

# REPORT FOR DECISION

<b>Agenda Item</b>	
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<b>DECISION OF:</b>	<b>CABINET</b>
<b>DATE:</b>	<b>19 DECEMBER 2012</b>
<b>SUBJECT:</b>	<b>PROPOSED REVISION TO THE POLICY ON ELIGIBILITY FOR HOME TO SCHOOL TRANSPORT</b>
<b>REPORT FROM:</b>	<b>CABINET MEMBER, CHILDREN AND FAMILIES</b>
<b>CONTACT OFFICER:</b>	<b>PAUL COOKE STRATEGIC LEAD (SCHOOLS, ACADEMIES AND COLLEGES)</b>
<b>TYPE OF DECISION:</b>	<b>CABINET (KEY DECISION)</b>
<b>FREEDOM OF INFORMATION/STATUS:</b>	This paper is within the public domain
<b>SUMMARY:</b>	<p>On 22 August 2012 Cabinet agreed to consultation taking place with key stakeholders in respect of proposed changes to the Council’s home to school transport policy, specifically in respect of changes to the eligibility criteria for financial assistance in respect of transport to a denominational (faith) school.</p> <p>Consultation on these changes took place between the 10 September and 9 November 2012.</p> <p>This report sets out the outcome of that consultation and makes recommendations in respect of the policy.</p>
<b>OPTIONS &amp; RECOMMENDED OPTION</b>	<p>The following options are available:</p> <ol style="list-style-type: none"> <li>1. Retain the existing policy, with no changes</li> </ol>

	<p>2. Adopt the policy as set out for consultation</p> <p>3. Adopt the policy with further modifications</p> <p>Cabinet is requested to approve option 2, adopting the policy as set out for consultation.</p>
<b>IMPLICATIONS:</b>	
<b>Corporate Aims/Policy Framework:</b>	<p>Do the proposals accord with the Policy Framework?                      Yes                      No</p>
<b>Statement by the S151 Officer: Financial Implications and Risk Considerations:</b>	
<b>Statement by Executive Director of Resources:</b>	
<b>Equality/Diversity implications:</b>	<p>Yes                      Members must have due regard to the Council's equality duty and the implications set out in the Equality Analysis attached to this report.</p>
<b>Considered by Monitoring Officer:</b>	<p>As the report makes clear there is a duty on the local authority to have regard when fulfilling its duties and exercising its powers in relation to travel arrangements to any wish of parents for their child to be educated at a particular school on the grounds of parent's religion or belief. The recommended proposal is to remove the discretionary provision of free travel to those pupils attending a denominational school where there is a nearer qualifying school.</p> <p>There is a legal duty to consult with those likely to be affected by the proposals. It is important that the decision is considered in the context of the consultation and its outcomes. In accordance with established authorities, where consultation is required certain principles apply. Firstly, consultation has to be at a time proposals are still at a formative stage; secondly, there must be sufficient reasons for any proposal (to permit intelligent consideration and response); thirdly, adequate time had to be given for consideration and response and fourthly, the consultation responses have to be conscientiously taken into account in finalising any proposals.</p> <p>As decisions such as these are susceptible to challenge by way of judicial review members must take the decision on a reasoned and rational basis, for example considering all relevant factors and not taking any irrelevant factors into account.</p>

<b>Wards Affected:</b>	All
<b>Scrutiny Interest:</b>	

**TRACKING/PROCESS**

**DIRECTOR: CHILDREN'S SERVICES**

Chief Executive/ Strategic Leadership Team	Cabinet Member/Chair	Ward Members	Partners
Scrutiny Committee	Committee	Council	

**1.0 Background**

- 1.1 Bury Council currently provides financial assistance to meet the cost of travel to pupils who live over the statutory walking distance from their catchment area or nearest qualifying<sup>1</sup> school. In addition, the Council provides financial assistance to meet the cost of travel on a discretionary basis to pupils attending a denominational (faith) school, where they live over the statutory walking distance, even if a place was available at a closer, non-denominational school.
- 1.2 The Council's statutory duties in respect of the provision of free transport are set out in section 444 of the Education Act 1996, and Schedule 35b of the Education Act 1996 (inserted by the Education and Inspections Act 2006).
- 1.3 Section 508B of the Education Act 1996 (inserted by the Education and Inspections Act 2006) describes the local authority's duty in providing free travel arrangements for eligible pupils.
- 1.4 Section 509AD of the Act places a duty on the local authority in fulfilling its duties and exercising its powers in relation to travel, to have regard to, amongst other things, any wish of the parent for their child to be provided with education at a particular school on grounds of the parent's religion or belief.
- 1.5 Schedule 3, part 2 of the Equality Act 2010 provides an exemption to discrimination on the grounds of religion or belief in relation to transport to or from school.
- 1.6 Local Authorities remain under a general duty to 'have regard' to the wish of a parent for their child to be provided with education at a particular establishment on the grounds of the parents' religion or belief. However, other than the statutory duty towards secondary school pupils who are from low income families, there is no statutory duty to provide free transport to denominational schools for children generally.
- 1.7 The proposed policy on which the Council consulted enables the Council to meet its statutory duties, whilst removing the discretionary provision of free

travel to those pupils attending a denominational school where there is a nearer qualifying school. Free travel would continue to be provided to pupils of low income families in accordance with Schedule 35B of the Act.

- 1.8 In April 2011, Transport for Greater Manchester (TfGM) increased the cost of travel passes by 18.5%, thereby increasing the cost to the Council by £69,700, based on the number of passes issued in 2011/12. There has been a further increase in the cost of passes from £361 per pass in 2011, to £376.75 this year. There will be a further increase in 2013 to £378.10 per pass, resulting in an additional increase of 4.7% over the last two years. Currently the budget pressure created by the increased cost is unfunded.
- 1.9 During 2011/12 1035 travel passes were issued, of which 82% were for pupils attending denominational schools. Council expenditure on home to school transport in 2011/12 was £337,200, against a base budget of £235,700, resulting in a total overspend of £101,500. Of the £337,200 expenditure, £267,336 provided financial assistance to families of pupils attending denominational schools.
- 1.10 In addition to the base budget, a specific Local Services Support Grant of £48,500 was available in 2011/12 to support those pupils from low income families, which has had the effect of reducing the overspend to £53,000. The LSSG has increased to £60,100 in 2012/13, however this grant is not ring-fenced to the provision of transport, nor can it be relied upon in future years.
- 1.11 In the current academic year 2012/13, 968 travel passes have been issued to date, thus committing expenditure of £364,694. Applications continue to be processed, and will continue to be submitted throughout the year. Based on the number of passes issued in 2011/12, expenditure for 2012/13 is expected to be in the region of £390,000.
- 1.12 As the increasing cost pressures are unfunded, any savings arising from changes to the home to school transport policy can only be made against the base budget and not the total expenditure. Therefore, the savings arising from the change in policy would be £102,000 in the first year rising to £200,000 in a full year.
- 1.13 Under the proposed policy, it is estimated that a full year budget of £95,000 would be required in order to continue to provide financial assistance to eligible families on low income, or the distance criterion.
- 1.14 There is an existing commitment to provide for transport during the Summer term 2013 to be funded from the 2013/14 budget based upon current uptake.
- 1.15 The following table illustrates the current and future budget requirements, together with the total savings:

	<b>2013/2014</b>	<b>2014/2015</b>
Current budget	235,000	235,000
Local Services Support Grant	60,000	60,000
<b>Total Budget</b>	<b>295,000</b>	<b>295,000</b>
Committed expenditure Summer Term 2013	130,000	-
Future funding requirement (low income/distance criterion)	63,000	95,000

<b>Total Saving</b>	<b>102,000</b>	<b>200,000</b>
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## **2.0 Policy**

### **2.1 Current policy**

Under the current policy, financial assistance to meet the cost of travel is provided for all statutory age children who live in Bury and who attend their catchment area or nearest qualifying school, where the distance from home to school is over the statutory walking distance. This is defined as:

- More than 2 miles from home for children aged under 8 years
- More than 3 miles from home for children aged 8 years and over

In addition, where children are in a family with a low income<sup>ii</sup> there is additional entitlement where:

- the child is aged 8 or over, but under the age of 11 and is attending their nearest qualifying school over 2 miles
- the child is aged 11 or over, in statutory education, and is attending one of their 3 nearest qualifying schools between 2 and 6 miles from their home
- the child is aged 11 or over, in statutory education, and attending their nearest qualifying school, between 2 and 15 miles, in line with their parent/carer's religion or belief

The Council is not proposing any changes for children who are provided with transport on this basis.

### **2.2 Proposed Changes**

2.2.1 In considering entitlement to free transport the Council has to take into account any wish of a parent for their child to be provided with education at a particular school on the grounds of the parents' religion or belief. However, there is no statutory entitlement to free transport, as attendance at a denominational school is through parental choice.

2.2.2 The current policy makes discretionary provision for the Council to provide financial assistance to parents of pupils attending a denominational school because of their faith, regardless of whether there is a nearer non-denominational school with places available, and regardless of whether the low income criteria is met.

2.2.3 The Council proposes to end this discretionary provision of free transport to pupils attending denominational schools with effect from 1 September 2013.

This proposal does not affect the entitlement to free transport for families with a low income, or meeting the 3 miles or over criteria as set in paragraph 2.1.

2.2.4 The majority of families in receipt of financial assistance for home to school transport are for pupils attending a denominational school. Of the 1035 pupils receiving financial assistance in 2011/12, 846 were attending a denominational school. Approximately 20% of these pupils are likely to remain eligible for

financial assistance, either due to low income, or where the distance from home to school is over the statutory walking distance.

### **3.0 Consultation**

3.1 Consultation on the proposed policy took place with a comprehensive range of stakeholders between 10 September 2012 and 9 November 2012.

3.2 A letter was also sent to all schools, for onward circulation to all parents signposting them to the consultation documents. Letters were also sent to all families currently in receipt of financial assistance for home to school transport.

3.3 The consultation documents comprised a document setting out the proposed revisions, a set of frequently asked questions, and a consultation response form. All forms were available online, or hard copies provided on request. There was also an online response facility. Information regarding the consultation was also posted on the Council's Twitter page.

3.4 In addition, a number of denominational schools wrote to parents drawing attention to the consultation and providing a reply slip objecting to the proposed policy.

3.5 A total of 279 individual responses to the consultation were received. Where respondents indicated their interest in the consultation, these were as follows:

28 Parents/carers of a child at a mainstream (non-denominational) school  
191 Parents/carers of a child at a denominational school  
6 Employees or Governors of a mainstream (non-denominational) school  
24 Employees or Governors of a denominational school  
2 Diocesan/church authority representatives  
4 Pupils  
11 Other category

3.6 Of the individual responses received, 58.4% stated that they would be affected by the proposed changes. 30% of respondents accepted the need to review the current policy. 10% of respondents agreed with the proposal whilst 81% disagreed.

3.7 23% of respondents agreed that it is fair to apply the eligibility criteria to all children, irrespective of their faith. 66% of respondents disagreed.

3.8 In addition 724 reply slips were received from a number of denominational schools (Guardian Angels, St Bernadette's, St Joseph's, St Joseph & St Bede, St Marie's St Michael's, St Gabriel's & St Monica's). A further 59 reply slips were received from St Monica's after the consultation period had ended.

3.9 A response was also received from the Diocese of Salford which expressed opposition to the proposal in principle and in law. This is contained at Appendix 1.

3.10 The key themes emerging from the consultation were:

- It contravenes long-established practices
- It is discrimination on religious grounds to remove free transport

- Assistance with travel costs is enshrined in British Law
- It discriminates on socio-economic grounds
- It is environmentally unsound

### 3.11 In respect of the reasons set out in 3.11:

#### 3.11.1 It contravenes long-established practices

The suggestion that the policy shouldn't be changed because it is long-standing practice is clearly a difficult one to sustain. There may be historical and geographical reasons why schools were established, and why they are located where they are. Some of these reasons will pre-date the 1944 Education Act, may pre-date the development of comprehensive public transport infrastructure, and there will have certainly been significant demographic change over the years. Therefore, the initial need and justification for the policy may have long since passed.

#### 3.11.2 It is discrimination on religious grounds to remove free transport

Under the current policy, parents seeking a place for their child in a denominational school benefit from an entitlement that is not available to parents seeking a place at a non denominational school. The proposed revision seeks to redress this inequity.

Parents still have the right to express a preference for a place at a denominational school of their choice.

The Equality Act 2010, Schedule 3, Part 2 provides an exemption to discrimination on the grounds of religion or belief in relation to transport to or from school.

#### 3.11.3 Assistance with travel costs is enshrined in British Law

Financial assistance for transport is provided in accordance with the Education Act 1996. This sets out the local authority's statutory responsibilities for the provision of free transport.

The local authority also has discretionary powers to make arrangements for children who are not entitled to free home to school transport to facilitate their attendance at school. This includes pupils attending a school because of faith.

It is this discretionary financial assistance that it is proposed to remove.

The 2006 Education and Inspections Act extended the duty on local authorities to provide free transport in relation to low income families. The local authority will continue to provide free transport to pupils of low income families under the new policy.

#### 3.11.4 It discriminates on socio-economic grounds

Pupils from low income families, whether attending denominational or non denominational schools, will continue to receive free transport. There is therefore positive discrimination to ensure that those pupils from areas of greatest socio-economic need continue to be supported. The new policy would bring the policy as it applies to denominational schools into line with the policy

as it applies to non denominational schools, removing any discrimination that currently exists.

### 3.11.5 It is environmentally unsound

With public transport being inherently cheaper than private car usage (when total cost of ownership is considered), any suggestion that the absence of free public transport will automatically lead to increased car usage can only be guessed at. Public transport, albeit charged, may still provide the most cost-effective and practical solution in many cases.

It is anticipated that the schools would want to work with their pupils to reduce the environmental impact of the school run.

### 3.12 Other issues that were raised as part of the consultation included:

#### 3.12.1 Concerns about affordability of public transport

For those families most likely to face financial hardship as a result of the change in policy, it is expected that most would continue to be eligible for free transport because of low income.

#### 3.12.2 Impact on parental demand and fair access

There are many reasons why parents select a school for their child and it is acknowledged that in some circumstances the availability of free transport may be a factor. However, there are non-denominational schools that are oversubscribed, with demand for places coming from across a wide area. In these cases, the absence of free transport does not appear to be a barrier to access, or impact on parental demand.

Denominational schools in Bury are very popular and there is no reason to believe they will become unviable. We are not in a position to make a detailed judgement on the potential impact of the removal of transport support on parents' decisions as this is currently unknown. We are not aware of any problems of this nature in those LA's that have already removed financial support for transport to denominational schools. There would be nothing to prevent schools providing home to school transport from their delegated budgets, if they wished to do so. At the end of the last financial year, Voluntary Aided secondary schools had a total of £900,000 in surplus balances.

#### 3.12.3 Impact on children if they have to be moved because of the implementation of this policy.

A number of respondents stated that places in schools were chosen based on a policy that allowed transport provision; therefore any implementation of a change in policy should be phased in order that it did not affect pupils at denominational schools currently in receipt of financial assistance.

Information to parents regarding the secondary admission process for children transferring to secondary school in 2013 highlighted the consultation on the proposed policy. Given the unprecedented financial challenges the LA faces, it is proposed to implement the policy with effect from September 2013 in order to achieve the savings identified in the Plan for Change. Furthermore, in recent years a significant number of local authorities have ceased to fund travel



passes and many of those authorities have introduced the removal of funding in a single stage.

#### **4.0 Risk Management**

- 4.1 The key risks associated with the proposed change in policy are of legal challenge and reputational damage to the Council, and the inability to meet the financial savings targets agreed by the Council.
- 4.2 The proposed changes to the policy seek to remove the discretionary element whilst ensuring that the policy remains statutorily compliant. However, there remains a risk that the Council may be challenged over its proposals. In mitigation, Council Officers have reviewed policies in other local authorities and noted that similar changes to policy have been successfully implemented.
- 4.3 The recommended option will enable the substantial savings identified in the Plan for Change to be achieved.

#### **5.0 Equality and Diversity**

- 5.1 An equality assessment has been completed and this identified a potential negative impact in that the proposed changes will specifically affect parents/carers of pupils attending a school of a denomination to which the child's parents/carers adheres, although the intended outcome is to ensure that the policy on eligibility for home to school transport is applied consistently to all families regardless of religion or belief.
- 5.2 However, the Equality Act 2010, Schedule 3, Part 2 provides an exemption to discrimination on the grounds of religion or belief in relation to transport to or from school.

#### **6.0 Conclusion**

- 6.1 The consultation has identified a level of opposition to the proposals, particularly from those that currently benefit from free transport, or parents of primary age pupils that would hope to benefit.
- 6.2 The substantive points made by respondents have been addressed above.
- 6.3 It is recommended that the policy as consulted upon be adopted.

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#### **List of Background Papers:-**

Home to School Transport Policy – Report to Cabinet 22 August 2012  
Letter to Parents, 10 September 2012  
Home to School Transport Policy Consultation Document

#### **Contact Details:-**

**Paul Cooke, Strategic Lead (Schools, Academies and Colleges)**  
**0161 253 5674**

<sup>i</sup> A qualifying school is defined as a community, foundation or voluntary school; community or foundation special school; non-maintained special school; pupil referral unit; maintained nursery school; or Academies, with places available that provide education appropriate to the age, ability and aptitude of the child, and any special educational needs that the child may have.

<sup>ii</sup> 'low income' families, defined as those parents/carers in receipt of maximum working tax credit, or their child is eligible for free school meals