

# CHESHIRE EAST COUNCIL

## REPORT TO: Children and Families Scrutiny Committee

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**Date of Meeting:** 12<sup>th</sup> April 2011  
**Report of:** Lorraine Butcher, Director of Children's Services  
**Subject/Title:** Home to School Transport Review  
**Portfolio Holder:** Councillor Hilda Gaddum

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### 1.0 Report Summary

- 1.1. This report outlines proposals to consult upon changing the services for which Cheshire East Borough Council (the Council) is legally permitted to make a charge for under the Home to School Transport Policy and the Complex and Special Needs Policy Transport Policy.
- 1.2 Section 508A onwards of the Education Act 1996 (the Act), as amended by the Education and Inspections Act 2006, details the Council's powers and duties to provide home to school transport. In line with the Act, the Council provides free home to school transport for 'eligible children' (see Appendix 1), which amongst others, includes pupils:
- who are registered pupils at their local school and live more than the recognised (statutory) walking distance from it, i.e. 2 miles for children of primary school age and 3 miles for secondary school age; or
  - who are from a low income family and are registered pupils at an appropriate 'qualifying secondary school' between 2 and 6 miles of the home address (or 2-15 miles for a denominational secondary school).
- 1.3 However, the pupils covered by some of the Council's current home to school transport policies can be charged for the service that they receive and it is these services that are the focus of this report.
- 1.4 A review of the Council's Home to School Transport Policy is required as a result of the tight financial framework within which all Local Authorities are now operating. As a consequence it is proposed that the Policy is reviewed and consultation undertaken in relation to the services for which a charge can be made, which are:
- Post 16 transport;
  - some denominational transport;
  - the post 16 element of the Complex and Special Needs Policy; and
  - the provision of transport for children with Medical Needs.
- 1.5 This review is undertaken as part of the wider Total Transport Project currently being developed within the Council, which is focusing on improved

organisation, operations, procedures and procurement processes, rather than on policy changes.

## **2.0 Decisions Requested**

- 2.1 The Committee note the contents of the report that the Council should undertake consultation on ending the elements of the Home to School Transport Policy and Complex and Special Needs Transport Policy for which the Council can charge.
- 2.2 The Committee endorse, subject to any proposed changes to the policies being approved, that the Starting School (information for parents and carers) and Transferring to Secondary School (How to apply for a school place) booklets be updated, as necessary, to reflect these changes prior to publication for this Autumn's school admissions round for admissions to schools in the academic year 2012/13.
- 2.3 The Committee support the need to review the efficiency of the current home to school transport appeals process be undertaken prior to any future policy changes taking effect.
- 2.4 The Committee endorse that a separate review of transport arrangements for cared for children in foster placements travelling to/from school is undertaken.
- 2.5 The Committee considers how it wishes to respond to and receive further updates on the consultation.

## **3.0 Reasons for Recommendations**

- 3.1 As part of the Authority's wider Passenger Transport Strategy, Children Services are required to review the provision contained within the Home to School Transport Policy and Complex Special Needs Transport Policy and the transport arrangements for cared for children in foster placements travelling to/from school. This review is required to recognise the financial constraints upon the Council.

## **4.0 Wards Affected**

- 4.1 All

## **5.0 Local Ward Members**

- 5.1 All

## **6.0 Policy Implications**

- 6.1 The Home to School Transport Policy will be revised to accommodate any approved changes arising from these proposals.

- 6.2 The policy and procedures regarding home to school transport arrangements for cared for children in foster placements will be reviewed and developed.
- 6.3 The services available to young people will not be diminished, but the potential cost of accessing those services may be affected.
- 6.4 As these proposals include services for vulnerable groups, e.g. children, the disabled, economically disadvantaged families, etc., the Council will be required to conduct an Equality Impact Assessment to determine the effect of any proposals on such groups and, where possible, to enable the proposals to be modified in order to minimise that impact.
- 6.5 This assessment can be conducted during the consultation period, which will permit any modifications to the proposals to be considered prior to a final determination.
- 6.6 However, if the changes introduced by the Assessment result in material and substantive changes to a proposal or some of the proposals, the Council could be obliged to consult further.

## **7.0 Financial Implications (Authorised by the Borough Treasurer)**

- 7.1 The Council spends in the region of £8.9 million on home to school transport per year, as follows:-

<b>Transport Expenditure</b>	<b>Total £000s</b>
Mainstream Home to School	4,216
Post 16 Travel	1,029
Denominational Travel	512
Medical Needs	30
Complex and Special Needs	3,944
Cared for Children & Foster place	890
<b>TOTAL EXPENDITURE</b>	<b>£10,567</b>

- 7.2 The options, if all proceed, could realise savings of £1 million over the next three years. In addition to the specific proposals outlined below, a number of efficiency savings are being proposed, such as contract re-tendering.

	Description	11/12 £000	12/13 £000	13/14 £000	Total £000
	<b>Reductions</b>				
1	Increase charge for existing users denominational travel based from £415 to £500 from September 2011	-23	-16 +26	+13	0
2	Increase charge new intake for denominational travel from £415 to £500 from September 2011	-37	-18 +36	+19	0
3	Withdraw denominational travel (2/3) and (1/3) from September 2012		-342	-170	-512
4	Increase charge for post 16 travel from £415 to £500 from September 2011	-37	-18 +37	+18	0
5	Withdraw post 16 mainstream travel from 2012		-255	-127	-382
6	Charge for post 16 Complex and Special Needs travel from September 2011	-43	-21	0	-64
7	Foster placement review (current spend on accessing school £400k)	tbc	tbc	tbc	tbc
8	Medical withdraw current provision from 2011, review in accordance with "exception" policy	-13	-6	0	-19
9	School organisation from 2011	-4	-2	0	-6
	<b>Total reductions</b>	-157	-579	-247	-983

**Note: The most recent possible additional cost of £200k following the withdrawal of transport for Adults, and the direct knock on impact on C&F budgets have not been reflected within these proposals.**

- 7.3 These estimates are supplied only as a guide and would be subject to any limitations to changing the policy arising from for the Council's duty to provide free transport to 'eligible children' under the Education Act 1996, and the take up of assisted (but not free) transport by parents. It is not possible to estimate with any accuracy what income (take up) levels would be realised if an increase in the charge was approved, but it might be assumed that, as long as the charge continued to be competitive with the costs of car travel, and the transport provision was convenient, then take up would be fairly high.
- 7.4 However, a revised rate for denominational transport for over 16 provision for 2011/12 has not yet been proposed and the introduction of a charge for all Post 16 pupils with complex special needs would be expected to deliver revenue savings of £64,500 (this figure accounts for 20% of pupils who would be exempt from charging due to hardship).

## 8.0 Legal Implications:

- 8.1 The sections of the Education Act 1996 that detail the home to school transport that local authorities are entitled provide state that those authorities must make the arrangements that “... *they consider necessary to facilitate attendance at ...*” a relevant educational establishment. Therefore, all home to school transport is discretionary, but the law and the guidance stipulates how local authorities are expected to exercise that discretion in relation to some groups.
- 8.2 In particular, the Council cannot charge for home to school transport arrangements made under section 508B of the Education Act 1996, which obliges local authorities to provide ‘eligible children’ free of charge with the home to school travel arrangements that “... *they consider necessary to facilitate attendance at ...for the purpose of facilitating the child’s attendance at the relevant educational establishment ...*”;
- 8.3 ‘Eligible children’ are defined in Schedule 35B of the Education Act 1996 (Appendix 1) and can be seen as falling into three groups:
- those living within walking distance of their educational establishment, such as children with special educational needs, a disability, mobility problems or unsafe routes to their educational establishment;
  - those living outside walking distance of their educational establishment for whom no suitable alternative arrangements have been made; and
  - those children, 8 years and above, who satisfy an ‘Appropriate Condition’, along with some other criteria.
- 8.4 A charge can be made for transport arrangements made under the other relevant sections of the Education Act 1996, i.e. sections 508C to 509A, subject that charge being reasonable in the circumstances.
- 8.5 However, when determining what is reasonable, what is “necessary to facilitate attendance” or what is an appropriate educational establishment, local authorities are expected to take into account, amongst other factors, the wishes of parents. This was confirmed in the case of Regina v Rochdale Metropolitan Borough Council, ex parte Schemet 1992, which dealt with a request for transport to schools outside the borough, in which Mr Justice Roch stated:

*“The parent’s wishes were an important consideration but they were not the sole consideration and the education authority might conclude that they could make suitable arrangements for the child to be registered at a school closer to his home despite a conflict with the parents stated preference, provided the authority took account of that preference in reaching its conclusion”.*

## **9.0 Risk Management**

- 9.1 With particular reference to withdrawing most free denominational transport there is a high risk of challenge on the grounds of discrimination. However, as other local authorities have already adopted this approach, it is not insurmountable.
- 9.2 The withdrawal of Post 16 transport for mainstream pupils, introduction of charges for complex special needs pupils, combined with the withdrawal of Education Maintenance Allowances (EMA), could result in more young people becoming NEET (Not in Employment, Education or Training).
- 9.3 Increased costs could also result in higher numbers of 'school run' journeys which would undermine the Council's environmental objectives.
- 9.4 Increases in the number of children walking longer distances to school could potentially result in more accidents or safeguarding concerns from parents, unless supported by other strategies, for example: additional school travel planning, road safety improvements or support for walking bus schemes.

## **10.0 Background and Options**

- 10.1 The Council is required to provide home to school transport by law for certain groups of pupils, but the Council is also funding the provision of a number of other home to school transport services for pupils who do not have statutory right to free home to school transport. These services have been established over a number of years and have traditionally been provided to pupils who access schools further away than their nearest schools.

### **10.2. Denominational Transport:**

10.2.1 Children who attend for reasons of religious belief, a denominational secondary school between 2 and 15 miles of the home address are currently entitled to assisted (but not free) transport to the designated local denominational school under the Council's policy. Transport assistance is offered subject to payment of a parental contribution to the cost of transport at a charge to be decided annually and reflecting the cost of provision. A family subsidy is also applied whereby only two statutory school age children per household will be subject to a charge. It is not a statutory requirement for the Council to provide free or assisted transport to pupils attending denominational schools for reasons of religious belief, with the exception of those families on qualifying benefits.

10.2.2 The denominational assisted transport policy was introduced in 2008 and a pupil attending a school prior to September 2008 and in receipt of free transport under the Local Authority Home to School Transport Policy for 2007, and continuing in statutory education at the same school beyond September 2008, remains entitled to free transport under the

2007 policy, until such time as a change of school takes place, they reach 16 and transport is then charged or a change of policy. However the Education Act 1996 states that wherever possible local authorities should ensure that transport arrangements are in place to support the religious or philosophical preference parents express.

10.2.3 If the Council decides to continue to subsidise, there would need to be a decision on what level of subsidy Council would wish to continue paying towards assisted transport. This would however leave in place transport support to faith schools.

### 10.3 Post 16 transport provision:

10.3.1 The current Cheshire East Post 16 Transport Policy statement for the Academic Year 2010-2011 makes a commitment:

- to ensure that learners of sixth form age (and for those with learning difficulties and/or disabilities aged 19-24) are able to access appropriate high quality education and training of their choice; and
- to provide support to those young people who need it most and removing transport as a barrier to participation in learning.

10.3.2 In developing the Statement, the Council had regard of its duties under the Apprenticeships, Skills, Children and Learning (ASCL) Act 2009. The duties include consideration of whether there is adequate transport provision available to facilitate the attendance of further education learners and consultation with young people of sixth form age and their parents when drawing up the Transport Policy Statement. However, the provision of Post 16 transport is not a statutory requirement and is at the discretion of the Local Authority. If charges were not increased the effect would be to place even greater strain on services to more vulnerable groups as the authority faces the challenge of living within its financial means.

### 10.4 Post 16 Transport for Pupils with Complex Special Needs:

10.4.1 Currently students with complex special needs who continue their education after the age of 16, whether at school or college can apply for transport via the Complex Special Needs Policy. Entitlement via this Policy is reviewed annually and assisted transport for post 16 pupils with complex special needs is currently made at the Council's discretion. This provision is currently offered free of charge, but a number of other local authorities have introduced a charge for this provision.

### 10.5 Medical Circumstances:

10.5.1 Under the current School Transport Policy for Children of Statutory School Age, parents of pupils who live within the normal walking distance of their zoned school, but are unable to walk to it because of a medical condition, may apply for assisted transport there. The same Policy also allows for exceptional cases to be considered which are

outside the normal policy and in exceptional circumstances “*appropriate transport may be approved by Director of Children’s Services in relation to children for whom there are very exceptional personal or domestic circumstances*”.

10.5.2 The results of the Equality Impact Assessment and the Council’s obligations under the Equality Act 2010 could limit the changes that it may be possible to introduce to this aspect of the policy.

#### 10.6 Cared for children in foster placements:

10.6.1 Transport is provided to enable access to schools and colleges. A separate review of transport arrangements will need to be undertaken.

10.7 In considering any amendments to the policy which could lead to a reduced entitlement for children to transport, case law has determined that local authorities must consult the parents of the children that are and may be affected before policy is altered. Once the policy is determined, the authority is obliged to publish it at least 6 weeks before the deadlines set for parents to lodge applications for school places in the normal admissions process.

#### 10.8 **Options**

10.8.1 Revise the Home to School transport Policy to cover only services that the Council is required to provide free of charge and cease funding or introduce charges for all other home to school transport arrangements from September 2012 for existing and new pupils.

10.8.2 Withdraw transport to faith primary and secondary schools completely, except for those pupils who would remain ‘eligible’ for the free transport to a faith secondary school under the Education Act 1996.

10.8.3 Restrict the offer of free transport to ‘eligible children’ only and means test all other applicants for assisted transport to faith primary and secondary schools.

10.8.4 Increase the charge for Post 16 transport again for 2011-12 with a view to withdrawing completely in 2012-13.

10.8.5 Do not introduce or increase charges.

10.8.6 Remove transport provision or charge for Post 16 pupils attending special schools and colleges. (removal of provision – savings excluded from table pending legal view).

10.8.7 Streamline the Home to School Transport policy to include applications for children with medical problems to be considered under the Exceptions to Policy clause and introduce a charge.

#### 11.0 **Access to Information.**



- 11.1 The background papers relating to this report can be inspected by contacting the report writer.

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## **APPENDIX 1:**

### **Eligible Children:**

#### **Within Walking Distance:**

- Children with SENs, a disability or mobility problems – specifically those of compulsory school age, who are registered at a qualifying school which is within walking distance of their home or at a place other than a school by virtue of arrangements made in pursuance of section 19(1), whose condition or problems means that they cannot reasonably be expected to walk to their educational establishment and for whom no suitable arrangements have been made by the local authority for them to become a registered pupil at a qualifying school nearer to home.
- Children with unsafe routes – specifically those of compulsory school age, who are registered at a qualifying school which is within walking distance of their home or at a place other than a school by virtue of arrangements made in pursuance of section 19(1), who could not reasonably be expected to walk to their educational establishment given the nature of the route and for whom no suitable arrangements have been made by the local authority for them to become a registered pupil at a qualifying school nearer to their home.

#### **Outside Walking Distance:**

- Children with no suitable alternative arrangements – specifically those of compulsory school age who are registered at a qualifying school which is not within walking distance of their home or at a place other than a school by virtue of arrangements made in pursuance of section 19(1) or has been excluded but is still registered at the school although receiving education outside the school premises, for whom no suitable arrangements have been made by the local authority for boarding accommodation at or near the educational establishment or for them to become a registered pupil at a qualifying school nearer to their home.

#### **Children Satisfying an Appropriate Condition:**

- Children from 8 years, but below 11 years – specifically those are registered at a qualifying school which is more than two miles from his home or at a place other than a school by virtue of arrangements made in pursuance of section 19(1), for whom no suitable arrangements have been made by the local authority for them to become a registered pupil at a qualifying school nearer to his home and who satisfy an 'appropriate condition'.

- Children aged 11 years or more – specifically those who are registered at a qualifying school which is more than two miles, but not more than six miles, from his home or at a place other than a school by virtue of arrangements made in pursuance of section 19(1), who do not have access to three or more suitable qualifying schools nearer to their home and satisfy an ‘appropriate condition’.
- Children aged 11 years or more – specifically those who are registered at a qualifying school which is more than two miles, but not more than fifteen miles, from their home and whose parent has expressed a wish, based upon their religion or belief, for the child to be provided with education at that school, there is no suitable qualifying school having regard to their religion or belief that is nearer to the child's home and satisfy an ‘appropriate condition’.

An ‘APPROPRIATE CONDITION’ is satisfied if:

- (i) the child falls within section 512ZB(4) of the Education Act 1996, i.e. they are entitled to free school lunches and milk; or
  - (ii) a parent of the child, with whom the child is ordinarily resident, is a person to whom the maximum rate of working tax credit is awarded, either individually or jointly.
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## **APPENDIX 2:**

### **Proposed Home to School Transport Consultation and Implementation Timetable**

<b>DATE</b>	<b>ACTION</b>
<b>17 February</b>	<b>SMT agrees proposal paper</b>
<b>By 10 March 2011</b>	<b>Portfolio holder permission to consult</b>
<b>5 days later (15<sup>th</sup> March)</b>	<b>Call in period ends</b>
	Draft letters to parents
	Questionnaire
	Website
	Set up venues
<b>By 18 March</b>	<b>Consultation Papers published for 6 weeks</b>
<b>End of March</b>	<b>Public consultation events</b>
	CEAPH
	CEASH
	CEASSH
	Schools Forum
	Schools Bulletin
	Develop questionnaire
	Develop Survey monkey
	Set up website
	Equality Impact Assessment
<b>By 29 April 2011</b>	<b>Public Consultation Closes</b>
<b>31 May</b>	<b>Children and Families Scrutiny Committee</b>
<b>6 June</b>	<b>Cabinet Decision on proposals</b>
<b>13 June</b>	<b>Call in period ends</b>
<b>15 June</b>	<b>Deadline for schools booklet production</b>
<b>End of June 2011</b>	<b>Schools Booklet published</b>
<b>September 2011</b>	<b>First charges made, if agreed</b>
<b>September 2012</b>	<b>All changes implemented</b>

**\*\***This timetable does not include an additional consultation, which may or may not be necessary, depending upon whether there are any material and substantial changes to the proposals.

### **Communication Strategy**

- Schools Bulletin
- CEAPH
- CEASH
- CEASSH
- Schools Forum
- Staff Bulletin
- Team Talk

- Cheshire News
- Press Release
- Website
- FIS

### **Proposed Consultees**

A copy of the consultation document should be sent to the following:

- All parents of children resident in Cheshire East currently receiving free or subsidised transport to denominational schools (including the parents of pupils due to join Year 7 at a denominational secondary school in September 2011 and who are eligible under the current policy for subsidised transport)
- All parents of children in Year 5 of denominational primary schools resident in Cheshire East who would be due to enter secondary school in September 2012.
- The Diocesan authorities
- All headteachers and governing bodies of Cheshire East maintained primary, secondary and special schools, (including denominational schools)
- All headteachers and governing bodies of denominational schools in neighbouring authorities where there are children resident in Cheshire East attending currently
- Academies
- All Cheshire East Elected Members
- Neighbouring local authorities' Directors of Children's Services
- Members of the youth parliament
- Colleges of Further Education
- Unions and Professional Associations