

North Yorkshire County Council
Business and Environmental Services

Executive Members

21 February 2020

Consultation on the provision of home to school transport for non-entitled and post 16 pupils and the use of accessible vehicles.

Report of the Assistant Director – Transport, waste and Countryside Services

1.0 Purpose of Report

- 1.1 To seek approval to consult the public and other stakeholders on:
- a. the continued use of non-accessible vehicles for home to school transport and
 - b. Changes to the arrangements for the provision of home to school transport for non-entitled and post 16 pupils.

2.0 Background

- 2.1 The Executive considered a report on 3 September 2019 which highlighted a legal challenge to the Council's approach to the provision of home to school transport for non-entitled and post 16 pupils.
- 2.2 The challenge centred on the ability of non-entitled and post 16 pupils to 'buy' spare seats on vehicles that were used for home to school transport provided by the Council, but which were not accessible for people with mobility needs e.g. wheelchair users. It was alleged that this practice was contrary to the requirements of the Public Service Vehicles Accessibility Regulations 2000 (PSVAR).
- 2.3 In order to ensure compliance with PSVAR, the Executive resolved amongst other things to cease charging non-entitled and post 16 pupils to travel on home to school transport except:
- a) where daily fares are charged and vehicles are compliant with PSVAR,
 - b) for mainstream pupils transported:
 - i) by rail,
 - ii) by commercial bus services
 - iii) by vehicles which are otherwise exempt from PSVAR (i.e. 22 seats or fewer)
- 2.3.1 And that:
- A further report be brought to the Executive prior to the end of the 19/20 academic year with either:
 - a. Proposals to reintroduce charges where suitable clarification or a change in law has been provided that would enable the reintroduction of such charges or, in the event that clarification or a change in law is not provided by that time;
 - b. Long term proposals to address the application of PSVAR to home to school transport including recommendations as to whether the Council ceases to provide transport using spare seats on buses that do not comply with PSVAR or continues to offer them free of charge.

2.4 It is now clear that PSVAR does apply to home to school transport but from January 2020 the Government have provided exemptions for school services that carry fewer than 20% of fare paying passengers. These exemptions apply until December 2021 with the potential of a further extension up to December 2023.

2.5 This report seeks authority to begin a consultation on proposals to take advantage of these exemptions and reintroduce charges from September 2020 for almost all of the non-entitled and post 16 pupils currently travelling for free. The draft consultation document is attached as Appendix 1. The consultation will be mainly available on the Council's consultation web page www.northyorks.gov.uk/consultations as well as in other forms, and will be open until 19 April 2020 and the results reported to the Executive in May 2020, together with proposals on whether and under what circumstances the Council continue to allow non-entitled and post 16 to use spare seats on home to school transport.

2.6 The consultation addresses two issues:

1. The use of non-accessible vehicles for home to school transport
2. Whether and under what circumstances the Council should make any spare seats available on home to school transport available to non-entitled and post 16 pupils.

3.0 Use of Non accessible vehicles

3.1 There is no specific obligation for the Council to require all vehicles to be used for home to school transport to be accessible but the Council provides accessible vehicles when they are required. No entitled child is prevented from accessing education as a consequence of an inability to secure suitable transport.

3.2 Most vehicles used on mainstream home to school transport are not currently accessible. Whilst it may be desirable to provide only accessible vehicles it isn't affordable. A recent tender for home to school transport in Craven and Ryedale indicated that the costs of PSVAR compliant coaches would be nearly £12,000 more per vehicle than for a non-compliant coach. This would scale up to an additional annual cost in excess of £2.7million for the whole of North Yorkshire if home to school services were provided using only accessible vehicles¹.

3.3 This level of additional cost is not affordable and the consultation proposes that the Council continue to allow operators to use non accessible vehicles for home to school transport unless otherwise required by law, or to meet the mobility needs of pupils.

4.0 Permitting non-entitled and post 16 pupils to travel using spare seats.

4.1 The practice of selling spare seats to non-entitled and post 16 pupils has been popular with parents and pupils alike, as well as being beneficial for the Council. However, most mainstream school transport is provided using vehicles that are not accessible therefore and most of the spare seats offered by the Council are therefore not suitable for anyone needing accessible transport. The offer of a spare seat therefore has a disproportionate impact on pupils that have mobility needs (for example those pupils who use wheelchairs). The Council offers no alternative services for these non-entitled and post 16 pupils and they are expected to make their own arrangements to travel to and from school.

4.2 If a non-entitled or post 16 pupil wished to travel in a spare seat it is suggested that the objective would be first to secure an accessible vehicle to replace the non-accessible one, but if this was not possible or involved unreasonable additional costs, then the offer of a spare seat would be limited to pupils that did not require accessible transport.

¹ This number refers only to the estimated additional cost of providing accessible vehicles on services requiring more than 22 seats. It excludes any additional cost to provide accessible vehicles for services provided on vehicles with 22 seats or fewer.

5.0 Charging for Spare Seats

- 5.1 There are about 2,300 non entitled and post 16 pupils using spare seats on home to school services. Following the legal challenge in 2019 the Council stopped charging for most of the spare seats but continued to charge about 1,370 mainstream pupils where it was lawful to do so. This was an interim arrangement whilst the legal status of home to school transport and the requirement for accessible vehicles was clarified.
- 5.2 It is now clear that the Council can only charge for the use of spare seats where the vehicle used is accessible and compliant with PSVAR, or otherwise exempt (e.g. 22 seats or fewer).
- 5.3 The likely additional annual cost for providing PSVAR compliant or exempt vehicles where non-entitled or post 16 pupils are carried (allowing for the income from charging) is approximately £1.2million. This is not affordable.
- 5.4 Alternatively, the Council could chose to waive all fees for using spare seats but this would mean forgoing the existing £280,000 annual income. The provision of home to school transport for non-entitled and post 16 pupils is a discretionary service and completely waiving the charge would put an unnecessary strain on Council Tax, and is not proposed as a realistic option.
- 5.5 The options proposed in the consultation are:
1. Transport only eligible pupils
 2. Charge for spare seats where it is legal to charge – but do not offer the use of spare seats on vehicles where it would not be lawful to charge
 3. Charge where it is legal to charge and allow other spare seats to be used for free.
- 5.6 The options are discussed in detail within the consultation document but in summary a variant of Option 3 is proposed as the preferred option. The variant being that the offer of free travel using spare seats where it would not be lawful to charge is limited up to the end of the 2020/21 academic year, and only to pupils already travelling (which are almost all sixth form or college students).
- 5.7 The implication of this option is that almost all pupils currently being transported will continue to be transported (at least until July 2021) and income to the Council from selling spare seats will increase by £260,000 p.a. (at current charging rates) until the Government's temporary exemptions expire or vehicles can be replaced with accessible ones.

6.0 Proposals

- 6.1 The consultation makes the following proposals:
- 6.1.1 It is proposed that the Council continue to:
- Procure transport only for entitled pupils (i.e. the presumption is that post 16 and non-entitled pupils will make their own arrangements to travel to school (noting that Post 16 pupils may qualify for assistance from the Council - which may be by provision of transport or payment of an allowance)
 - Provide transport using the most economic means of transport that is capable of meeting the needs of the pupil - including public train and bus services and taxis

6.1.2 It is then proposed that:

- Where pupils do not have mobility needs that require accessible transport the Council may use vehicles that are not accessible.
- Spare seats on vehicles procured for home to school transport may be offered to non-entitled and post 16 pupils and allocated according to published criteria
- A charge will be made for the use of spare seats by non-entitled and post 16 pupils where the vehicle used is compliant with the requirements of PSVAR or otherwise exempt
- Pupils with Scholars Travel Permits currently travelling in spare seats on vehicles that are not compliant with the requirements of PSVAR, or otherwise exempt, will be able to continue to travel without charge for a period up to July 2021. This would be subject to the normal provisions that the offer can be withdrawn at any time if the seat is required for an eligible pupil, and on the understanding that a charge can be introduced with at least one month's notice if the vehicle either becomes exempt from PSVAR or is replaced with another vehicle that is compliant or otherwise exempt.
- Daily fares paid for the use of spare seats will only be taken where vehicles are accessible and comply with PSVAR.
- New applications for use of spare seats will only be considered where vehicles are PSVAR compliant or otherwise exempt.
- NYCC may require a PSVAR compliant vehicle to enable it to offer spare seats to non-entitled and post 16 pupils but will only do so where it is cost effective and represents value for money.
- The proposal is that these arrangements are effective from the start of the 2020/21 academic year

7.0 Legal Impacts

7.1 There are no legal implications arising from the recommendations of this report to carry out consultation. The consultation is a response to the need to change the way home to school services are provided following a legal challenge and the outcome will be reported to the Executive together with recommendations for change. The legal implications of the options and proposals will be detailed at that time

8.0 Financial Impacts

8.1 There are no financial implications arising from the recommendations of this report to carry out consultation. The consultation is a response to the need to change the way home to school services are provided following a legal challenge and includes options with different financial implications. The preferred option will increase income to the Council of circa £260k p.a. but the financial implications will be detailed in the report to the Executive in May 2020 together with recommendations for change.

9.0 Equalities Impacts

9.1 An equalities impact assessment is attached as Appendix 2.

10.0 Recommendations

10.1 That the Assistant Director Transport, Waste and Countryside Services, be authorised to make any final amendments or changes to the attached draft consultation document prior to publication so as to provide further clarification or correct any errors or omissions.

10.2 That, subject to 10.1, the proposals outlined in this report and detailed within the draft document attached as Appendix 1 to this report be approved for public consultation.

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Background: None

PART ONE-OPTIONS DOCUMENT

HOME TO SCHOOL TRANSPORT – USE OF ACCESSIBLE VEHICLES AND PROVISION OF TRANSPORT FOR NON-ENTITLED AND POST 16 PUPILS

Introduction

North Yorkshire County Council is responsible for making suitable travel arrangements for entitled children within the County to get to and from school. It spends in excess of £24 million per year on home to school transport, and aims to provide a safe and good quality service, whilst balancing costs to ensure it provides overall value for money.

The detail of how the Council goes about delivering its statutory obligations in relation to home to school transport is contained in its HOME TO SCHOOL AND COLLEGE TRANSPORT POLICY at:

<https://www.northyorks.gov.uk/sites/default/files/fileroot/Education%20and%20learning/School%20transport/Amended%20-%20Post%20PTP%20Home%20to%20School%20Transport%20Policy%202019.pdf>

This document explains that:

1. There are often spare seats on home to school transport which the Council makes available to other non-entitled and post 16 pupils. About 2,300 non-entitled or post 16 pupils currently travel to and from school using spare seats.
2. Under certain circumstances the Council can charge for the use of these spare seats. The ability for the Council to make a charge is limited to where vehicles are accessible² and comply with, or are exempt from, the requirements of the Public Services Vehicles Accessibility Regulations 2000 (PSVAR).
3. About 1,370 non-entitled or post 16 pupils are currently paying the Council approximately £270,000 per year to travel using spare seats. In addition, for a limited time the Council could lawfully charge a further 580 pupils which would generate an additional annual income for the Council of about £260,000.
4. About 370 non-entitled and post 16 pupils currently travel on vehicles that are not compliant or exempt from PSVAR and the Council cannot charge these pupils.

The Council is now consulting on whether and under what circumstances it should continue to allow non-entitled and post 16 pupils to travel in spare seats on home to school transport, and when a charge should be made.

A glossary of terms used is provided at the end of this document.

Background

North Yorkshire County Council has a duty to provide home to school transport free of charge to all entitled children up to the end of year 11. There are currently over 12,500 pupils entitled for free home to school transport in North Yorkshire.

Entitlement is to the nearest or catchment school and is dependent on a number of factors specific to each child including distance to school, age, mobility and health needs, and the safety of the walked route. Further details on how the Council determines whether a child is entitled to free home to school transport is available at: <https://www.northyorks.gov.uk/school-transport-reception-year-11-children>

² For the purposes of this consultation the term accessible means that a vehicle is designed or modified so as to be usable by everyone regardless of any physical disability. To be considered as accessible a vehicle will, amongst other things, be capable of transporting at least one passenger in a wheelchair.

The Council also has a duty to assist in the provision of transport for 16-19 year old pupils to travel to sixth form or college. This can be through the provision of transport (e.g. on a bus or by taxi) or by making a financial contribution towards cost. Where the Council provides home to school transport for post 16 pupils it is allowed to recover a contribution towards its costs. Further information on transport for post 16 pupils is available at:

<https://www.northyorks.gov.uk/transport-sixth-form-or-college>

The Council arranges transport for entitled pupils, and may also arrange transport for post 16 pupils where it is cost effective to do so. It then offers any spare seats on the vehicles to non-entitled and post 16 pupils. Until September 2019, the Council made a charge to any non-entitled or post 16 pupil travelling in a spare seat. The charge was for a 'Scholars Travel Permit' for regular transport; or, a daily fare.

Scholars Travel Permits are issued according to criteria that prioritise factors such as whether a child has any special educational needs; whether siblings already travel on the vehicle; and the stage the child is at in their education. The number of spare seats available on any home to school service varies each year as the number of entitled pupils changes. The terms and conditions attached to the provision of a Scholars Travel Permit state that it can be withdrawn with a minimum of seven days' notice should a seat be required for an entitled pupil.

The full year charges for Paid Travel Permits are:

	Non-entitled pupils up to year 11	Post 16 pupils travelling to college or sixth form
2019/20	£390	£490
2020/21	£490	£600
2021/22	£550	TBC

Charges have yet to be confirmed for future years. All charges are subject to a 50% discount for families in receipt of a low income.

Daily fares vary from service to service, but are typically about £2 per day per return journey. We estimate that about 1,150 pupils are currently purchasing fares on average about two days per week, generating an annual income to the Council of about £175,000. In addition, it is estimated that a further 80 pupils were paying daily fares until September 2019 but are now travelling for free for reasons explained later.

Allowing non-entitled and post 16 pupils to travel using spare seats on home to school transport has made effective use of spare capacity in the service; provides a safe and effective service for pupils not entitled for free transport; reduces congestion and also generates valuable income to the Council. Using spare seats is also environmentally better and helps reduce greenhouse gas emissions and improve air quality.

Impact of the Public Service Vehicles Accessibility Regulations 2000

In 2019 the Council received a complaint about selling spare seats to non-entitled and post 16 pupils. The complaint was that selling spare seats on certain vehicles³ meant that those vehicles had to comply with the Public Service Vehicles Accessibility Regulations 2000 (PSVAR) and therefore be accessible for passengers with mobility needs, including wheelchair users.

³ Vehicles with over 22 seats

The understanding within the Council at that time was that PSVAR did not apply to home to school transport. This was a common understanding amongst local authorities across the country but legal advice was that the Council was exposed to a risk of prosecution if it continued to charge pupils to travel on vehicles that are not compliant with, or otherwise exempt from, PSVAR.

In September 2019 the Council decided to cease charging on most home to school services. We have continued to charge for non-entitled and post 16 mainstream pupils travelling by rail, on vehicles that are exempt from PSVAR, or using registered bus services as PSVAR is either not relevant or vehicles are already compliant. The Council also decided to stop taking any new applications for Scholars Travel Permits until further notice.

It is now clear that PSVAR does apply to home to school transport on vehicles with over 22 seats, but from January 2020 the Government has provided some further exemptions for home to school services that carry fewer than 20% of fare paying passengers. These exemptions apply until December 2021 with the potential of a further extension up to December 2023.

In North Yorkshire the additional exemptions would apply to 109 routes that carry 386 non-entitled or post 16 pupils. A further 13 routes (mainly to sixth form colleges) currently carrying 292 paying passengers who are in possession of a Scholars Travel Permit would exceed the threshold for the exemption.

These temporary exemptions are not a long term solution: they are intended to enable councils and the industry to bring on more accessible vehicles. It is proposed that the Council takes advantage of these exemptions alongside the other proposals in this paper.

Use of Non-Accessible Vehicles

The Council does not require all vehicles used for home to school transport to be accessible: there is no specific legal obligation to do so. The transport needs for any entitled pupil that requires an accessible vehicle are met and **no all entitled pupils are offered suitable transport to school or college.**

Entitled pupils with mobility needs will always be provided with a suitable vehicle that allows them to be transported in safety and comfort (including in their wheelchair if appropriate). We know in advance whether pupils routinely require accessible transport and we will provide it when necessary. We also know that there has been no need or demand from parents, pupils or schools for most mainstream school transport to be accessible.

When the Council puts home to school transport services out to tender, vehicle operators are free to offer accessible or non-accessible vehicles unless we specifically require an accessible vehicle, and contracts are awarded on the basis of the lowest cost to the Council (subject to meeting minimum quality standards). Procurement in this way ensures a cost effective service and provides for greatest competition between both small and large operators.

Most vehicles used on mainstream home to school transport are not currently accessible⁴. The Council is not under any obligation to procure accessible vehicles, provided the mobility needs of any entitled pupil are met. However, it is recognised that there would be wider benefits in doing so as it would help increase the numbers of accessible vehicles within the industry and therefore improve the general accessibility of public transport.

⁴ In Nov 2019 only 21 out of the 248 mainstream home to school services using vehicles with over 22 seats were accessible.

The Council would like to see more accessible vehicles on the road and is working with operators to identify ways in which we might be able to be more innovative in our procurement of home to school services to help encourage the use of more accessible vehicles. This will take time to establish and in the meantime using more accessible vehicles on home to school transport will increase Council costs.

A recent tender for home to school transport in Craven and Ryedale indicated that the costs of PSVAR compliant coaches would be nearly £12,000 more per vehicle than for a non-compliant coach. This would scale up to an additional annual cost in excess of £2.7million if home to school services were provided using only accessible vehicles across the whole of North Yorkshire⁵.

This level of additional cost would impact significantly on Council resources and it is proposed that the Council continues to allow operators to use non accessible vehicles for home to school transport, unless otherwise required by law or to meet the mobility needs of pupils.

Permitting non-entitled and post 16 pupils to travel using spare seats.

The practice of allowing non-entitled and post 16 pupils to travel using spare seats on Council provided home to school transport has been popular with parents or carers and pupils alike, as well as being beneficial for the Council. However, most mainstream school transport is provided using vehicles that are not accessible meaning that most of the spare seats available for non-entitled or post 16 pupils are not suitable for anyone needing accessible transport.

The Council has a legal duty to consider how its policies or decisions affect people who are protected under the Equality Act, including people with disabilities, and to make any reasonable adjustment necessary to ensure they are not disproportionately affected.

The use of spare seats on home to school transport is limited to those pupils who are capable of accessing the transport –for example, if a vehicle is not wheelchair accessible then only pupils who do not use wheelchairs can travel in any spare seats. The offer of a spare seat therefore has a disproportionate impact on pupils that have mobility needs, and the Council provides no alternative services for these non-entitled and post 16 pupils who are expected to make their own arrangements to travel to and from school.

In these circumstances, the Council could offer to provide separate accessible transport, but this will result in an additional cost and would challenge the underlying simple principle that the offer is of a 'spare' seat. Arranging separate transport is therefore not considered to be a 'reasonable adjustment'.

It is instead proposed that, where a non-entitled or post 16 pupil is otherwise entitled to travel in a spare seat on home to school transport, but is denied the opportunity because of a mobility need requiring an accessible vehicle, the response will be first to secure an accessible vehicle instead of the non-accessible one. If this was not possible, or involved disproportionate additional costs, then the offer of a spare seat on that vehicle would in practice only be available to pupils that did not require accessible transport.

⁵ This number refers only to the estimated additional cost of providing accessible vehicles on services requiring over 22 seats. It excludes any additional cost to provide accessible vehicles for services provided on vehicles with 22 and fewer seats.

Charging for Spare Seats

In most cases, vehicles used for home to school transport only carry pupils entitled to free transport⁶. The Council is entitled to make a charge for those that carry non-entitled or post 16 pupils, but can only do so where the vehicle is either compliant with PSVAR and accessible, or is exempt.

There are about 2,300 non entitled and post 16 pupils using spare seats on home to school services. Following the legal challenge in 2019, the Council stopped charging for some of the spare seats but continued to charge about 1,370 mainstream pupils travelling on vehicles with 22 seats and fewer, or where the service is a registered commercial service.

This was an interim arrangement for up to a year whilst the legal status of home to school transport and the requirement for accessible vehicles was clarified. It is now clear that the Council can only charge for the use of spare seats where the vehicle used is accessible and compliant with PSVAR, or otherwise exempt (e.g. 22 seats and fewer).

Using only PSVAR compliant (or exempt) vehicles for all services transporting non-entitled or post 16 pupils would impact significantly on Council resources. In most cases, there are only one or two spare seats on a vehicle, and the income received by the Council for selling those seats would be small in comparison to the likely additional cost of a PSVAR compliant vehicle. The additional annual cost for providing PSVAR compliant or exempt vehicles (allowing for the income from charging) is approximately £1.4million. The Council is not able to meet this significant increase in cost.

Alternatively, the Council could choose to waive all fees for using spare seats but this would mean forgoing the existing £270,000 annual income as well as any further potential income. The provision of home to school transport for non-entitled and post 16 pupils is a discretionary service which the Council is entitled to charge for. Completely waiving the charge would put an unnecessary strain on Council resources and is not an option that would be in the best interests of the Council Tax payer.

Summary

The Council cannot charge all the non-entitled or post 16 pupils currently using spare seats on home to school transport. It must now decide if it is going to continue to allow those pupils to travel to school using spare seats, and if and when it is going to charge.

The Council has identified four options that it considers offer the most appropriate and viable way forward. We are seeking your opinion on these options:

4. Transport only entitled pupils
5. Charge for spare seats where it is legal to charge – but not offer the use of spare seats on vehicles where it would not be lawful to charge
6. Charge where it is legal to charge and allow other spare seats to be used for free
7. A combination of 2 and 3 above.

None of these options is without challenges or difficulties as discussed below.

⁶ About 940 of the 1088 home to school services provided by NYCC carry only entitled pupils entitled to free transport.

OPTION 1 – Transport only entitled pupils. This would mean removing the offer of transport to all 2,300 non-entitled and post 16 pupils to travel using spare seats. This provides a robust response to the legal challenge and ensures equity across those in receipt of transport. However, it creates significant difficulties for the 2,300 pupils who are currently using spare seats and would no longer be permitted to travel. This option would result in annual income to the Council reducing by £270,000 p.a., and would require those affected pupils to find alternative means of transport leading to increased congestion and emissions. It may impact on a parent's choice of school for their child.

OPTION 2 – Charge where it is lawful to do so - but do not offer spare seats on vehicles where it would be unlawful to charge. This option takes advantage of the potential for the Council to charge for services where vehicles are accessible or exempt from PSVAR.

Allowing for the recent Government exemptions, this option would enable about 1,960 of the 2,300 non-entitled and post 16 pupils currently using spare seats to continue to travel, and would generate additional income for the Council of approximately £260,000 per year at current charges. Compared to Option 1, this option affects significantly fewer families, and helps reduce the impacts on congestion and emissions.

Without the recent Government exemptions, the numbers of pupils that can be lawfully charged and additional Council income is reduced to 1,570 and £90,000 p.a. respectively. However, as accessible vehicles become more available we will have to rely less on the exemptions and the opportunity to offer spare seats to other pupils will increase.

In order to take advantage of the Government's exemptions and enable the maximum number of pupils to continue to travel in spare seats, the Council would have to control the numbers of fare paying passengers on vehicles that were not PSVAR compliant or exempt to ensure they were less than 20%. This would mean we would not be able to accept daily fares on these routes. This will impact on about 80 pupils who will be directed towards purchasing a paid travel permit, or who will have to make their own arrangements to travel.

OPTION 3 – Charge where it is lawful to do so - and offer other spare seats for free. This option provides for the same level of income as Option 2 but enables the remaining spare seats on other vehicles to be used by other non-entitled and post 16 pupils.

This option reduces inconvenience for existing travellers and helps reduce congestion and emissions by making best use of available seats. However, the obvious problem with this option is that it results in some pupils being charged and others not - which could be perceived as unfair. This option also has a disproportionate impact on pupils with special educational needs or disabilities (SEND) as there would be approximately 13% non-entitled and post 16 mainstream pupils that would travel for free compared to only 8% for SEND.

For these reasons it is not considered as a suitable long term option.

PROPOSED OPTION – Combination of Option 2 and Option 3

It is proposed that Option 3 be an interim option combined with a policy of not accepting any new applications to use spare seats unless the vehicle concerned is compliant with PSVAR or otherwise exempt.

Currently 236 of the 267 pupils who would travel without being charged under this option are post 16 pupils attending sixth form or college. These pupils only require transport until summer 2021 at the latest, with about half finishing their studies in summer 2020. A temporary policy up to July 2021 to enable free travel to existing users of spare seats where the Council is unable to charge would enable these pupils to finish their studies without

disruption to their transport arrangements. After this, spare seats would be offered only on vehicles that are PSVAR compliant or otherwise exempt– i.e. **Option 2 above**.

At this stage prior to this consultation this option is considered the most appropriate approach.

Proposal

In summary, it is proposed that the Council continues to:

- Only secure transport for entitled pupils: the presumption is that post 16 and non-entitled pupils will make their own arrangements to travel to school (noting that Post 16 pupils may qualify for assistance from the Council - which may be by provision of transport or payment of an allowance)
- Provide transport using the most economic means of transport that is capable of meeting the needs of the pupil - including trains, public bus services and taxis.

It is then proposed that:

- Where pupils do not have mobility needs that require accessible transport the Council may use vehicles that are not accessible.
- Spare seats on vehicles procured for home to school transport may be offered to non-entitled and post 16 pupils and allocated according to published criteria.
- A charge will be made for the use of spare seats by non-entitled and post 16 pupils where the vehicle used is compliant with the requirements of PSVAR or otherwise exempt.
- Pupils with Scholar Travel Permits currently travelling in spare seats on vehicles that are not compliant with the requirements of PSVAR, or otherwise exempt, will be able to continue to travel without charge for a period up to July 2021. This would be subject to the normal provisions that the offer can be withdrawn at any time if the seat is required for an entitled pupil, and on the understanding that a charge can be introduced with at least one month's notice if the vehicle either becomes exempt from PSVAR or is replaced with another vehicle that is compliant or otherwise exempt.
- Daily fares paid for the use of spare seats will only be taken where vehicles are accessible and comply with PSVAR.
- New applications for use of spare seats will only be considered where vehicles are PSVAR compliant or otherwise exempt.
- The Council may require a PSVAR compliant vehicle to enable it to offer spare seats to non-entitled and post 16 pupils, but will only do so where it is cost effective and represents value for money.
- The proposal is that these arrangements are effective from the start of the 2020/21 academic year.

PART TWO

CONSULTATION ON HOME TO SCHOOL TRANSPORT – USE OF ACCESSIBLE VEHICLES AND PROVISION OF TRANSPORT FOR NON-ENTITLED AND POST 16 PUPILS

Background

North Yorkshire County Council spends in excess of £24 million per year on home to school transport, and aims to provide a safe and good quality service, whilst balancing costs to ensure that the service provides overall value for money.

The Council provides home to school transport using vehicles that meet the needs of pupils. Where pupils have mobility needs that require accessible vehicles then an accessible vehicle is provided.

The Council would like to use only accessible buses for home to school transport but it cannot afford to do so. A recent tender has shown that the additional annual cost of requiring accessible buses for home to school transport is, on average, proximately £12,000 per bus. If we were to only use accessible buses for all home to school transport it could cost another £2.7million per year. This is unaffordable and when we know most pupils do not have mobility needs that require accessible transport, is not necessary.

Vehicles used for home for school transport often have spare seats which we have made available for non-entitled and post 16 pupils for a charge. The Council received £610,000 in income from selling spare seats in 2018/19 but a legal challenge has meant that we had to stop charging for some spare seats from September 2019 and our annual income has gone down to about £270,000.

The Council is only allowed to charge for spare seats where the vehicle used meets the requirements of the Public Service Vehicles Accessibility Regulations (PSVAR) or is otherwise exempt. PSVAR requires vehicles to be accessible for anyone to use regardless of disability or mobility needs. Most vehicles used on home to school transport, especially to mainstream schools, are not accessible but the Government has recently allowed further exemptions up to 2023 that would allow us to reintroduce charges on most of our services.

The Council is therefore proposing to reintroduce charges for the use of spare seats on home to school transport where it would be legal to do so. It is also proposed to allow those pupils currently using spare seats on vehicles where the Council cannot charge to continue to travel for free up to July 2021. This is not an ideal situation as it means that for a short time some pupils will have to pay and other will not, but the alternatives are either not affordable, or mean we have to immediately stop allowing some or all non-entitled and post 16 pupils to travel using spare seats.

This would significantly inconvenience up to 2,300 pupils and their families, add to congestion and emissions from having more vehicles on the road, and would mean the Council was unable to collect circa £535,000 p.a. of income it would be entitled to recover.

CONSULTATION QUESTIONNAIRE

Please ensure you have fully read the consultation documentation before answering the questions below.

1. When should the Council use accessible vehicles to transport pupils to and from school?

Please select one option.

- a. Always, regardless of cost and the needs of pupils?
- or
- b. Only where required to meet the known needs of pupils being transported?

2. Spare seats on home to school transport may be offered to non-entitled and post 16 pupils and allocated according to published criteria. Allowing non-entitled and post 16 pupils to travel using spare seats has made effective use of capacity in the service; provides a safe and effective service for pupils not entitled for free transport; reduces congestion and also generated valuable income to the Council.

Please select one option.

When should spare seats on home to school transport be offered to non-entitled and post 16 pupils?

- a. Never
- or
- b. Only when the Council can charge for the use of the spare seat
- or
- c. Regardless of whether the Council can charge for the use of the spare seat.

3. Non-entitled or post 16 pupils with mobility needs may be unable to use spare seats on vehicles that are not accessible. Taking into account that the Council is not required to offer transport to non-entitled or post 16 pupils, that the offer is to use a 'spare seat', and that the Council has a legal duty to consider the needs of people with disabilities, how should the Council respond under these circumstances?
 - a) Replace the vehicle with an accessible vehicle, or provide separate transport regardless of cost
 - b) Provide an accessible vehicle if possible and within reasonable additional cost but do not provide an additional separate vehicle
 - c) Decline to provide transport unless alternative arrangements can be made without additional cost

4. If spare seats on vehicles for home to school transport are offered to non-entitled and post 16 pupils, we propose they should be allocated based on the criteria shown below. Please can you rank these criteria based on what you think should be prioritised. Prioritise based on 1 = highest priority to 5 = least priority
 - a. Previously travelled on vehicle
 - b. Siblings already travel
 - c. Pupils with special educational needs or disabilities
 - d. Distance
 - e. Other (state).....

5. In most cases vehicles used for home to school transport carry only pupils entitled to free transport. For those that carry non-entitled or post 16 pupils the Council is entitled to make a charge, but can only do so where the vehicle is either compliant with Public Service Vehicles Accessibility Regulations (PSVAR) and accessible for users, or is otherwise exempt from PSVAR (e.g. 22 seats and fewer). Which of the following options for the use of spare seats do you prefer?

OPTION 1 – Transport only entitled pupils – and do not make any spare seats available for non-entitled or post 16 pupils. This would mean removing the offer of transport to all 2,300 non-entitled and post 16 pupils to travel using spare seats. This provides a robust response to the legal challenge and ensures equity across those in receipt of transport.

OPTION 2 – Charge where it is lawful to do so - but do not offer spare seats on vehicles where it would be unlawful to charge. This option takes advantage of the potential for the Council to charge for services where vehicles are accessible or exempt from PSVAR.

This option would enable about 1,960 of the 2,300 non-entitled and post 16 pupils currently using spare seats to continue to travel, and would generate additional income for the Council of approximately £260,000 per year at current charges.

Without the recent Government exemptions, the numbers of pupils that can be lawfully charged and provide the Council with additional income is 1,570 and £90,000 p.a. respectively. However, as accessible vehicles become more available we will have to rely less on the exemptions and the opportunity to offer spare seats to other pupils will increase.

OPTION 3 – Charge where it is lawful to do so - and offer other spare seats for free. This option provides for the same level of income as Option 2 but enables the remaining spare seats on other vehicles to be used by other non-entitled and post 16 pupils.

This option reduces inconvenience for existing travellers and helps reduce congestion and emissions by making best use of available seats. However, the obvious problem with this option is that it results in some pupils being charged and others not - which could be perceived as unfair.

This option also has a disproportionate impact on pupils with special educational needs or disabilities (SEND) as there would be approximately 13% non-entitled and post 16 mainstream pupils that would travel for free compared to only 8% for SEND. For these reasons it is not considered as a suitable long term option.

PROPOSED OPTION – Combination of Option 2 and Option 3

It is proposed that Option 3 be an interim option combined with a policy of not accepting any new applications to use spare seats unless the vehicle concerned is compliant with PSVAR or otherwise exempt.

Currently 236 of the 267 pupils who would travel without being charged under this option are post 16 pupils attending sixth form or college. These pupils only require transport until summer 2021 at the latest, with about half finishing their studies in summer 2020. A temporary policy up to July 2021 to enable free travel to existing users of spare seats where the Council is unable to charge would enable these pupils to finish their studies without disruption to their transport arrangements. After this, spare seats would be offered only on vehicles that are PSVAR compliant or otherwise exempt – i.e. Option 2 above.

At this stage prior to this consultation this PROPOSED OPTION – Combination of Option 2 and Option 3 is considered the most appropriate approach.

Please tick the option you prefer	
OPTION 1 – Transport only entitled pupils – and do not make any spare seats available for non-entitled or post 16 pupils	
OPTION 2 – Charge where it is lawful to do so - but do not offer spare seats on vehicles where it would unlawful to charge.	
OPTION 3 – Charge where is where it is lawful to do so - and offer other spare seats for free.	
PROPOSED OPTION – Combination of Option 2 and Option 3	

6. Please indicate which of the following you represent
- Service provider
 - Parent of entitled children
 - Parent of non-entitled children
 - Parent of Post 16 student

 - Representative group-younger persons
 - Representative group -Disability group/forum
 - School
 - Non users of service
7. If you have any further comments on this consultation, please add them here.

Glossary of terms

Accessible vehicles

For the purposes of this consultation the term accessible means that a vehicle is designed or modified so as to be usable by everyone regardless of any physical disability. To be considered as accessible a vehicle will, amongst other things, be capable of transporting at least one passenger in a wheelchair.

Entitled pupils

Entitlement is to the nearest or catchment school and is dependent on a number of factors specific to each child including distance to school, age, mobility and health needs, and the safety of the walked route. Further details on how the Council determines whether a child is entitled for free home to school transport is available at: <https://www.northyorks.gov.uk/school-transport-reception-year-11-children>

Non-entitled pupils

Further details on how the Council determines whether a child is entitled or not for free home to school transport is available at: <https://www.northyorks.gov.uk/school-transport-reception-year-11-children>

Non-accessible vehicles

For the purposes of this consultation the term Non-accessible means that a vehicle is not designed or modified so as to be usable by everyone regardless of any physical disability. To be considered as Non-accessible a vehicle will, amongst other things, not be capable of transporting at least one passenger in a wheelchair.

Spare seats

There are often spare seats on home to school transport which the Council makes available to other non-entitled and post 16 pupils. About 2,300 non-entitled or post 16 pupils currently travel to and from school using spare seats

Post 16 pupils

The Council also has a duty to assist in the provision of transport for 16-19 year old pupils to travel to sixth form or college. This can be through the provision of transport (e.g. on a bus or by taxi) or by making a financial contribution towards cost. Where the Council provides home to school transport for post 16 pupils it is allowed to recover a contribution towards its costs. Further information on transport for post 16 pupils is available at: <https://www.northyorks.gov.uk/transport-sixth-form-or-college>

Scholars Travel Permit

The Council arranges transport for entitled pupils, and may also arrange transport for post 16 pupils where it is cost effective to do so. It then offers any spare seats on the vehicles to non-entitled and post 16 pupils. Until September 2019, the Council made a charge to any non-entitled or post 16 pupil travelling in a spare seat. The charge was either through a 'Scholars Travel Permit' for regular transport; or, a daily fare

Initial equality impact assessment screening form			
<p>This form records an equality screening process to determine the relevance of equality to a proposal, and a decision whether or not a full EIA would be appropriate or proportionate.</p>			
Directorate	Transport Waste and Countryside Services (TWACS)		
Service area	Home to School Transport		
Proposal being screened	Proposal to consult on Home to School Transport for Non Entitled and Post 16 pupils and use of accessible vehicles		
Officer(s) carrying out screening	Andy Holmes		
What are you proposing to do?	Consult on Home to School Transport for Non Entitled and Post 16 pupils and use of accessible vehicles		
Why are you proposing this? What are the desired outcomes?	We are proposing Proposal to consult on Home to School Transport for Non Entitled and Post 16 pupils and use of accessible vehicles. There are no Equalities implications arising from the recommendations of this report to carry out consultation. The consultation is a response to the need to change the way home to school services are provided following a legal challenge and the outcome will be reported to the Executive together with recommendations for change. The Equalities implications of the options and proposals will be detailed at that time		
Does the proposal involve a significant commitment or removal of resources? Please give details.	The consultation is being carried out by Transport Waste and Countryside Services and the Communications team.		
<p>Impact on people with any of the following protected characteristics as defined by the Equality Act 2010, or NYCC's additional agreed characteristics</p> <p>As part of this assessment, please consider the following questions:</p> <ul style="list-style-type: none"> To what extent is this service used by particular groups of people with protected characteristics? Does the proposal relate to functions that previous consultation has identified as important? Do different groups have different needs or experiences in the area the proposal relates to? <p>If for any characteristic it is considered that there is likely to be an adverse impact or you have ticked 'Don't know/no info available', then a full EIA should be carried out where this is proportionate. You are advised to speak to your Equality rep for advice if you are in any doubt.</p>			
Protected characteristic	Potential for adverse impact		Don't know/No info available
	Yes	No	
Age		X	There are no Equalities implications arising from the recommendations of this report to carry out consultation. The consultation is a response to the need to
Disability		X	
Sex		X	
Race		X	
Sexual orientation		X	
Gender reassignment		X	

Religion or belief		X	change the way home to school services are provided following a legal challenge and the outcome will be reported to the Executive together with recommendations for change. The Equalities implications of the options and proposals will be detailed at that time	
Pregnancy or maternity		X		
Marriage or civil partnership		X		
NYCC additional characteristics				
People in rural areas		X	There are no Equalities implications arising from the recommendations of this report to carry out consultation. The consultation is a response to the need to change the way home to school services are provided following a legal challenge and the outcome will be reported to the Executive together with recommendations for change. The Equalities implications of the options and proposals will be detailed at that time	
People on a low income		X		
Carer (unpaid family or friend)		X		
Does the proposal relate to an area where there are known inequalities/probable impacts (e.g. disabled people's access to public transport)? Please give details.	No			
Will the proposal have a significant effect on how other organisations operate? (e.g. partners, funding criteria, etc.). Do any of these organisations support people with protected characteristics? Please explain why you have reached this conclusion.	No			
Decision (Please tick one option)	EIA not relevant or proportionate:	X	Continue to full EIA:	
Reason for decision	There is no impact on protected characteristics as defined by the Equality Act 2010, or NYCC's additional agreed characteristics			
Signed (Assistant Director or equivalent)	Ian Fielding			
Date	14 February 2020			