denominational schools. In response the Prime Minister stressed not only support for faith schools but his intention to determine with the Education Secretary how best to enhance the prospects for those choosing such schools

- 2.2 The ending of transport entitlement will also lead to Local Authorities contravening long established practices. Withdrawal from these is not acceptable. Again this view has been echoed by successive Secretaries of State who have all expressed the hope that Authorities will continue to think it right not to disturb well established practices, some of which have been associated with local agreements or understandings about the siting of Catholic schools. They have also continued to attach great importance to the opportunity that many parents have to choose a school or college in accordance with their religious convictions. It is certain that all parties concerned would not wish to see changes in school transport which might disrupt the excellent education standards achieved by pupils currently at Catholic schools nor should parents expressing admissions preferences for September 2013 suddenly find that transport arrangements may be subject to unexpected change.

Any proposal to remove transport assistance to schools for current pupils is educationally and socially unacceptable as costs involved could necessitate their withdrawal from those schools with severe consequences for their future prospects. Not only has Bury Council's proposals rejected phasing in of its transport proposals, in complete contradiction to DfE guidance and all education norms, but no verifiable reasons are given for that decision, other than finance. Neighbouring Councils in Bolton, Lancashire and Oldham all recognised that their educational responsibilities to children currently in Catholic schools could not be set aside.

In terms of legal rationality it is inconceivable that for two cohorts of students currently enrolled in the same academic year (one group at a denominational school, the other elsewhere) who have undertaken the same work and invested the same effort, and who will be competing in future for the same opportunities should be subjected to such radically different standards of award; one maintaining transport support whilst the other is stripped of such with potentially grave educational consequences.

- 2.3 The references to equality and fairness in the consultations are at best disingenuous. Removing a long standing guarantee from a minority of 3.4% pupils within a pupil population of 29,000 does not sit easily under either heading. It is worth emphasising too that provision of schools by Dioceses has saved the Exchequer many millions of pounds and that parents at Catholic schools are still heavily subsidising the public purse by a 10% contribution to building and repair costs in those schools. These same parents, as tax and rate payers, are also contributing to National and Local Authority education budgets and if charges were introduced they will continue to do this whilst being denied any transport support to their nearest Catholic school. An outcome which is contrary to natural justice and clearly undermines the concept of 'free' Catholic education.

For reference the Council, under the 1993 Education Act, has had the power to counter this lack of equitable treatment by covering the 10% contribution but has not demonstrated any measures to remedy such.

3. Other Nationally Agreed Policies that the ending of entitlement contradicts :

- 3.1 The promotion of education diversity is a key aim for the Council in order to enhance the range of preferences available to parents. For many of the latter the lack of transport support to Catholic schools will necessarily diminish that range. The obstacles that the Council is setting up via its removal of discretionary transport support run contrary to its outlined ambitions.
- 3.2 Currently 20% of morning rush hour traffic is attributable to the school run and Government policy is to generate a modal shift from car to bus. For children entering denominational schools in the future and lacking transport support to those schools the outcome could be an unacceptable increase in car use with subsequent risks to the environment or taking the risk of walking to school via routes which may be deemed as unsafe due to heavy traffic or on grounds of personal security.

4. Test of Proportionality

- 4.1 On the one hand, there is the strong desire of parents to have their children educated at a denominational school appropriate to their faith. This is a desire that is buttressed by human rights legislation and recognised and respected in successive Education Acts. Furthermore, it is reasonably clear, that for some parents – perhaps even for a large number – the withdrawal of free transport will make it impossible for them to secure the education for their children that their faith community suggests is required.
- 4.2 On the other hand is the wish of Local Authorities to secure savings but the amounts involved are uncertain, seldom identified clearly and may in any event be rather low., particularly when judged against the Council's overall education budget.
- 4.3 If one weighs the inability of parents to access denominational schools due to cost, and the human rights law and education legislation seeking to counter this inability, against what may be marginal savings to the Local Authority then the balance of proportionality suggests maintenance of discretionary transport support. An outcome which also avoids education disruption overall and in turn its consequent costs.

5. Conclusion

The balance of evidence presented here is that discretionary transport support to denominational schools should be maintained as a matter of principle and because the burden of legislation clearly rests with that outcome.

PART TWO

Though the Diocese is very much opposed to the withdrawal of transport support to denominational schools in principle and in law, it would draw to the attention of elected members (and indeed those electing them) that the current proposals are also flawed under a series of headings

6. Lack of Clarity

6.1 The case of *R –v- Dyfed County Council ex parte Smith 1994 ELR 320* set out the matters which decision makers should take into account when making a decision as to whether or not to withdraw discretionary funding for home to school transport. These factors include financial considerations. Accordingly the financial implications of the decision to withdraw funding for transport to a pupil's nearest faith school should be fully detailed within the consultation document to enable those consulted to comment on this key aspect. Bury's proposals emphasise the key role of financial considerations estimating that those proposals will save somewhere between £102,000 and £214,000.

This is the only financial implication identified within the proposals and clearly does not meet the detail instanced above.

From the identified savings members also need to know for how many children is a denominational school their nearest school with consequent retention of transport support and reduced savings. From estimated savings must be deducted those children entitled still to transport support on financial grounds and the costs of transport to denominational schools for children deemed as vulnerable and hard to place.

- Pupils permanently excluded from other schools
- Looked after children (LAC)
- Children who have been out of education for longer than one school term and where attempts at 'normal' admission have so far failed
- Children of registered refugees and asylum seekers where previous attempts through 'normal' admissions have failed
- Children returning from secure units or otherwise having serious offending issues.

Take together the cost of exemptions and the administration of any new transport arrangements may well offset any savings, particularly when added to these are those expenses arising from appeals by parents against the decision to withhold transport support. For reference, and via data provided under the Freedom of Information Act, members may wish to note that Cumbria County Council projected savings of £103,000 for withdrawal of transport support to denominational schools in 2011/12, the actual figure was £15,647. In essence the balance of financial advantage lies with leaving the present arrangements undisturbed.

- 6.2 In reacting to the proposal the Diocese would have expected to see some projections from the Authority within the consultation process as to the likely impact on admissions to Catholic schools and other maintained schools within Bury. The complete lack of such, allied to the absence of costings, leave decision makers with scant evidence to proceed even if not already convinced to resist the change in principle.
- 6.3 No attempt in the proposals was made to factor in the extended rights to free travel grants generated by Central Government save what might be a passing reference to them in Section 2.10 of the Decision Paper.
- 6.4 As proposals include services for vulnerable groups, e.g. children, the disabled, economically disadvantaged families etc, Authorities are required to conduct an Equality Impact Assessment to determine the effect of those proposals on such groups and where possible, to enable the proposals to be modified in order to minimise that impact. The Diocese can see scant evidence of such in the proposals.

7. Framing proposals

- 7.1 Members have been misdirected and the withdrawal of transport to denominational schools is a 'key decision' under the Local Government Act 2000. Parents should have the opportunity to question elected members on proposals previous to any decision on that enactment. Again evidence of such is not available. Lack of such negates the decision making process
- 7.2 As proposals impact most heavily on parents with children attending denominational schools one would have anticipated that at least briefing sessions would have taken place in at least some Voluntary Aided Schools but unfortunately this was not so.
- 7.3 Proposals suggest that removal of transport support is almost a standard re-action. This is contrary to the DfE Statement in 2.1 and, for reference, Stockport, Tameside, Wirral and Telford Councils have all withdrawn proposals to remove discretionary transport support. The validity of the information provided in the consultation exercise may well have been enhanced by the addition of this detail.

8. Conclusion

Much information required by members is absent from the proposals and that provided is often lacking in detail and clarity. Taken together with the flaws within the framing of proposals it is suggested that those proposals should be set aside and discretionary transport maintained for pupils accessing their nearest denominational school.

For the reasons outlined here, and indeed to avoid reputational damage to the Council, the Diocese of Salford and indeed the whole community (Catholic and non Catholic) served by Bury Catholic schools within the Diocese asks that the Authority withdraws any proposal to penalise parents for seeking places at schools for their children on the grounds of religion or belief. As per its remit the Diocese has advanced its arguments on behalf of those schools which fall to the responsibilities of the Bishop of Salford but equally feels that the case presented applies with the same force to all parents seeking placed in denominational schools for their children.