

Shadow Dorset Council

Date of Meeting	12 November 2018
Officer	Director of Children’s Services
Subject of Report	School Transport Policies 2019-2020
Executive Summary	<p>The Local Authority has a duty to publish a suite of policies detailing eligibility/entitlement to school transport for any Dorset resident attending an education setting, both Dorset maintained, Academy or in the case of children and young people with Special Educational Needs and Disabilities, those attending an Independent Specialist Placement.</p> <p>The policies fully encompass the duties that are placed on the Local Authority by the requisite legislation and its accompanying guidance issued by the Department for Education.</p> <p>There are two aspects of the policies that need to be highlighted:</p> <ol style="list-style-type: none"> 1. The surplus seat cost, as agreed by Cabinet on the 7 March 2018, has risen from £675 to £715. 2. An objection to eligibility for transport for residents of the Swanage Town area raised by the Swanage School <p>These policies were consulted on in June/July 2018 and in September/October 2018. All the responses to the consultations are attached to the report.</p> <p>The responses to the consultation have been fully considered but it is not proposed that any changes should be made. Four recommendations are placed before the Dorset Shadow Executive for agreement and the subsequent adoption of the two policies.</p>
Impact Assessment:	<p>Equalities Impact Assessment:</p> <p>This is an existing policy that is updated each year prior to consultation. No material changes to the policy have taken place from 2018-2019 policy. An EQIA has been carried out based on this being an existing policy.</p> <hr/> <p>Use of Evidence:</p> <p>The Home to School Transport Policy and the Post 16 Transport Support Policy were developed based on the statutory guidance issued by the Department of Education – please see back ground papers.</p>

	<p>Budget:</p> <p>There are no changes to the policy that are likely to have any significant changes to the budget as was allocated in 2018-2019.</p> <p>Risk Assessment:</p> <p>Having considered the risks associated with this decision using the LGR approved risk management methodology, the level of risk has been identified as: Current Risk: HIGH/MEDIUM/LOW (Delete as appropriate) Residual Risk HIGH/MEDIUM/LOW (Delete as appropriate)</p> <p>Other Implications:</p> <p>(Note: Please consider if any of the following issues apply: Sustainability; Property and Assets; Voluntary Organisations; Community Safety; Corporate Parenting; physical activity; or Safeguarding Children and Adults.)</p>
<p>Recommendation</p>	<p>(a) The Home to School Transport Assistance Eligibility Policy for Children and Young People attending School 2019-2020 be approved and adopted.</p> <p>(b) Dorset Post 16 Transport Support Policy for 2019-2020 which includes a rise in the surplus seat price from £675 to £715 be approved and adopted.</p> <p>(c) The Shadow Executive agrees that the surplus seat cost for 2020/21 will be £760 and in 2021/2022 will be £800 as per the Dorset County Council Cabinet decision of 7 March 2018.</p> <p>(d) The Shadow Executive agrees that the Home to School Transport Policy and Post 16 Transport Support Policy are re-consulted on only either when there is a significant change to the eligibility criteria; or where there are changes to the statutory guidance that would require significant change to the policy; or in April-June 2021 for implementation in September 2022, whichever is the sooner.</p>
<p>Reason for Recommendation</p>	<p>For Dorset (County) Council to fulfil its statutory duty to approve and publish school transport policies ahead of the Academic Year to which they refer.</p>
<p>Appendices</p>	<p>Appendix 1:</p> <ul style="list-style-type: none"> - The Home to School Transport Assistance Eligibility Policy for Children and Young People attending School 2019-2020 - Dorset Post 16 Transport Support Policy 2019-2020 <p>Appendix 2:</p> <ul style="list-style-type: none"> - Responses received from the consultation - anonymised as appropriate. <p>Appendix 3:</p> <ul style="list-style-type: none"> - Information Sheet for Sept-Oct Consultation - Information on Swanage School Changes for Sept-Oct Consultation

Background Papers	<p>DFE Guidance on Home to school travel and transport – <i>July 2014</i> https://www.gov.uk/government/publications/home-to-school-travel-and-transport-guidance</p> <p>DFE Guidance on Post 16 Transport – <i>October 2017</i> https://www.gov.uk/government/publications/post-16-transport-to-education-and-training</p> <p>Dorset County Council Cabinet Minutes – 7 March 2018.</p>
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1. Introduction

1.1 Dorset Council has a duty to provide Home to School Transport services to eligible pupils and to assist in supporting pupils attending Post 16 provision.

1.2 The duty that is placed on the local authority is referred to in the following:

- Sections 444, 508A, 508B, 508C, 508D, 508F, 508G, 508H, 508I, 509AA, 509AB, 509AC, 509AD, 509AE, and Schedule 35B of the Education Act 1996 (the Act), as inserted by Part 6 of the Education and Inspections Act 2006 (the EIA 2006)
- Regulation 5 and Part 2 of Schedule 2 to The School Information (England) Regulations 2002, as amended
- Equality Act 2010
- School Admissions Code
- European Convention on Human Rights
- The School Travel (Pupils with Dual Registration)(England) Regulations 2007
- Public Service Vehicles (Carrying Capacity) Regulations 1984
- Section 48 of the School Standards and Framework Act 1998

1.3 The policies have been developed in accordance with the Department for Education Guidance to local authorities:

- DFE - Home to school travel and transport guidance – July 2014 (as updated)
- DFE – Post 16 transport to education and training – October 2017

2. Consultation

2.1 Dorset County Council undertook a consultation on these proposed transport policies between the 19 June -16 July 2018 for implementation in the academic year 2019-2020. The County Council received various responses including an interim response from the Swanage School during this time.

2.2 The interim response from The Swanage School suggested that there was insufficient information in the consultation to explain changes that had occurred in the 2018-2019 policy.

2.3 Dorset County Council on advice, decided to extend the consultation and two further information sheets were prepared. The consultation ran from 3 Sept – 12 Oct 2018. One of the information sheets responded to the various questions and queries raised in the first consultation. The second information sheet detailed the reasons why in 2018, there were changes to the policy for the Swanage School. These two sheets are contained in Appendix 3.

3. Changes to the Policies

3.1 There are no significant changes to the policies that were adopted on the 7 March 2018 by Dorset County Council Cabinet for implementation for the academic year 2018-2019.

3.2 The adoption of the policy for 2018-2019 on the 7 March 2018 also approved the levels of Surplus Seat costs for the next 3 years. For 2019-2020 a cost per seat of £715 was approved, with £760 proposed for 2020-2021 and then £800 for 2021-2022. These are based on around a 5% increase each year. It was agreed that subsequent increases would be based on the Confederation of Passenger Transport Index (CPTi) for the period.

3.3 £715 was the figure used in the current consultation and thus the proposed policies for 2019-2020.

3.4 There are no other changes between the adopted 2018-2019 policy and the proposed policy for 2019-2020.

4. Swanage School

4.1 The Swanage School is a Free School set up with DFE funding based on an application by the local community towards the end of the Purbeck Re-organisation.

4.2 Transport arrangements, when the school opened, were agreed on the basis that children resident in the Swanage Town area would remain catchment for the Purbeck School and, based on the transport policy, would continue to be eligible for transport to that school regardless of space availability at the Swanage School, subject to all criteria within the policy. Eligibility for transport to the Swanage School would be based on it being a pupil's closest school and subject to the usual 3 mile criterion.

4.3 The Swanage School has been undersubscribed in many of its year groups and they raised objections in 2017 to the fact that Dorset County Council were providing transport to the Purbeck School while there were places available at the Swanage School thus increasing transport cost exposure for the Local Authority.

4.4 Based on legal advice it was agreed that the Swanage School do have the right to have a transport catchment area that would allow any student within that catchment area to be eligible for transport regardless of distance to the next nearest school but still subject to the 3 mile criterion and any other policy stipulation.

4.5 The Home to School Transport Policy for 2018-2019 made provision for an identified school transport catchment area for The Swanage School that would ensure that this legal advice was adhered to.

4.6 The Local Authority did not make changes that either removed the Swanage Town area from the catchment of the Purbeck School thus removing transport eligibility on catchment grounds, nor change the Home to School Transport Policy to only allow a pupil to be eligible to school transport to their nearest catchment school where the home address falls within the catchment of two schools.

4.7 To remove the Swanage Town area from being catchment for the Purbeck School would present the LA with significant challenge in pupil place planning and admissions as families in the Swanage Area would be unlikely to gain a place at Purbeck on a 'distance admission criteria'. The distances are greater from Swanage to Wareham than they are to Wareham from parts of the Thomas Hardy, Blandford, Lytchett Minster catchment areas and a significant area of the current Poole Local

Authority area¹. Families in these areas would be more likely to gain a place at Purbeck over Swanage families were the Swanage families not to retain their catchment designation.

- 4.8 Currently there is an average of 92 children per year group in the Swanage School Transport area, an average total of 462 across the 5 year groups of Year 7 – 11. Approximately 160 of these are transported to Purbeck (May 2018) figures (all 5 year groups). This is at a cost to the LA of £134,000. Should the Swanage School fill to 420, and the numbers in the Swanage Area rise to the PAN of the combined primary schools, then 105 pupils will still require transport to the Purbeck School at an approximate cost of £89,000 – a saving of £46,430. This is based on current cost per seat, which may rise should the LA require fewer seats and there is a reduction in the cost efficiencies for a contractor. A quantum, though probably modest, would also be entitled to transport to the Swanage School.
- 4.9 The removal of the eligibility on catchment grounds would disproportionately affect Low Income families as they are currently able to access either Swanage or Purbeck but once they are no longer catchment to Purbeck from Swanage, as the distance is greater than 6 miles, they would not be entitled to transport under the Education & Inspection Act of 2006 that provides for families on Free School Meals and Full Working Tax Credits to be eligible to transport to one of their 3 nearest schools, thus removing an existing eligibility from these low income families.
- 4.10 There is one other location within the Council area where there is a joint catchment and that is Verwood, where families are catchment for both Queen Elizabeth School and Ferndown Upper School despite the fact that the nearest school will be Ferndown Upper. A change to policy would affect both of these joint catchment areas in order for there to be parity across the Local Authority Area.
- 4.11 The Swanage School have objected to the Home to School Transport Policy for 2019-2020 as there is continued entitlement of Swanage Town residents to transport to the Purbeck School regardless of places being available at the Swanage School.

5. Consultation Responses

- 5.1 The responses that were received during the first consultation are contained in Appendix 2. An information sheet was written to answer those concerns raised and was used as additional information for the second consultation. Please see Appendix 3.
- 5.2 The Swanage School raised a series of objections as detailed in their submission (contained within Appendix 2) when the Local Authority re-consulted on the transport policy between the 3 Sept – 12 Oct 2018.
- 5.2.1 The objection suggests that DCC is not working in partnership with the The Swanage School to determine transport needs for the area.
- 5.2.2 The objection suggests that DCC is not reviewing transport entitlement to ensure best value for money
- 5.2.3 The objection suggests that the Transport Policy is not sustainable by not promoting physical wellbeing and environmental wellbeing
- 5.2.4 The objection suggests that DCC is discriminating against families in respect to consistent approach to transport policy eligibility criteria
- 5.2.5 The objection suggests that DCC is not mindful of its duties of economy, efficiency and effectiveness under the Local Government Act 1999 Section 3
- 5.2.6 The objection suggests that there should be no overlap between the transport catchment areas of the Swanage School and The Purbeck School

¹ This will remain the case from 1 April 2019 with parts of the Bournemouth, Christchurch & Poole Unitary Authority being closer to Wareham than the Swanage Town Area.

- 5.2.7 The objection suggests that The Swanage School could increase capacity to then limit the need for transport as they could accommodate all children in the transport area into The Swanage School
- 5.2.8 The objection suggests that there are no rights to transport to any school and this should only be limited to their local school.
- 5.3 Dorset (County) Council have very carefully considered these objections as part of the consultation process but ultimately do not consider that these objections should result in a change to the policy.
- 5.4 Dorset Council has a discretionary legal power to provide school transport over and above the statutory minimum which it has done for some time in certain circumstances. In exercising its statutory discretion, the Council has to have regard to government guidance which makes it clear that it is for the Council to make a judgment based on the particular circumstances of its area. In addition, even if Swanage School was at capacity, there are still some children who would need transport to Purbeck school – up to 105 students may require transport to the Purbeck School should Swanage fill to its current PAN in all year groups. As such taking the circumstances into account the Council consider that it is appropriate to continue to provide transport. Dorset Council under its Post 16 Transport Support duty would also look to ensure that there is capacity on the Swanage to Wareham network to ensure Post 16 students can access the nearest Post 16 provision at the Purbeck school. The Swanage School currently does not have Post 16 provision.
- 5.5 To respond to the specific objections, while the Council does not agree with Swanage School on this occasion, Swanage School has had the opportunity to participate in the decision-making process through the consultation. The consultation process is designed to enable a range of views to be expressed and then considered. While the Council has a duty to consult it is not always going to be in a position to agree with the views expressed. Working in partnership does not always mean that there will be agreement on every issue.
- 5.6 It is accepted that the provision of school transport over and above the statutory minimum will incur an additional cost. This will always be the position whenever such provision is made and therefore is not unique to this specific situation. In relation to objections based on cost and efficiency, this is a matter for the Council to exercise its own judgment. In this case, the Council considers that the reasons for the provision of school transport justify the additional cost. As such the Council has been mindful of its duties in relation to efficiency in relation to public expenditure. If the Council were to adopt a position of not ever providing discretionary services on the basis of cost and/or efficiency arguments, then this would not be lawful as the Council must consider its approach to discretionary spending fairly by considering each case on its own merits. This point also addresses the objection that there should be no discretionary free school travel because if the Council were to adopt this position then it would have effectively have fettered its discretion in relation to discretionary free school transport.
- 5.7 It is also accepted that the provision of school transport over and above the statutory minimum may mean that some children may be provided with free school transport who otherwise may have travelled to a nearer school. This does not mean that the Council has failed to consider sustainable travel in the policy overall. The Council has considered sustainability arguments in this point but does not consider that the impact on sustainable travel is so great that it would be appropriate to stop the discretionary free transport.
- 5.8 It is not accepted that there is anything in this policy which is discriminatory. It has not been suggested that any person or group of people is disadvantaged based on any protected characteristic under the Equality Act 2010. The provision of discretionary school transport over and above the statutory minimum is considered on a case by case basis. The fact that discretionary provision is made in one

geographical area does not mean that other areas are disadvantaged as each case would be considered on its own merits.

5.9 It is not accepted that there should be no overlap between catchment areas. As set out above even if Swanage School were at capacity some children would still require transport to Purbeck school. The reasons for this are as set out above.

5.10 In respect of the expansion of the The Swanage School, it is a free school and as such it is not under the control of the Local Authority. The Swanage School has a funding agreement with the Secretary of State and any expansion of the school would be a matter for the school as a free school. In this context it is important to note that the provision of discretionary free transport does not in any way restrict the ability of parents to apply for places at the Swanage School. It is simply that the Council considers that, in these particular circumstances, the provision of some discretionary free transport is appropriate.

5.11 For these reasons, while the Council is aware that the Swanage School has concerns about this policy, the objections have been carefully considered as part of the consultation process.

6. Recommendations

6.1 The Home to School Transport Assistance Eligibility Policy for Children and Young People attending School 2019-2020 be approved and adopted.

6.2 Dorset Post 16 Transport Support Policy for 2019-2020 which includes a rise in the surplus seat price from £675 to £715 be approved and adopted.

6.3 The Shadow Executive agrees that the surplus seat cost for 2020/21 will be £760 and in 2021/2022 will be £800 as per the Dorset County Council Cabinet decision of 7 March 2018.

6.4 The Shadow Executive agrees that the Home to School Transport Policy and Post 16 Transport Support Policy remain current for 2020/21 and 2021/22 and are only re-consulted on; a) either when there is a significant change to the eligibility criteria; or b) where there are changes to the statutory guidance that would require significant change to the policy; or c) in April-June 2021 for implementation in September 2022, whichever is the sooner.

Nick Jarman
Director of Children's Services
November 2018