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CABINET

Tuesday, 14th June, 2016

SUPPLEMENTARY PACK

1.	LLANFYLLIN HIGH SCHOOL'S USE OF DELEGATED FUNDS FOR TRANSPORT	C106- 2016
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To consider a report on Llanfyllin High School's use of delegated funds for transport.
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C106- 2016

CYNGOR SIR POWYS COUNTY COUNCIL.

CABINET EXECUTIVE 14TH June 2016

REPORT AUTHOR: County Councillor Wynne Jones
Portfolio Holder for Finance

SUBJECT: Ensuring Llanfyllin High School complies with Council
Policy on Use of Delegated Funds

REPORT FOR: Decision

Summary

- 1.0 Cabinet on 22nd March and 12th April resolved to address the issue of Llanfyllin High School's non-compliance with council policy since September 2011 on the use of delegated budget to subsidise home to school transport.
- 1.1 The school has accepted it must comply with council policy and therefore cease subsidising out of catchment transport from its delegated schools budget. In addition the council has also noted the school's concerns about the impact of any change and as a result will amend some of the previously agreed recommendations to allow a two year transition based on the implementation of a charging structure that uses the council's vacant seats charges scheme. The two year transition proposal now means the requirement to recover 50% of the position for this year from 1st April 2016 has also been removed.
- 1.2 The report confirms the position already reached around some recommendations and also outlines other options available to the Cabinet. It also covers the reasons why the option being recommended has been selected. In making the decision the Cabinet has also had due regard to the content of the Home to School Transport report commissioned jointly by the Council and the Llanfyllin High School's Governing Body. The report's author (Jonathan Walters QC) acted upon a terms of reference agreed by both parties.
- 1.3 The council also sought independent legal opinion in relation to the school's use of its delegated budget for home to school transport. The opinion received is unequivocal that the school is acting unlawfully and that the Council should demand that the school cease its unlawful action immediately. However the Cabinet must make its decision in the wider context of the potential impact of a move to immediate compliance. Under the council's constitution it is a matter for Cabinet to set a policy direction about the timing of that compliance.

- 1.4 It is also worth confirming the position around the transport of the 16 Powys pupils who have been paid for by the council and transported on buses arranged by the school. These pupils were charged on a full cost recovery basis by the school and therefore there is no issue about whether their transport was unlawful. This is because unlike the other pupils transported they were not subsidised by the school's delegated budget. The unlawfulness relates to the school determining its own arrangements, policy and funding of home to school transport.

2.0 Background

- 2.1 On 22nd March cabinet instructed the S151 Officer to produce a report for consideration about options available for recovery of delegated funds used by Llanfyllin High School to subsidise home to school transport. It also provided context that the council's external auditors had raised questions about whether Llanfyllin High School's funding of pupil transport from their delegated budget was in line with Council policy.
- 2.2 The report confirmed that since September 2011 Llanfyllin High School has not fully complied with Regulation 5.2 contained in the Powys Scheme for the Financing of Schools. This had occurred in each of the previous 5 years. An internal audit report confirmed Llanfyllin High School's use of its 2015/16 delegated budget to fund the transport for 187 pupils from outside the catchment area on coaches that are paid for directly by the school. The analysis was based on data supplied by the school and indicates 149 of the pupils are from Shropshire and 38 from Powys. Of the 38 from Powys, 16 are pupils that the School invoices the Council for because there is no capacity on current Council provision.
- 2.3 Cabinet on 22nd March considered Llanfyllin High School's proposal for compliance with Regulation 5.2 of the Powys Scheme for Financing of Schools. The internal audit report also noted that the procurement of transport from a single external supplier occurred 7 years ago and that no formal tendering of the provision has occurred. As a result the school was in breach of the Council's standing orders relating to contracts. The report also noted that the aggregated spend on transport means the school may also be in breach of the EU Procurement Directive.
- 2.8 The change to the Scheme for the Financing of Schools is well established having been agreed on 29th July 2008 by the Council's Board. The revised Scheme included the provision in Section 5.2 on Income from fees and charges that states:

"Where schools provide a service which is normally provided by the Authority e.g. home to school transport, the provision must be fully cost recovered either through parental contributions or PTA funding and should not be subsidised from the school's delegated budget".

2.9 When agreeing the revised policy the Board approved a 3 year transitional arrangement for schools that provided home to school transport. This was done to ensure that learners at that time were provided with continuity of provision. The transition period ceased September 2011 at which time all schools were required to comply with the policy. This was further emphasised in the revised home to school transport policy agreed by the Board on 14th September 2010 that stated:

“Where parents exercise a preference for a school other than the nearest allocated school they must make arrangements for transport and are responsible for all transport costs”

2.10 At the meeting on 22nd March 2016, Cabinet resolved that the school should comply with policy as from September 2016. Cabinet also requested that a further report be brought as soon as possible and this requirement was delivered on 12th April.

Cabinet’s Recommendations of 12th April

The following lists the recommendations agreed by cabinet on 12th April. It is followed by the school’s response:

1. *Cabinet confirms its decisions taken on 22nd March 2016, that require the governors of Llanfyllin High School to:*
 - *ensure that by the start of the 2016/17 academic year, the school is fully compliant with PCC policy with regards the use of delegated funds by schools in relation to home to school transport; and*
 - *Advise how Llanfyllin High School proposes to address the issue of compliance with EU procurement procedures.*
2. *That Governors take action to reimburse the schools delegated budget for 50% of the cost of subsidised transport from the 1st April 2016, the method of recovery would be a matter for the school.*
3. *That monthly meetings be held between council officers and school representatives to review expenditure and income to ensure compliance with the Scheme for the Financing of Schools. Regular reports of these meetings be submitted to Cabinet and Audit Committee.*
4. *To ensure future compliance with Scheme for the Financing of Schools, the School be required to use the Council’s financial system as its primary accounting system.*
5. *The school provide documentary evidence to demonstrate compliance with financial regulations and/or EU procurement*

procedures in relation to the procurement of transport at the school in general, but in particular in relation to home to school transport arrangements made by the school.

Llanfyllin High School's Response to the Cabinet's recommendations of 12th April

On 3rd June the Council received a response from the school to the five recommendations listed above. The letter is a background paper to the report and it contains the following responses to each individual recommendation:

Recommendation 1 – The school would comply from September 2016 but outlined the potential impact of a move to complying with policy and to support its views had commissioned an impact study that it supplied to the council..

Recommendation 2 – The governing body was minded to use pre 2011 reserves for reimbursement to the school's delegated budget.

Recommendation 3 – The school agreed with the recommendation with the request that all records of these meetings are copied to the Governing Body.

Recommendation 4 – The Governing Body confirmed agreement noting the council was formulating a plan.

Recommendation 5 – The school was unable to provide documentary evidence of compliance with EU procurement procedures for the services that had been or are currently being provided. However it believed it was achieving good value for money in terms of the cost of transport relative to those provided by the council.

The above summary indicates the overall positive response by the school to Cabinet's recommendations of 12th April. The key issue being acceptance of the need to comply with regulation 5.2 as well as a proposal for payment of the 50% requirement from 1st April 2016.

3.0 Regulation 5.2 and the use of delegated Budget

- 3.1 The issues raised by the practice or policy around home to school transport operated by Llanfyllin High School require cabinet to understand fully the consequences should delegated budgets revert to being able to be used to subsidise transport.
- 3.2 The removal of this regulation within the Scheme for Delegated Funding would have serious and far reaching consequences for the provision of education in Powys and see the diversion of funds for educating pupils to transport provision. The use of a financial incentive in the form of a

transport subsidy to attract pupils means that less funding is available for education in delegated budgets.

- 3.3 It also undermines the ability of the council strategically to manage school provision across Powys. As a result regulation 5.2 remains the correct policy direction.
- 3.4 Equally it is not appropriate to amend regulation 5.2 to allow (only) out of county children attending Powys schools to be subsidised from delegated budget. Such a move would have clear implications for complying with equalities legislation and if it were to be permitted would affect a number of schools situated on near the county boundaries with neighbouring authorities. The schools in a similar geographic position have complied since September 2011. In addition similar issues also arise that have been covered in paragraphs 3.2 and 3.3.

4.0 Options

- 4.0 The Cabinet has a number of options available and these are outlined below along with reasons for support or rejection:

- a) **To re-inforce the previous decision of 22nd March and 5th April that compliance with regulation 5.2 is achieved from September 2016.**

The school's response of 3rd June indicates they would comply with regulation 5.2 and cease providing transport for out of catchment pupils from September 2016. Whilst the cabinet welcomes the position expressed by the school in its letter of 3rd June it must also reflect on the comments raised by the Governing Body and the correspondence from parents.

Reasons for rejecting the option:

In reaching a decision the cabinet needs to assess whether the move to full compliance from September 2016 would affect the provision of pupils' education. The option does deliver compliance but having listened to the Governing Body's concerns about the immediate impact of the change it has agreed to deliver it is clear that an abrupt move to compliance will have an impact on parents and pupils.

- b) **That the school are provided with an additional year to comply and are therefore required to comply by September 2017.**

The School could be required to become policy compliant for the next academic year commencing September 2017.

Reasons for rejecting the option:

The addition of an academic year will provide some opportunity for parents to prepare for a change to transport fee levels and it also has some educational merit. An added benefit sees the school able to have more time to look at the impact of the change. This covers not only the impact on curriculum offer and funding levels should the phased removal of subsidised transport and the associated increase in charges impact on parental decision making. However it will only provide a one year transition and may not have as much educational merit as a longer period of transition.

- c) That the school are given two years to move to compliance therefore required by September 2018. The transition period would require a fee structure that uses the council's existing vacant seat fee levels**

Reasons for supporting this option:

By providing a two year transition period it allows the Governing Body time to work with the Council to prepare for compliance with regulation 5.2. The proposal to permit a two year period for Llanfyllin to move towards full compliance with Clause 5.2 of the Scheme for Financing Schools is educationally sound.

- Pupils in year 9, will by this stage of the current academic year have made their choices of subjects to follow at GCSE level. This proposal will enable the pupils to commence and complete their chosen subjects and provide parents with a sufficient timescale to consider post 16 options.
- Pupils currently in year 10 will be provided the opportunity to conclude their GCSE courses. This will ensure that pupils are not required to change courses and will avoid a potential change of school to a curriculum which does not have the same examination syllabus and requirements as they currently follow.
- Pupils in year 11, following this year's GCSE outcomes will with be provided with the opportunity to commence and complete their A level courses at Llanfyllin High School .
- Pupils in year 12 will be provided with the opportunity to complete their A levels studies, ensuring that any applications for Higher Education places are not affected.

The use of the vacant seat fee structure until September 2018 is a transparent and equitable approach. The Powys vacant seat scheme is already in place and is being paid by 280 Powys parents across the county who take advantage of the policy. It is set at a £360 per seat level for 2016/17 for pupils aged up to 16 and £465 for post 16 transport. These should be reflected in their charging as a minimum

charge. Thereafter any local arrangement will need to demonstrate full cost recovery for transport.

d) That compliance be delayed until the outcome of Secondary Schools Transformation programme for North Powys is known

Reasons for rejecting this option:

The School is, by determining its own transport policy, distorting the current demand for places at individual schools in north Powys. The original decision in 2008 to cease a school's ability to use delegated budget for home to school transport sought to stop individual schools distorting demand for places and therefore undermining the council's role to strategically manage school provision across Powys. As the council moves through a strategic review process it would not be appropriate or acceptable to continue the current approach until the outcome of a review is known.

e) That the Council should pay for the transportation of the 'out of catchment/ out of county children, and reclaim the money from the Llanfyllin HS delegated budget.

Reasons for rejecting this option:

This option would see the council permanently condone the current practice and allow the school to maintain the status quo by another means. Despite the obvious contravention of the spirit of regulation 5.2 it also sees funding intended for the education of pupils continue to be used to subsidise transport. It also raises issues of equity for those schools in Powys who complied with council policy from September 2011 and have managed their schools accordingly since that date.

4.0 One Powys Plan

4.1 The provision of education is part of the Learning and Skills Programme forming part of the One Powys Plan.

5.0 Options Considered/Available

5.1 The options available to Cabinet are outlined above.

6.0 Preferred Choice and Reasons

6.1 The report recommends that the Cabinet supports the two year transition period from September 2016. Full compliance with Regulation 5.2 will be in place for September 2018. The use of the vacant seat fee structure during this two year period means that pupils currently in receipt of

subsidised transport will have a phased introduction. The sound educational reasons are outlined above.

- 6.2 The preferred choice also has implications for the 12th April cabinet report's recommendation that '*Governors take action to reimburse the schools delegated budget for 50% of the cost of subsidised transport from the 1st April 2016, the method of recovery would be a matter for the school*'. It would be inappropriate to continue to pursue this recommendation given the two year transition and as a result this requirement is removed.

7.0 Local Member(s)

- 7.1 To be supplied at the meeting.

8.0 Support Services (Legal, Finance, Corporate Property, HR, ICT, Business Services)

- 8.1 Finance note the proposal and continue to state that the move to a shared financial system will have benefits for the school and the council's finance service.
- 8.2 Legal: The recommendation can be supported from a legal point of view. The legal section will provide support for the decision of cabinet

9.0 Corporate Communications

- 9.1 This issue will be of considerable public interest and the cabinet decision should be publicised using all appropriate media

10.0 Statutory Officers

- 10.1 The Strategic Director Resources (Section 151 Officer) notes that this issue continues to be of interest to the external auditor (Wales Audit Office) and that the approach outlined will ensure Llanfyllin High School complies with the Powys Scheme for the Financing of Schools from September 2018. The external auditor is being kept informed of the position but may look at the issue again, as well as the Council's response, as part of the audit of the 2015/16 accounts.

- 10.2 The Solicitor to the Council (Monitoring Officer) has commented as follows: "I note the legal comment and have nothing to add to the report.

11.0 Members' Interests

- 11.1 The Monitoring Officer is not aware of any specific interests that may arise in relation to this report. If Members have an interest they should declare it at the start of the meeting and complete the relevant notification form.

Recommendation:	Reason for Recommendation:
<p>1. That Llanfyllin High School will have a two year transition period to comply with Regulation 5.2 and during the transition period beginning September 2016, the charges for transport will be at least in line with the council's vacant seat scheme. From September 2018 the position will be on a full cost recovery basis.</p> <p>2. That the decision of Cabinet taken on 12th April, where the school was required to reimburse the delegated budget for 50% of the cost of the subsidised transport for the summer term 2016, be rescinded, thus removing this requirement.</p> <p>3. Cabinet reaffirms that Recommendations 3, 4 and 5 from 12th April remain in place</p>	<p>The two year transition period has a sound educational basis and by using the vacant seat charging structure a move towards full cost recovery that will commence in September 2018.</p>

Relevant Policy (ies):	Powys Scheme for the Financing of Schools Home to School Transport Policy		
Within Policy:	N/A	Within Budget:	N/A

Relevant Local Member(s):	Cllr Barry Thomas Cllr Gwynfor Thomas Cllr Peter Lewis Cllr Daren Mayor Cllr Aled Davies Cllr Eldrydd Jones
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Person(s) To Implement Decision:	David Powell
Date By When Decision To Be Implemented:	21 st June 2016

Contact Officer Name:	Tel:	Fax:	Email:
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Background Papers used to prepare Report:

- Report to the Council's Board of 29th July 2008 on 'Revisions to the Powys Scheme for the Financing of Schools'
- Financial Reports supplied by Llanfyllin High School from 2011
- Llanfyllin High School's proposal for compliance with Regulation 5.2 of the Powys Scheme for the Financing of School
- Internal Audit's Fact finding Report on Llanfyllin's Transport Arrangements
- Cabinet report of 22nd March 'Llanfyllin High School's Proposal to ensure Compliance with the Powys Scheme for Financing of Schools'
- Cabinet report of 12th April 'Options for the recovery of Llanfyllin High School's Use of Delegated Funds for Transport'
- Letter of 3rd June 2016 from Llanfyllin High School to Mr J. Patterson, Chief Executive
- Impact Report of May 2016 'The Potential Impact of Changes to Transport Policy from Sept 2016 on Llanfyllin High School'
- Jonathan Walters QC report on 'Home to School Transport Investigation on behalf of Powys County Council and the Governing Body of Llanfyllin High School' (May 2016)
- Legal Opinion re Llanfyllin High School (May 2016)

Local Government Act 1992