

Children, Young People and Schools
Scrutiny Commission

20 March 2013

Outcome of Public
Consultation on
discretionary Home to
School Transport Budget
proposals

Lead director: Rachel Dickinson



Useful information

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1. Summary

- 1.1 The City council currently spends in the order of £4.5 million per year on the provision of home to school/college transport. This expenditure is incurred in meeting both *statutory duties* and the operation of a range of additional discretionary schemes that provide children with either subsidised or free *discretionary* transport.
- 1.2 In order to make required budget savings the Council proposed in 2012/13 to limit the circumstances in which discretionary home to school/college transport would be provided. At this point the Council proposed a number of reductions in this discretionary provision to achieve savings of £320,000 in 2013/14 and £343,000 in subsequent years. *Implementation of these proposals was however dependent upon the completion of a public consultation upon this matter in order that the Executive was fully informed and any decision met public requirements law.*
- 1.3 This consultation was conducted between 19 November 2012 and 14 January 2013 (**see Appendix A**). Consultation sought views upon the provision of discretionary faith based provision and further discretionary provisions for mainstream and SEN post 16 students. In keeping with original decisions taken by the Executive in February 2012 views were sought upon reduced discretionary provision but continued provision for those who met low income eligibility thresholds.
- 1.4 As a result of new budget proposals for 2013/14 and 2014/15 however further views were invited on the removal of all discretionary provision including that for those who might otherwise receive support under a low income eligibility threshold as previously envisaged.
- 1.5 This report briefs Scrutiny and the Executive on the nature of the above consultation, responses received and seeks a clear decision on the way ahead.
- 1.6 Scrutiny are invited to comment on this matter. Executive is asked to review the attached consultation response summary document (**Appendix B**), available options and decide upon this matter.
- 1.7 ***If approved it is proposed that the changes will take effect from September 2013.*** Please see Section 4 below for options.

2. Main report:

Proposals:

- 2.1 Please refer to **Appendix A** (Consultation document) which provides full details of the three proposals outlined in Section 1 above.

Consultation methodology:

- 2.2 Consultation materials were available on line and respondents had an option to download a copy of the questionnaire from the council's website and complete by hand. In addition the following groups were informed directly about the consultation:

- The parents/carers of children and young people already in receipt of school/college transport (via a letter informing them about the consultation).
- Schools and colleges – with a request that they inform children/students via their individual websites and newsletters.
- School Governors.
- Church Diocesan Boards, Muslim Association of Schools and other faith groups.
- Young People's Council.
- Councillors.
- Disabled Children Team and fora identified by this Team

- 2.3 The launch of the public consultation was also supported by a press release and press briefing.

3 Consultation Responses:

- 3.1 A total of 137 responses were received - 78 online responses and 57 paper responses and 2 emails.
- 3.2 Over 70% of the respondents were parents / carers and 10% of respondents considered themselves to be disabled. Just over 75% of respondents came from the age group 35 – 54. 56% of respondents categorised themselves as White British; the next largest ethnic grouping was Asian / Asian British Indian (12%)
- 3.3 *65% did not agree with the proposal regarding removal of transport assistance to faith based schools.*

- 3.4 *77% did not agree with the initial 2012/13 proposal regarding removal of Post 16 Transport – (this option referring to the removal of Post 16 Transport except for those on low income).*
- 3.5 *85% did not agree with the initial 2012/13 proposal regarding removal of Post 16 SEN Transport – (this option referring to removing Post 16 SEN Transport except for those on low income.)*
- 3.6 *With regard to the current 2013/14 & 2014/15 proposal - 89% did not support the removal of all discretionary Post 16 transport –including low income – should the council have to make further budget savings.*
- 3.7 With regard to the current 2013/14 & 2014/15 proposal - 89% did not support the removal of *all* discretionary Post 16 SEN transport if the council had to make further budget savings—including low income.

4 **Options:**

4.1 **Implement the full range of proposals.**

- 4.1.1 The approval of this option would ensure that the maximum amount of savings could be achieved from discretionary transport budgets.

4.2 **Implement the proposals to remove discretionary faith based transport but retain the discretionary provision for Post 16 mainstream and Post 16 SEN Transport.**

- 4.2.1 This proposal would impact on approximately 232 pupils in Leicester City but result in a full year saving of £46,000 per academic year.

4.3 **Implement the proposals to remove faith based transport together with Post 16 mainstream transport but retain the provision for Post 16 SEN transport.**

- 4.3.1 There are a total of 1210 students, 961 pay a contribution of £160 per year, with 249 receiving free transport. The authority has a budget of £190k per annum for these arrangements (£130k to cover the 961 subsidised passes and £60k covering the free passes).

- 4.3.2 The removal of discretionary faith based transport together with discretionary Post 16 Mainstream transport would result in a saving of £236k per annum.

4.4 **Implement the proposals to remove faith based transport together with Post 16 mainstream transport and some elements of Post 16 SEN transport.**

- 4.4.1 In this event a decision would be required on which aspects of Post 16 SEN transport would continue to attract financial assistance.

Consultation responses suggest a number of possible variants for further exploration.

- 4.5 Each of the above presents a number of challenges to the Council and the need to exercise due diligence in policy formulation and implementation is set out in the Legal Implications below.
- 4.6 *In recognition of the nature of the consultation outcomes, particularly with regard to post 16 provision (both mainstream and SEN), Executive may however wish to consider a further alternative proposal – namely to remove discretionary provision for all new post 16 course applicants but make continued provision for those already attending post 16 provision to allow the majority of them to complete their course.*
- 4.7 Impact of decisions: In the event that the Executive do not agree to implement any/ all current budget proposals it will not prove possible to realise savings as set out last year's (2012/13) and this year's (2013/14 & 2014/15) budget build process. It will also prove necessary to give further consideration to appropriate low income threshold eligibility criteria and the operation of discretionary provision into the future. There is some precedent for this and Birmingham City Council will introduce a revised Scheme in September 2013.
- 4.8 Mitigating factors for consideration: Scrutiny and Executive will wish to note that all local FE providers receive significant funds from the Education Funding Agency to operate discretionary bursary schemes to assist students overcome barriers to participation in further education. The 16-19 Bursary Fund is intended to help 16- to 19-year-olds continue in education, where they might otherwise struggle for financial reasons. It is made up of two parts – bursaries of £1200 a year to the most vulnerable young people and a discretionary fund for providers to distribute to other students who face genuine barriers to participation. Young people in the defined vulnerable groups can receive bursaries of £1200 a year. This group is made up of children in care, care leavers, those on income support and those in receipt of both Employment Support Allowance (ESA) and Disability Living Allowance (DLA). Providers can distribute their discretionary funds to support any student who faces genuine financial barriers to participation such as *costs of transport*, food or equipment. Providers have freedom to decide the scale and frequency of bursary payments. A spreadsheet detailing current bursary 2012/13 bursary allocations can be found at: <http://www.education.gov.uk/aboutdfe/executiveagencies/efa/funding/fundinga/b00204972/16-19-allocations>
- A number of local providers receive significant amounts (**Appendix C**). For example, in 2012/13 Gateway College received £237k.

5. Details of Scrutiny

- 5.1 The proposals were subject to public consultation which took place between 19 November 2012 and 14 January 2014 – Consultation analysis in **Appendix B**.

6. Financial, legal and other implications

6.1 Financial implications

The full year financial impact of budget decisions taken in 2012/13 are shown below. Also shown below is the full year impact of the 2013/14 budget proposal, option 4.1 above, ie implementing the full range of proposals and removing all discretionary support for all students with effect from 1 September 2013:

	2012/13 Budget decisions	2013/14 Budget proposals	Total Full Year impact £'000
	Full Year impact £'000	Full Year impact £'000	£'000
Mainstream post 16			
Remove discretionary provision for those not on low incomes	130		
Remove discretionary provision for those on low income		60	
Remove free transport for students at VA schools	46		
SEN post 16			
Remove discretionary provision for those not on low incomes	167		
Remove discretionary provision for those on low income		175	
Total	343	235	578

The alternative proposal suggested in 4.6 above is to:

- remove financial support for transport for all post 16s applying for courses which start from 1 September 2013.
- continue to support those currently attending courses in 2012/13 to allow the majority of them to complete their existing course.

Implementing this alternative proposal means that the full saving of £235k shown in the above table will not be achieved until 2015/16. Instead there would be a saving of £25k in 2013/14 rising to £75k in 2014/15 and £235k in 2015/16.

Martin Judson, Head of Finance

6.2 Legal implications

1. The options for consideration entail making changes to “discretionary” school travel arrangements for children (s.508C Education Act 1996) and for sixth formers (s.509AA)
2. In the exercise of both discretions, the Council must “have regard” to the parent/sixth former’s wish to receive education at a place based on their “religion or belief” (s.509AD). (Note: This duty is in addition to the mandatory duty on local authorities to make travel arrangements for children of parents on low incomes who attend the nearest suitable school preferred on grounds of religion or belief, where they live more than two miles, but not more than 15 miles from that school). In exercising their functions, local authorities will therefore need to respect parents’ religious and philosophical convictions as to the education to be provided for their children in so far as this is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure.
3. Similarly, Article 2 Protocol 1 of the European Convention on Human Rights says that no one shall be denied the right to education. Unlike most rights in the Convention, this is expressed in negative rather than positive terms, reflecting the comparatively weak protection it provides. It requires every signatory to guarantee that individuals can take advantage of existing educational institutions, but it does not guarantee an education of a particular kind or quality, or that the education will be provided by a particular institution.
4. The second part of Article 2 Protocol 1 concerns the rights of parents and provides that they are able to ensure that their children’s education conforms with their own religious or philosophical convictions. The parents’ right need only be ‘respected’, which does not mean that their wishes must always be granted or necessarily facilitated/aided by the State.
5. The Education Act 1996 arguably exceeds the requirement under the Protocol for uninhibited access ‘to educational institutions existing at a given time’. The Act requires that even those children who cannot access mainstream education must be provided with a ‘suitable education’.
6. Where the impact is to simply cut the funding for someone who travels to school on independently sourced and provided transport, the consequence is a financial one, and the retention of the mandatory “low income” protection ameliorates this. However where the impact of the proposals is to withdraw a service (special bus, or subsidised bus or taxis etc) the Council will need to evidence more carefully its analysis of impacts.
7. Separate to the above is a requirement in legislation to prepare a TPS (Transport Policy Statement) for sixth formers. This requires the Council in deciding whether it is “necessary” to provide financial support for sixth formers, to have regard to the factors identified in section 509AB(3) as follows:
 - (a) the needs of those for whom it would not be reasonably practicable to attend a particular establishment to receive education or training if no

arrangements were made

- (b) the need to secure that persons in their area have reasonable opportunities to choose between different establishments at which education or training is provided,
- (c) the distances, and journey times, between the homes of persons of sixth form age in their area and establishments at which education or training suitable to their needs is provided,
- (d) the cost of transport to the establishments in question and of any alternative means of facilitating the attendance of persons receiving education or training there

8. (3A) In considering whether or not it is necessary to make arrangements for those purposes in relation to a particular person, a local authority in England shall have regard (amongst other things) to the nature of the route, or alternative routes, which he could reasonably be expected to take.
9. There is also a duty (s.15ZA Education Act 1996) placed upon the Council to secure enough suitable education and training to meet the reasonable needs of
 - (a) persons in their area who are over compulsory school age but under 19, and
 - (b) persons in their area who are aged 19 or over but under 25 and are subject to learning difficulty assessment. A Council may comply with this duty by securing the provision of education or training outside as well as within their area. Location, diversity and choice are all relevant considerations in meeting this duty. This must therefore be factored-in to any decision which might have the impact of limiting choice etc.
10. In respect of the options identified at 4.4.1 of the Report, it is important to bear in mind that under s.509AB(2)&(3) there are clear “parity” provisions making it unlawful for the Council to provide less favourable (or more favourable) support to those attending non-maintained schools than maintained schools.

Kamal Adatia - City Barrister & Head of Standards, ext 29 6302

6.3 Climate Change and Carbon Reduction implications

Implementing any of the proposals may have a slight detrimental impact on air quality and increase carbon dioxide emissions if more pupils choose to travel by car. However, the likely changes are considered negligible on a city-wide scale.

If any of the proposals are implemented then information should be provided about sustainable transport options. Please contact the Environment Team for further information.

Mark Jeffcote – Senior Environment Consultant x 29 6765

6.4 Equality Impact Assessment

Equality impact assessments were scrutinised by the EIA Impact panel on 21 January 2013 and are available for inspection on request. Commentary on post 16 mitigation factors can be found at Section 4.7 above.

6.5 Other Implications (You will need to have considered other implications in preparing this report. Please indicate which ones apply?)

None

7. Background information and other papers:

- See appendices.

8. Summary of appendices:

- Appendix A: Consultation document.
- Appendix B: Consultation Responses document.
- Appendix C: Leicester FE Bursary Funds 2012/2013