

## Report of the Cabinet Member for Education

Special Cabinet - 2 June 2015

### HOME TO SCHOOL TRANSPORT POLICY – PUBLIC CONSULTATION ON AN UPDATED POLICY

<b>Purpose:</b>	To seek approval to commence statutory consultation with interested parties on a revised Home to School Transport Policy.
<b>Policy Framework:</b>	Welsh Government Learner Travel Measure. Home to School Transport Policy. Welsh Education Strategic Plan.
<b>Reason for Decision:</b>	To provide officers with permission to commence statutory consultation in relation to any potential changes to the Home to School Transport policy.
<b>Consultation:</b>	Legal Finance Transportation Access to Services
<b>Recommendation(s)</b>	
It is recommended that:	
1. Cabinet approves the commencement of consultation with interested parties in relation to the proposed changes reflected in this report; and	
2. A further report on consultation responses and on the proposed Policy be submitted to Cabinet and then Council for decision.	
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## 1.0 Summary

- 1.1 This report outlines the current situation with regards to post-16 education transport, the implications of our current policy and outlines proposals to change the policy. It must be noted that the Transport Policy has been affected by the judgement of the High Court in the case of Diocese of Menevia and Others v City & County of Swansea 2015
- 1.2 Post-16 education transport is discretionary as there is no mandatory requirement for Local Councils to provide or organise this. However, the Learner Travel Wales Measure obliges Local Authorities to assess the travel needs of those up to the age of 19. In the past, the Local Authority has worked to encourage young people in Swansea to progress to further education, employment or training. The Council has worked closely with partner agencies to reduce the number of young people Not in Education, Employment or Training (NEET) over recent years with some considerable success. There are different arrangements in relation to those pupils who attend school 6<sup>th</sup> form and those that attend further education colleges.
- 1.3 In terms of those pupils who attend further education colleges, the City and County of Swansea currently makes an annual payment to Gower College Swansea of £286k and Neath Port Talbot College of £44k to subsidise the costs of transport provision for post-16 learners (this figure is based on 2014-15 budget figure). The total annual grant is £330k.
- 1.4 Currently, students participating in post-16 learning in Gower College who wish to take up the option of transport regardless of distance are required to pay £205 towards the cost of their transport plus an additional £15 towards administrative costs thus making the total cost towards their transport of £220 per annum.
- 1.5 Although our policy is to arrange transport only to the nearest institution with a relevant course, the expansion of specialist courses not available locally has resulted in the need to provide transport to institutions outside the County. Some post-16 students opting to attend Neath Port Talbot College, are provided with a bus pass for which they are required to make a financial contribution of £100 per annum towards transport and other college services. Some students who attend Coleg Sir Gar and Pencoed College are issued with a bus pass by Swansea Council which allows them to travel free on local bus services to the pick-up points for the buses provided by the colleges.
- 1.6 Students pursuing post-16 options at Swansea school sixth forms who live more than three miles from the school or where there is no available

walking route are also provided with free home-to-school transport. Places are allocated on existing school contracted buses and pupils travel with younger pupils attending the same school. In the current academic year (2014-15) a total of 485 students access free places on the current contracted services.

- 1.7 The current policy relating to post-16 transport needs to be revised and updated to reflect the current financial climate and the reductions in grants to local authorities. The current policy is unlikely to prove sustainable in this climate.
- 1.8 The proposals for a new policy would seek to provide a single approach to transport provision to cover all types of education provision whilst recognising that the effect may have to be mitigated in some cases. It would apply universally to students whether they study at a Swansea sixth form school or a college. It would also seek to embed in the policy framework the Council's approach to poverty reduction by ensuring provision is either equitable across the student population or on the basis of additional support to families on a low income. Under the current policy, one anomaly is that there is free transport provision for pupils from areas with lower levels of disadvantage, and pupils from areas with high levels of disadvantage are required to pay to get to the other side of the city, simply because there is a lack of post-16 provision in those areas. Whilst recognising that poverty can exist in all areas, a revised policy will seek to redress this issue to reflect the Council priority on poverty reduction.
- 1.9 In the preparation of the Council's budget for 2015 – 2016, wide consultation was undertaken. As a part of this process, specific events were held with children and young people on the proposals for budget reductions. The potential unfairness and impact on poverty for those who would have to pay for transport under a new policy was strongly part of their feedback and one of the issues they were most concerned about.
- 1.10 In order for changes in transport arrangements to take effect in September 2016, the changes in policy need to take place prior to September 2015. This is due to the need to notify parents and learners of the transport arrangements prior to 1 October of the preceding year in order for them to consider this in their decision as to which school or college to attend. Any change in funding support would need to be phased to allow any current studying pupils at the establishment to finish their course.
- 1.11 Support for pupils with a Statement of Special Educational Need which is a statutory requirement and amounts to around £200k per annum. **There is no proposal to alter this** element of funding which will continue to be

provided.

- 1.12 The authority has a responsibility as a corporate parent for children who are being looked after. All efforts are made to provide continuity and stability for those children as far as school provision is concerned. At present, if carers, young people and social workers decide that a child in care or leaving care should continue to attend their normal school, free home to school transport is provided to maintain attendance where the carer's home is further than three miles away. This arrangement also applies to those children who are being cared for at addresses in neighbouring authorities. It is not proposed that this arrangement be changed and free transport will continue to be provided for looked after children who meet the statutory three mile distance criteria.

## **2.0 Statutory obligations**

- 2.1 The Learner Travel (Wales) Measure 2008 sets out the legal framework for home to school transport in Wales and the Learner Travel Statutory Provision and Operational Guidance (2014). Under the Measure, children of compulsory school age are entitled to free home to school transport when they live more than two miles (for primary age) and three 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 this responsibility in any future policy for pupils of compulsory school age.
- 2.2 The type of transport and any supervision provided will be dependent upon the needs of the child/learner, and his/her age. The most cost effective and suitable mode(s) of transport will be used. This could include a ticket for use on a local bus service, a place on a contracted vehicle, parental allowance or cycle allowance. Transport arrangements and pupils' transport needs will be reviewed on a regular basis to ensure they are suitable and cost effective.
- 2.3 For eligible children transport will be provided from home-to-school (or college) at the start and end of the day. It is not provided for part-time/lunchtime or travel between school sites. The Local Authority will provide transport from reasonably near the child's home to reasonably near school/college.
- 2.4 Depending upon their age and ability a child may be required to walk to a

pick up and set down point.

- 2.5 The Local Authority may withdraw transport if they are satisfied that a learner has failed to comply with the Welsh Government Travel Behaviour Code.

### **3.0 Background Information**

- 3.1 In Wales, traditionally there has been free transport provided to the identified local college and local sixth forms and this has been retained in many areas.

- 3.2 The City and County of Swansea Council currently spends £330k towards the transport costs for post-16 students who attend Gower College Swansea and Neath Port Talbot Colleges.

- 3.3 Post-16 students who opt to remain in school sixth form provision who live more than three miles from the school or where there is no available walking route are mainly allocated free places on contracted school transport buses and travel with other younger pupils attending the same school. Where appropriate, some pupils are issued with season tickets which allow them to travel free on public bus services at school times.

- 3.4 Other Local Authorities in Wales have changed their policies in recent years with the aim of reducing their expenditure on transport to students over 16. Officers believe that only four other Local Authorities currently have a similar policy to Swansea. It should be noted, however, that other Local Authorities are also considering consulting on various proposals so the overall provision of post-16 transport across Wales is in a change situation.

### **4.0 Options for change**

- 4.1 At the outset five options were considered. These options all relate to post-16 learners who live more than three miles from their chosen place of study except for those students who formally held a Statement of Special Educational Need who also meet the requirement for transport under that Statement. However, after having considered the Council and corporate priorities 2 options were discarded due to the impact they would have if implemented. In line with a recent decision of the Supreme Court in relation to Haringey Council, Cabinet will be consulting on three preferred options Cabinet are seeking to consult on the following three options.

- **Option 1** - Continue to provide home-to-school transport but introduce a subsidised flat rate of £300 per student per academic year.
- **Option 2** - Continue to provide home-to-school transport and introduce

a charge of £300 but also offer a reduced payment rate for students from low-income families.

- **Option 3** - Withdraw all home-to-school transport provision for post-16 learners completely and seek to negotiate a discounted ticket with bus operators for post-16 travel on the public transport network.

4.2 **Option 1** - Continue to provide home-to-school transport but introduce a subsidised flat rate of £300 per student per academic year.

### **Colleges**

- Students currently attending Gower College Swansea are required to make a payment of £205 plus an administrative charge of £15 towards the cost of a subsidised bus ticket to enable them to travel to and from the College and at other times.
- Students currently attending a course at Neath Port Talbot College, because they are unable to access the same course either at Swansea College or at a Swansea school sixth form base, are required to make a payment of £100 towards the cost of transport and other services.
- This option if adopted would cease payment to Swansea and NPT Colleges of the annual payment to support transport costs for post-16 learners initially £192,500 (7/12) for the first year of implementation and thereafter £330,000 as the current full-year allowance.
- The Colleges and the Council would aim to adopt a common policy and continue to operate their own systems to assess student eligibility and charge fees accordingly.
- As a result of withdrawing the payments to the Colleges, the Colleges may increase their annual charge to students for travel.

### **School sixth form students**

This option proposes to standardise post-16 transport support for all post-16 learners who live more than three miles from their nearest appropriate or designated place for further education study of £300.

- This proposal would require implementation of an administrative system to invoice students for payments and issue bus tickets as required. It would be considered necessary to implement an instalment system which would fall in with the three term sessions thus enabling students

to pay fees via a three payment instalment method.

- These charges would be increased in line with inflation as necessary to ensure full cost recovery for the administrative support required.
- Based on initial analysis of the worst case scenario financially, the overall financial saving for this option would be as follows. A saving to the Council of £330k in a full year. That is the funding allocated annually to the Colleges to support transport for post-16 learners. In addition, the Council would receive payment from post-16 students attending Swansea sixth forms of around £145,500 – based on 485 students at £300 per student per annum. There would be a need to offset costs to implement an administrative system – estimated at £51,330 per annum thus the net cost avoidance would be £94,170. These figures need further analysis and will be confirmed in the future report to Cabinet after the results of the consultation have been analysed
- The total saving to the Council would be (£330k plus £94,170) £424,170.

This option would reduce costs, however, it is considered to have the lower level of financial impact upon students.

4.3 **Option 2** - Continue to provide home-to-school transport and introduce a charge of £300 but also offer a reduced payment rate for students from low-income families.

4.3.1 This option proposes to implement a charge as in Option 1 above and also introduce an assessment for students from low income families who would be exempt from payment of some or all of the £300 fee. Students would be required to provide proof of family income in order for an assessment of the family income to be undertaken and help with transport costs provided for eligible students.

4.3.2 Implementation of an assessment system would increase the requirement for additional administrative support to administer an assessment of students potentially eligible to receive help with transport costs.

4.3.3 This option would seek to cease payment to Swansea and NPT Colleges of the annual payment to support transport costs for post-16 learners initially £192,500 (7/12) for the first year of implementation and thereafter £330,000 as the current full year allowance.

4.3.4 As a result of withdrawing the payments to the Colleges, the Colleges and

the Council would aim to adopt a common policy and Colleges may choose to increase their annual charge to students for travel.

- 4.3.5 This proposal would require implementation of an additional administrative system to invoice students for payments and issue bus tickets as required – as outlined above. It would be considered necessary to implement an instalment system which would fall in with the three term sessions thus enabling students to pay fees via a three payment instalment method.

It would be necessary to undertake further work to consider implementing an appropriate system to assess eligibility for a reduced cost. It would not be possible to base the system on Free School Meals as post-16 learners are not entitled to free school meals. It could be possible to consider students who were eligible for free school meals in year 11 for assessment to ensure that the family income level remains below the threshold. With this option, these students would then qualify for assistance with transport costs. Based on Swansea free school meals data (figure taken from January 2015 PLASC), 19.8% students would likely be eligible to be exempt from payment. Based on the figure of 485 students in post-16 Swansea schools, 389 students would be eligible for payment of fees and 96 would be exempt from payment. Thus fees would be based on payment from 389 students at £300 each which would be £116,700. Other options for how to assess eligibility, including the extent to which colleges can undertake this function, will be analysed and costed during the consultation period and reported back to Cabinet.

- 4.3.6 Additional administrative support may also be required to assess eligibility, depending upon the option chosen. Based on previous calculations around £51,330 would be required in addition to administrative support to issue tickets also around £51,330 therefore reducing the above cost avoidance figures by £102,660 to £14,040 (based on a charge of £300). This is based on the most costly case scenario and the most cost effective options will be explored. This will include, exploring, but not be limited to, utilising any existing staffing and intelligence resource which already operates any means testing of eligibility criteria on grounds of being most cost effective and efficient to do so, but only where we are legitimately permitted to do so. That necessarily also entails exploring, again where possible or permissible, aligning as far as practicable eligibility criteria with any other existing eligibility criteria for means testing.

- 4.3.7 The overall financial saving for this option would be as follows. A saving to the Council of £330k. That is the funding allocated annually to the Colleges to support transport for post-16 learners. In addition, the net cost avoidance to the Council would be £14,040 (based on a charge of £300).



4.3.8 The total saving to the Council would be £344,040 (£330k plus £14,040).

4.4 **Option 3** - Withdraw all home-to-school transport provision for post-16 learners completely and seek to negotiate a discounted ticket with bus operators for post-16 travel on the public transport network.

4.4.1 This option would generate the most savings for the Council as the full savings would be realised. Subject to the results of the consultation and any necessary analysis of the effect on pupils with protected characteristics, it would be equitable in that no City and County of Swansea Council support for post-16 transport would be provided. Consequently there would be no issues of providing support for some students and not for others. If a discounted season ticket is agreed with bus operators, it would be available to students at the colleges and to post-16 pupils attending schools. The students could purchase these tickets directly from the bus operators thereby removing administration costs to the Council. This would be a similar arrangement to that which is in place between First Cymru and Swansea University and would be available to all post 16 students regardless of the distance they live from school or college.

Swansea University work in partnership with First Cymru who operate the 'Unibus' network of services on a commercial basis. Students can purchase First Cymru season tickets, which allow unlimited travel on First Cymru's public transport and Unibus services, from the bus company directly or from the University Travel Shop. The season tickets for the 2014/15 academic year cost £390 for 3 terms or £450 for a full year but for 2015/16 will be reduced to £300 and £350.

It may be possible to agree with bus companies a similar arrangement at a discounted rate for post-16 school and college students, but the cost will be dependent on the number of students likely to take up the option who are prepared to travel on public transport and also whether the ticket will be required for travel only around school / college times or include evenings, weekends and holidays. Discussions will need to take place with several operators to comply with procurement requirements and because no bus company provides complete coverage throughout the City and County area.

Risks to pursuing the above option include:

- not all students will be able to make the journeys they need on the current public transport network as there are no suitable services in their area (e.g. students living in rural areas);

- not all students will be able to access a service that will suit the start and end times of school or college sessions as bus services do not currently operate at convenient times;
- there are unlikely to be direct services and most pupils will have to travel into the city centre and back out to complete their journeys;
- there may not be enough capacity to accommodate the number of students wanting to travel at peak times on the network as this will overlap with commuting times to work; and
- at present, most post-16 students attending schools travel on contract buses with younger pupils attending the same school. It will still be necessary to provide these buses for the younger students so any savings from taking post-16 students off these buses will be realised gradually as the vehicle capacities are reduced to reflect the declining numbers travelling.

A detailed analysis of the journeys currently being made by sixth form students is being undertaken to establish the extent of these risks and to highlight areas where travel by public transport would be particularly problematic. Alternative arrangements for students in these areas can then be considered as part of any future report to Cabinet on this issue.

- 4.4.2 This option would cease payment to Gower and NPT Colleges of the annual payment to support transport costs for post-16 learners initially £192,500 (7/12) for the first year of implementation and thereafter £330,000 as the current full year allowance.
- 4.4.3 Existing Council-provided transport services to schools for sixth form students would be reduced in the first year and end completely after the second year resulting in an estimated saving of £339,985. Therefore the total overall saving would be £669,985.

#### **4.5 Discarded Options**

In addition to the three options outlined above, two additional options originally put forward included:

- The introduction of a full cost recovery charge for all pupils – this option would not support the corporate poverty reduction agenda and could impact upon overall take up of post-16 learners progressing to further education opportunities.

- To continue with the present system and implement no change - this option would not address the corporate aim around sustainable funding.

As stated above, all five options were analysed and considered. As a part of this process, the full costs to the Council of providing transport were considered and anomalies identified. This analysis identified that the costs to the Council ranged from £476 per pupil per year to £1406 per pupil per year. The average cost to the Council is therefore around £700 per pupil per year. This means that even with the introduction of a £300 charge, the Council is still investing heavily in this area, and the lowest charge being considered falls far less than the real cost to the Council.

The Council is consulting upon its preferred options but also welcomes any comment on the discarded options. It is important to reflect that these options were considered so that consultees understand the range of considerations that Cabinet have undertaken.

## **5.0 Planned implementation**

- 5.1 Any policy change would need to be achieved over a phased basis, ensuring that students already registered on FE courses would continue to receive transport support until the conclusion of their course. Students commencing their FE education as from September 2016 would not receive the supported transport provision. The phasing in would accordingly take two years to fully implement.

## **6.0 Further issues for consideration**

- 6.1 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 towards transport costs plus an administration fee of £15.00 per annum. This policy has therefore favoured Swansea sixth form students.
- 6.2 Options for withdrawal of provision are likely to impact on the take-up of post-16 places and wider Council strategies for 14-19 and post-16 provision within Swansea.
- 6.4 Those Not Engaged In Education, Employment or Training (NEETs) from low-income families who are not able to pursue post-16 learning opportunities due to costs for transport could impact upon social exclusion and their ability to compete in the workplace at a later stage. This then may have a negative impact on individuals who are trying to break cycles of family poverty. This then has the potential to further increase the inequality gap in attainment, life

chances, education opportunities, social mobility which contradicts the Council's priority to tackle poverty.

- 6.5 Eligible students receive an Educational Maintenance Allowance up to £30 per week for families below the relevant income thresholds.
- 6.6 The availability of appropriate transport provision and routes to schools and colleges, even if paying for transport may be an issue.
- 6.7 The Welsh Government is implementing a concessionary travel scheme for 16-18 year-olds from September 2015 giving 1/3 discount on public transport. This may mitigate the effects of any changes to the policy
- 6.8 Many bus operators already offer discounted bus tickets. Some post-16 institutions may also continue to provide discounted or free travel to learners.

## **8.0 Policy Framework**

- 8.1 There is no statutory requirement to transport students over the mandatory school leaving age to their educational establishment. However, Welsh Government and the City and County of Swansea Council policies encourage students to continue their education after the age of 16 to acquire additional skills or study for further qualifications that would enable students to attend higher education courses or work placement positions.
- 8.2 During the consultation stage it will be necessary to assess the potential impact on the take up of Welsh medium and Faith places for post-16 study as students may opt for college and/or English-medium / non Faith school provision if the courses being offered are closer to their home address and will thus not incur transport charges.

## **9.0 Wider contextual information**

- 9.1 The Council delegates funding to the colleges to support post-16 transport. The Colleges make their own arrangements to support students and students attending the Ty Coch, Kingsway and Llwyn-y-bryn Campuses of Gower College can purchase a season ticket from the College which allows them unlimited travel on the First Cymru network. At the Gorseinon site students purchase a bus pass which allows them to travel on dedicated buses/coaches arranged by the College purely for their students. The Gorseinon campus is not served by such a good public transport service as Ty Coch and some areas are not served with a public transport service that is appropriate for start and end times of College sessions. In addition to the

£15 admin fee, charges to pupils also include an optional insurance fee of £15.

9.2 Neath Port Talbot students can purchase a First Cymru season ticket from the College for £100. This charge was implemented as a result of changes to the NPTCBC Post-16 Transport Policy that came into force in September 2014.

## **10.0 Staffing Implications**

10.1 Depending upon the option chosen for implementation, there may be additional staffing requirements to implement a fee payment system and also to administer an income-based assessment for transport support.

10.2 Further analysis of options will be undertaken during the consultation period. However, based on a worst case scenario the following applies.

- Staff would be required to assess eligibility of students to qualify for a reduced rate of payment (i.e. those students who can demonstrate that the family income is low/the family are in receipt of benefit payment/s).
- Staff will be required to raise invoices to recover the £300 fee payments from each student. These duties may need to be undertaken three times per academic year per student in order that payments can be staggered to help spread costs for students/families especially for students who are from low income families who may not qualify for free Transport.
- Bus passes will need to be issued to all post-16 pupils, those that pay the full fee and those that qualify for reduced rate of payment for transport. This could also require as many as three bus passes per academic year to be issued to individual students in order to accommodate students who will need to pay by instalments.
- Additional duties will involve dealing with applications for post-16 transport, requesting payments from parents, verifying details of courses to ensure that students are attending the nearest appropriate/ designated school/ college and then monitoring the bus services on the ground to check that only eligible students are travelling.

## **11. Other changes to policy**

11.1 During the life of the policy, the Operational Guidance issued by the Welsh Government has been updated and it is proposed that the policy be updated to match the wording of the new guidance on a housekeeping basis. This will not affect the impact or scope of the consultation but it is important to highlight changes where changes will be made.

11.2 The changes will take the form of removing 2009 Operational Guidance reference and updating to the 2014 Statutory Provisions and Operational Guidance.

## 12.0 Legal implications

12.1 There are a number of legal implications relating to this report, many of which will need to be amplified when the consultation responses are received and considered. However, what follows are the general legal issues which Cabinet will need to be aware of when making the decision on whether to go out to consultation on its preferred options.

### 12.2 Judicial Review of decision to remove discretionary transport to faith schools

On the 22<sup>nd</sup> of May 2015 judgement was handed down in judicial review proceedings against the City & County of Swansea as a result of a challenge to remove discretionary free transport to pupils attending faith schools in Swansea. The decision of the High Court is that the decision made on the 30<sup>th</sup> July 2014 to change the policy is quashed in relation to the faith schools.

12.3 The Claimants challenged the decision on six grounds and the Court found against the Council on two grounds namely:

- That the decision resulted in a policy, criterion or practice that indirectly discriminated on grounds of race and that this was not justified as a proportionate means of achieving a legitimate aim
- That the report to Council contained an error of law in that it gave the impression that the Council could not remove discretionary free transport for pupils attending Welsh medium education.

12.4 Cabinet will be provided with a specific briefing on this case and it is not necessary to go into any more detail in this report. However, the authority must take the findings of the Court into account when considering the potential effect of any options and analysing consultation responses. It is also important to note that there was never any suggestion or finding that the Council directly discriminated on grounds of race.

12.5 The effect of the decision of the Court is that the decision taken by Council in relation to faith schools is quashed and is as if it had never been made. Therefore, officers will have to ensure that the Transport Policy under consideration is suitably amended with the reinstatement of faith school transport provisions from the earlier policy and any consequential effects

on Post 16 transport are taken into account.

12.6 Officers will need to carry out a thorough and careful analysis of the pupil demographic paying particular attention to the protected characteristics identified on the equality impact assessment attached hereto. The EIA should be monitored and updated as and when the consultation responses are received and analysed. Officers should also commence analysis of data held by the authority to assess any potential impact on pupils with protected characteristics as soon as Cabinet has made any decision in relation to consult.

12.7 Contract Matters

Services that are modified or withdrawn need to follow the cancellation or modification conditions of contract relating to the services concerned.

12.8 Law in relation to educational transport

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 the travel of school pupils and young people in education and training aged 16-19 in Wales. The requirements of the Measure and associated Learner Travel Operational Guidance 2014 should be followed when formulating the Local Authority's Travel arrangements or making amendments to existing policy.

12.9 The 2014 Operational Guidance states:

- Section 2 of the measure requires local authorities to assess the travel needs of all learners under the age of 19 who receive education or training and who are ordinarily resident in the authority's area. This includes those who have reached 19 but started a course under 19 and continue to attend that course'. [para. 1.65]
- There is no statutory duty to provide free transport to post-16 learners who continue their studies in mainstream further education or training.' [para. 1.66]
- Section 6 of the Measure gives Local Authorities the power to make any arrangement they think fit to facilitate the travel of learners to and from a place where they receive education or training.' [para. 1.98]

12.10 Examples of when discretionary transport provision might be used include:

- transport for learners who are not of compulsory school age (i.e. under the age of five attending nursery school or in post-16 education or training)
- transport for learners who are not attending their nearest suitable school
- transport for learners who live below the statutory distance limit relevant to the learner's age' [para. 1.100]

12.11 'When a Local Authority uses its section 6 powers to provide discretionary travel arrangements for learners not entitled to free transport provision, a charge can be made for these arrangements'. [para. 1.131]

12.12 'If a Local Authority does make use of their section 6 powers, in accordance with section 9 of the Measure, the authority must ensure that the policy applies to all learners in similar circumstances living in the Authority's area. The Local Authority should ensure that any policy is fair, reasonable and complies with relevant equality legislation to ensure they do not discriminate unlawfully between learners when using their section 6 powers.' [para. 1.101]

### **13.0 Welsh language considerations**

13.1 As a change in policy will potentially involve the charging for learners attending Welsh-medium post-16 education it is necessary to consider the statutory and legal framework in relation to the Welsh language in education and the impact a change of policy may have.

13.2 Swansea has adopted its own Welsh Language Scheme (to be replaced by Welsh Language Standards in due course). As part of that scheme the summary states:

13.3 'The Welsh Language Scheme has an important role in the following:

- Assessing services for their impact on Welsh speakers and learners
- Monitoring service provision
- Consulting on proposed functions, policies and procedures
- Improving access to information and services' [page 2 summary of Swansea Welsh Language Scheme]

13.4 The Welsh Medium Education Strategy (WMES) issued by Welsh Government in 2010 states:



'We expect proposals for change to describe how opportunities for learners to take courses taught in Welsh will be improved and, where appropriate, ensure that learners can access a school or college where the Welsh language is used for all activities. Local Authorities will be expected to produce proposals which maintain Welsh –medium provision post-16 for those who want it'. [para. 2.9]

- 13.5 Swansea Council has adopted a Welsh in Education Strategic Plan (WESP) which sets targets specific to post-16 education through the medium of Welsh:

'Objective 3.3 Increase to percentage of learners aged 16-19 who study subjects through the medium of Welsh in schools'. [page 21 WESP]

- 13.6 Section 10 of the Learner Travel (Wales) Measure 2008 provides:

'Each Local Authority and the Welsh Ministers must promote access to education and training through the medium of the Welsh language when exercising functions under this measure'.

- 13.7 A Local Authority is not legally required to provide free Transport to Welsh-medium schools. Cabinet will note that the judicial review outcome was that the Council report had given the impression that there was a legal requirement to provide transport. The Council must promote access to education and training through the medium of Welsh and carefully consider whether any proposal to change the transport policy will impact on this duty.

## **14.0 Consultation**

- 14.1 Before coming to a decision, the Local Authority must carry out proper consultation. It should follow the so-called Gunning requirements (from the case of R v Brent LBC ex parte Gunning) which are:

- consultation is undertaken at a time when the relevant proposal is still at a formative stage;
- adequate information is provided to consultees to enable them properly to respond to the consultation exercise;
- consultees are afforded adequate time in which to respond; and
- the decision maker gives conscientious consideration to consultees' responses.

14.2 The principles outlined in the case of Gunning were expanded upon in the case of R (on the application of Mosely) v Haringey 2014. This case added that fairness may require that interested persons should be consulted not only upon the preferred option but also upon discarded options. Meaningful participation in the consultation process may require that those persons consulted with are provided with an outline of realistic alternatives so that they can express their full range of views upon the proposals. It is for this reason that the discarded options are being included in the consultation alongside the preferred options

## **15.0 Equality Act 2010**

15.1 Section 149 of the Equality Act 2010 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;

15.2 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.

15.3 The Local 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 an Equality Impact Assessment would be evidence that the Authority has considered its legal obligations.

## **16.0 Financial Implications**

16.1 Additional administrative support may be required to implement a charging system – as outlined in Options 1 and 2. As a worst case scenario, this is estimated to be in the region of £51,330 and further analysis will be needed to confirm the costings.

- 16.2 Implementation of charging and the need to provide administrative support will reduce any potential savings by £51,330 – that is the estimated cost to provide the administrative support.
- 16.3 The additional costs in the region of £51,330 will be funded through the option to charge. If the option to charge is not supported then no additional administrative support will be required.

## **17.0 Special Educational Needs**

- 17.1 Pupils with a Statement of Educational Need are required to have an annual review of their Statement. As part of the transition to post-16 study, the annual review will take into consideration the transport needs of the pupil.
- 17.2 The Colleges undertake independent travel training with pupils who have SEN where it is considered appropriate as part of their broader education and development of life skills.
- 17.3 In 2013 the Transport Unit undertook Travel Training with some older pupils from Ysgol Pen y Bryn (Special School) in conjunction with Travel Trainers from Social Services. As a result, some pupils who had been transported to school by taxi were able to travel to and from school using public transport. This was a pilot study and needs further analysis to gauge whether there is an invest to save argument for investment in funding, based on a preventative approach to service provision.

## **17.0 Equality and engagement implications**

- 17.1 An Equality Impact Assessment Screening (Appendix A) has been completed for the proposed changes with the conclusion that a full Equality Impact Assessment is required. This will be commenced prior to any consultation and updated as required following engagement. Members must have regard to the assessment before any final decision is made.
- 17.2 It is important that all students and their parents and guardians are given adequate notice of changes to our education transport provision. In the light of this, all consultation exercises must be carried out offering all stakeholders including those studying and their guardians together with the general public an opportunity to provide feedback on the proposals.
- 17.3 The consultation exercise must be for a reasonable length of time and six weeks' duration is proposed from 8 June 2015 to be completed by 17 July 2015 in line with the end of Summer Term 2015.

17.4 The following stakeholders will be included in the consultation exercise:

- all post-16 institutions where we currently send learners;
- all Swansea secondary and special schools, including those who provide a post-16 offer;
- learners and parents of learners resident in Swansea;
- neighbouring Local Authorities where they provide post-16 Education at schools accessed by Swansea learners.

17.5 The consultation process will be managed by the Education Department with the Chief Education Officer writing formally to all organisations identified above, seeking their response to the options identified.

17.6 The consultation will include a web-based consultation exercise including the use of an on-line survey tool or an e-mail response system to gather the views of the public.

The consultation process and assessment of impact will be conducted with the Council's commitment to the Rights of the Child in mind, and the child rights impact assessment will form a part of the Equality Impact Assessment report presented to Cabinet.

17.7 A full summary of consultation responses will be included in further reports for consideration.

17.8 In order to ascertain the overall effect of these proposals to college students, specific consultation with Gower College Swansea and NPT College is planned. Removal of the funding to the Colleges to subsidise transport for post-16 students could result in an increase in charges being necessary. Discussion is planned with senior college staff to consider the impact and also consider the possibility of coming to an agreement about a common charge that would apply to all post-16 learners. Details on this will be included as part of the overall consultation response for Council.

## **Background papers**

None

## **Appendices:**

Appendix A: Equality Impact Assessment Screening