

## Report of the Director of Children's Services

### Report to Executive Board

Date: 6<sup>th</sup> November 2013

**Subject: Outcome of Supplementary Consultation & Review of Children's Services Transport Policy**



Are specific electoral Wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, name(s) of Ward(s):		
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is the decision eligible for Call-In?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, Access to Information Procedure Rule number:		
Appendix number:		

### Summary of main issues

1. On 17<sup>th</sup> July 2013 the Executive Board approved a series of recommendations to change the previous children's transport policy. The decision was released for implementation by the Scrutiny Board (Children and Families) on 7<sup>th</sup> August 2013.
2. During the scrutiny process, however, the potential for discrimination to occur within the new policy was highlighted. This was on the basis of the retention of discretionary free transport on the grounds of non-faith or belief, and in the case of parental preference for a single sex educational setting for their child on the basis of religion or belief.
3. As a consequence a supplementary consultation has been held on these two elements to consider whether or not they should be retained. In the interim arrangements were put in place to ensure that as the new policy came into effect (1<sup>st</sup> October 2013) any new applications for support on the basis of faith received discretionary consideration prior to a final decision being made by the Board. The purpose of this report is to:
  - a) inform the Executive Board of the outcome of the recent additional public consultation and to present further proposals for consideration and, as a consequence,
  - b) to seek permission for the introduction of a revised Children's Services Transport Policy with effect from 1<sup>st</sup> December 2013 (appendix 1).

## **Recommendations**

4. The Executive Board is asked to approve the following changes to the current policy:

- a) to remove discretionary free travel on the basis of non-faith or belief;
- b) to remove discretionary free travel on the basis of parental preference on the grounds of the parents' religion or belief for their child to be educated in a single sex educational setting;
- c) to implement the policy for all new applicants from 1<sup>st</sup> December 2013, but provide transitional discretionary free travel for existing recipients until 31<sup>st</sup> August 2015. This would be in line with the Board's decision on 17<sup>th</sup> July 2013, in relation to the removal of discretionary free travel for students on the basis of faith and for those attending school/college (over sixteen).

5. The Executive Board is asked to note that:

- a) the Director of Children's Services (the Director) will submit a further report to the Executive Board during 2014 in relation to updated proposals for post 16 SEN transport. This will take place as soon as formal proposals have been designed and agreed, and after the new Children and Families Bill has been enacted.
- b) The Director will publish a new Children's Transport policy on 1<sup>st</sup> December 2013 (subject to due governance processes). This will be available on the Council's internet pages.

## **1 Purpose of this report**

- 1.1 The purpose of this report is to present the outcomes from the recent supplementary public consultation on the current Children's Services Home to School Transport Policy.
- 1.2 To make recommendations to be included in a new policy and for the Executive Board to approve it for implementation from 1<sup>st</sup> December 2013 (appendix 1).

## **2 Background information**

- 2.1 A report was submitted to and accepted by Executive Board on 17<sup>th</sup> July 2013 requesting permission to revise the Children's Services Transport Policy.
- 2.2 This was as a result of a public consultation and survey undertaken by the Council on the whole policy, including how statutory services were provided. There was, however, an inevitable focus on the four major areas of discretionary provision contained within the previous policy as they were the areas that cost the Council the most and were not statutory. These were:
  - free travel at age 16+ in mainstream education
  - free travel at age 16+ for young people with special educational needs attending a qualifying school or college
  - free travel to and from faith schools
  - free travel to a school that was not the nearest, in circumstances where the authority was unable to provide a school within the statutory walking distance.
- 2.3 Other discretionary provision, which included free travel to a single sex school on the grounds of parents' religion or belief, and free travel in circumstances where parents elected to send their child to a non-faith school, primarily because they objected to a faith based education, were identified as low impact and so were not addressed in any detail, even though they are essentially 'faith or belief based' in their intent. As a result the discrepancy of withdrawing non-statutory free travel to faith schools, whilst retaining a facility for parents to obtain free travel to alternative non-faith schools or single sex schools on the grounds of religion or belief, was raised during the Council's own scrutiny process.
- 2.4 The take up of discretionary free transport to non-faith based schools, due to parental objections to a faith-based education, 2013/14 is nil (to date); this has been a consistent pattern for the last five years.
- 2.5 The total cost of discretionary free transport to a single sex school in 2013/14, based on religion or faith, is approximately £6,375 affecting twenty-three children.
- 2.6 Fifteen of these children, who now attend the E-Act East Leeds Academy, have a 'legacy' entitlement from the former Parklands Girls High School (as agreed by the former Education Leeds). None of these children would be affected by the changes as the proposed transitional arrangements would enable them to complete their compulsory education on their current legacy entitlement. The

remaining eight children are from four families and receive support on a discretionary basis to attend Batley Girls High School in year seven to eleven.

- 2.7 Four of these eight children will complete their compulsory education at Batley Girls High School during the proposed transitional period. The direct cost for each of the remaining four children from 1<sup>st</sup> September 2015, if they remain at their current school, will be approximately £275 per year.
- 2.8 Although the recommended revisions to this policy were released for implementation by the Scrutiny Board on 7<sup>th</sup> August, the Scrutiny Board (Children and Families) requested that their concerns about the two residual discretionary elements in the new policy should be addressed.
- 2.9 The specific concerns related to the perception that since the provisions contained in the previous policy in relation to discretionary free travel to faith schools had been withdrawn (on a phased basis) it would be potentially discriminatory to retain discretionary free travel provisions to non-faith schools. Similarly, because the basis for a parental request for a child to attend a single sex school is on the grounds of the parents' religion or belief, it would be potentially discriminatory to retain non-statutory free travel provisions to single sex schools.
- 2.10 It was therefore determined that a supplementary public consultation would be launched in order to review these areas of the policy with a view to consulting on whether or not these elements should also be removed from the new policy. The consultation period ran for a period of twenty-eight days, in accordance with Department for Education (DfE) guidance (from 02/09/13 to 09/10/13). The results are summarised in section three of this report.
- 2.11 It was recommended that as part of the analysis of the findings a full equality, diversity, cohesion and integration (EDCI) impact assessment should be undertaken on the resultant draft policy. The Scrutiny Board had also expressed concern that the previous EDCIs had primarily concentrated on the effect of the specific changes in the policy rather than on the policy as a whole. Two new EDCI impact assessments have therefore been undertaken; one on the proposed changes and one on the new draft policy (appendices 2a and 2b).
- 2.12 Finally, in the report to the Executive in July 2013 an outline proposal was put forward for consideration in relation to post sixteen discretionary transport arrangements for students with special educational needs (SEN). In principle an approach that will involve the provision of a means-tested personalised budget was supported.
- 2.13 Due to delays in the Parliamentary Committee stages important guidance related to the new Children and Families Act has only just been made available for consultation. A further report will be prepared, therefore, on this subject ready for consideration by the Executive Board by March 2014 ready for implementation in September 2014.

### **3 Main issues**

- 3.1 A summary of the main findings from the survey and overall consultation process is outlined below.
- 3.2 Overall respondents were generally supportive of removing discretionary funding to both single sex schools and non-faith schools on the grounds of religion or belief.
- 3.3 The key elements of the consultation were as follows:
- The consultation used a wide range of different engagement processes including:
    - an online survey
    - an email to all those who had participated in the previous consultation
    - a letter to all parents whose children currently benefit from the provisions under review along with families who had recently benefitted and
    - an offer to meet with any interested parties
  - 428 people accessed the online survey
  - Across all consultation methods respondents were asked to provide recommendations on how these services should be reviewed
  - 411 responded to the question regarding discretionary funding for transport to attend a school based on non-faith or belief
  - 389 responded to the question regarding providing funding for transport to attend a single sex school on the grounds of religion and belief
  - 43.3% (178) of respondents agreed or strongly agreed that discretionary funding for transport to attend a school based on non-faith or belief should continue, whereas 50.1% (206) disagreed or strongly disagreed
  - 23.3% (102) of respondents agreed or strongly agreed that discretionary funding for transport to attend a single sex school on the grounds of religion or belief should continue, whereas 67.4% (262) disagreed or strongly disagreed
  - Out of the 379 respondents that said they were affected by any of the proposed changes, four said that they would be affected by changes to transport to single sex schools on the grounds of religion and belief, and 14 said they believed they would be affected by changes to transport to schools based on non-faith or belief.
- 3.4 Although generally supportive of both provisions being withdrawn, the analysis shows that it was not conclusive in relation to the discretionary funding for transport to a school on the basis of no faith. Neither is it possible to explain why fourteen respondents believed that they would be affected as the Council currently does not provide any discretionary funding in this category.
- 3.5 As shown by the analysis, support for the withdrawal of discretionary funding, on the basis of a parental preference for a single sex education, on the grounds of religion or belief, was conclusive.

3.6 During the last few years other local authorities have also consulted on their offer of free discretionary faith travel and the current position is summarised at appendix 4. This includes a comparison with geographical, statistical and core city neighbours. The key points are as follows:

- Only 2 out of 14 neighbouring Yorkshire and Humber authorities have retained discretionary faith transport
- Only 3 out of 7 core cities have retained discretionary faith transport
- Only 4 out of 9 of our statistical neighbours have retained discretionary faith transport.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

4.1.1 There were two key elements to the consultation process. These are outlined below.

4.1.2 An on-line 'Talking Point' Survey for adults (16+). 411 surveys were wholly or partly completed. There was also the opportunity to request a hard copy.

4.1.3 A letter was sent to all families either currently benefitting from the provision of free travel to single sex schools on the grounds of religion or belief or those known to have done so in the recent past. This amounted to direct contact with the parents of forty-two children. There have been no recipients of free travel on the basis of non-faith in the last five years. The first letter to these parents was followed up with a reminder letter and a personal telephone call. Either a direct conversation took place or a message was left for the call to be returned.

4.1.4 In addition the following key stakeholders were contacted and invited to complete the survey or request further information:

- All Elected Members
- Leeds MPs
- Leeds head teachers and Chairs of Governors
- Head teachers of schools in neighbouring authorities, where Leeds children currently attend
- Representative of the Catholic diocese of Leeds
- Representative of the Church of England diocese of Ripon and Leeds
- Council Heads of Service
- Parents, carers and children and young people through the Voice and Influence Team
- A range of voluntary sector groups via Young Lives
- Leeds Humanists
- The Citizens Panel

4.1.5 In addition the regular Council 'Essentials' publication invited all Council employees to complete the survey and an email box was also set up for the duration of the consultation period. In total one email was received.

- 4.1.6 Finally an offer was also made for senior officers to attend meetings to discuss the proposals with any interested parties. This offer was not taken up by any group or school.

## **4.2 Equality and Diversity / Cohesion and Integration**

- 4.2.1 Two full EDCI impact assessments have been completed; one on the specific changes and the other on the new draft policy. The findings are attached at appendices 2a and 2b.
- 4.2.2 Children's Services were aware from the outset of the process that any changes to the discretionary funding, i.e. reductions in eligibility, would have an impact on some equality groups, and so the project team spent a great deal of time obtaining opinions from as many equality groups as possible, through existing networks and through specific focus groups and meetings.
- 4.2.3 The project team worked closely with colleagues working in the special needs sector; faith groups; children and young people and parent representatives in order to address the concerns expressed by survey respondents; these are set out in appendix 3. This in turn has led to the development of a detailed action plan, which will inform the work of the Implementation Steering Group.

## **4.3 Council policies and City Priorities**

- 4.3.1 The recommended changes are in line with the key elements of the Council's Plan and Financial Strategy. It is essential that services provided for children and young people are of high quality, effective and good value. Introducing these changes will produce a more consistent approach in terms of who receives free travel and will ensure that, in addition to any statutory provision, support is targeted at the most vulnerable.
- 4.3.2 The already proposed retention of some discretionary support for post 16 students with special educational needs is an example of Leeds ensuring that the most vulnerable or in need in our communities continue to receive appropriate support.
- 4.3.3 Leeds' ambition to be the Best City in the UK has at its heart the wish for Leeds to be the first Child Friendly City. The longer term vision of better, more affordable, high quality, child-friendly transport is why changes to the previous and current policy are essential. It will mean that in the longer term better foundations will be in place for an improved transport offer for children and young people, and the goal of a better deal for all will be more achievable
- 4.3.4 Children's Services will work in partnership with key partners such as Metro; schools; colleges; the church dioceses; other faiths, and other key stakeholders to develop a better, more integrated service for all children and young people in Leeds.
- 4.3.5 The proposed withdrawal of the discretionary elements outlined in this report will have a minimal impact on the local environment due to the very low

numbers of children affected (a total of twenty-three in 2013/14 reducing to four in 2015/16).

#### **4.4 Resources and value for money**

- 4.4.1 The savings associated with the proposed changes are minimal. In 2013-2014 a total of £6,375 will be spent maintaining free travel to a single sex school for twenty-three current qualifying students up to year eleven, reducing to £3,315 in 2014/15. This includes fifteen children who currently benefit from a legacy arrangement from when they previously attended the former Parklands Girls High School.
- 4.4.2 This school, which is no longer single sex, was replaced by the new E-Act East Leeds Academy in 2011. These girls remained at the new school when it was opened. The actual cost, therefore, in 2013/14 for the remaining eight children who currently benefit under the terms of the current policy, for discretionary free transport to a single sex school on the basis of a parent's religion or belief, is approximately £2,200. These children attend Batley Girls High School.
- 4.4.3 A continuing zero expenditure is forecasted on free travel to non-faith schools as there will be no transition arrangements on a discretionary basis.
- 4.4.4 The main impact would have been felt in future years if there had been a sudden increased demand for this service provision.

#### **4.5 Legal Implications, Access to Information and Call In**

- 4.5.1 Since the Scrutiny Board in August the DfE has contacted the authority to ask for clarification of its position. The DfE were initially contacted by the Catholic Education Service to ask it to intervene as it believed that the new policy amounted to an unreasonable exercise of the local authority's duties in providing transport under the Education Act 1996. As a consequence they asked the Department to exercise its powers of direction, under section 496 of the 1996 Act, to prevent the local authority from acting unreasonably.
- 4.5.2 Following the initial approach by the DfE a 'letter before claim' was received by the authority from the Leeds Diocesan Trust in respect of a potential Judicial Review on the changes to the previous policy. A response to the "letter before claim" was sent on 14<sup>th</sup> October 2013. At the time of drafting this report the Council is not aware of any proceedings having been issued.
- 4.5.3 This report is subject to call in.

#### **4.6 Risk Management**

- 4.6.1 The initial response from the DfE, following a detailed briefing from the Council, suggested that the proposed changes would not put the authority at risk of intervention. A more recent follow up discussion with a representative of the DfE has confirmed that they do not consider that, on the basis of the information provided, the authority is behaving unreasonably and have therefore decided that no further action is required.



- 4.6.2 If the Executive Board agrees to the recommendations in this report it will remove any potential risk of challenge to the authority on the grounds of discrimination as all discretionary support (except for children with a special educational need aged sixteen to twenty-five) will have been removed from the policy. The proposed retention of some element of discretionary support for SEN students aged over sixteen was strongly supported in the first consultation and is consistent with the principles contained in the Council Best Plan; namely raising educational standards and narrowing the gap for vulnerable groups.
- 4.6.3 There is still a potential risk that the authority could be challenged, on the basis that some parents with a religion or belief continue to maintain that they had a legitimate expectation that the support they currently receive would continue for the duration of their child's education. This is referred to both in the current DfE Guidance and the authority's previous policy. The guidance is not mandatory and the policy contains a caveat that states support will 'usually' be provided for the duration of the child's time at school and that changes to the policy could be consulted on at any time.
- 4.6.4 Unfortunately the previous commitment is now unsustainable and the DfE has now confirmed that it does not believe the authority is acting unreasonably by phasing the changes in over a period of two years. At least three other local authorities have removed all discretionary faith transport with little or no notice from September 2013.

## **5 Conclusions**

- 5.1 The result of the survey on discretionary funding for transport to a school, on the basis of no faith, although generally supportive was inconclusive
- 5.2 In order to introduce consistency in the existing Children's Services Transport Policy further amendments are required in the form of the removal of discretionary free travel to single sex schools on the grounds of religion or belief and to non-faith schools.

## **6 Recommendations**

- 6.1 The Executive Board is asked to approve the following changes to the current policy:
- a) to remove discretionary free travel on the basis of non-faith or belief;
  - b) to remove discretionary free travel on the basis of parental preference for their child to be educated in a single sex school on the grounds of a parent's religion or belief;
  - c) to implement the policy for all new applicants from 1<sup>st</sup> December 2013, but provide transitional discretionary free travel for existing recipients until 31<sup>st</sup> August 2015. This would be in line with the Board's decision on 17<sup>th</sup> July 2013, in relation to the removal of discretionary free travel for students on the basis of faith and for those attending school/college (over sixteen).

6.2 The Executive Board is asked to note that:

- a) the Director of Children's Services (the Director) will submit a further report to the Executive Board during 2014 in relation to updated proposals for post 16 SEN transport. This will take place as soon as formal proposals have been designed and agreed, and after the new Children and Families Bill has been enacted.
- b) The Director will publish a new Children's Transport policy on 1<sup>st</sup> December 2013 (subject to due governance processes). This will be available on the Council's internet pages.

## **Appendices**

- Appendix 1 Draft Leeds Children's Services Transport Policy - December 2013
- Appendix 2a EDCI on the proposed changes
- Appendix 2b EDCI on the new policy
- Appendix 3 Summary of concerns expressed by survey respondents
- Appendix 4 Analysis of current school/college transport provision by Local Authorities – 2013 to 2014 (June 2013; updated October 2013)

## **7 Background documents<sup>1</sup>**

None

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<sup>1</sup> The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.