

## **Cabinet Meeting on Wednesday 15 December 2021**

### **Home to School Transport – Review of Temporary Vacant Seat Scheme**



**Cllr Jonathan Price, Cabinet Member for Education (and SEND) said,**

“Earlier this year we said that updated Government legislation had left the Council with a non-statutory service that could not be applied fairly and evenly across the county and placed a burden on taxpayers.

We said then that we would not reinstate the suspended Temporary Vacant Seat Scheme unless a reasonable and workable solution could be found.

Having undertaken a six-week listening exercise, to which less than one per cent of the school population responded, no such solution has been found.”

#### **Report Summary:**

This report outlines the outcome of the Home to School Temporary Vacant Seat Scheme listening exercise together with an analysis of the legislative constraints in order to make recommendations on future actions. Based on this analysis the recommendation is that the Temporary Vacant Seat Scheme should not be reinstated, as no legal and fair solution that benefits all has been presented.

#### **Recommendations**

I recommend that Cabinet:

- a. Note the outcome of the temporary vacant seat scheme listening exercise carried out between 31 August 2021 and 12 October 2021.
- b. Consider the recommendation for the future of the temporary vacant seat scheme and mitigating factors.
- c. Agree to terminate the home to school temporary vacant seat scheme.
- d. Agree to review and consider reinstating the temporary vacant seat scheme once the availability of Public Service Vehicles Accessibility

Regulations (PSVAR) compliant coaches significantly improves in the Staffordshire coach market.

- e. To ask the Council's Transport Operations and Future Connectivity Team to work with bus operators to see if existing bus routes can be extended/alterd, within available resource, so as to provide travel opportunities for some pupils impacted by the PSVAR legislation.



<b>Local Members Interest</b>
N/A

## **Cabinet – Wednesday 15 December 2021**

### **Home to School Transport – Review of Temporary Vacant Seat Scheme**

#### **Recommendations of the Cabinet Member for Education (and SEND)**

I recommend that Cabinet:

- a. Note the outcome of the temporary vacant seat scheme listening exercise carried out between 31 August 2021 and 12 October 2021.
- b. Consider the recommendation for the future of the temporary vacant seat scheme and mitigating factors.
- c. Agree to terminate the home to school temporary vacant seat scheme.
- d. Agree to review and consider reinstating the temporary vacant seat scheme once the availability of coaches that meet the requirements of the Public Service Vehicles Accessibility Regulations (PSVAR) significantly improves in the Staffordshire.
- e. To ask the Council's Transport Operations and Future Connectivity Team to work with bus operators to see if existing bus routes can be extended/alterd so as to provide travel opportunities for some pupils impacted by the PSVAR legislation.

#### **Report of the Director for Economy, Infrastructure and Skills**

##### **Reasons for Recommendations:**

1. Guidance issued by Department for Transport in 2019 on the PSVAR legislation means that the Council's Temporary Vacant Seat Scheme needs to be reviewed to ensure that the Council's policies and practices remain within the law.
2. Following further communication from government in July 2021 it was clear that the current temporary vacant seat scheme operated by the Council could not function in its current form in the medium to long term, due to a lack of suitable vehicles which would create inequalities between different parts of the county. It was therefore decided to hold a listening exercise with interested stakeholders and potential users of the scheme

to understand if there was a legal and fair solution which would allow the scheme to continue within existing available budgets.

3. This report provides Cabinet Members with the outcome of the Home to School Temporary Vacant Seat Scheme listening exercise together with an analysis of the legislative constraints in order to make recommendations on future actions. Based on this analysis the recommendation is that the Temporary Vacant Seat Scheme should not be reinstated, as no legal and fair solution that benefits all has been presented.

### **Context – Home to School Transport**

4. The authority has a statutory obligation to provide free home to school transport for children that are eligible, in line with the published home to school transport policy.
5. The authority currently arranges free home to school transport for c8000 eligible children, c6000 in mainstream education and for c2000 children with special educational needs and/or disability (SEND).
6. This is out of a total mainstream and SEND Staffordshire school population of c120,000 children.
7. The home to school transport network consists of more than 900 vehicles and routes operated by more than 200 separate companies.
8. In addition, c1700 of the c6000 eligible mainstream pupils travel on the public transport network on both commercial and supported routes.
9. If a child is not eligible for free home to school transport, it is the parent / carer's responsibility to make and pay for (if needed) the necessary travel arrangements to ensure their child attends school.
10. The travel arrangements to and from school for around 95% of school children in Staffordshire, c112,000, are made by families or young people themselves without the involvement of the local authority.
11. Eligible 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). The Council knows in advance whether children routinely require accessible transport, and it is provided when necessary.

## **Overview of the Temporary Vacant Seat Scheme**

12. The Temporary Vacant Seat Scheme (TVSS) is a discretionary scheme, that makes spare seats on closed home to school contracted vehicles available for pupils that are not eligible for free home to school transport.
13. The number of seats available on the TVSS has always been limited, there has never been a guarantee that a seat will be available under the scheme. They were issued on a first come first serve basis, and parents / carers were always informed at the point of application that vacant seats could be, and have been, withdrawn at any time in the event of the seat being required for an eligible pupil.
14. There is no statutory requirement that the authority should offer such a scheme or consider the travel arrangements for children that are not eligible.
15. The original purpose of the TVSS was to generate a small income to support the cost of home to school transport. However over time the purpose of the scheme has been overtaken by changes in policy and legislation (including the requirement for children to remain in education beyond the age of 16, resulting in the Council developing a post 16 policy and offer of support).
16. Until July 2019 the Council sold vacant seats at a cost of £625 pa (although the average cost of providing a seat for eligible mainstream pupils on a contracted service is c£900 per seat) on contracted school transport where available. In recent years the number of vacant seats paid for has declined (c700 to c300, income reducing from c£450k pa to £190k pa) as the home to school transport network has transformed, from using dedicated closed school services to a more flexible approach with more pupils (both entitled and non-entitled) travelling on local service buses.
17. Contracted home to school routes are not modified, or capacity increased, for the benefit of TVSS, and the policy is that no additional contract costs are incurred in the provision of TVSS.
18. This does not make transport universally available to all in any event, since availability is dependent on there being eligible students in the area creating the need for a route to pass through and there being additional seats on the vehicle.
19. This means the scheme has only been accessible to a very small proportion of children, c300 families in 2019, which is equivalent to approximately 0.25% of the Staffordshire school population.

20. It remains the parent/carer's responsibility to arrange and fund (if necessary) travel to and from school if their child/children are not eligible for free home to school transport.

### **Background to Passenger Service Vehicles Accessibility Regulations**

21. The Public Service Vehicle Accessibility Regulations (2000) (PSVAR) were enacted through a statutory instrument following the Disability Discrimination Act 1995.
22. Local authorities were first directly informed that PSVAR applied to home to school transport networks in July 2019.
23. From dialogue with other Local Transport Authorities, and professional bodies such as the Association of Transport Co-ordinating Officers (ATCO) and the coach industry, it is clear that prior to summer 2019 that the intention of PSVAR was to ensure that all local bus services and other scheduled services carrying passengers at separate fares (such as National Express, Megabus) would, by 1 January 2020, operate using vehicles that met certain accessibility standards including being able to carry wheelchairs.
24. However, communications during 2019 from central government confirmed that the regulations apply to all Passenger Service Vehicles (PSVs) that can carry more than 22 passengers where a separate fare is paid.
25. On 19th November 2019 Department for Education (DfE) wrote to all Local Transport Authorities confirming that the Department for Transport (DfT) would allow a 2-year exemption on qualifying routes, with the expectation that contractors would after 2 years have a fully compliant PSV fleet. Exemptions had to be applied for and were complex to administer, being route and vehicle specific.
26. It should however be noted that home to school contracts carrying exclusively eligible pupils are not affected by PSVAR as there are no separate fares – the vehicle is paid for as a whole and all passengers travel free of charge. However, either where a vacant seat or post 16 seat is sold on a contract route or the route is registered as a local service for non-eligible pupils to board and pay a fare, separate fares then exist. School contracts with vacant seats/paying passengers fall within the definition of scheduled services within PSVAR as they operate regularly to a fixed route/timetable and separate fares exist.
27. The effect of this was that vacant seats / post 16 / paying passengers could only continue to be carried on contracted routes if the vehicle met accessibility requirements.

28. Vehicles carrying 22 or fewer passengers are exempt from the PSVAR – whether they carry fare paying passengers or not. All vehicles operating on Staffordshires SEND home to school routes fall under this category.
29. Local coach operators in Staffordshire have expressed difficulties in sourcing PSVAR compliant vehicles, the lead in time for build is lengthy and vehicles are expensive. This is also true for retrofitting of vehicles. There are currently a limited number of compliant coaches (c30%) available within operator’s existing fleets in Staffordshire. These are typically committed and procured by schools and academies as they were placed under more strict deadlines and exemptions by DfT to be compliant due to 100% of passengers paying separate fares.
30. Due to the confusion around the relevant legislation there are many coach operators in the UK that have relatively modern fleets that are not PSVAR compliant as they thought that their core business of home to school transport, school/club trips and leisure trips were all exempt from the regulations.
31. Staffordshire Coach Operators have indicated it is likely to take between 3 and 7 years to upgrade their entire fleet to meet PSVAR regulations.
32. The home to school network in Staffordshire has c80 vehicles currently operating with more than 22 seats that would fall under PSVAR regulations if any seats are sold at separate fares (in reality the fleet needed is more than 80 as operators would all have to have spares available to cover maintenance and breakdown). Replacing this quantity of vehicles (c80), if they could be sourced, could result in an estimated annual pressure on the home to school transport budget of more than £2 million per annum (40% increase) at the current time.
33. Legal advice and clarification from DfT in July 2021 has confirmed that the regulations apply to home to school transport and do therefore impact on local authorities’ ability to offer and sell vacant seats to non-eligible pupils. The date for making the changes has not changed, and temporary exemptions to charge fares on non PSVAR compliant vehicles are due to end in March 2022.
34. Disability groups are taking a keen interest in this agenda and providing vacant seats for free whilst avoiding the separate fare issue could be challenged on equality grounds since vacant seats could only be offered to non-entitled pupils without mobility difficulties.
35. The Council has a duty under the Public Sector Equality Act to consider the use of PSVAR coaches should they be required by an entitled pupil. If and when the need arises, a suitable PSVAR compliant coach or vehicle

would be commissioned, even though such a vehicle is likely to attract a premium of c£20,000 pa.

36. School Transport has become more accessible over the last 5 years due to the increased use of local bus services which are all PSVAR compliant, so the percentage of students travelling on accessible vehicles (buses) has increased.

### **Current Position**

37. Since August 2019 a number of officer decisions have been taken in conjunction with relevant stake holders.
38. In August 2019 an officer decision was made to stop charging for vacant seats on a temporary basis, in order to remain within PSVAR guidance. The action of making the TVSS free for users increased applications in the autumn term of 2019 by c30% from the number anticipated.
39. In March 2020 Coronavirus led to the closing of much mainstream schooling, with the exception of key workers' children who continued to attend school. This resulted in fewer home to school travel routes operating. In June 2020, as schools were returning to being fully open to all children, a further officer decision was made to suspend the TVSS as part of the response to Covid. This allowed the service to support children eligible to free school transport whilst maximising opportunities for social distancing on home to school transport, in line with clear government guidance.
40. In June 2020 an Officer decision was made to suspend the TVSS as part of the response to Covid. This allowed the service to maximise opportunities for social distancing on home to school transport, in line with government guidance.
41. In August 2021 following a government announcement of the ending of school bubbles and social distancing restrictions, the suspension of the TVSS was reviewed.
42. At this time the impact of PSVAR on the future operation of the TVSS was also considered; the date by which operators were expected to be PSVAR compliant has not changed. As an authority working with our operators, we had not at that time been able to identify a legal and fair solution for all. Thus, a further officer decision was made that the TVSS should remain suspended subject to completing a public engagement exercise (the "TVSS Listening Exercise").
43. This decision was communicated to interested parties, who were invited to take part in a 6-week public engagement exercise by completing an

online survey. Interested parties were informed that a decision would be taken that the TVSS would not be reinstated unless during this period a legal and fair solution for all was presented.

44. Details of the public engagement exercise and link to the online survey were shared with all those that had registered an interest in the scheme. The information was also shared with all Staffordshire Schools and with the general public through press releases and TV interviews and coverage.

### **Outcome of the Temporary Vacant Seat Scheme Listening Exercise**

45. The survey was open between 31 August 2021 and closed at midday on 12 October 2021, 603 responses were received in total.
46. The Executive Summary and Detailed Analysis of the 2021 TVSS survey are attached as Appendix 1 and 2 respectively.
47. Summary of key findings - 603 responses received (equivalent to c0.5% of Staffordshire School Population)
- a. 92% of respondents reported that they live in Staffordshire
  - b. 25% of respondents previously used the TVSS
  - c. 25% of responses related to year 12 & 13 pupils (post 16 students) which represents less than 1% of all post 16 students in Staffordshire (including school sixth form, standalone sixth form and colleges)
  - d. 37% of post 16 respondents reported their child (children) had previously been entitled to free transport to the high school
  - e. 57% of respondents suggested families are allowed to pay for / contribute towards seats
  - f. 9% of respondents stated they believe taxpayers' money should be used to cover the costs of the TVSS
  - g. Other solutions suggested included sponsorship, applying for DfT exemptions, and running more bus services in rural areas
48. All but one of the 603 respondents were opposed to the removal of the scheme and 171 (28%) of the respondents suggested that the removal of the scheme would lead to their child not being able to attend school.
49. It should be noted that the authority is not aware of any child (children) that have not attended school on a regular basis as a result of the continued suspension of the TVSS.
50. From analysis of the postcode data collected as part of the exercise, clusters of respondents have been identified by postcode area and this has provided valuable data on which to consider potential solutions / mitigations.

51. In terms of proposed solutions many of the respondents confirmed their willingness to pay for a seat and suggested that charging should be reintroduced so that the Council was able to collect valuable revenue. However, respondents proposing this solution did not address how the Council would resolve the additional financial burden arising from this step, though that need was explained in the accompanying text on the engagement website. To enable this to happen in a legal and fair way for all, significant investment would be required at the current time.
52. A table summarising respondents proposed solutions, with Council comments, is attached in Appendix 3.
53. From an analysis of the survey feedback, there is currently no clear legal and fair solution which will provide a medium or long-term solution for all respondents across the county.

### **Link to Home to School Transport Post 16 Scheme**

54. The authority does not have to provide free or subsidised Post 16 travel support but has a duty to prepare and publish an annual transport policy statement specifying the arrangements for the provision of transport or other support that the authority considers it necessary to make to facilitate the attendance of all persons of sixth form age receiving education or training.
55. The Post 16 scheme provides travel assistance for mainstream post 16 students from low-income families who meet all the following entitlement criteria: low income (as defined by national guidance), over 3 miles distance and under 15 miles distance, nearest appropriate educational establishment offering the course.
56. The Post 16 scheme is separate to the Council's vacant seat scheme and is in operation currently despite the suspension of the vacant seat scheme.
57. Travel assistance is offered (discounted ticket) on either public transport or where legally allowed and available, on closed home to school transport (PSVAR compliant coaches and minibuses with less than 22 seats that are exempt from PSVAR).
58. It should be noted that numbers of entitled mainstream pupils are very low with average numbers over the last five years running at c4 pupils per annum.
59. The authority currently provides travel assistance to c280 SEN post 16 students who require specialist transport due to their learning difficulty

or disability. Due to the nature of this transport, it is provided using vehicles of less than 22 seats and therefore not affected by PSVAR.

60. The post 16 scheme could therefore continue for mainstream and SEN students if the TVSS is permanently withdrawn.

### **Proposed Final Decision and Mitigation**

61. The outcome of the listening exercise has indicated that, there is not a fair and legal solution at this current time, which will retain the TVSS scheme in the medium to long term and that can be provided within available budgets.

62. A proposal to reinstate the vacant seat scheme could be considered once the coach market has recovered from the global pandemic and invested in the required PSVAR coach fleet, although all indications suggest that this will take between 3 and 7 years to achieve in Staffordshire.

63. It is therefore recommended that TVSS is terminated.

64. Although the decision to terminate the scheme will be unwelcomed by some, from analysis of the postcode data it is thought that local bus services could provide a solution for some respondents.

65. Members will be aware that considerable changes have been made to the home to school transport network over the last six years which has resulted in much greater use of the public transport being made. This has reduced the total number of vehicles on the road, reduced costs and carbon emissions. Importantly for this agenda this has facilitated the movement of large numbers of pupils who are not eligible for free home to school transport.

66. Examples of opportunities for 'non-entitled' home to school movements are evident across the local authority area and the success of this work has been largely unreported and it is felt that the success of these steps will have contributed to a response rate equivalent to the 0.5% of the Staffordshire school population that travels to school each day.

67. Local service bus routes have been mapped alongside survey respondents' postcodes, which suggests many respondents live on or close to an existing bus route. The map is attached in Appendix 4.

68. Respondents proposed that more public bus services are operated in rural areas. This is something that the Council already do, and are willing to do more of, by adjusting existing supported routes (ie routes funded by the local authority) to take additional demand in to account. The Council will review the information supplied in the listening exercise and

look to introduce any changes where possible. An example of this could be adjusting the route of service 103 (Eccleshall to Stone) or 102 Swynnerton to Stone so that it runs through some additional villages and hamlets. A sufficient lead in time will be needed to plan and implement any changes.

69. This activity will then be linked with the emerging Bus Service Improvement Plan (BSIP) work with an aim to provide a firm long-term solution for a number of the families that responded to the survey.
70. This approach should provide benefits for the wider community, providing increased connectivity in rural areas to enable residents to access employment, leisure activities and services as well as education.

### **Resource and Value for Money Implications**

71. No vacant seat income or post 16 scheme income has been included within budget forecasts for the financial year 2021/22 or indeed in the Medium-Term Financial Strategy (MTFS). Implementation of the recommendation is unlikely to result in additional costs for the Council.
72. All other options considered did not provide a legal and fair solution for all, and would result in a financial burden for the authority, as additional staff resource would be required in administering any scheme with no, or insufficient, income coming in to offset those costs.
73. The cost of retendering home to school contracts to provide a fully PSVAR compliant network to enable the authority to legally charge for seats on all routes, could result in an estimated annual pressure on the home to school transport budget of more than £2 million per annum (40% increase) at the current time. To put this into context, in order to cover this additional cost, the charge for each spare seat would need to be more than £6,600 pa (based on an average of 300 users).

### **Legal Implications**

74. The authority has a statutory obligation to provide transport for eligible pupils, in line with our school transport policy, however there is no legal requirement for the authority to provide discretionary transport, such as the TVSS.
75. The Council has taken legal advice and considers that it has complied with its duty to consult, in order to reach a fair and balanced decision in respect of the termination of the discretionary policy.

## **Risks Identified**

76. The proposed solution will disappoint users of the suspended TVSS.
77. If the Council delays the commissioning of fully PSVAR coaches, then there could be criticism of the Council as it is the Council's understanding that this will not be in line with the wishes of ministers.
78. If the Council insisted on PSVAR compliant vehicles this could provide a significant challenge for Staffordshire's coach operators, particularly for some of the smaller SME's, and it is likely there will be a contraction in the market as the asset value of the stock could become scrap value overnight forcing some into bankruptcy. This will almost certainly result in higher contract prices for the Council.
79. Furthermore, there are not physically enough PSVAR coaches currently in existence on the new or second-hand market. The market capacity for retrofitting is also necessarily limited and those vehicles also have to go through a notifiable alteration process which is reliant on DVSA capacity to certify them. In other words, operators couldn't physically provide PSVAR compliant vehicles across the board even if they wanted to. Some may purchase second hand PSVAR buses as an alternative but the value of these is increasing and greater costs involved as a typical coach operator wouldn't be able to deploy them on their private hire work i.e. the school work would bear all of the cost.

## **Summary and Recommendation**

80. The operation of a vacant seat scheme is a non-statutory function and our existing scheme has been compromised by the interpretation issued by DfT on the PSVAR legislation.
81. The Council does not require all vehicles used for home to school transport to be accessible and there is no specific legal obligation to do so.
82. Eligible 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). The Council knows in advance whether children routinely require accessible transport and it is provided when necessary.
83. This decision affects a small proportion of children and families, equivalent to approximately 0.25 – 0.5% of the Staffordshire school population; families where the responsibility and accountability of ensuring that pupils attend school/college rests with the parents/guardians. The

recommendation as outlined in this report will mean that the temporary vacant seat scheme will be terminated but opportunities will be sought to modify the local bus network where practical to provide suitable travel options for non-entitled pupils. This should provide a pragmatic answer for some of the respondents' desired outcomes.

84. It is recommended that the Mainstream and SEND post 16 scheme remain in place, and that the TVSS is not reinstated.

85. The decision will be published on the Council website and the Transport Operations and Future Connectivity Team will write to all parents/carers currently on the TVSS waiting list informing them of the termination of the scheme.

### **List of Background Documents/Appendices:**

Appendix 1 – Executive Summary – Temporary Vacant Seat Survey

Appendix 2 – Detailed report – Temporary Vacant Seat Survey

Appendix 3 – Proposed Solutions and comments table

Appendix 4 – Map of Bus Routes and Respondents Postcodes

### **Contact Details**

**Assistant Director:** Clive Thomson, Assistant Director for Connectivity and Sustainability

**Report Author:** Louise Clayton

**Job Title:** Head of Transport Operations and Future Connectivity

**Telephone No.:** 07855 336910

**E-Mail Address:** [louise.clayton@staffordshire.gov.uk](mailto:louise.clayton@staffordshire.gov.uk)

