

## Report of the Cabinet Member for Learning and Skills

Cabinet – 1<sup>st</sup> July 2014

### HOME TO SCHOOL TRANSPORT POLICY – PUBLIC CONSULTATION ON A NEW PROPOSED POLICY

<b>Purpose:</b>	To report back on the responses to consultation with regard to the proposed new Home to School Transport Policy and transitional support arrangements.
<b>Policy Framework:</b>	Current Home to School Transport Policy. The Welsh Education Strategic Plan.
<b>Reason for Decision:</b>	For Cabinet to consider the responses received as part of the recent public consultation together with the Equality Impact Assessments and determine whether it wishes to ask Council to adopt some or all of the proposals .
<b>Consultation:</b>	Legal, Finance, Transportation & Access to Services
<b>Recommendation(s):</b>	It is recommended that: -  1) Cabinet note the outcome of the statutory consultation process and the potential impact on equalities issues, as outlined in the report. 2) Cabinet decide which, if any, of the three consultation proposals, in relation to the discretionary areas of provision, should be taken forward to Council for approval.
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#### 1. Financial Context

- 1.1 The Council, in common with all local authorities, needs to take radical action to respond to the wide range of service and financial pressures that we face, including the reduction in external grant as a result of the UK austerity measures.
- 1.2 The scale of the financial, demographic and sustainability challenge requires the Council to adopt a radically different approach to previous years. An approach that focuses on:

- The core future purpose of the Council
- The transformation of services and the model of delivery
- Greater collaboration with other councils and local organisations, community groups and residents, and above all:
- Sustainable solutions with prevention at the heart

1.3 This ambition is set out in *Sustainable Swansea – fit for the future*.

1.4 The Medium Term Financial Plan adopted by Council on 18<sup>th</sup> February 2014 detailed the forecast budget savings requirements for the Council for the period 2015/16 to 2017/18, together with an indicative funding scenario for each financial year. Specific details of the individual savings proposals that make up the above total are included in Appendix 'A' to this report.

1.5 A key element of the budget strategy is the achievement of future year specific savings proposals across all Services as follows:-

	<u>2015/16</u> <u>£'000</u>	<u>2016/17</u> <u>£'000</u>	<u>2017/18</u> <u>£'000</u>
Specific Savings proposals	-8,990	-17,143	-18,706

1.7 Several of the proposals require further consideration by Cabinet in terms of implementation. Where this is the case, it has been agreed that further reports will be brought back to Cabinet during 2014/15 detailing the work undertaken and decisions required to implement the specific proposals.

1.8 It goes without saying that progress against these proposals is essential if the Council is to achieve the required level of savings to balance future budget requirements. Consequently, any decision not to proceed with a particular proposal or any shortfall against agreed savings will lead to a requirement for additional savings from elsewhere within the Authority.

1.9 This report relates to Home to School Transport, contained within the agreed savings for the People Directorate. The target savings in respect of this service, *and specifically these proposals*, are:-

	<u>2015/16</u> <u>£'000</u>	<u>2016/17</u> <u>£'000</u>	<u>2017/18</u> <u>£'000</u>
Home to School Transport	100	223	309

By their very nature, and due to statutory guidance that the Council has to take into account, the realisation of savings (including those to Aided Transport), whilst protecting existing pupils, have a long lead in period. The potential total annual savings could be in excess of £1.1m by 2022/23.

1.10 The financial context facing the Council cannot 'fetter' the discretion of the Authority. It is a clear and compelling driver but as part of the decision making process Cabinet, and then Council as the ultimate decision maker, has to fully consider and take into account the responses received through consultation.

1.11 Equality Impact Assessments have been completed in respect of all of the proposed changes. They reflect the views received during the consultation and are attached as Appendix A.

## **2. Background to the Review**

- 2.1 The Welsh Government's Learner Travel (Wales) Measure 2008 (referred to as "the Measure") sets out the current statutory duties of Local Authorities with regard to the provision of home to school transport. Statutory guidance is also provided by the Welsh Government in the Learner Travel Operational Guidance 2009 document (referred to as "the 2009 Guidance").
- 2.2 Cabinet on the 11<sup>th</sup> February 2014 approved the commencement of consultation with interested parties in relation to the proposed changes set out in this report. The report provided further background detail in relation to the partnership with the former South West Wales Integrated Transport Consortium (SWWITCH) to produce a Regional Home to School Transport Policy covering Swansea, Neath Port Talbot, Carmarthenshire and Pembrokeshire.
- 2.3 The proposed new policy will be simpler and clearer than the current individual Council policies and covers transport for mainstream and SEN pupils. The Policy will be supported by more detailed Operational Guidelines which will be issued to all those involved in the assessment of entitlement and procurement of school transport. The proposed new policy will take into account current budget pressures and recognise the need to make changes to discretionary transport elements.
- 2.4 Significant efficiency and contract savings of at least £660k per annum have already been delivered by comparison with the equivalent contracts in 2009 (in addition to mitigation of other inflationary cost drivers), as part of the 3 year 'One Education Budget' strategy over recent years, through consistently robust management of the service and regular re-tendering of taxi contracts, to as far as possible optimise efficiency of delivery. This represents achieved cumulative savings of around £2.0m, without any reliance on costly external consultancy support.
- 2.5 These savings also in part reflect the impact of the improved 'spread' of Welsh medium primary and secondary provision over recent years through the QEd strategic programme.
- 2.6 Wherever possible the fullest practical use of the vehicles that the Council operates is ensured before contracting with other operators. Constructive discussion has taken place with the relevant officers in Education, Social Services and Transportation which indicates little scope for further savings to be delivered in this area. *Any further detailed work on this would be part of the wider corporate transport review.*
- 2.7 However, further challenging saving targets for 12/13 and 13/14 have proved unachievable without a change in Council policy and further pressures are apparent in the current financial year.
- 2.8 National changes to criteria for determining 'safe' walking routes to school, outside the Council's control, are likely to significantly increase demand and therefore costs of free transport provision in the future, as well as undermining some of the work that has been undertaken to deliver 'invest to save' options through investment in improving walking routes to school.

## **3. Statutory Requirements**

- 3.1 The Learner Travel (Wales) Measure 2008 sets out the legal framework for home to school transport in Wales. Under section 3 of the Measure, children of

compulsory school age are entitled to free home to school transport when they live more than 2 miles (for primary age) and 3 miles (for secondary age) from their nearest suitable school. The walking distance is measured by the shortest available route. The guidance states that, “a route is considered to be ‘available’ if it is safe for a child without a disability or learning difficulty to walk the route alone or with an escort if the age of the child would call for such an escort.” If a route is not ‘available’ then a child is entitled to free transport even though the distance from home to school is less than the distance limit that applies to his/her age. *The Council will continue to meet these responsibilities in any future policy.*

- 3.2 In deciding whether a School is a suitable School, Local Authorities need to take into account the child’s age, ability and aptitude, and any learning difficulties.

Paragraph 1.23 of the 2009 Guidance states:

“1.23 Neither the child’s or parent’s language preference or mother tongue, nor religious faith or conviction of the child or his or her parent have any bearing on whether a School is suitable. However, the Measure (section 10) does require each local authority to promote access to education and training through the medium of Welsh when exercising their functions under the Measure”.

Section 4 of the Measure also requires a local authority to make other travel arrangements for children of compulsory school age if the authority judges it is necessary in order to facilitate a child’s attendance at school. Paragraph 1.18 of the 2009 Guidance says this section provides the basis for local authorities to support travel for children if they have particular needs, whether arising from a learning difficulty, a disability or any other factor which makes particular travel arrangements necessary to facilitate the child’s attendance.

- 3.3 Part 2 of the 2009 Guidance deals with discretionary transport arrangements. Paragraph 2.3 of the 2009 Guidance says:  
“2.3 Section 6 of the Measure gives a local authority a power to make any arrangements they think fit to facilitate the travel of learners to and from a place where they receive education or training. The power applies in relation to a learner living or studying in the authority’s area. This could include transport for those under 5 or over 16, or to schools other than the nearest suitable school – for instance it could include transport to schools with or without a religious character or to Welsh or English medium schools in cases where the nearest suitable school has not met parental preference in these respects.

2.4 Local Authorities may provide free transport for travel over a shorter walking distance than the statutory distances of 2 or 3 miles. When this is the case, the policy must apply to all pupils in similar circumstances living in the authority’s area.

2.5 If a local authority does make use of the Powers in section 6 of the Measure, it must ensure that any policies are fair, reasonable and comply with relevant legislation including equality legislation and the Human Rights Act 1998. Local Authorities must not discriminate unlawfully between learners when using their section 6 powers.”

#### 4. Discretionary Areas of Provision

- 4.1 The draft policy on which consultation has taken place proposes changes to the following areas of discretionary provision:

##### **Proposal 1: Passenger Assistants on School Transport Services**

#### 4.2 Current Policy

The Home to School Transport policy currently states, in respect of pupils with special educational needs, that:

‘passenger assistants are generally provided on all vehicles as standard’.

For other pupils it states that:

‘passenger assistants are provided on all home to primary school contract vehicles.’

#### 4.3 Proposal on which we have consulted

**That the provision of passenger assistants in future is on the basis of a risk assessment where it is assessed that there would be a significant risk to passenger safety if a Passenger Assistant was not provided. This would be for all categories of passengers.** This is currently the practice in around half of the Local Authorities in Wales. For children with statements of SEN this would be done as part of their annual review. For other pupils this would be carried out annually when routes are reviewed for the start of the new academic year.

#### 4.4 Key points raised in consultation

The most significant areas of concern highlighted include:

##### **The removal of passenger assistants is detrimental to the safety of pupils**

Children on mainstream primary routes in approximately half the Councils in Wales are currently being transported on routes without passenger assistants and have been for some time. Before any route has its passenger assistant removed it will be assessed to ensure that no unacceptable risks are being placed on the children.

For SEN transport routes, the provision of a passenger assistant would remain necessary in the majority of cases.

For mainstream routes there are a number of situations where specific potential issues are identified:

1. Routes where children transfer from one vehicle to another
2. Routes where the vehicle stops some distance from the school and the children are walked into the school.
3. Where pre-school age children are carried
4. Child protection issues of a single adult working with children.
5. Failure of parent/ carer to meet pupils at drop off points.

These issues could be overcome by removing the current option for pre-school children to buy a seat on school transport, and also by advising schools to undertake their duty (as outlined in the Learner Travel Operational Guidance 2009 – para. 1.55), to supervise embarkation and disembarkation of the school transport vehicles. Specifically this states:

*The Welsh Assembly Government regards it as good practice that head teachers ensure that there is supervision of embarkation and disembarkation, whether on, outside, or near the school premises. The level of supervision will depend on local circumstances and the age of pupils. The head teacher should contact the authority immediately about any concerns or matters reported to him or her.*

Under the Measure the Authority is under a duty to assess learner travel needs and to make travel arrangements. Travel arrangements may include provision of persons to escort a child when travelling. In making an assessment the Authority must have regard to the needs of disabled learners, learners with learning difficulties, the age of child and nature of routes. Transport arrangements are not suitable if they cause unreasonable level of stress on a child or are unsafe. In order to comply with the duty under the Measure and to ensure the continued safety of children travelling to school the Authority will undertake risk assessments on routes and consider the needs and risks posed. The risk assessment will include any risk posed by the age of the pupils, any special educational needs, disabilities, any other areas of vulnerability, and general standards of behaviour on the route. Any risk identified will be assessed and a decision made as to whether a passenger assistant should be provided on that route. This will ensure that the duty under the Measure and general duty of care is discharged.

### **The removal of passenger assistants will make journeys too stressful for children and their parents**

Routes will be carefully inspected before any passenger assistants are removed and possible causes of stress for the passengers will be considered before a decision is made. By engaging with the children it should be possible to discover what specific concerns they may have and the council will attempt to work with them to alleviate these causes of stress. It must be remembered that about half of the Councils in Wales already transport their primary children without passenger assistants and we will only remove any passenger assistant if appropriate after an assessment is carried out.

### **Safeguarding and child protection concerns for children, particularly on their way home, and in terms of the vulnerability of the driver, which would need to be mitigated**

All staff that work on school transport services have to be checked through the Disclosure and Barring Service and approved by the Council prior to employment. School transport services carrying pupils of secondary school age do not currently have passenger assistants travelling on them and so the proposal would be consistent with this approach.

There may be occasions when there is no responsible adult at the drop off point to collect a primary aged child. A procedure for dealing with this circumstance is already included in the school transport contract terms and conditions and also in the School Transport Code of Conduct. Pupils are not allowed off the vehicle if there is no responsible adult there to meet them.

### **Safety concerns in terms of ensuring the use of seatbelts, supervision of children and opportunities for bullying**

The size of the vehicle used on the service will be a factor to be considered as part of the risk assessment process alongside the number and age of pupils as

it would be easier for the driver to supervise a smaller number of pupils on a minibus or car than on a larger bus or coach.

### **The potential impact on school admissions and particularly the choices of pre-school parents**

Approximately 20 pupils of pre school age purchase spare seats on school transport. Most of these are mainstream pupils who would not be able to purchase seats if this proposal is implemented.

There is no legal requirement for the Council to provide transport for pupils under statutory school age, but the removal of this facility is likely to be unpopular with parents who will have to make alternative arrangements to get their pre school aged children to and from school.

Most of the pre school age pupils who purchase spare seats attend Welsh Medium or Voluntary Aided provision and therefore the impact of withdrawing this concession is likely to have a greater impact on these schools than English medium schools.

It is likely that some parents will select local English Medium mainstream provision as their pre school aged children will not be able to purchase seats to travel to Welsh medium or VA schools further away. This will potentially impact on pupils' ability to engage in Welsh medium activities at the pre school stage and language ability in the longer term.

The Guidance for the Measure does not restrict consideration of the effects of a policy change on the Welsh language to any age group and would be equally good practice for pre-school as for post-16. Failure to take this into account raises the prospect of a potential challenge.

### **The Council does not have the ability to assess routes effectively**

The Council employs qualified road safety officers, transport professionals and health and safety officers and in the case of pupils with SEN employs an officer with many years' experience of working with children with the full range of SEN. This officer also has access to the educational psychology team and the wider resources of the Additional Learning Needs team if necessary.

#### **4.5 Projected Savings**

Assuming passenger assistants are paid the minimum wage of just over £6 per hour, the potential saving on mainstream transport of removing all passenger assistants would be around £135k per year. Routes will be assessed before withdrawing passenger assistants and any costs will be met from within the remaining transport budget.

The income currently generated by the sale of spare seats to pupils of pre school age is £3,800 per annum. The loss of this income would need to be offset against these savings leaving a net projected saving of up to £131,200.

#### **4.6 Equalities Implications**

An EIA Screening Form was previously completed with the agreed outcome that a full EIA report was required. The completed EIA report is attached (Appendix A).

The provision of passenger assistants in future would be on the basis of a risk assessment where it is assessed that there would be a significant risk to

passenger safety if a Passenger Assistant was not provided. This would be for all categories of passengers.

For children with statements of SEN this would be done as part of their annual review and for other pupils this would be carried out annually when routes are reviewed for the start of the new academic year.

The risk assessment proposed would also be subject to an Equality Impact Assessment.

## **Proposal 2: Transport to Voluntary Aided Schools (Catholic and Church in Wales)**

### **4.7 Current provision**

The Authority currently provides free transport to Voluntary Aided (VA) schools (Catholic and Church in Wales) based upon the statutory distance criteria regardless of whether the school is the nearest available school for that child.

The VA school (based on the parental choice made) is effectively deemed to be the nearest suitable school for the child, and the statutory distance criteria ( 2 miles primary, 3 miles secondary) is then applied. Transport is provided on this basis to pupils aged 5 to 19 both to schools in the Council's area and also for pupils living in Swansea but whose closest faith school is outside the Council's area.

### **4.8 Proposal on which we've consulted**

**That discretionary free transport to Voluntary Aided sector schools would only be provided (based on the statutory distance criteria) where there is no nearer mainstream school for that pupil. This will apply to pupils aged 5 to 19 years.**

The proposed change would be introduced on **a transitional basis**, which means that those pupils in receipt of free transport prior to September 2014 would retain that benefit up to the next point of transition, e.g. a move from primary to secondary education or when progressing from year 11 to post 16 education.

Pupils with statements of Special Educational Need (SEN) would not be affected by this proposed policy change as their transport is based upon distance criteria to their chosen/allocated school.

### **4.9 Key points raised in consultation**

The most significant areas of concern highlighted include:

**Restriction on learner and parental choice, especially for less wealthy families** (Parents / carers with a strong desire for a faith based education for their children will be unable to send their children to a faith based school because transport costs are considered to be prohibitive).

The Council is committed to providing high quality schools for all its children and by deciding to make efficiency savings in the manner proposed it means that scarce funds can be targeted at preserving this core provision. It cannot be denied that poorer families may find it more difficult to find the resources to get their children to a VA school. They will however, have access to a good local school.



## **Perceived discrimination on religious grounds and will treat Aided schools differently than Welsh medium schools**

The proposal to remove this transport is not viewed as discriminatory. This is because the Council is currently treating the voluntary aided sector more favourably than the other English medium schools and the new policy will treat both groups equally. It is recognised that this proposal will only impact on the VA schools and it is regrettable that the financial position of the Council has made this proposal necessary. The Council can offer assurances that no child currently in receipt of free transport who is attending a VA school will have their transport removed for their time at that school.

The Learner Travel Operational Guidance 2009 states (section 1.23):

“Neither the child’s or parents language preference or mother tongue, nor religious faith or conviction of the child or his or her parent have any bearing on whether a school is suitable. However the Measure (Section 10) does require each Local Authority to promote access to education and training through the medium of Welsh when exercising their functions under the Measure.”

The Learner Travel Operational Guidance 2009 does go on to say in section 2.18:

“Section 9 of the Education Act 1996 places a general duty on local authorities to have regard to the general principle that pupils are to be educated in accordance with the wishes of their parents so far as that is compatible with the provision of effective instruction and training and the avoidance of unreasonable public expenditure. Consequently, many authorities in Wales have a policy of providing free transport to pupils attending church schools who live beyond the walking distances set in the Measure and these policies have been developed to meet local circumstances and needs. Section 6 of the Measure will allow local authorities to continue to be able to provide such transport and Welsh Ministers expect this to be the case.”

The Authority’s interpretation of the above statements, and further examination of the Learner Travel (Wales) Measure (2008) (the Measure) and the Operational guidance (2009) concludes that the removal of the discretionary spend on VA school transport is permissible within the guidance.

Additionally the legal duties outlined in the draft Guidance on learner Travel Statutory Provision and Operational Guidance states that Local Authorities must promote access to Welsh medium education. Faith schools are not included in these duties.

## **The proposal will cause parents financial difficulties / financially unfair / general disagreement**

There may be a cost to parents. This cost is likely to be the same as the cost for any other parent deciding not to send their child to the nearest mainstream local school. A good education will be available locally should the parents not be able to meet the transport costs. We understand that this may cause difficulties, hence the phasing in over 6 years.

## **The proposal goes against Statute i.e. Section 6 of Education Act, or Learner Travel (Wales) Measure or Operational Guidance, UNCRC, Human Rights Act, Equality Act 2010**

Section 9 of the Education Act places a general duty on local authorities to have regards to the general principle that pupils are to be educated in accordance with the wishes of their parent, however this is 'in so far as that is compatible with the provision of efficient instruction and training **and with the avoidance of unreasonable public expenditure**'. Due to the financial pressures the Council is currently facing it is considered to be unreasonable to continue to provide faith based transport which is a discretionary provision under section 6 of the Measure

Nothing in the proposal contravenes Principle 7 of the United Nation Convention on the Rights of the Child. This is an entitlement for a child to receive education which promotes their general culture. It is not an entitlement to transport.

Also, nothing in the proposal contravenes Article 2 of the European Convention on Human Rights or any legislation on unlawful discrimination. Article 2 of the first Protocol guarantees a right to access to education. The Article also requires all schools to respect parents beliefs. It does not confer an entitlement to transport.

The Equality Act 2010, Schedule 3, provides an exemption to discrimination on the grounds of religion or belief in relation to transport to or from school.

Please see response to "The proposal constitutes discrimination on religious grounds" above which covers the Learner Travel Measure and it's Operational Guidance.

### **The proposal will affect the long term viability of the Faith schools**

There may be some impact on the number of pupils on roll at Faith schools, however, most Aided schools are currently over-subscribed. Consequently, the Council does not envisage any school becoming non-viable as a result of the proposed transport changes. Furthermore, education provision in the Council is likely to change over the longer term, especially with regard to secondary schools.

There may also be a corresponding increase in numbers at other mainstream schools, providing there are sufficient places. Should there be insufficient capacity it may be necessary to transport children to the next available school.

### **Increased traffic congestion across the City**

It is thought that the overriding effect of this policy is more likely to be less travel rather than more. It is true that in the shorter term there may be increased drop off traffic at some schools, but this will be mitigated by the transitional implementation of the new policy.

It is possible that there might be increased numbers of pupils travelling by public transport, resulting in overloading of public transport vehicles at peak times but this is difficult to quantify as the numbers of pupils involved are uncertain, as are their future choice of travel mode.

There could also be areas where there is no public transport available at all or none available at appropriate times. The areas most affected would be very

rural and the most likely scenario is that pupils will have longer journeys involving a change of bus, probably in the city centre.

### **Impact on those Not in Education, Employment or Training (NEETS)**

It is possible that if pupils are not able to take up the option of faith based education because of the inconvenience and costs of travelling then some pupils may be discouraged from attending school. They will however have the option of attending their local school.

We have a good track record of working with those at risk of becoming NEET and we would continue to provide support to ensure that students are supported.

### **Administrative impact on the Local Authority**

There would be a significant increase in administration costs if the Council chose to in future charge or means test parents for Aided transport, however, this is not what is being proposed here.

#### **4.10 Projected savings**

Modelling the savings which would be realised from this change of policy requires some assumptions to be made:

- (i) The spread of pupils across all age ranges in the school remains the same.
- (ii) Pupils lose entitlement to free transport at each school life event e.g. at transition from primary to secondary school.

The costs at September 2013 are estimated to be £806,540 including an estimated 3% indexation factor which is applied annually from 1 September. The potential savings have been modelled as pupils drop out during the transitional period. Passenger numbers will therefore fall and vehicle sizes can be reduced based upon current costs and the numbers of pupils in each year group.

Whilst the proposal would be a significant change to policy, using current attendance and travel records it can be demonstrated that the change will affect approximately 40% of children at Bishop Vaughan, 60% at St David's, 34% at St Joseph's Cathedral, 26% at St Illtyd's and 18% at Christchurch schools.

There would be some increases in transport costs to other schools if pupils move to alternative mainstream provision but it is anticipated that if the policy change is implemented from September 2015, a saving of £683,000 might be delivered by 2022/23. Savings in earlier years will be modest due to the need to protect existing pupils through the remaining years of their education at their chosen school until the respective point of transition.

Savings would commence from September 2015 when these could amount to £22.5k (part year effect in 15/16). This could rise to £67.7k in 2016/17, £138.4k in 2017/18, £209.6 in 2018/19, £371.5k in 2019/20, £471.5k in 2020/21 and £601.7k in 2021/22.

The possibility of means testing pupils for entitlement has been considered, but this would involve considerable extra administration as there would need to be continual monitoring of entitlement as families incomes change. This would reduce the potential savings outlined above. In addition pupils who may be entitled as a result of means testing are likely to be relatively small numbers at

scattered locations across the County. The provision of transport on this basis is likely to be expensive as taxis and small minibuses would be needed compared to the current costs of providing transport using buses and minibuses for larger groups of pupils who live in the same area.

#### 4.11 Equalities Implications

An EIA Screening Form was previously completed with the agreed outcome that a full EIA report was required. The completed EIA report is attached (Appendix A).

It is recognised that this proposal will only impact on the Voluntary Aided schools and it is regrettable that the financial position of the Council has made this proposal necessary. The Council can offer assurances that no child currently in receipt of free transport who is attending any of these schools would have their transport removed for the remainder of their time at that school. The phased introduction of the change will ensure this. Legal advice states that these changes do not contravene any statutes including the Equality Act 2010.

The potential saving over time is very significant, although the need to protect existing pupils means that the full savings could not be realised until 2022/23.

### **Proposal 3: Financial Assistance for Post 16 Transport – Introduction of a common charge.**

The 2013/14 budget of £546k included £321k in financial assistance to Gower and Neath Colleges, a further £195k in respect of SEN transport, and a further £29k in respect of assistance in transport to sixth forms.

#### 4.12 Current Policy

*School Sixth Forms:* Currently all post 16 pupils attending a Swansea school sixth form who live more than 3 miles from the school are provided with free home-to-school transport.

*Gower College, Swansea:* The majority of Swansea students opting to study at post 16 at Gower College are required to pay *between £205 and £220 per annum* towards the cost of their transport. The Local Authority makes an annual payment to Gower College Swansea of £272k and £49k to NPT College to subsidise the costs of transport provision for students – a total annual grant of £321k.

*Further Education Colleges outside the City and County of Swansea:* Some post 16 students opt to attend a Further Education (FE) College outside the City and County of Swansea area i.e. NPT College if a particular course is not available in the area. Students are provided with a free bus pass to attend these destinations, but have to make a financial contribution of £100 per annum towards transport and other college services.

#### 4.13 Proposal on which we've consulted

**To seek to introduce a common charge across the City and County of Swansea with Gower College Swansea for all post 16 students eligible through distance criteria to the nearest appropriate school except for those students who still have a statement of special educational needs.** This proposal would apply to English medium, Welsh medium and Voluntary Aided provision.

The level of charge would need to be set at a level broadly consistent with charges for College students and also those charges levied by the Council for the sale of spare seats on contracted School Transport services. Assuming a charge of around £300 per academic year, this would actually result in a lower charge for spare seats on school transport services than is currently levied (£400) and would only marginally affect the overall saving to the Council. This would equate to **£1.58 per day for a return journey of over 3 miles for post 16 learners.**

#### 4.14 Key points raised in consultation

The most significant areas of concern highlighted include:

##### **The proposed charge is too expensive / financially unfair.**

The average cost to the Council of a pupil's seat on school transport is £750 per year so on this basis the proposed charge of £300 is reasonable. For families with a low income or for students with a low income living independently, the Education Maintenance Allowance (EMA) is available to help with further education costs.

Currently students eligible for transport attending Swansea school sixth forms are provided with free home-to-school transport. In contrast, students attending Gower College Swansea have to pay £205 plus an administration fee of £15 per annum towards transport costs. The proposal to introduce a standard rate of around £300 per student living more than 3 miles from the school or college destination would seek to ensure equity across the student base.

##### **Charging will be a disincentive to pupils staying on in sixth form.**

As explained above, an EMA is available to support students from low income families. There are already students attending College paying transport costs at more than £200. The proposal will help towards keeping post 16 students in education (as opposed to a removal of support altogether).

##### **The proposal discriminates against language and/or religious choice.**

The proposal is to introduce a common charge to all post 16 students. We recognise the possible greater impact on students attending faith and Welsh medium schools as they have less choice of establishments and therefore travel further. Presently the students of the Welsh medium and Catholic sixth forms have enjoyed free transport whereas students attending College are charged.

##### **There is no evidence that the Authority has paid due attention to Clause 10 of the Measure to promote access to education and training through the medium of the Welsh Language**

When a Council is using its powers under Section 6 of the Measure to offer discretionary travel arrangements for learners not entitled to free transport provision, a charge can be made for these arrangements. The Council is promoting access to Welsh education by treating the Welsh medium and English medium post 16 pupils the same, i.e. they will all have to pay the same charge. The Council is proposing to continue to provide transport for Welsh Medium provision but a charge will be made. As explained above, an EMA is available to support students from low income families.

### **This proposal adversely affects choice**

With the new proposed charge, the cost will be equitable for all post 16 across the borough. Any student living more than three miles from the nearest provision will pay the same price.

### **There needs to be concessions for those in receipt of certain benefits / low income families**

The Education Maintenance Allowance remains available for these families and this provides up to £30 per week during term time for eligible students. The possibility of means testing pupils for entitlement has been considered, but this would involve considerable extra administration as there would need to be continual monitoring of entitlement as families incomes change. This would reduce the potential savings outlined above.

### **Will encourage greater student vehicle traffic, congestion and parking issues**

There is no evidence to suggest this might be the case. If students elect to transport themselves, it is highly likely that the cost of personal transport will exceed the proposed cost per annum.

#### **4.15 Projected Savings**

Gower College Swansea receives an annual income from the City and County of Swansea of £272k. This is a discretionary allowance to provide subsidised transport for post 16 students going to Gower College Swansea. In addition an amount of £49k per annum is allocated for post 16 students living in the City and County of Swansea who attend destinations outside Swansea, the total annual amount being £321k.

Therefore, a policy change to introduce a charge for post 16 students could result in savings, once fully implemented of around £321k per annum ie. the annual payment to the Colleges. During the first year the savings would be £187,250 – that is 7/12 of the overall grant total for the financial year 2015/16. The full financial gain of £321k would be made during the financial year 2016/17.

Additional savings would be achieved in relation to students aged 11-16 years who travel on home-to-school transport to school. The income generated by the charge of around £300 per student would offset current costs. However, it would be necessary to put in place administrative support to cope with the additional workload to administer the charge levied on each eligible individual student ie. those living more than 3 miles from the school/college destination and also for those students travelling outside the area in order to pursue a particular course not being offered within the area. The estimated cost of this additional support is £10,000 per annum

It could also be possible to introduce a means tested system to assess eligibility to pay the £300 annual fee; however, the costs anticipated to operate a system would significantly reduce any potential savings. Eligible students are in receipt of an Educational Maintenance Allowance as previously stated.

#### **4.16 Equalities Implications**

An EIA Screening Form was previously completed with the agreed outcome that a full EIA report was required. The completed EIA report is attached (Appendix A).

Whilst the potential impact on take up of post 16 education is uncertain and of concern, the potential saving is significant. The Education Maintenance Allowance will provide support to those students and families who are eligible to receive this support. It is recognised that the biggest impact of this change will be on the Welsh Medium and Voluntary Aided sectors.

There is no duty to provide transport or make transport arrangements for those over 16. Section 6 of the Learner Travel Measure allows for this discretionary service to be provided and for it not to be free of charge. In making any change, regard must be had for the 2009 Learner Travel Operational Guidance.

However, the Measure (section 10) does require each local authority to promote access to education and training through the medium of Welsh when exercising their functions under the Measure. There is no further mitigation for young carers, disabled students without an SEN statement or those disproportionately affected i.e. Welsh Medium students and Faith students.

## 5. How did the Authority consult?

5.1 Consultation took place between Monday 3rd March and Friday 11th April. We offered response by online version, tick box proforma, letter, or email and also face to face meetings where appropriate. All comments and feedback received have been evaluated in order to be represented to Cabinet in this report and inform the final transport policy.

5.2 During the consultation we engaged with the following stakeholders:

<b>Audience</b>	<b>Method</b>
Pupils	Pupil questionnaire via email to all School Councils
Parents/carers	Local media, social media, CCS website
Governors	Email to all Governing Bodies
Headteachers	Email to all Headteachers
The Council's Executive Board	Email
Cabinet	Formal process
All Councillors	Email
Trade Unions	Email
Evening Post	Press Release
Diocese	Email and meetings as appropriate
Gower College Swansea	Email and invitation to meet
Neath Port-Talbot College	
Coleg Sir Gar	Email
Welsh Government	Email
Estyn	Email
AMs	Email
MPs	Email
School Staff	Email, Local Media, Twitter, Social Media, CCS Website
Other Media	Press release
Senior Managers in Education	Email
All Council Staff	Staffnet
Swansea Residents	Local Media, CCS website, social media
Local Businesses	Local Media, CCS website

Bus Companies and Taxi Operators	Email
Neighbouring Authorities – ERW plus Bridgend and Vale of Glamorgan	Email
RhAG	Email
Children’s Commissioner	Email
SNAP Cymru	Email
Scrutiny Board	Email
Out of County Establishments e.g. Heronsbridge School	Email
School Councils	Email

5.2 In total, 884 people responded to the consultation and their views on the three proposals were as follows:

	<i>I agree with this proposal</i>	<i>I disagree with this proposal</i>	<i>I neither agree nor disagree with this proposal</i>	<i>Did not respond</i>
<i>Passenger Assistants</i>	105	431 (49%)	310	38
<i>Transport to Voluntary Aided Schools</i>	89	741 (84%)	39	15
<i>Charging for Post 16 Transport</i>	62	482 (55%)	300	40

5.3 A summary of the responses received from School Councils is attached at Appendix B. Detailed responses have also been received from Bishop Vaughan School and RhAG which provide a good summary on objections to two of the three proposals (attached as Appendices C and D, respectively). Copies of every response and all comments are available to Members, within the Members’ Room. However for the purposes of this report, comments have been summarised into the most common themes. In summarising the comments, each communication was reviewed. Some made a single comment on a single aspect/proposal and others several comments over the course of a multi-page letter.

5.4 The following table summarises the **most frequently made** comments for each proposal.



<b>PROPOSAL 1 Total comments = 224</b>	<b>Number of comments for this category</b>
Removal of passenger assistants is detrimental to safety	70
General agree comments (no specific reason)	7
General neither agree or disagree comments	6
General disagree comments (no specific reason)	136
Removal of passenger assistants will make journeys too stressful for children (and their parents)	5
<b>PROPOSAL 2 Total ALL comments = 253</b>	<b>Number of comments for this category</b>
The Proposal constitutes discrimination on religious grounds	<b>162</b>
There will be a restriction on freedom of choice especially for less wealthy families	<b>16</b>
The proposal is unfair as Welsh schools are not being treated the same	<b>12</b>
The proposal will cause parents financial difficulties / financially unfair / general disagreement	<b>59</b>
The proposal goes against Statute (Use of section 6 of Education Act, or Learner Travel (Wales) Measure or Operational Guidance)	<b>4</b>
<b>PROPOSAL 3 Total Comments =125</b>	<b>Number of comments for this category</b>
The proposed charge is too expensive / financially unfair	<b>9</b>
Charging will be a disincentive to pupils in staying on to sixth form	<b>15</b>
Discriminates against language and / or religious choice	<b>23</b>
Adversely effects choice	<b>73</b>
There needs to be concessions for those in receipt of certain benefits / low income families	<b>5</b>

## 6. Implementation Timescales

- 6.1 It would be possible to implement a changed policy for new pupils / students only with effect from September 2015, subject to Council agreement of the proposals at its meeting on the 15<sup>th</sup> July 2014. This would provide sufficient time for schools and parents to be notified prior to the new academic year 2015 and would enable the Council's transport policy statement to be amended accordingly by the due date of 1<sup>st</sup> October 2014. In this way, changes could then be implemented from September 2015.

## 7. Financial Implications

- 7.1 The estimated potential savings set out within the report, necessarily make a range of assumptions as to contractual and customer behavioural responses to the proposed changes in policy. Whatever action is taken to change current transport policies, the resulting savings are likely to be offset to some extent at least by the continuing cost pressures and potentially significant implications of changes in national guidance in relation to available walking routes.

- 7.2 The table below summarises the potential scale and phasing of savings:

Option	14/15	15/16	16/17	17/18	18/19	19/20	20/21	21/22	22/23
Passenger Assistants	-	£70k	£131k	£131k	£131k	£131k	£131k	£131k	£131k
Aided Transport	-	£22.5k	£67.7k	£138.4k	£209.6k	£371.5k	£471.5k	£601.7k	£683k
Post 16 Transport	-	£187k	£320k	£320k	£320k	£320k	£320k	£320k	£320k

- 7.3 The existing MTFP cumulatively sets out savings requirements of;

15-16 £138k  
16-17 £333k  
17-18 £1,418k

It is recognised that these total savings include additional proposals not specifically addressed at this time by the proposals in this report (especially around future efficiencies). Nevertheless whilst the early implementation years' savings proposals are in excess of that required, the later years' values are less than required and flow at a later time than required. It remains a necessity and inevitability that, if the Authority is to balance its medium term plan, even on the basis of current forecast resources (which are likely to deteriorate further as the public finances come under further strain), all of the existing planned savings are required by value and on time. Any shortfall will need to be addressed by compensating alternative savings.

## 8. Equality and Engagement Implications

- 8.1 EIA Screening Forms were previously completed for all three proposals with the agreed outcome that a full EIA report was required. The full EIA reports are attached (Appendix A). It should be noted that the following information are

areas extracted from each of the EIA reports in relation to some of the impacts and justification – each EIA should be considered in its entirety for the full detail of the assessment and impact.

**In summary:**

**Proposal 1** was found to be relevant to age, disability, race, religion, sexual orientation, Welsh language, poverty/social exclusion and carers.

Pupils would only be supervised on their home to school transport journeys by the driver which could result in a negative impact upon pupil behaviour. In addition journeys could take longer if drivers have to get in and out of the vehicle to help children get on and off.

This proposal will not affect SEN pupils who qualify for free transport on grounds of their specific needs but could affect disabled pupils without a statement of SEN e.g. those with mobility difficulties.

This proposal could affect pupils who may be at risk of bullying because of their protected characteristics eg young carers, those of different ethnicities, disabled pupils, pupils of different (or perceived) sexual orientations, pupils who don't speak English or Welsh

*Justification:* The provision of passenger assistants in future would be on the basis of a risk assessment where it is assessed that there would be a significant risk to passenger safety if a Passenger Assistant was not provided. This would be for all categories of passengers.

For children with statements of SEN this would be done as part of their annual review and for other pupils this would be carried out annually when routes are reviewed for the start of the new academic year.

The risk assessment proposed would also be subject to an Equality Impact Assessment.

**Proposal 2** was found to be relevant to age, disability, religion, sex, poverty/social exclusion, carers and community cohesion.

Some parents wishing their child to receive a faith education may be deterred from participating if free transport provision is ceased due to increased costs and less convenient transport arrangements involved in getting to and from the faith medium school of choice.

There could also be an impact on young carers with disabled parents and their ability to get to school.

The proposal will not affect SEN pupils who qualify for free transport on the grounds of their specific needs but could affect disabled pupils without a statement of SEN eg those with mobility difficulties.

Numbers of pupils attending faith medium schools could potentially fall and pupils could transfer to alternative maintained schools within the City and County of Swansea affecting projected pupil numbers used to forecast future education provision across the local authority area.

It could also impact upon the numbers of pupils attending faith medium schools and have impact upon falling roles at these schools.

*Justification:* It is recognised that this proposal would only impact on the Voluntary Aided schools and it is regrettable that the financial position of the Council has made this proposal necessary. The Council can offer assurances that no child currently in receipt of free transport who is attending any of these schools would have their transport removed for the remainder of their time at that school. The phased introduction of the change will ensure this. Legal advice states that these changes do not contravene any statutes including the Equality Act 2010.

**Proposal 3** was found to be relevant to age, disability, race, religion, sex, Welsh language, poverty/social exclusion, carers and community cohesion.

£300 per annum would be a barrier to some potential students wishing to pursue post 16 education options. It is possible that the charge could have an impact on the long-term viability of 6<sup>th</sup> Forms in the area. Young Carers could also be impacted by the charges leading to them becoming NEET (Not in Education, Employment or Training). The proposal will not affect SEN pupils who are still covered by a Statement and qualify for free transport on grounds of their specific needs, however could affect students who have other disabilities not addressed by SEN provision. Possible greater impact on students attending faith and Welsh medium schools as they have less choice of establishments and therefore travel further.

*Justification:* Whilst the potential impact on take up of post 16 education is uncertain and of concern, the potential saving is significant. The Education Maintenance Allowance will provide support to those students and families who are eligible to receive this support. There is no duty to provide transport or make transport arrangements for those over 16. Section 6 of the Learner Travel Measure allows for this discretionary service to be provided and for it not to be free of charge. In making any change, regard must be given to the 2009 Learner Travel Operational Guidance. However, the Measure (section 10) does require each local authority to promote access to education and training through the medium of Welsh when exercising their functions under the Measure. There is no further mitigation for young carers, disabled students without an SEN statement or those disproportionately affected i.e. Welsh Medium students and Faith students.

## **9. Legal Implications**

- (i) The statutory requirements are set out in the body of the report and confirm that the Council is given both statutory duties and discretionary powers to provide transport. The Welsh Government's Learner Travel (Wales) Measure 2008 (the Measure) sets out, amongst other things, the duties on Local Authorities to assess learner travel needs and to make transport arrangements for school pupils and young people in education or training aged 16-19 in Wales. The requirements of the Measure and associated Learner Travel Operational Guidance (the 2009 Guidance) must be followed when formulating the Local Authority's Travel Arrangements or making amendments to existing policy.
- (ii) The 2009 Guidance states that:  
  
"An authority should only change an existing transport policy and / or arrangements at the beginning of a school year (unless an emergency such as

road works necessitates change). *Any changes that reduce discretionary provision of free school transport should only apply to pupils reaching compulsory school age or changing school. An authority could be judged to be acting unreasonably if entitlement to free school transport were withdrawn during a pupil's education at a particular school and parents had not been aware of this possibility at the time their application for admission was accepted.* An authority could also be judged to have acted unreasonably if it changed other aspects of its arrangements, such as timing of services or pick up/drop off points, if it failed to give parents adequate and timely notification of the change.

If an authority is considering changing its school transport policy, the Welsh Government recommends that, as a matter of fairness and good practice, there should be consultation with the schools, parents of pupils, and any other relevant parties likely to be affected, before a decision is taken." Consultation should also take place with pupils.

The 2009 Guidance is Statutory, and the Authority must take it into consideration when making decisions on reviewing its Policy. There would be a strong likelihood of a challenge if the Authority chose to ignore it e.g. if it did not protect existing pupils.

Also, before coming to its decision, the Authority must carry out proper consultation and give conscientious consideration to the results of the consultation. A full consultation has been carried out and the responses are contained within this report for consideration.

(iii) Section 149 of the Equality Act 2010 (Public Sector Equality Duty) requires public authorities to demonstrate in decision making that they have paid 'due regard' to the need to:

- eliminate unlawful discrimination, harassment and victimisation
- advance equality of opportunity between people who share a protected characteristic and people who do not share it
- foster good relations between people who share a protected characteristic and those who do not

The relevant protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex and sexual orientation. The Authority must have due regard to the impact of any of the proposals on those with a protected characteristic.

The Authority has a specific duty to publish information to demonstrate how they have paid due regard to the aims above as part of their decision making. Undertaking Community and Equality Impact Assessments would be evidence that the Authority has paid due regard to its legal obligations in making the decision on the recommendations in this report.

iv) In respect of the 3 proposals regarding the discretionary provision:

*Proposal 1 – Passenger Assistants on School Transport Services -*

Under the Measure the Authority is under a duty to assess learner travel needs and to make travel arrangements. Travel arrangements may include provision of persons to escort a child when travelling. In making an assessment the Authority must have regard to the needs of disabled learners, learners with learning difficulties, the age of child and nature of routes. Transport

arrangements are not suitable if they cause unreasonable level of stress on a child or are unsafe. In order to comply with the duty under the Measure and to ensure the continued safety of children travelling to school the Authority will undertake risk assessments on routes and consider the needs and risks posed. The risk assessment will include any risk posed by the age of the pupils, any special educational needs, disabilities, any other areas of vulnerability and general standards of behaviour on the route. Any risk identified will be assessed and a decision made as to whether a passenger assistant should be provided on that route. This will ensure that the duty under the Measure and general duty of care is discharged.

*Proposal 2 – Transport to Voluntary Aided Schools (Catholic & Church in Wales)*

A full Equality Impact Assessment has been completed. It is considered that the proposal is not discriminatory. Free transport to faith schools is a discretionary provision in exercise of the discretionary power under section 6 of the Measure (unless either section 3 applies by virtue of the relevant walking distance to the nearest suitable school or section 4 applies by virtue of the Council considering it necessary in any given case that travel arrangements, including transport, were necessary to facilitate attendance of a child). As free transport to faith schools is discretionary, it is possible to withdraw this provision. However, in order to do this, it is essential that the Authority are satisfied that it has considered all the matters set out in the 2009 Guidance and in particular paragraphs 2.18 – 2.20. These paragraphs state:

“Transport to Denominational Schools

2.18 Section 9 of the Education Act 1996 places a general duty on local authorities to have regard to the general principle that pupils are to be educated in accordance with the wishes of their parents so far as that is compatible with the provision of effective instruction and training and the avoidance of unreasonable public expenditure. Consequently, many authorities in Wales have a policy of providing free transport to pupils attending church schools who live beyond the walking distances set in the Measure and these policies have been developed to meet local circumstances and needs. Section 6 of the Measure will allow local authorities to continue to be able to provide such transport and Welsh Ministers expect this to be the case.

2.19 The Welsh Assembly Government, like local authorities, recognise the value and role of faith based education and want local authorities to continue to use their discretionary powers to make transport arrangements which take account of parental preferences for schools with a religious character. This reflects current policy on entitlement to free transport and Welsh Ministers are not currently inclined to legislate further on arrangements at local level. However, if there should be any changes in learner travel arrangements at the local level, which adversely impacts on choice, then Welsh Ministers will consider taking action such as further guidance, directions or regulations.

2.20 If an authority provides free or subsidised transport to church schools, it must be non-discriminatory.”

The Authority must therefore consider whether the withdrawal of free transport to a faith school complies with the 2009 Guidance and consider in particular whether it would adversely impact on parental choice but also considering the

avoidance of unreasonable public expenditure. The Authority must also ensure it complies with paragraph 2.5 of the 2009 Guidance:

“2.5 If a local authority does make use of the powers in section 6 of the Measure, it must ensure that any policies are fair, reasonable and comply with relevant legislation including equality legislation and the Human Rights Act 1998. Local Authorities must not discriminate unlawfully between learners when using their section 6 powers”

As stated in the Report, nothing in the proposal contravenes Principle 7 of the United Nation Convention on the Rights of the Child. This is an entitlement for a child to receive education which promotes their general culture. It is not an entitlement to transport.

Also, nothing in the proposal contravenes Article 2 of the European Convention on Human Rights or any legislation on unlawful discrimination. Article 2 of the first Protocol guarantees a right to access to education. The Article also requires all schools to respect parent’s beliefs. It does not confer an entitlement to transport.

The Equality Act 2010, Schedule 3, provides an exemption to discrimination on the grounds of religion or belief in relation to transport to or from a school.

In respect of the different treatment of transport to Welsh medium schools, the Learner Travel Operational Guidance 2009 states at paragraph 1.23:

“Neither the child’s or parents language preference or mother tongue, nor religious faith or conviction of the child or his or her parent have any bearing on whether a school is suitable. However the Measure (Section 10) does require each Local Authority to promote access to education and training through the medium of Welsh when exercising their functions under the Measure.”

It is the view of the Education Department officers that travel assistance is required to meet the requirements to promote access to education and training through the medium of Welsh under section 10 of the Measure, and therefore it follows that Welsh medium transport provision cannot be withdrawn.

However, there is no case in law on the interpretation of the provision in the Measure and the Guidance and therefore any decision could be open to challenge by way of Judicial Review.

### *Proposal 3 – Financial Assistance for Post 16 transport – Introduction of a Common Charge*

Section 3 and 4 of the Measure do not apply to children over compulsory school age. There is no duty to provide transport or make transport arrangements for those over 16. Section 6 allows for this discretionary service to be provided and to charge for it. In making any change, regard must be had to the 2009 Guidance

- v) Any decision by the Council to change its current policy, may be challenged by way of Judicial Review. Therefore Council will have to ensure that it acts lawfully. The grounds for Judicial Review are: Illegality; Irrationality; Procedural unfairness and legitimate expectation.

**Background papers:**

Learner Travel (Wales) Measure (2008) and Operational Guidance (2009)

**Appendices:**

Appendix A: Equality Impact Assessments

Appendix B: Summary of School Council Responses

Appendix C: Detailed response received from Bishop Vaughan RC School

Appendix D: Detailed response received from 'Parents for Welsh Medium Education'  
(RhAG)