

HAMPSHIRE COUNTY COUNCIL

Report

Committee:	Children and Young People (Overview and Scrutiny) Select Committee
Date:	28 July 2022
Title:	Home to School Transport Policy Public Consultation Outcomes - Consideration of Request to Exercise Call-in Powers
Report From:	Head of Law and Governance and Monitoring Officer

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Purpose of this Report

1. The purpose of this report is for the Children and Young People (Overview and Scrutiny) Select Committee ('CYP Select Committee') to consider whether it should exercise its powers under Section 9F of Part 1A of the Local Government Act 2000 ('the 2000 Act'), referred to in the County Council's Constitution as 'Call-in'.

Recommendation(s)

2. That Members of the CYP Select Committee determine whether:
 - a. They recommend that the Executive Lead Member for Children Services should re-consider their decisions as set out in the Decision Record attached at Appendix 1, OR
 - b. They consider that they should not recommend that the Executive Lead Member for Children Services re-considers their decisions as set out in the Decision Record attached at Appendix 1.

Contextual information

3. On 14 January 2022, the Executive Lead Member for Children Services gave permission to consult with the public and affected service users on proposed amendments to the Home to School Entitlement Policy. The proposals were to:
 - a. Increase the use of co-ordinated pick up and drop off points for SEND children.
 - b. Arrange journeys to more commonly serve multiple schools and colleges and age groups, including journeys that serve both mainstream and special schools and colleges.

4. On 12 July 2022, the CYP Select Committee pre-scrutinised the Home to School Transport Entitlement Policy Consultation Report attached at Appendix 2 (“Decision Day Report”) due to be considered by the Executive Lead Member for Children Services later that day. After detailed questions and debate, the CYP Select Committee resolved by majority to support the recommendations contained at paragraph 2 and 3 of the Report.
5. The Executive Lead Member for Children Services listened to the questions and debate and thanked members for their comments, which they confirmed they would consider as part of their decision making.
6. On the same date, the Executive Lead Member for Children Services considered the Decision Day Report and approved the recommendations contained at paragraph 2 and 3 of the Report, enabling the implementation of the proposals and amending the Home to School Transport Policy. The decision record of the Executive Member dated 12 July 2022 is attached at Appendix 1.
7. Following the decision of the Executive Lead Member for Children Services on 12 July 2022, a call-in request was made by a quorum of members of the CYP Select Committee for a meeting of the Committee to be held for it to consider whether it should exercise its call-in powers. No stated reason was given for the call-in request

Legal and Constitutional Position

8. Legal provisions in respect of Call-in are set out at Section 9F of Part 1A of the 2000 Act and reflected at Part 3, Chapter 3, Paragraph 1.17 of the County Council’s Constitution. A copy of Part 3, Chapter 3, Paragraph 1.17 of the Constitution is attached at Appendix 3 for ease of reference. It should be noted however that discussion of the Executive decision subject of the Call-in request is not limited to the points raised in the request (should any have been given).
9. When a Scrutiny Committee meets to consider whether it should exercise its Call-in powers in respect of an Executive Decision, a Select Committee is required to consider whether to recommend:
 - a. that the decision be reconsidered by the relevant decision maker; or
 - b. that its function in respect of review or scrutiny of the decision should be exercised by the County Council.
10. It should however be noted that the recommendation as referred to at 11b above is not available where the Executive decision in question is in line with the Budget or Policy Framework. Neither does the exercise of Call-in powers prevent implementation of a decision within the Budget and Policy Framework.

11. As indicated at paragraph 4 of this Report, the decision of the Executive Lead Member for Children Services relates to proposals regarding the provision of the Home to School Transport Entitlement Policy which forms part of the Council's Budget or Policy Framework. For these reasons, it is the view of the Head of Law and Governance and Monitoring Officer that the decision made by the Executive Lead Member for Children Services is in line with the Budget or Policy Framework. Therefore, should the CYP Select Committee determine it appropriate to exercise its Call-in powers, the recommendation open to the Committee is as set out in Paragraph 2 above.

Scrutiny

12. The role of a Scrutiny Committee includes both developing and reviewing policy and holding the Executive to account. A Scrutiny Committee may not however discharge any functions other than those conferred on it, and whilst it is perfectly proper for a Scrutiny Committee to offer advice and recommendations to an Executive decision maker, in law, responsibility for an Executive decision is that of the Executive. Similarly, in law, functions of the Executive cannot be discharged or overturned by the Full Council.

13. Where pre-scrutiny of a proposed Executive decision takes place, the Executive is advised that it should take into account any views expressed by an Overview and Scrutiny Committee when determining their final decision. The Executive is not however limited to consideration only of the views of a Scrutiny Committee and may take into account other relevant factors in its decision-making process and make other determinations as it thinks fit.

14. It should be noted that the Executive Lead Member for Children Services was present at the Select Committee meeting which scrutinised the Home to School Transport Entitlement Policy Report. At that meeting, they listened to the Select Committee's questions and debate and acknowledged their comments and views. As part of their decision day the Executive Lead Member heard further from Members and acknowledged their concerns and reasons for not supporting the recommendations, which were considered in making the decision.

15. When operated effectively, call-in provisions should ensure that there is an appropriate balance between effectively holding the Executive to account, being able to question decisions before they are recommended, and allowing effective and efficient decision making by the Executive within the policy framework and budget agreed by the full Council.

Call-In

16. So far as reconsideration of the recommendations in the Report contained at Paragraphs 1.1 of the decision record, it is open to the CYP Select

Committee to ask the Executive Lead Member for Children Services to reconsider her decisions.

17. It is not however possible under the provisions relating to call-in for the CYP Select Committee to do anything other than ask the Executive Lead Member for Children Services to reconsider the specific decisions she made.

REQUIRED CORPORATE AND LEGAL INFORMATION:

Links to the Strategic Plan

Hampshire maintains strong and sustainable economic growth and prosperity:	Yes
People in Hampshire live safe, healthy and independent lives:	Yes
People in Hampshire enjoy a rich and diverse environment:	Yes
People in Hampshire enjoy being part of strong, inclusive communities:	Yes

Other Significant Links

Links to previous Member decisions:	
<u>Title</u> Proposed changes to Home to School Transport Policy for Home to School Transport Travel provision (2022) Decision Day Agenda Item 1	<u>Date</u> 14 January 2022
Direct links to specific legislation or Government Directives	
<u>Title</u> Local Government Act	<u>Date</u> 2000

Section 100 D - Local Government Act 1972 - background documents	
<p>The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)</p>	
<u>Document</u>	<u>Location</u>
None	

EQUALITIES IMPACT ASSESSMENT:

1. Equality Duty

The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act with regard to the protected characteristics as set out in section 4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- Advance equality of opportunity between persons who share a relevant protected characteristic within section 149(7) of the Act (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic within section 149(7) of the Act (see above) and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- The need to remove or minimise disadvantages suffered by persons sharing a relevant protected characteristic that are connected to that characteristic;
- Take steps to meet the needs of persons sharing a relevant protected characteristic that are different from the needs of persons who do not share it;
- Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

2. Equalities Impact Assessment:

An EIA was not applicable as the report is governance in nature and relates to decisions that have a separate assessment undertaken.

Climate Change Impact Assessment

The carbon mitigation tool and/or climate change adaptation tool were not applicable because the decision relates to a separate project, which is subject to assessment individually.