

North Yorkshire County Council

Executive

3 September 2019

Charges for Home to School Paid Travel Permits and Post 16 Travel

Report of the Corporate Director - Business and Environmental Services

1.0 Purpose of Report

- 1.1 To seek approval to cease charging for home to school transport for non-entitled and Post 16 children travelling on certain County Council provided home to school transport services until the legal position is clarified.

2.0 Background

- 2.1 The Education Act 1996 (The Act) provides a statutory duty on the County Council to provide home to school transport free of charge to all eligible children up to the end of year 11. Eligibility is defined by reference to age, the safe walking distance to the school (which varies according to the age of the child), any mobility restrictions of the child and other factors. The Council also has a duty to assist in the provision of transport for 16-19 year old pupils to travel to sixth form or college which can be through the provision of transport or by making a financial contribution towards cost. Where the Council provides home to school transport for post 16 pupils it is allowed to recover a contribution towards the costs. The obligation on the Council to provide home to school transport is limited to the catchment school/college or nearest suitable school/college if the catchment school is full.
- 2.2 The Council has no obligation to make arrangements to transport non-entitled children to school but has a power to do so under Section 508C of the Act. The Council makes a charge where it provides this discretionary service.
- 2.3 Current practice within the County Council as with many other local authorities, is that home to school transport is arranged only for entitled pupils, but that any spare seats on busses or coaches are then made available to non-entitled children and post 16 pupils for a charge. This may be through either:
- the issuing of permits for regular transport (either one way or return) – permits are allocated based on published assessment criteria that prioritise factors such as special educational needs and the stage the child is at in their education; or,
 - by allowing non-entitled and post 16 pupils to pay a daily fare.
- 2.4 The full year charges for daily return permits for 2019/20 are:
- £390 for a non-entitled pupil up to year 11,
 - £490 for pupils 16 or over travelling to college or sixth form.
- 2.5 Daily fares vary from service to service but a minimum of £2 per day per return journey is charged.
- 2.6 Permits are often referred to as either paid travel permits and/or post 16 travel permits, but for the purposes of this report are aggregated into the generic term of 'paid travel permits' or PTPs.

- 2.7 The County Council's policy framework in relation to the provision of home to school transport, including the charges to be levied for the provision of PTPs has recently been updated so that charges for permits will be standardised to a single rate from September 2020/21.
- 2.8 Selling spare seats on home to school transport to non-entitled and Post 16 pupils makes effective use of spare capacity in the service, provides a safe and effective service for pupils not eligible for free transport, reduces congestion and also generates valuable income to the Council.
- 2.9 The County Council received £415K (£371K Mainstream and £44K for SEND) in income from the sale of 1,204 paid travel permits in 2018/19. In comparison, the total number of eligible pupils receiving free home to school transport was 12,662 in that year.
- 2.10 In addition to income from selling permits, the County Council received approximately £196k in income for 2018/19 from the sale of daily fares to non-entitled and post 16 pupils, almost exclusively from services in the Harrogate, Scarborough and Selby areas.
- 2.11 In order to meet its statutory functions for the provision of home to school transport the Council seeks tenders from operators to transport only entitled pupils and does not set out to provide larger vehicles than necessary, however it is not unusual for operators to provide vehicles with seats greater than are needed to transport only entitled pupils. These seats can either remain empty or the Council can allow others to use these spare seats. The Council in no way seeks to provide larger vehicles nor asks the operator to provide vehicles with a greater capacity than is needed to take only the entitled pupils.

3.0 Public Service Vehicles Accessibility Regulations 2000 and the Equality Act 2010

- 3.1 The Public Service Vehicle Accessibility Regulations (PSVAR or The Regulations) were introduced in 2000 to improve access to buses for disabled people. The Regulations apply to all new public service vehicles (buses or coaches):
- introduced since 31 December 2000
 - with a capacity exceeding 22 passengers
 - used to provide a local or scheduled service
- 3.1.1 A public service vehicle can be broadly defined as a vehicle capable of carrying more than eight passengers and used for hire or reward.
- 3.2 Vehicles have had to comply with the Regulations at different times depending on their age, and weight of the vehicle:
- New buses weighing up to 7.5 tonnes and all new coaches have been required to have wheelchair access from 1 January 2005
 - All older buses weighing up to 7.5 tonnes have been required to be fully accessible from 1 January 2015
 - All full size single deck buses over 7.5 tonnes have been required to be fully accessible from 1 January 2016,
 - All double deck buses have been required to be fully accessible from 1 January 2017.
 - All remaining vehicles are required to be fully accessible from 1 January 2020.

- 3.3 The Regulations only apply to public service vehicles with a carrying capacity of more than 22 passengers that are used on local or scheduled services and have been introduced into service since 31 December 2000. Part of the definition of both local and scheduled services is that a fare (direct or indirect) is paid to travel therefore any service provided without charge is excluded from the Regulations.
- 3.4 Section 175 of the Equality Act 2010 makes the breach of the Regulations a criminal offence and states that:
- A person commits an offence by
 - contravening a provision of the PSVAR;
 - using on a road a regulated public service vehicle which does not conform with a provision of the regulations with which it is required to conform;
 - causing or permitting such a regulated public service vehicle to be used on a road.

4.0 Complaint and Legal Challenge

- 4.1 The Council has received a complaint regarding the provision of a specific home to school service in the Craven area that has implications for the continued practice of selling paid travel permits to enable the transport of non-entitled and Post 16 pupils.
- 4.2 The complainant has alleged that the home to school service in question was being provided using a vehicle with more than 22 seats without being compliant with Schedule 1 of the Regulations in that it was not accessible for wheelchair users. The complainant stated that the bus being used should therefore be wheelchair accessible and that it was not. The complaint also alleged a breach of section 175 of the Equality Act 2010 and requested that the Council ceased the use of such inaccessible vehicles for school services.
- 4.3 Prior to receipt of the complaint it had been understood that home to school services were exempt from the Regulations, regardless of whether spare seats were sold, but the complaint has led to a review of the relationships between the Regulations and the Council's ability to charge for transporting non-entitled and Post 16 pupils, and to an assessment of current practice compared to other authorities. This has involved taking legal advice as well as discussions with DfT and ATCO (Association of Transport Co-ordinating Officers)
- 4.4 This has established that the understanding and practice within North Yorkshire is common amongst local authorities, and in particular with shire counties and rural authorities who commonly use the income from selling spare seats to help fund the cost of delivering that service. Although not explicit within the Regulations, it is widely understood within local authorities that the Regulations do not apply to home to school transport.
- 4.5 The complainant advised on 26 July 2019 that he has started proceedings to bring a private prosecution against a named officer of the Council for allowing the provision of home to school transport services that were not compliant with the Regulations, and in doing so committed an offence under S175 of the Equality Act.

5.0 Legal Opinion

- 5.1 There is a legal argument that by charging for spare seats on home to school transport, the vehicles used on those journeys may be brought within the requirements of the Regulations, depending on age and carrying capacity of the vehicle used. There has been no case law regarding this point but an argument has been put to the Council that this is in breach of the legislation. The Council therefore needs to take a view of this matter. The issue of charging for such provision is a matter for the Executive to take and therefore this report brings this issue to the Executive for consideration.
- 5.2 The Regulations provide for a number of exemptions, e.g. where services are provided as a 'tour' (defined as "a service where a public service vehicle is used for or in conjunction with the carriage of passengers to a particular location, or particular locations, and back to their point of departure.") It would ultimately be for the courts to determine if home to school transport comes under this definition and the Council is engaged with the DfT and MPs to try to clarify this and other issues however, to avoid any argument that the Council is in breach, it is advised that the Council stops the current practice of charging for any spare seats pending further clarification and/or guidance from Government.

6.0 Implications for the Council

- 6.1 There are approximately 160 contracts/services (out of a total of 1100) that might be affected if the current interpretation of the legislation is incorrect and home to school services carrying non-entitled and Post 16 pupils are required to comply with PSVAR. On those services there are approximately 900 non-entitled pupils who are paying a total of approximately £305k each year for their paid travel permits. The issue does not impact on services where:
- daily fares are charged - as the vehicles used are understood to already comply with the PSVAR,
 - Travel is by rail
 - Travel is on commercial bus services - which must be provided using compliant vehicles
 - Travel on vehicles less than 22 seats – which are exempt from PSVAR
- 6.2 The Council has a number of options in relation to those affected services:
- a) Do nothing
 - b) Use compliant vehicles on routes where at least one pupil has a paid travel permit
 - c) Cease transporting some or all non-entitled and post 16 pupils
 - d) Cease charging some or all non-entitled and post 16 pupils to travel
- 6.3 **a) Do nothing**
This option would have the County Council continue to provide the services to those entitled pupils and provide a charge for any spare seats that are available on the relevant routes. Prior to the current complaint, the existing arrangement has not attracted any complaints from users or parents of the service. This may be partly explained on the basis that the Council arranges transport for all entitled children (including any requiring accessible transport) however it is notable that there have been no complaints to date from any non-entitled or post 16 child on the basis that they were denied transport because vehicles are not accessible. Conversely, the Council has now received a complaint that the Council is not operating lawfully by selling these spare seats and also faces a threat of the complainant bringing a private criminal prosecution under Section 175 of the Equality Act.

- 6.4 It is therefore recommended from officers that continuing with the existing arrangements is not acceptable and that immediate action should be taken to address these issues in the short term, and that further action should be taken to develop a sustainable long term solution.
- 6.5 **b) Use Compliant Vehicles on routes where at least one pupil has a paid travel permit**
Past practice is that the Council does not set out to procure accessible vehicles for mainstream home to school transport. There is no specific obligation to do so, and transport needs for entitled pupils requiring accessible vehicles are met through bespoke arrangements. When services are put out to tender, operators are then free to offer accessible or non-accessible vehicles with contracts awarded on the basis of the lowest cost to the Council (subject to meeting minimum quality standards).
- 6.6 Procurement in this way ensures a cost effective service and provides for greatest competition between both small and large operators.
- 6.7 The Regulations have applied to vehicles used for local bus services for some time so operators of these services may be able to offer accessible vehicles for home to school transport in future using existing stock (some already do). However, the majority of mainstream home to school transport in North Yorkshire is provided by coach operators who use vehicles that are exempt from the Regulations as they are otherwise used mainly on tours. To date there has been no immediate incentive for coach operators to provide accessible vehicles as the additional costs of new vehicles would put them at a competitive disadvantage.
- 6.8 This option would require that vehicles used on home to school services that also carry non-entitled or Post 16 pupils be compliant or otherwise exempt from the Regulations. This is the desirable outcome as it increases the opportunity for disabled pupils to use mainstream transport but it is highly unlikely that this is a deliverable option in the short term except where pupils are already transported on compliant or exempt vehicles.
- 6.9 The precise number of vehicles currently being used on any one day that do not meet the requirements of the Regulations is not clear but, from the Council's knowledge of the fleet operated by its contractors, it is highly probable that most mainstream transport vehicles are not compliant (albeit some may not be brought under the requirements until January 2020 due to their age) and could not be economically retrofitted to make them compliant. This is a consequence of the local market where mainstream home to school transport is typically provided using older vehicles. There are limited numbers of accessible coaches available in the market without buying new, meaning that it would take some time to secure the required numbers, and it is highly likely that, for all but a few routes, the additional costs to provide accessible vehicles would outweigh the income from selling spare seats.
- 6.10 This option will require tendering for the services where spare seats are proposed to be sold to enable a direct comparison of cost for an accessible vehicle compared to a non-accessible vehicle. Discussions with operators and the industry generally suggests that the additional cost are likely to be significant, and intelligence from another authority who has recently done this exercise suggests that the average additional cost may be circa £10,000 p.a. per vehicle.
- 6.11 This would put the total cost for using compliant vehicles on the routes where spare seats are sold at circa £1.6m p.a. This is compared to the current revenue from selling spare seats of £415k p.a., meaning the net difference could be a cost to the Council of £1,185K p.a. This level of cost for the provision of a discretionary service is considered as unaffordable against other Council pressures.

- 6.12 Most of the 160 affected routes that currently carry non-entitled or post 16 pupils carry only a few paying pupils therefore it is highly unlikely that the revenues generated on most routes will cover the additional cost of the vehicle. However, work has started to define these additional costs by seeking tenders, initially for those services carrying more than 10 potential fare paying pupils (being those routes most likely to provide value for money), although it is anticipated that for all but a handful of routes the level of income will not exceed the additional cost.
- 6.13 This option cannot be delivered quickly and is unlikely to provide value for money for all but a few routes, and represents the highest cost of all the options assuming sufficient vehicles could be secured. This option would improve accessibility for those routes where spare seats are sold but would not address accessibility on the remaining (majority) of mainstream home to school transport routes.
- 6.14 **c) Cease Transporting all Non- Entitled and Post 16 Pupils (except where vehicles comply with PSVAR)**
The option here is to cease transporting those non-eligible or post 16 pupils that cannot be economically or practically transported in accessible or exempt vehicles. In practice this would mean ceasing transport for almost all mainstream pupils with paid travel permits and stopping the taking of daily fares on some routes where vehicles may not currently be compliant. Under this option the Council could continue to charge for permits on services that use compliant or exempt vehicles such as commercial buses and vehicles with fewer than 22 seats, as well as those that involve travel by train.
- 6.15 This is a practical long term solution as it ensures compliance quickly at least cost, although it means the loss of circa £305K p.a. income from the sale of the majority of paid travel permits and the possibility of a loss of up to £30k of income from daily fares. This option can be implemented quickly as the terms of use for paid travel permits make it clear that they can be withdrawn on 7days' notice however, this option provides the worst outcome for parents of the circa 900 children who are faced with finding alternative transport for their children at very short notice.
- 6.16 Under this option the Council may incur additional costs for those post 16 pupils who are eligible for transport assistance who will then be offered alternative arrangements. This will be determined on a case by case basis but may include the purchase of passes for commercial bus services or payment of an allowance. It is also possible that in some cases the additional cost and practical burden of arranging their own transport may result in non-entitled pupils moving schools such that they become entitled to free transport. This will further increase costs to the County Council. It is not possible to identify these additional costs at this stage but it would be prudent to allow for an additional £20k p.a.in evaluating this option.
- 6.17 Ceasing to transport non-entitled and Post 16 pupils ensures home to school transport services are provided lawfully without any further opportunity for challenge under equality legislation, as they would be unequivocally exempt from the Regulations, but perversely given the intentions behind the original complaint, does little or nothing to improve accessibility.

6.18 d) Cease Charging All Non-Entitled and Post 16 Pupils to Travel (except where vehicles comply with PSVAR)

This option is proposed only on a temporary basis pending further clarification of the legal position with the DfT and to enable further discussion and lobbying of DfT in an attempt to secure a clarification of the law and/or a specific exemption from the Regulations for home to school transport. Implementation of this option enables the circa 900 affected pupils to continue to travel, albeit for a limited period, but requires the Council to voluntarily waive its ability to charge those pupils for that transport. The cost of this option is similar to option c) although as post 16 pupils will continue to be transported there is no additional cost associated with allowances.

6.19 Under this option the Council would continue to charge those pupils transported on accessible vehicles but this creates an apparent perverse outcome where non-entitled and post 16 SEND pupils are proportionally more likely to be charged, whereas most non-entitled and post 16 mainstream pupils will not. This could be addressed by limiting charges to mainstream pupils only (travelling on services that are required to be compliant or are otherwise exempt), but not charging SEND pupils regardless of the vehicle used for travel.

6.20 This option also allows the early re-introduction of charges if and when the position is clarified, and delivers a robust defence to any challenge with minimum inconvenience to children and families.

6.21 It is proposed that this option should be limited to no more than 12 months, initially for the autumn term but to be extended by each term in the 19/20 academic year in the absence of any further clarification of the legal position. Continuing this option beyond the 19/20 academic year will be challenging as new applications for paid travel permits will be made with an expectation of free travel which is likely to significantly increase numbers.

7.0 Proposals

7.1 It is proposed that in order to remove any doubt about compliance with the Equality Act 2010 and the Public Service Vehicle Accessibility Regulations 2000 the County Council

- Ceases charging non-entitled and Post 16 pupils (except mainstream pupils travelling by rail, travelling on commercial bus services or paying daily fares and travelling on PSVAR compliant vehicles) to travel on Council provided home to school transport for a period up to the end of the 19/20 academic year, and;
- Cease taking any further applications for paid travel permits until the legal position is clarified and/or changed (except for post 16 pupils which will remain open for applications on a first come first served basis until the end of September 2019 to allow for the usual late applications following GCSE results).
- Carry out further soft market testing and seek speculative tenders where appropriate to better understand the feasibility and cost differential of providing PSVAR compliant vehicles.
- A further report with appropriate equality impact assessment be brought to the Executive prior to the end of the 19/20 academic year with either:
 - a. Proposals to reintroduce charges where suitable clarification or a change in law has been provided that would enable the reintroduction of such charges or in the event that clarification or a change in law is not provided by that time

- b. Long term proposals to address the application of PSVAR to home to school transport including a consideration as to whether the Council ceases to providing transport using spare seats on buses that do not comply with PSVAR, or continues to provide them free of charge.

7.2 The County Council has a duty to publish a Transport Policy Statement detailing the assistance to be provided for post 16 pupils, including the level of any fees, by 31 May each year for application in the following academic year. Subject to clarification and/or further statutory guidance on the application of PSVAR to home to school transport it would therefore be desirable to conclude the Council's position on the potential to reintroduce charges before 31 may 2020.

8.0 Implications for Operators and on the Market

8.1 Operators are understood to be working on the same understanding as the Council on the applicability of PSVAR to home to school transport. School transport operators are legally obliged to comply with the Regulations where applicable but are not aware which pupils are entitled to free travel, and which pupils, if any, are non-entitled or Post 16 and hold a paid travel permit. Operators have been made aware of the contents of this report and will be advised of any actions taken as a result, and in future will be made aware of any non-entitled pupils travelling on their services. This will enable the operator to take their own advice on the need or otherwise to provide accessible vehicles.

8.2 The home to school transport market within North Yorkshire is fragile with many operators working on low margins and without resources to invest in new vehicles. In many cases operators will continue to run non-compliant vehicles on work which is outside the scope of PSVAR, and so it not simply a matter of time before vehicles used for home to school transport become compliant by default. There is therefore a risk that action to move towards provision of accessible vehicles for mainstream home to school transport may act to unsettle the market and result in consolidation and/or the loss of operators, with a corresponding pressure on prices. Many operators also provide commercial and subsidised local bus services therefore any impact on home to school transport provision could also have consequential impacts on local bus services if it results in market failures, and potential wider impacts on local bus services.

9.0 School Provided Transport

9.1 In addition to the home to school services provided by the County Council, a number of schools also provide their own bus services for non-entitled and post 16 pupils, and in some cases the availability of this transport is essential for the sustainability of the school. In a few cases the County Council has historically procured these services for schools and has received payments from pupils on behalf of the school concerned.

9.2 These services are within scope of any challenge therefore it would not be appropriate for the County Council to expose itself to additional risk by continuing to organise transport for schools in the same way. However it should be a matter for each school to decide how to respond and the County Council cannot unilaterally decide that the school should forgo its income and/or cease transporting pupils.

- 9.3 It is impractical to expect schools to make their own arrangements without reasonable notice, and it would cause them considerable financial harm to forgo the income, therefore it is proposed that the County Council offer financial support to the relevant schools to cover lost income for a limited period of time, to enable them to arrange their own transport and take appropriate legal advice and determine an appropriate response. The appropriate period of support will need to be discussed with schools on a case by case basis but it is prudent to make provision for support for up to the end of the 2019/20 academic year. The additional cost to the County Council for this level of support will be circa £110k
- 9.4 As a further precautionary measure other schools know to be arranging their own transport are being advised of the contents of this report and advised to seek their own legal advice.

10.0 Conclusions

- 10.1 The County Council has provided home to school transport in good faith and in the genuine belief that it complied with all legal obligations. A recent challenge has caused a review of operating practice which has identified a risk that mainstream services which also transport non-entitled and Post 16 pupils may be failing to comply with statutory requirements for the vehicles to be accessible for wheelchairs.
- 10.2 The County Council is committed to equal opportunities and improving accessibility. The Council's Equalities Policy states that:
"North Yorkshire County Council welcomes and celebrates diversity and the strengths this brings to our communities and workforce. The council aims to provide excellent and efficient local services enabling everyone to fulfil their potential". To do this we must give everyone equal access to services and job opportunities."

It goes on to say....

"We have a duty to make reasonable changes to the way we do things so that disabled people can use our services and work for us. We recognise that everyone is different and we will treat people as individuals."

- 10.3 Whilst it is therefore desirable that all school transport should be accessible, it is not a statutory requirement. Services provided free of charge are exempt from the Regulations meaning that mainstream home to school transport (as a free service to entitled pupils) can be provided cost effectively using non-compliant vehicles. The Council retains its statutory duty to transport all entitled children and fulfils this when required through the provision of bespoke arrangements.
- 10.4 The challenge to current practice relates only to services where the Council allows non-entitled and Post 16 pupils to occupy the spare seats on school buses. This is a mutually beneficial arrangement for families and the Council but it is possible that the charge made by the Council for this discretionary service constitutes a fare which then might mean that the vehicle is required to be accessible. It is believed that this is an unintended consequence of the legislation which then creates a perverse outcome where the Council is effectively being prevented from receiving any income from non-entitled and Post 16 pupils occupying spare seats. Currently it is impractical and likely to be prohibitively expensive for the Council to require operators to provide accessible vehicles on all routes where spare seats are made available to non-entitled or post 16 pupils.

- 10.5 The Council has now to decide what action to take in response to this dilemma. Four options have been identified with the proposal being that the Council cease to make a charge for non-entitled and Post 16 pupils to travel on home to school transport. This is unlikely to be sustainable in the long term but will ensure compliance with statutory obligations and allow time for discussions with Government to seek further clarification and/or a change in the law to enable the continuation of past practice. In the event of there being no such clarification or change the Council will have to further consider its options including permanently waiving charges or ceasing to providing transport for non-entitled mainstream pupils unless and until operators are able to provide accessible vehicles at an affordable cost to the Council.

11.0 Legal Impacts

- 11.1 This report outlines the relevant statutory duties and powers of the Council in relation to home to school transport, and the potential risk of a breach of S175 of the Equality Act 2010 brought about by the use of certain vehicles where a charge is made to transport non-entitled and Post 16 pupils.
- 11.2 If found guilty, a breach can result in a level 4 fine on the Standard Scale (£2,500) but it is worth noting that if the offence is committed by a body corporate and is committed with the consent or is attributable to neglect on the part of a responsible person, the responsible person as well as the body corporate is guilty of the offence.
- 11.3 The definition of responsible person includes a director, manager, secretary or similar officer, or in the case of a body corporate whose affairs are managed by its members, a member.
- 11.4 The Legal advice is that if the Council stopped charging for the spare places, then the requirement for the vehicles transporting the pupils to comply with the PSVAR regarding accessibility will not apply. The basis of this advice is that in those circumstances the relevant service would fall outside the definition of “public service vehicle” contained in section 1(1)(a) of the 1981 Act. As a result, the service or services in question would also fall outside the definition of “local service” contained in section 2(1) of the 1985 Act and regulation 2(1) of the Regulations; and outside the definition of “scheduled service” contained in regulation 2(1) of the Regulations. Therefore there would be no question of the Council potentially inadvertently breaching these Regulations. Whilst it is understood that many local authorities have been carrying out the practice described in this report, it is recommended that the Council removes any potential criticism of continuing with this practice and actively engages with DfT to get clarification on the process and not to reintroduce a charge until after clarification is obtained and a further report taken to the Executive for a future decision, including looking at options of providing a compliant fleet of vehicles. However in the meantime, it is recommended that no charges are made as identified in this report.

12.0 Financial Impacts

- 12.1 In 2018/19 the County Council received £519,078 in income from the sale of paid travel permits. This included £104,664 of income which was passported to schools who pay for the transport themselves. The net income for the County Council from the sale of paid travel permits for 2018/19 was £414,414, which included £110k arising from the sale of permits for travel on services required to use PSVAR exempt vehicles or otherwise exempt. The income attributable to the sale of permits for travel on vehicles which are understood not to be PSVAR compliant is circa £305k. Of the total income from sale of permits in 2018/19, £371,098 related to mainstream pupils and £43,316 for SEND.

12.2 In addition to income from sale of permits, the County Council received income in 2018/19 of £196k from daily fares for non-entitled and post 16 pupils travelling on routes mainly in Harrogate, Scarborough and Selby.

12.3. The estimated full year costs of the options outlined above are given in Table 1.

Option	Description	Full Year Cost (£k)					Total Cost
		SEND	Mainstream		Post 16	Vehicles	
		PTPs	PTPs	Fares	Allowance		
a	Do nothing	0	0	0	0	0	0
b	Use PSVAR compliant vehicles on routes where at least one pupil has a paid travel permit	0	0	0	0	1,600	1,600
c	Cease transporting all non-entitled and post 16 pupils except where compliant with/ exempt from PSVAR	10	295	30	20	0	355
d	Cease charging all non-entitled and post 16 pupils to travel except those travelling on vehicles compliant with or exempt from PSVAR	10	295	30	0	0	335
Proposed	Cease charging non-entitled and post 16 pupils to travel except mainstream pupils travelling on vehicles compliant with or exempt from PSVAR	43	295	30	0	0	368

Table 1. Estimated full year costs of Options

12.4 The recommended option is to cease charging for paid travel permits for non-entitled and post 16 mainstream and SEND pupils but to continue to charge daily fares (where PSVAR compliant vehicles are used) and to charge mainstream pupils for permits for travel on commercial bus services, by rail and on vehicles which are exempt from PSVAR (<22 seats). The cost of the proposal is marginally higher than the cost of either ceasing to provide transport or charging where transport is provided on compliant vehicles but:

- a) Impacts on pupils and families are kept to a minimum as they can continue to travel
- b) it protects against disproportionate impacts on SEND pupils when charging for travel on compliant or exempt vehicles

12.5 The estimated reduction in income for the next 3 years assuming no change or clarification of the law to enable reintroduction of charges and the lowest cost option thereafter is set out in table 2.

Annual Cost (£'000)	2019/20	2020/21	2021/22
	246	360	355

Table 2. Estimated Annual Costs (Assuming no change/clarification in law)

12.6 The costs in Table 1 and Table 2 do not include any allowance for financial support to schools that the County Council currently arrange transport for. The proposal is that the County Council provides financial support for a period up to the end of the 19/20 academic year which will increase the total cost to the Council for 19/20 up to £319k, and up to £396 for 20/21.

- 12.7 The County Council has recently revised its charging scheme for non-entitled and Post 16 pupils with the intention of moving towards a single charge for all permits. It is also proposed to increase charges from 2020/21 so that post 16 pupils pay £600 p.a. with charges for other non-entitled pupils in years 11 and below increasing progressively each year until they reach the same levels as post 16 pupils in 2022/23. These changes are forecast to deliver additional income to the Council and help deliver future savings which will be put at risk as a consequence of issues raised in this report. The additional impact of permanently losing the income from the sale of spare seats to mainstream non-entitled and post 16 pupils will be a further £160,000 p.a. pressure on Council budgets as a result of an inability to deliver on future savings targets.
- 12.8 It should also be noted that the current savings target relating to the introduction of Post 16 charging for SEN pupils in September 2018 will also be negatively affected by any changes as a result of this report. Any removal of charges also removes the financial incentive from the parents/carers' perspective to take responsibility to arrange transport for their child, so it is highly likely that the savings already delivered as a result of action to reduce the number Post 16 SEN pupils being transported will be reversed if charges are waived. Future years planned savings will also be put at risk if charges are waived as a long term measure. The financial impact of this could be between £400,000 to £480,000 p.a.

13.0 Equalities Impacts

- 13.1 An equalities impact assessment is attached as Appendix 1.
- 13.2 The impact assessment identifies the potential for the provision of home to school transport to impact on children and young people with a physical disability in that many of the coaches used by contractors to provide mainstream transport are not accessible for wheelchair users and do not comply with the requirements of the Public Service Vehicles Accessibility Regulations 2000 (the Regulations).
- 13.3 In most cases home to school transport falls outside the Regulations as it is provided free of charge to entitled pupils, with transport for pupils with special educational needs or a disability (SEND) being typically arranged using a combination of the County Council's own fleet of accessible minibuses, or private, wheelchair accessible, taxis as necessary. Alternatively, parents and carers may opt to be paid an allowance to transport entitled children to school.
- 13.4 In most cases, current arrangements do not specifically require contractors providing mainstream home to school services to use PSVAR compliant vehicles. The exceptions are where the Council simply buys passes on commercial bus services, or where the service includes for a staged fare to be charged and is available to anyone to use. Under these scenarios the services will be registered with the Traffic Commissioner and must be provided using PSVAR compliant vehicles. In practice there are relatively few such routes and most mainstream home to school services are operated using vehicles that do not comply with the Regulations.
- 13.5 Council policy and practice does not therefore commit the Council to transport pupils who use wheelchairs with their peers, although where a pupil uses a wheelchair operators are encouraged to provide an accessible vehicle where possible and affordable. In recent years there has only been one incident where an entitled pupil travelling to a mainstream school requested to travel with their peers on accessible transport and in this case the operator was able to provide an appropriate vehicle. Where this is not possible separate arrangements will be in an accessible taxi provided by the Council.

- 13.6 Where an accessible vehicle is not available, or affordable, the practice of providing separate specialist transport as necessary for entitled pupils who are wheelchair users is considered to be appropriate. The alternative would be to specify that all mainstream vehicles should be accessible but such a policy would be disproportionate given the low number of entitled wheelchair users, impractical in the short term as there are insufficient vehicles to meet demand, and unaffordable as the costs of early replacement of vehicles would be passed onto the Council.
- 13.7 The practice of making spare seats available to non-entitled and post 16 pupils limits the availability of the offer to those pupils who are capable of accessing the transport. In practice this creates additional impacts on those with a physical disability as it is a matter of fact that most mainstream home to school transport is provided using vehicles which are not accessible for wheelchair users.
- 13.8 It is therefore acknowledged that the practice of making spare seats on mainstream home to school transport available to non-entitled and post 16 pupils when such transport is provided mainly using non-accessible vehicles has a disproportionate impact on pupils with a physical disability that requires the use of a wheelchair.
- 13.9 This impact is compounded by the fact that as 'non-entitled pupils' such pupils are not offered any alternative by the Council and are required to make their own arrangements to travel to school. This could be mitigated by the Council offering the same provision as for entitled pupils but as this is likely to involve separate arrangements it compromises the objective of filling the spare seat on the vehicle.
- 13.10 The proposal to continue to make spare seats available to non-entitled and post 16 pupils but to waive charges except in certain circumstances is therefore recognised as having a disproportionate impact on those with a protected characteristic as wheelchair users remain unable to use the majority of mainstream school transport, but it is proposed that the recommendation be acceptable, given that:
- a) It is proposed that this practice be time limited up to the end of the 19/20 academic year
 - b) It is not proposed to charge SEND pupils regardless of the vehicle used
 - c) The alternative option of not making spare seats available is perverse and will create significant inconvenience to circa 900 pupils and increase costs to the Council by more than £315k p.a.
- 13.11 However, in the event that the law is subsequently clarified or changed to enable the Council to reintroduce charges for spare seats on vehicles that do not comply with PSVAR it would be appropriate to further consider the longer term equalities implications of reintroducing charges as part of any decision to do so.

14.0 Recommendations

- 14.1 That the County Council ceases charging non-entitled and post 16 pupils to travel on home to school transport except:
- a) where daily fares are charged and vehicles are compliant with PSVAR,
 - b) for mainstream pupils transported:
 - i) by rail,
 - ii) by commercial bus services
 - iii) by vehicles which are otherwise exempt from PSVAR (i.e. fewer than 22 seats)
- 14.2 That charges be waived initially for the Autumn term 2019 and extended as necessary on a term by term basis for a period up to the end of the 19/20 academic year, and;

- 14.3 A further report be brought to the Executive prior to the end of the 19/20 academic year with either:
- a. Proposals to reintroduce charges where suitable clarification or a change in law has been provided that would enable the reintroduction of such charges or, in the event that clarification or a change in law is not provided by that time,;
 - b. Long term proposals to address the application of PSVAR to home to school transport including recommendations as to whether the Council ceases to provide transport using spare seats on buses that do not comply with PSVAR or continues to offer them free of charge.
- 14.4 An Equality Impact Assessment be undertaken involving consultation with key stakeholders prior to any further decision concerning either the reintroduction of charges for non-entitled and Post 16 pupils, or other proposed arrangements for the period beyond the end of the 2019/20 academic year.
- 14.5 That no further applications for paid travel permits be accepted for the 2019/20 academic year except for post 16 pupils which will be considered using the usual criteria until the end of September 2019.
- 14.6 That the Council immediately cease collecting income for transport arranged on behalf of schools (except where vehicles are compliant with PSVAR) and ceases to arrange transport for those schools from the beginning of the 2020/21 academic year (or earlier by agreement), and that discussions are held with those schools to determine the level of appropriate financial support (if any) from the County Council necessary as a consequence of lost income.
- 14.7 That all schools within North Yorkshire be advised of the contents of this report and the decisions of the Executive relating to this report.

DAVID BOWE
Corporate Director
Business and Environmental Services

Author: IAN FIELDING
Assistant Director, Transport, Waste and Countryside Services

Background: None

Equality impact assessment (EIA) form: evidencing paying due regard to protected characteristics

(Form updated May 2015)

Charges for Home to School Paid travel Permits and Post 16 Travel

If you would like this information in another language or format such as Braille, large print or audio, please contact the Communications Unit on 01609 53 2013 or email communications@northyorks.gov.uk.

যদি আপনি এই ডকুমেন্ট অন্য ভাষায় বা ফরমেটে চান, তাহলে দয়া করে আমাদেরকে বলুন।

如欲索取以另一語文印製或另一格式製作的資料，請與我們聯絡。

اگر آپ کو معلومات کسی دیگر زبان یا دیگر شکل میں درکار ہوں تو برائے مہربانی ہم سے پوچھیے۔



Equality Impact Assessments (EIAs) are public documents. EIAs accompanying reports going to County Councillors for decisions are published with the committee papers on our website and are available in hard copy at the relevant meeting. To help people to find completed EIAs we also publish them in the Equality and Diversity section of our website. This will help people to see for themselves how we have paid due regard in order to meet statutory requirements.

Name of Directorate and Service Area	Children and Young People and Business and Environmental Services Directorates
Lead Officer and contact details	Project Owner: Ian Fielding
Names and roles of other people involved in carrying out the EIA	Shanna Carrell
How will you pay due regard? e.g. working group, individual officer	Consideration of the EIA by the Officers involved in the issue
When did the due regard process start?	February 2019
<p>Section 1. Please describe briefly what this EIA is about. (e.g. are you starting a new service, changing how you do something, stopping doing something?)</p> <p>Current practice within the County Council is that home to school transport is arranged only for entitled pupils, but that any spare seats on vehicles are then made available to non-entitled children and post 16 pupils. Non-entitled pupils are those deemed to be able to walk to school, or those whose parents chose to send them to a school which is not their catchment school, or nearest alternative if the catchment school is full. Access to transport for non-entitled and post 16 pupils may be through either the purchase of a permit to allow daily transport, or on a limited number of services, through the payment of a daily fare. This makes use of spare capacity in the service and provides a safe and effective service for pupils.</p> <p>Many of the coaches used by contractors to provide mainstream school transport are not accessible for wheelchair users and do not comply with the requirements of the Public Service Vehicles Accessibility Regulations 2000 (PSVAR).</p> <p>In most cases home to school transport falls outside the Regulations as it is provided free of charge to entitled pupils, with transport for pupils with special educational needs or a disability (SEND) being typically arranged using a combination of the County Council's own fleet of accessible minibuses, or private, wheelchair accessible, taxis as necessary. It is alleged that the 'selling' of spare seats to non-entitled and post 16 pupils requires the vehicles used to transport those pupils within the scope of PSVAR, and therefore such vehicles should be accessible for wheelchair users.</p> <p>There is therefore a need to review the provision of home to school transport in response to this challenge.</p>	
<p>Section 2. Why is this being proposed? What are the aims? What does the authority hope to achieve by it? (e.g. to save money, meet increased demand, do things in a better way.)</p> <p>The purpose of the review of home to school transport is to consider options available to the Council in response to the recent challenge, and ensure compliance with statutory duties for provision of home to school transport and equalities.</p>	
<p>Section 3. What will change? What will be different for customers and/or staff?</p> <p>The Council has approximately 160 mainstream school contracts/services (out of a total of 1100) where spare seats are made available to non-entitled and Post 16 pupils. Most of the vehicles used on these services are not accessible.</p> <p>Four options have been identified to address the complaint that the Council is providing home to school transport in such a manner that it is in breach of its statutory duties. The proposed options are:</p> <ol style="list-style-type: none"> Do nothing Transport non-entitled and post 16 pupils using vehicles that comply with PSVAR Cease transporting non-entitled and post 16 pupils (except where transport is compliant or otherwise exempt from PSVAR) Cease charging to transport non-entitled and post 16 pupils 	

The proposal is to cease charging for the issue of permits to non-entitled and post 16 pupils except where transport is provided to mainstream pupils using PSVAR compliant vehicles. The proposal is limited to a maximum of one academic year, with a further decision required on how to proceed after that.

Option b) provides the most desirable outcome as it increases the opportunity for disabled pupils to use mainstream transport but it is highly unlikely that this is a deliverable option in the short term (except for a limited number of services)

Most mainstream transport vehicles are not currently compliant (albeit some may not be brought under the requirements until January 2020 due to their age) and could not be economically retrofitted to make them compliant. There are limited numbers of accessible coaches available in the market without buying new, meaning that it would take some time to secure the required numbers. This is not a viable option for immediate action.

Removal of the charge for this discretionary service would mean that whilst the Council will lose the income received from those passengers, the 900+ pupils across North Yorkshire that take advantage of these services will still be able to use the transport services to get to and from their educational provision. The proposed decision will therefore not initially give rise to any change in the way services are currently provided, with the only difference being that services are provided to most users free of charge.

If the law is not clarified or changed to enable the Council to reintroduce charging the alternative will be to either stop transporting non-entitled and post 16 pupils that cannot be transported cost effectively on PSVAR compliant vehicles, or to continue to transport them free of charge. This may mean that some pupils will no longer have access to transport to and from their place of education, leading to additional congestion on the roads and pollution, as well as the potential for significant disruption to families who are then faced with finding alternative transport.

It is proposed that a further equalities assessment be carried out to inform any further decision on this matter i.e. to re-introduce charging, to stop transporting non-entitled pupils or to continue to transport them free of charge. These would all be subject to a separate decision.

Section 4. Involvement and consultation (What involvement and consultation has been done regarding the proposal and what are the results? What consultation will be needed and how will it be done?)

Due to the urgent need for the Council to consider how to respond to the allegation that the Council is providing home to school services in breach of its statutory duties relating to equalities, the opportunity to undertake consultation in relation to this issue has been limited. The proposal at this time is to cease charging so as to ensure compliance with an alleged statutory obligation to provide vehicles that comply with PSVAR. The decision now is a financial one that has no negative impacts on service users or anyone with a protected characteristic but it is recognised that any future decision related to this issue, including any proposal to reintroduce charging, will need to be subject to further equalities impact assessment including relevant consultation.

Section 5. What impact will this proposal have on council budgets? Will it be cost neutral, have increased cost or reduce costs?

The proposal will reduce income to the Home to School Transport budget.

The net income for the County Council from the sale of paid travel permits for 2018/19 was £414,414, made up of £371,098 for mainstream, and £43,316 for SEND. Some or all of this income could be lost.

In addition, the County Council received income in 2018/19 of approximately £196k from daily fares for non-entitled and post 16 pupils travelling on routes mainly in the Harrogate, Selby and Scarborough areas.

Depending on the outcome some or all of the above income could be lost to the authority in the longer term as well as for the initial period of one year covered by the proposal.

Section 6. How will this proposal affect people with protected characteristics?	No impact	Make things better	Make things worse	Why will it have this effect? Provide evidence from engagement, consultation and/or service user data or demographic information etc.
Age	X			The proposed recommendation will initially have no impact but unless the law is either clarified or changed there is a risk that 900+ non –entitled and post 16 pupils will be prevented from travelling on County Council provided school transport.
Disability	X			The proposed recommendation will have no impact on those with disabilities who are currently unable to travel on the majority of mainstream home to school transport services which use vehicles that do not comply with PSVAR. The practice of making other arrangements for entitled pupils using compliant vehicles will continue. However, the practice of making spare seats on vehicles that do not comply with PSVAR available to non-entitled pupils means that pupils who use wheelchairs, by definition, are not able to use the vehicle provided. However it is notable that there have been no complaints to date from any non-entitled or post 16 child on the basis that they were denied transport because vehicles are not accessible. If the outcome is such that non-entitled and post-16 pupils are prevented from travelling on County Council provided school transport, there is the potential for negative impact on that group – this may include young people with other disabilities, and family members with caring responsibilities. This, however, would be very difficult to quantify.
Sex (Gender)	X			No evidence of impact on grounds of sex.
Race	X			No evidence of impact on grounds of race.
Gender reassignment	X			No evidence of impact on grounds of gender reassignment.
Sexual orientation	X			No evidence of impact on grounds of sexual orientation.
Religion or belief	X			No evidence of impact on grounds of religion or belief.

Pregnancy or maternity	X			No evidence of impact on grounds of pregnancy or maternity.
Marriage or civil partnership	X			No evidence of impact on grounds of marriage or civil partnership.
Section 7. How will this proposal affect people who...	No impact	Make things better	Make things worse	Why will it have this effect? Provide evidence from engagement, consultation and/or service user data or demographic information etc.
live in a rural area?	X			The proposed recommendation will initially have no impact on people in rural areas but if non entitled pupils or post 16 pupils are no longer able to access spare seats on services this will mean that those pupils will have to make their own arrangements to get to their place of education. This will impact more on those who live in a rural locations which have less access to a local bus or other public transport network.
have a low income?		X		The proposed recommendation will initially benefit those currently paying to access Council provided home to school transport as they will not be required to make a contribution to the costs. However, this is not understood to have a proportionally higher impact on those with a low income although the cash benefit to those on lower incomes will be greater as a proportion of income. If the decision is to remove transport for post 16 and non-entitled pupils then the costs of alternative arrangements may be higher which may then have a proportionally greater impact on those on low incomes.
Section 8. Will the proposal affect anyone more because of a combination of protected characteristics? (e.g. older women or young gay men) State what you think the effect may be and why, providing evidence from engagement, consultation and/or service user data or demographic information etc.				
No				
Section 9. Next steps to address the anticipated impact. Select one of the following options and explain why this has been chosen. (Remember: we have an anticipatory duty to make reasonable adjustments so that disabled people can access services and work for us)				Tick option chosen
1. No adverse impact - no major change needed to the proposal. There is no potential for discrimination or adverse impact identified.				
2. Adverse impact - adjust the proposal - The EIA identifies potential problems or missed opportunities. We will change our proposal to reduce or remove these adverse impacts, or we will achieve our aim in another way which will not make things worse for people.				
3. Adverse impact - continue the proposal - The EIA identifies potential problems or missed opportunities. We cannot change our proposal to reduce or remove these adverse impacts, nor can we achieve our aim in another way which will not make things worse for people. (There must be compelling reasons for continuing with proposals which will have the most adverse impacts. Get advice from Legal Services)				✓

4. Actual or potential unlawful discrimination - stop and remove the proposal

– The EIA identifies actual or potential unlawful discrimination. It must be stopped.

Explanation of why option has been chosen. (Include any advice given by Legal Services.)

The proposed recommendation will initially have no impact on people with protected characteristics, low income or those living in rural areas, but it is recognised that the current practice of providing home to school transport on vehicles that may not comply with PSVAR, and then selling spare seats to non-entitled pupils does have a disproportionate impact on wheelchair users.

The proposal is to continue to make spare seats available at no charge to non-entitled and post 16 pupils recognising that this practice is not inclusive of those with a specific protected characteristic. However, it is proposed that this is an acceptable outcome given that:

- a) it is proposed that this practice be time limited up to the end of the 19/20 academic year
- b) The alternative option of not making spare seats available is perverse and will create significant inconvenience to circa 900 pupils

However, it should be noted that this option, and any future option that does not allow the selling of spare seats, will reduce the council's income by more than £300k p.a. which may in future impact on other services.

In the event that the law is subsequently clarified or changed to enable the Council to reintroduce charges for spare seats on vehicles that do not comply with PSVAR it would be appropriate to further consider the longer term equalities implications of reintroducing charges as part of any decision to do so.

In the event that the law is neither clarified nor changed to enable the Council to reintroduce charges for spare seats on vehicles that do not comply with PSVAR the proposal is to consider either ceasing transporting non-entitled and post 16 pupils except where this can be done cost effectively using vehicles compliant with PSVAR, or to continue to transport them free of charge. Stopping transport would remove any potential disadvantage for disabled young people in that they would have equal access to home to school transport, albeit this would be a reduced offer for young people overall. A later decision to continue to provide free transport for non-entitled and post 16 pupils would disproportionately impact on disabled people unless fees were also waived for them.

Section 10. If the proposal is to be implemented how will you find out how it is really affecting people? (How will you monitor and review the changes?)

- Monitor correspondence and complaints following the introduction of any changes
- Monitoring of the services through on-going contract management
- Feedback from users, bus contractors, and other key stakeholders including schools and colleges
- Further consultation in support of any future consideration to reintroduce charges for non-entitled and post 16 pupils.

Section 11. Action plan. List any actions you need to take which have been identified in this EIA, including post implementation review to find out how the outcomes have been achieved in practice and what impacts there have actually been on people with protected characteristics.

Action	Lead	By when	Progress	Monitoring arrangements

Section 12. Summary Summarise the findings of your EIA, including impacts, recommendation in relation to addressing impacts, including any legal advice, and next steps. This summary should be used as part of the report to the decision maker.

The proposed recommendation is to temporarily cease charging to transport non-entitled and post 16 pupils in receipt of a travel pass and travelling on vehicles that do not comply with PSVAR. This proposal has no direct impact on people with protected characteristics, low income or those living in rural areas, but it is recognised that the current practice of providing home to school transport on vehicles that may not comply with PSVAR, and then selling spare seats to non-entitled pupils does have a disproportionate impact on wheelchair users who cannot use this service.

It is proposed to continue with this current practice for no more than the 2019/20 academic year when this practice will be considered further in light of any changes in the legal framework and in context of consultation with stakeholders.

Section 13. Sign off section

This full EIA was completed by:

Name: Ian Fielding

Job title: Assistant Director, Transport, Waste and Countryside Services

Directorate: Business & Environmental Services

Signature:

Completion date: July 2019

Authorised by relevant Assistant Director (signature):

Ian Fielding

Date: 20 August 2019