

Open Report on behalf of Richard Wills, Director responsible for Democratic Services and Debbie Barnes, Executive Director of Children's Services

Report to:	Councillor Mrs Patricia Bradwell, Executive Councillor for Adult Care and Health Services, Children's Services
Date:	03 June 2016
Subject:	Review of the Council's Home to School Transport Policy in relation to Discretionary Grammar School Transport – Final Decision
Decision Reference:	I011256
Key decision?	Yes

Summary:

At its meeting on 5 April 2016, the Executive received the final report arising from the scrutiny review of the Council's Home to School Transport Policy in relation to Discretionary Grammar School Transport and delegated the Executive's response to the final report to the Executive Councillor for Adult Care and Health Services, Children's Services. This report invites the Executive Councillor for Adult Care and Health Services, Children's Services to consider the final report and the recommendation contained therein, and decide whether to accept either of the two options outlined in the recommendation.

Recommendation(s):

The Executive Councillor for Adult Care and Health Services, Children's Services is recommended to accept one of the following two options:

- Option 1 - To leave the Grammar School Transport Policy as it is, but review it in two years.
- Option 2 (originally Option 5 in the Task and Finish Group report) - Charge pupils living in grammar school DTAs for transport to a grammar school where it is not the nearest suitable school. This should be introduced to new pupils, excluding pupils with siblings at the same grammar school, on a phased basis with some level of financial support for pupils in receipt of free school meals.

Alternatives Considered:

Within the final report from the scrutiny review of the Council's Home to School Transport Policy in relation to Discretionary Grammar School Transport, there are three alternative options which were considered by the Task and Finish Group who conducted the scrutiny review. These are:-

- Extend free transport to nearest grammar school from all addresses in Lincolnshire, by extending grammar school DTAs into the non-grammar school (i.e. all-ability school) DTA areas
- Remove all secondary school DTAs and offer free transport only to the nearest suitable school
- Amend the grammar school DTA areas only in specific areas to include the areas where the opposition to the policy has been most marked in grammar school DTAs

The benefits, risks and cost implications of these three options are outlined on pages 26-28 of the final report, which is attached at Appendix A.

Reasons for Recommendation:

To comply with the legislative and constitutional requirement on the Executive to consider and respond to reports from overview and scrutiny committees within two months.

1. Background**The Scrutiny Review Report**

The scrutiny review report on Review of the Council's Home to School Transport Policy in relation to Discretionary Grammar School Transport, attached at Appendix A, was approved by the Children and Young People Scrutiny Committee at its meeting on 4 March 2016. The Committee's report reflects the work of a scrutiny Task and Finish Group, which comprised nine non-Executive Councillors.

The review was undertaken between September 2015 and February 2016. As part of the review, the Task and Finish Group reviewed the current discretionary Grammar School Transport Policy and the costs involved in providing this policy, examined Grammar School Transport policies at other councils with grammar schools, and held an engagement day with Headteachers and Chair of Governors of a selection of grammar and non-grammar schools, parents, campaign groups, and the Youth Cabinet. The Task and Finish Group also examined a range of options for changing the current Grammar School Transport Policy to address the issues and concerns raised by parents, schools and young people. The Task and Finish Group produced a final report containing one recommendation consisting of two options.

The Task and Finish Group Report was approved by the Task and Finish Group by a majority, with two members of the Group voting against the approval of the Final Report, namely Councillor Mrs Overton and Councillor Wood. Both Councillors addressed the Scrutiny Committee as did Councillor Mrs Austin. An extract from the Scrutiny Committee minutes are attached at Appendix B.

At its meeting on 5 April 2016, the Executive was invited to consider the final report and assign responsibility to the relevant Executive Councillor for responding to the report. The minute from the Executive meeting held on 5 April 2016 for this item is attached at Appendix C.

Executive Director Comments

The Task and Finish Group Report and the investigations and debates that have taken place around it have clearly identified the critical issue in relation to the existing Grammar School Transport Policy as being how to balance the sustainability of two different models of school.

Some areas of the county can be classed as selective areas – i.e areas that are characterised by having schools within them that are entitled to select by aptitude/ability (grammar schools). This creates a situation where children with the aptitude/ability to attend a grammar school will find their most significant peer group of children with the same aptitude within their local grammar school.

One area of the county (which has come to be identified as the white area by reference to the map on page 10 of the Task and Finish Group Report at Appendix A) can be classed as non-selective in that it is characterised by having schools within it that are not entitled to select by aptitude. As a result they all have a group of pupils with grammar school aptitude.

All those schools are available for anyone in the county to attend, subject to the Council's and the Schools' admission arrangements that must comply with government guidance in the form of the Admissions Code. The Grammar School Transport Policy is not therefore about the availability of places within that type of school. It is, however, about the steps the Council takes to facilitate access to those schools by providing transport free of charge.

For the grammar schools themselves, the very fact that they select their pupils from the top 25% of the cohort by aptitude/ability means that they draw their pupils from a much wider geographical area than a non-selective school. The sustainability of the schools themselves and the ability of pupils to take up this opportunity to learn alongside pupils with similar aptitude/ability is supported by the provision of transport across a wider area (the grammar school DTAs) than might otherwise be the case.

However, to widen the scope of these transport areas too widely would potentially impact on the ability of the non-selective schools to attract pupils at the higher end of the ability range and therefore to offer to pupils within the non-selective area the ability to be educated alongside a significant cohort of pupils of the same aptitude.

In striking such a balance, it is inevitable that there will be a boundary somewhere and that individuals will feel a sense of injustice if they are on the "wrong" side of the boundary. That is unfortunate but it does not render the policy unjustified. In fact the policy has a strong educational rationale. The Task and Finish Group received much comment about the precise location of the boundaries in the current policy. However, they have the merit of reflecting community and parish boundaries and generally, when tested, have proven to reflect distance from the nearest provision – i.e the nearest school for those within the non-selective area has been a non-selective school and the nearest for those within the selective area has been a selective school.

For these reasons the continuation of the current policy (Option 1) is a viable option in education terms. On the other hand, extending grammar school transport outside the current DTAs would have the potential to upset the somewhat delicate balance currently maintained. The proposal to review the policy in two years' time is a sensible provision given that the Council operates within a climate of almost constant change.

Option 2 would see a charge introduced for travel to a grammar school from within a grammar school DTA. In other words, there would be no change to the policy in relation to the use of the existing DTAs to determine the right to transport to a grammar school. However, the parents of pupils within a DTA who currently benefit from free transport would in the future be expected to make a contribution to the cost.

When the Task and Finish Group report was first published this proposal elicited concern from the grammar schools themselves who argued that this would be unlawful on the grounds that for a pupil of grammar school aptitude, a grammar school was the nearest suitable school. I addressed this at some length in the Scrutiny Committee as summarised in the minutes at Appendix C and I am satisfied that this proposal is not unlawful.

However, if the Executive Councillor was minded to pursue this Option, any such contribution would need to be carefully assessed to determine its impact on grammar school provision.

Equality Act 2010

The Council's duty under the Equality Act 2010 needs to be taken into account when coming to a decision.

The Council has reviewed its grammar school transport policy and published a report on its findings. The report made two recommendations for the Executive Councillor to consider. These are

Option 1 – Leave the policy as it is at present (entitlement to grammar school transport, provided free until end of year 11, if the pupil meets the residence criteria based on Designated Transport Areas (DTAs)), and review in two years' time.

Option 2 (originally Option 5 in the Task and Finish Group report) – Charge parents/pupils of grammar school pupils living in existing grammar school DTAs for transport to their school where the school is not the nearest suitable school to their home address, but the criteria is otherwise.

The Council must, in the exercise of its functions, have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it: [Equality Act 2010 section 149\(1\)](#). The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation: section 149(7)

Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

- Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
- Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it
- Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding.

Compliance with the duties in this section may involve treating some persons more favourably than others.

A reference to conduct that is prohibited by or under this Act includes a reference to:

- ❖ A breach of an equality clause or rule
- ❖ A breach of a non-discrimination rule

This duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is

identified consideration must be given to measures to avoid that impact as part of the decision making process.

An Equality Impact Analysis (EIA) supports the compliance by the decision-maker with the public sector equality duty under section 149 of the Equality Act 2010. An EIA for Option 1 and Option 2 (originally Option 5 in the Task and Finish Group report) are attached as Appendices D and E respectively.

In terms of Option 1 the EIA identifies that the existing policy has the potential to impact negatively on people with certain protected characteristics who fall outside the grammar school DTAs and who can be expected because of their protected characteristic to be likely to be less able to afford to pay for transport to a grammar school.

It should be noted that this impact only arises if it is judged against provision of transport to a selective school. However, the Council is not under an obligation to provide education at any particular school or type of school. The Council provides free transport for people outside the grammar school DTAs to schools which reflect the full cohort of pupils including those of grammar school aptitude. Properly understood, therefore, there is no detrimental impact. Access to education appropriate to pupils with grammar school aptitude is not restricted or limited by the fact that free transport is not provided to a grammar school outside a grammar school DTA.

Alternatively, any impact is mitigated by the fact that the Council provides suitable schooling for pupils with grammar school aptitude at other schools within the non-selective area to which it does provide free transport.

Further, as set out earlier in this Report the use of grammar school DTAs is justified on educational grounds to sustain different types of school within a mixed economy of educational provision. Even if the existing policy did represent a limitation or restriction it has a legitimate aim that is important to the balance of education in the county and the DTAs represent a proportionate means of achieving that balance. In the circumstances, having due regard to the Equality Act duty it is open to the Executive Councillor to approve the continuance of the existing policy.

In terms of Option 2, the EIA concludes that the proposal to charge has the potential to impact on persons with a protected characteristic who by reason of that protected characteristic may be expected to be less able to afford such a charge. The mitigation in relation to such a charge would consist in the implementation of a charge at affordable levels together with assistance to those on low incomes.

Again, having due regard to the Equality Act duty it is open to the Executive Councillor to approve the introduction of a charge.

Child Poverty Strategy

The Council is under a duty in the exercise of its functions to have regard to its Child Poverty Strategy. Child poverty is one of the key risk factors that can negatively influence a child's life chances. Children that live in poverty are at greater risk of social exclusion which, in turn, can lead to poor outcomes for the individual and for society as a whole.

In Lincolnshire we consider that poverty is not only a matter of having limited financial resources but that it is also about the ability of families to access the means of lifting themselves out of poverty and of having the aspiration to do so. The following four key strategic themes form the basis of Lincolnshire's Child Poverty strategy: Economic Poverty, Poverty of Access, Poverty of Aspiration and Best Use of Resources.

Education is recognised as a key component of an anti-poverty strategy. The Child Poverty Strategy aims have been taken into account in this report. By providing transport support to young learners living in Lincolnshire, it will enable access to a range of secondary education provision.

Joint Strategic Needs Assessment (JSNA) / Joint Health & Well Being Strategy (JHWS)

The JSNA reports on the health and wellbeing needs of the people of Lincolnshire. It brings together detailed information on local health and wellbeing needs and looks ahead at emerging challenges and projected future needs.

The Lincolnshire JSNA identifies a number of needs that directly relate to young people. The policy on transport support under-pins the identified topics and aims of the JSNA, in particular Health and Wellbeing Strategy.

The Lincolnshire JSNA and JHWS identify a number of needs that directly relate to young people. The policy on transport support under-pins the aims of the JSNA and JHWS in the following areas.

- Improve health and social outcomes and reduce inequalities
- Achieve potential
- Improve educational attainment

Each of the above aims is specifically addressed by the transport policy, since it's over riding aim is to enable young people to participate in education.

Crime and Disorder

Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area.

The Transport Policy sets out the means by which the Council supports young people to access education and therefore contributes to reducing the potential for crime and disorder.

Human Rights

Article 2 of the First Protocol to the European Convention on Human Rights provides that "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the state shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophic aims."

However English case law establishes that this Article is not engaged in relation to considerations of school transport. The Article is concerned with access to educational institutions and neither the existing policy nor the introduction of charges for grammar school transport would deny access to any of the educational institutions which are provided within Lincolnshire.

2. Conclusion

The Executive Councillor for Adult Care and Health Services, Children's Services is asked to consider the outcomes from the scrutiny review of the Council's Home to School Transport Policy in relation to Discretionary Grammar School Transport and decide whether to accept one of the two options in the recommendation.

3. Legal Comments:

The Council has the power to adopt either of the recommendations set out in the Report. Specific legal issues are addressed within the Report. The proposals are consistent with the Policy Framework and within the remit of the Executive Councillor.

4. Resource Comments:

Financial implications will arise from the decision of the Executive Councillor on supporting either option 1, or option 2 (formerly option 5 in the Task & Finish Group report). The Council's funding is under significant financial pressure and option 1 (i.e. continuation of the Grammar Schools Transport Policy for 2 years) would maintain the same level of funding for this discretionary service within the Council's budget for that period. This would require other Council services to address the budget imbalance over the coming years. The now option 2 (i.e. charge pupils living in grammar school DTAs for transport to a grammar school where it is not the nearest suitable school) would offset the costs of delivering the discretionary service (savings phased over a 5 years period of c.£1.5m) that will contribute towards the Council's financial challenge budget shortfall.

5. Consultation

a) Has Local Member Been Consulted?

Not applicable.

b) Has Executive Councillor Been Consulted?

Yes.

c) Scrutiny Comments

The Children and Young People Scrutiny Committee will consider this report at its meeting scheduled to be held on 27 May 2016. Comments from the Scrutiny Committee will be reported to the Executive Councillor.

d) Policy Proofing Actions Required

Not Applicable.

6. Appendices

These are listed below and attached at the back of the report	
Appendix A	Review of the Council's Home to School Transport Policy in relation to Discretionary Grammar School Transport - Final Report
Appendix B	Extract from Minutes of the Children and Young People Scrutiny Committee meeting held on 4 March 2016
Appendix C	Extract from Minutes for the Executive meeting held on 5 April 2016
Appendix D	Equality Impact Analysis for Option 1
Appendix E	Equality Impact Analysis for Option 2 (originally Option 5 in the Task and Finish Group report)

7. Background Papers

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

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